



Legislation Details (With Text)

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**On agenda:** 11/4/2021      **Final action:**

**Title:** HEARING to Consider Text Amendment Application No. P21-05185 and related Environmental Finding for Environmental Assessment No. P21-05185, amending Section 15-2706 of the Fresno Municipal Code, relating to the sale of alcoholic beverages for off-site consumption (Citywide) - Planning and Development Department

- ADOPT Environmental Assessment No. P21-05185, dated October 20, 2021, that Text Amendment Application No. P21-05185 is exempt from the California Environmental Quality Act (CEQA) pursuant to the Common Sense Exemption that it can be seen with certainty that there is no possibility that the proposed Text Amendment may have a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3).
- BILL (For introduction) - Amending Section 15-2706 to the Fresno Municipal Code, relating to the use regulations for alcohol sales.

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Fresno City Council Resolution No. 2021-162, 2. Exhibit B - Section 15-2706-F (Location Restrictions) and Section 15-2706-S (Cancel and Transfer), 3. Exhibit C - Text Amendment No. P21-05185 amending Sections 15-2706 of the Citywide Development Code, 4. Exhibit D - Finding of No Possibility of Significant Adverse Effect as prepared for Environmental Assessment No P21-05185 dated October 20, 2021, 5. Supplement\_Nov 4 2021\_21-685 10AM#1\_PowerPoint Presentation

Date	Ver.	Action By	Action	Result
11/4/2021	1	City Council	continued	

**REPORT TO THE CITY COUNCIL**

**DATE:** November 4, 2021

**FROM:** JENNIFER CLARK, Director  
Planning and Development Department

**THROUGH:** WILL TACKETT, Planning Manager  
Planning and Development Department

**BY:** PHILLIP SIEGRIST, Supervising Planner  
Planning and Development Department

**SUBJECT**

HEARING to Consider Text Amendment Application No. P21-05185 and related Environmental Finding for Environmental Assessment No. P21-05185, amending Section 15-2706 of the Fresno Municipal Code, relating to the sale of alcoholic beverages for off-site consumption (Citywide) -

## Planning and Development Department

1. ADOPT Environmental Assessment No. P21-05185, dated October 20, 2021, that Text Amendment Application No. P21-05185 is exempt from the California Environmental Quality Act (CEQA) pursuant to the Common Sense Exemption that it can be seen with certainty that there is no possibility that the proposed Text Amendment may have a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3).
2. BILL (For introduction) - Amending Section 15-2706 to the Fresno Municipal Code, relating to the use regulations for alcohol sales.

## RECOMMENDATION

### Staff recommends that the City Council take the following actions:

1. ADOPT Environmental Assessment No. P21-05185, dated October 20, 2021, that Text Amendment Application No. P21-05185 is exempt from the California Environmental Quality Act (CEQA) pursuant to the Common Sense Exemption that it can be seen with certainty that there is no possibility that the proposed Text Amendment may have a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3).
2. BILL (For introduction) - Amending Sections 15-2706 to the Fresno Municipal Code, relating to the use regulations for alcohol sales.

## EXECUTIVE SUMMARY

On June 10, 2021, the Fresno City Council initiated the proposed Text Amendment Application No. P21-05185 pursuant to Fresno City Council Resolution No. 2021-162 (**Exhibit A**). The resolution proposes to amend Section 15-2706 of the Citywide Development Code, otherwise known as the Responsible Neighborhood Market Act (RNMA). The RNMA provides regulations relating to the sale of alcoholic beverages for off-site consumption.

The proposed text amendment would provide greater flexibility for existing off-sale establishments seeking to relocate by allowing an exception from the Location Restrictions set forth at Section 15-2706-F and an exemption from the Cancel and Transfer requirements as Section 15-2706-S.

Under the proposed text amendment, qualifying existing establishments would be permitted to relocate and transfer their existing off-sale license to a new location and would not be subject to applicable Location Restrictions for New Establishments or the Cancel and Transfer Provisions provided the new location meets the proposed provisions of the exception.

### Fresno City Planning Commission Action

Pursuant to the requirements of Fresno Municipal Code section 15-5806 (and 15-5007.D), notice of the Planning Commission public hearing was published in the *Fresno Bee* on October 8, 2021. Section 15-5007-D allows the posting of a public hearing notice, in at least one newspaper of general circulation, as an alternative noticing method for large mailings.

The subject applications were considered by the Fresno City Planning Commission at its regularly scheduled meeting on October 20, 2021. After hearing testimony from city staff, the Planning Commission unanimously voted to recommend approval of the proposed applications by a vote of 7-

0 (7 in favor, 0 in opposition). The Planning Commission Resolution and recommendation is attached as **Exhibit E**.

## **BACKGROUND**

Off-sale establishments possess certain characteristics that have the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, especially when such establishments are concentrated near one another. In order to ensure that establishments operate in a manner that is mutually beneficial to surrounding uses and to also provide mechanisms to prevent and correct any associated problems, establishments that sell alcoholic beverages for off-site consumption are subject to special regulations pursuant to Chapter 15, Article 27, Section 15-2706 of the FMC, otherwise known as the Responsible Neighborhood Market Act (RNMA).

The RNMA provides additional standards that establishments must meet in order to obtain a Conditional Use Permit (CUP) to sell alcoholic beverages for off-site consumption. Furthermore, the RNMA applies to any proposed new establishment or any existing establishment that requests to modify their alcohol or business license type(s), reinstate their alcohol or business license(s) after an expiration, surrender or revocation, extend their hours of alcohol sales, expand their floor area for retail sales of alcohol, or relocate and transfer an existing alcohol license.

Any new or expanded use (including existing establishments seeking to relocate) is required to obtain a CUP in compliance with the established provisions of the Citywide Development Code, including but not limited to the Location Restrictions for New Establishments and the Cancel and Transfer requirements set forth at Sections 15-2706-F and 15-2706-S (**Exhibit B**).

### Location Restrictions

Pursuant to Section 15-2706-F (Location Restrictions for New Establishments) of the FMC, new off-sale alcohol establishments are prohibited if they are near sensitive uses, near other alcoholic beverage establishments, within high crime areas, within high concentration areas, and if the number of sites selling alcohol for off-site consumption will exceed one license per 2,500 residents.

The aforementioned ratio requirement does not apply to new establishments that utilize the Cancel and Transfer provisions set forth at Section 15-2706-S, which requires new establishments (including existing establishments seeking to relocate) to transfer and cancel ABC licenses in good standing as set forth in Table 15-2706 (**Exhibit B**).

### Exceptions to Location Restrictions

According to Section 15-2706-F-6 (Exceptions) of the FMC, a new establishment (including existing establishments seeking to relocate) may be excepted from the location restrictions if the Review Authority determines there is sufficient information in the record to make all four (4) exception findings (included in **Exhibit B**).

### Implementation of Location Restrictions and Exceptions

If a new establishment does not comply with applicable location restrictions and the review authority

is unable to make all of the required exception findings, then the new establishment is prohibited, and a conditional use permit cannot be approved.

Alternatively, if a new establishment does not comply with applicable location restrictions but the review authority is able to make all of the required exception findings, then the new establishment may be excepted from the location restrictions and a conditional use permit may be approved, provided the establishment complies with the Cancel and Transfer provisions which requires the purchase and surrender of an additional alcohol license.

### **Text Amendment Application No. P21-05185**

Text Amendment Application No. P21-05185 was initiated on June 10, 2021, pursuant to Fresno City Council Resolution No. 2021-162 (**Exhibit A**) to amend use regulations for off-site alcohol sales uses within the City of Fresno.

#### Summary of Text Amendment

Text Amendment Application No. P21-05185 proposes to amend Section 15-2706 of the Citywide Development Code to:

- 1. Provide Flexibility for an Existing Establishments Seeking to Relocate.** The proposed text amendment would provide flexibility for existing off-sale establishments seeking to relocate by adding an additional exception to Location Restrictions set forth at Section 15-2706-F and allow an exemption from the Cancel and Transfer requirements as Section 15-2706-S.
  - a. Existing Establishment Relocation Exception.** An existing establishment that relocates and holds a Conditional Use Permit pursuant to this ordinance may be excepted from the location restrictions if the proposed relocation is located:
    - i. Across the street and within ¼ mile radius of the current location;
    - ii. Within the same Council District;
    - iii. Within the same Census Tract;
    - iv. Not within 500 feet of a nursery school, preschool, a public or private State-licensed or accredited school or daycare facility; and
    - v. Not in an area of high crime, as defined by the California Business and Professions Code 23958.4(a)(1) et seq., and as determined by the Department of Alcoholic Beverage Control. The original location will be required to forfeit its existing alcohol entitlements for the original location.
  - b. Exemption from the Cancel and Transfer Requirements.** Existing establishments that seek to relocate are exempt from the Cancel and Transfer Requirements if the proposed relocation meets the requirements of Section 15-2706-F.7.

The proposed Text Amendment does not relate to any physical project and will not result in any physical change to the environment. The approval of this text amendment does not approve any

development or specific project. Rather, it clarifies the additional requirements of operating an alcohol use in the City.

### **Airport Land Use Commission**

The Fresno County Airport Land Use Commission (ALUC) reviewed the proposed text amendment on October 4, 2021. The ALUC voted unanimously to recommend approval of the proposed text amendment.

### **Council District Advisory Committees**

The recommendations of the Council District Plan Implementation Committees are as noted below:

#### Council District 1

On August 6, 2021, the Council District 1 Project Review Committee voted 5-0 to recommend denial of the proposed text amendment.

#### Council District 2

On July 26, 2021, and August 9, 2021, the Council District 2 Project Review Committee was scheduled to review the proposed text amendment. A meeting was not held because of lack of a quorum.

#### Council District 3

On July 27, 2021, the Council District 3 Project Review Committee voted 4-0 (2 members absent) to recommend approval of the proposed text amendment.

#### Council District 4

The Council District 4 Project Review Committee is currently inactive.

#### Council District 5

On July 26, 2021, the Council District 5 Project Review Committee voted 3-0 (2 members absent) to recommend approval of the proposed text amendment.

#### Council District 6

On August 6, 2021, the Council District 6 Project Review Committee was scheduled to review the proposed text amendment. A meeting was not held because of lack of a quorum.

#### Council District 7

There is no Council District 7 Project Review Committee at this time.

#### Fulton-Lowell

On August 3, 2021, the Lowell District Advisory Committee voted 3-1 to recommend approval of the proposed text amendment.

#### Tower District

On July 13, 2021, the Tower District Advisory Committee voted 7-0 to recommend approval of the proposed text amendment.

### **Development Code Text Amendment Findings**

The Planning Commission shall not recommend, and the City Council shall not approve an application unless the proposed amendment meets the following criteria, as set forth in Fresno Municipal Code section 15-5811:

1. The Code text amendment is consistent with the General Plan, the Fresno County Airport Land Use Compatibility Plan, and any applicable operative plans; and

*Response:* Each project applying for a conditional use permit under the proposed text amendment will be individually reviewed and assessed for consistency with the General Plan, the Fresno County Airport Land Use Compatibility Plan, the underlying base zone district, and any applicable specific or community plans. Text Amendment Application No. P21-05185 has been examined with respect to its consistency with the Fresno General Plan and applicable operative plans and it was concluded that Text Amendment Application No. P21-05185 is consistent with said plans. The proposed text amendment is a modification to existing local ordinance previously found consistent with the General Plan and Fresno County Airport Land Use Compatibility Plan. The proposed amendment would allow existing businesses, which presently have authorization of the City and an active ABC license to sale alcohol for off-site consumption, to re-locate (in limited circumstances) in a manner which will not adversely affect consistency with the intent of existing ordinance to limit the potential for such operations to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, especially when such establishments are concentrated near one another; or otherwise have an adverse impact on public health.

2. The amendment is consistent with the purpose of the Development Code to promote the growth of the city in an orderly and sustainable manner and to promote and protect the public health, safety, peace, comfort, and general welfare.

*Response:* The purpose of the proposed text amendment is to provide a process for existing locations that sell alcohol for off-site consumption seeking to relocate to comply with new regulations and provisions, which will promote the growth of the city in an orderly and sustainable manner. The modification to the established regulations of the proposed Text Amendment seeks to promote and protect the public health, safety, and general welfare beyond what the current Code requires. This proposed text amendment concerns the issue of a relocating business and the requirements and exceptions that may will apply due to re-locations. The scope of this amendment is significantly narrower than the prior amendment to Section 15-2706, as adopted by the Fresno City Council on October 15, 2020, pursuant to Ordinance No. 2020-045 and which took effect on November 15, 2020. The proposed Text Amendment does not relate to any physical project, and it does not intensify the use of alcohol sales beyond what is already in place. Further, the proposed Text Amendment requires that future applications for off-site consumption alcohol sales meet the additional regulations to obtain discretionary approval from the City via a CUP, at which time the particular impacts of each known proposed project will be assessed specifically relating to public health, safety, peace, comfort, and general welfare. No such impacts were identified under this amendment and thus it can be concluded that Text Amendment Application No. P21-05185 is consistent with the purpose of the Development Code.

## ENVIRONMENTAL FINDINGS

An environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA) Guidelines.

CEQA Guidelines Section 15061(b)(3) states that a project is exempt from CEQA if it is “covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

Staff has conducted a preliminary review of the project and has determined that it is exempt from CEQA pursuant to CEQA Guidelines Section 15061 (b)(3) under the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed Text Amendment changes the Zoning Code and modifies an existing, established framework for future land use planning and approvals and does not commit the City to any specific project or development on any particular site. It does not intensify the use of alcohol sales beyond what is already in place. Further, the proposed Text Amendment requires that future applications for off-site consumption alcohol sales meet the additional regulations to obtain discretionary approval from the City via a CUP, at which time the particular impacts of each known proposed project will be assessed. Because the text amendment merely modifies an existing procedure for applying for an alcohol license and does not approve any individual CUPs with its adoption, it can be seen with certainty that there is no possibility that adoption of the Text Amendment may have a significant effect on the environment. Therefore, this action is exempt from CEQA pursuant to CEQA Guidelines Section 15061 (b)(3); the Environmental Assessment is attached as **Exhibit D**.

### **Notice of City Council Hearing**

Pursuant to the requirements of Fresno Municipal Code section 15-5806 (and 15-5007.D), notice of this public hearing was published in the *Fresno Bee* on October 22, 2021, which is at least 10 days prior to the public hearing. Section 15-5007-D allows the posting of a public hearing notice, in at least one newspaper of general circulation, as an alternative noticing method for large mailings.

### **CONCLUSION**

The appropriateness of the proposed text amendment has been examined with respect to its consistency with stated goals of the Fresno General Plan; and consistency with the purpose of the Development Code. These factors have been evaluated as described above and by the accompanying environmental assessment. Upon completion of this evaluation, it can be concluded that Text Amendment Application No. P21-05185 is appropriate.

### **LOCAL PREFERENCE**

Local preference was not considered because this project does not include a bid or award of a construction or service contract.

### **FISCAL IMPACT**

Affirmative action by the Council will result in timely deliverance of the review and processing of the applications as is reasonably expected by the applicant. Prudent financial management is

demonstrated by the expeditious completion of this land use application inasmuch as the applicant has paid to the city a fee for the processing of this application and that fee is, in turn, funding the respective operations of the Planning and Development Department.

**Attachments:**

Exhibit A: Fresno City Council Resolution No. 2021-162

Exhibit B: Section 15-2706-F (Location Restrictions) and Section 15-2706-S (Cancel and Transfer)

Exhibit C: Text Amendment No. P21-05185 amending Sections 15-2706, 15-6801 and 15-6802 of the Citywide Development Code

Exhibit D: Finding of No Possibility of Significant Adverse Effect as prepared for Environmental Assessment No. P21-05185 dated October 20, 2021