



POLICE DEPARTMENT

Central Problem Oriented Policing

3502 N. Blackstone Ave, Suite #201

Fresno, CA 93726

(559) 621-6209 / Curtis.Bunch@Fresno.Gov



Jerry Dyer
Chief of Police

RESTAURANT ABCUP CONDITIONS

March 26, 2019

City of Fresno, Development Department

Director of Planning & Development.

Special Permit, Conditional Use Permit

2600 Fresno Street

Fresno, California, 93721-3604

Attn. Bruce Barnes

Re: SPECIAL PERMIT NO. P18-02804

Quesadilla Gorilla, Inc.

608 E. Weldon Ave

Fresno, Ca 93704

A.P.N. 444-221-01

Dear Mrs. Vang,

The City of Fresno has requested that the Fresno Police Department review the application of the property development at **608 E. Weldon Ave.** The property has been zoned **CMS (Commercial – Main Street)** for commercial development. The Fresno Police Department's primary concern with the application is the propensity of the premises to generate calls for police service, and therefore, be detrimental to public welfare.

As you know, to approve any Conditional Use Permit, the City must make the following findings:

1. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code;
2. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;

3. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;
4. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and
5. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.

The conditions are established to ensure public safety, and to minimize any impact for the surrounding area. This CUP allows for the retail sale of alcoholic beverages for on-site consumption in conjunction with the operation of a Restaurant, as defined by Fresno Municipal Code, section 15-2751. We understand that along with this CUP application, the applicant has also applied or will be applying for a **Type 41** license which, if approved by Department of Alcoholic Beverage Control, will allow for the **sale of beer and wine for consumption on or off the premises where sold**).

We understand from the Operational Statement that the applicant intends to operate this establishment between the hours of:

Restaurant Operation:

Monday through Sunday (Everyday) 11 a.m. - 10 p.m.

**The restaurant shall not serve any alcoholic beverages until after 4:30 p.m. on days where school is in regular session. Managers will keep the alcohol secured/locked until this time.*

We request the following conditions be included as Conditions of Approval for **Conditional Use Permit Application No. P18-02804**. These conditions will maintain an environment that is least likely to generate public complaints and calls for service. The Fresno Police Department is not in opposition of this Conditional Use Permit, provided the applicant agrees to the listed conditions. If the following conditions are not included as conditions of approval in **CUP No. P18-02804**, the Fresno Police Department shall oppose the approval of this Conditional Use Permit, and shall appeal such approval to the Planning Commission. As such, we request that you provide Detective Curtis Bunch with notice of the Director's decision regarding this Conditional Use Permit as well as a complete copy of the conditions of approval, should the Director approve the Conditional Use Permit.

Requested Conditions of Approval:

1. Fresno Municipal Codes

The applicant shall comply with all applicable provisions of the Fresno Municipal Codes ("FMC"), including but not limited to:

FMC 9-502 (Amusement Devices - Permit Required)

FMC 9-1803 (Hours of Operation Billiard Hall)
FMC 9-1804 (Restriction on Attendance of Minors in Billiard Rooms)
FMC 9-1805 (Minors allowed: Family Billiard Rooms)
FMC 10-105 (Noise Ordinance)
FMC 10-708 (Unlawful Nuisances - High Calls for Police Service)
FMC 15-2705 (Limitations on Adult Business Activities) - Applicant shall also verify with the Planning Division that Adult Business Activities are permitted in the zone district where the applicant seeks to operate his/her business

A current version of the Fresno Municipal Code may be viewed at the City of Fresno's website: www.Fresno.gov. The link to the FMC is located on the Home Page of that website.

2. State and Federal Law

The applicant shall comply with all applicable state, federal, and local law, including but not limited to the following California Business and Professions Code sections and the California Department of Alcoholic Beverage Control rules:

BP 23038 (Bona fide public eating place; "meals", "guests").
BP 24046 (Required to Post ABC License on Premises)
BP 25612.5 (Loitering, Open Alcoholic Beverage Containers, Consuming Alcoholic Beverages on Premises, Exterior Lighting, Litter Removal, Graffiti Removal, Signs and Barriers in Windows and Doors, Public Phones Blocked From Incoming Calls, Areas to Display Harmful Matter, Required Copies of Operating Standards Available for Public Viewing)
BP 25665 (Minors Remaining in Public Premises)
ABC Act Rule 106 (No Buy One Get One Free Drinks)
ABC Act Rule 107 (No One Under 21 Allowed Signs Posted)
ABC Act Rule 139 (Interior Lighting Required for Identification of Patrons)

3. Video Camera

Prior to exercising any privileges granted by **CUP No. P18-02804** the applicant must install a fully functional color digital video camera system ("System") that meets the following requirements:

- 3.1 The System must continuously record, store, be capable of playing back images and be fully functional at all times, including during an hours the business is closed. The system must be maintained in a secure location inside the business.
- 3.2 The System shall have the correct date and time stamped onto the image at all times.

- 3.3 The camera storage capacity should be for at least two weeks (fourteen calendar days). Such cameras must be capable of producing a retrievable and identifiable image than can be made a permanent record and that can be enlarged ion or other means.
- 3.4 The System shall be capable of producing a CD or digital playback feature and may be provided to an authorized representative of the Fresno Police Department within 24 hours of the initial request relating to a **criminal investigation only**.
- 3.5 The interior of the business must have at least one camera placed to focus on each cash register transaction to include the clerk as well as the customer waiting area.
- 3.6 There shall be at least two (2) exterior cameras placed so as to record activities in the primary customer parking areas of their business. These cameras should be of sufficient quality to be able to identify persons and or vehicles utilizing the business parking lot or street parking.
- 3.7 All interior cameras shall record in color.
- 3.8 All exterior cameras shall record in color and have automatic low light switching capabilities to black and white. Exterior cameras should be in weatherproof enclosures and located in a manner that will prevent or reduce the possibility of vandalism.

It is recommended, but not required, that the owner/operator provide the IP address(s) to the Fresno Police Department Communications Center for any system that is browser-based or viewable from a remote site. The Fresno Police Department may, with reasonable notice, perform periodic inspections of the System to ensure compliance with these specifications. An inoperable System may be good cause for seeking revocation of this Conditional Use Permit.

4. ABC Education

Any and all employees hired to sell alcoholic beverages shall provide evidence that they have either:

- 4.1 Completed training from the State of California Department of Alcoholic Beverage Control--Fresno District Office-administered "Leadership and Education in Alcohol and Drugs" (LEAD) Program as confirmed by receipt of an ABC-issued certificate of completion; or,
- 4.2 Completed equivalent training acceptable to the ABC-- Fresno District Office to ensure proper distribution of beer, wine, distilled spirits, tobacco, and inhalants to adults of legal age.

If any prospective employee designated to sell alcoholic beverages, tobacco or inhalants does not currently have such training then:

- 4.3 The ABC-licensed proprietors shall have confirmed with the Development Department within 15 days of the final approval of the CUP, that a date certain has been scheduled with the local ABC Office for the prospective employees to take the LEAD Program course; and
- 4.4 Within 30 days of taking the course the employee(s) or responsible employer shall deliver each required LEAD Program Certificate evidencing completion of said course.

5. Contests or Promotions

At least two weeks prior to the event, the establishment shall notify the District Commander, or his/her designee of any promotional or special events. In addition, the establishment shall obtain written approval that the current Security Plan is adequate to address security issues that may arise from the event or promotion or approval of a new Security Plan that will be in place for the promotional or special event.

6. Security Plan.

Prior to the approval of this Conditional Use Permit, the establishment shall prepare and submit to the District Commander a security plan for approval. Approval of the security plan by the District Commander or his/her designee shall not be unreasonably denied. The contents of the Security Plan shall be incorporated as conditions of approval of **P18-02804**. The establishment shall be responsible to have the District Commander or his/her designee re-approve the security plan annually running from the anniversary date of the final approval of the CUP. The establishment is responsible for providing both the District Commander and the Planning and Development Department a copy of the approved security plan.

All establishments Security Plan shall:

- Identify the establishment's designated contact person for all safety and security management and shall provide the telephone numbers where the contact person may be reached 24 hours a day, seven days a week.
- Confirm that a manager will be on duty during business hours and will be responsible for monitoring and controlling the behavior of patrons.
- Identify all managers of the establishment and their contact telephone numbers.
- Confirm that all bartenders and other employees shall be trained to recognize the symptoms of an obviously intoxicated patron, to refuse serving alcoholic beverages to obviously intoxicated patrons, and to report emergencies to the manager on duty and to law enforcement.

- Confirm that first aid supplies and operational fire extinguishers are located in the kitchen, service areas and the manager's office.
- Confirm that the burglar and fire alarm is monitored by a security company 24 hours a day, seven days a week.
- Identify an adequate number of acceptable interior security personnel and exterior security personnel who will monitor and control the behavior of customers inside and outside the building, the parking lot and any adjacent property under the establishment's control. The security personnel may be employees of the establishment or licensed security personnel retained from a security firm.
- Confirm that the security personnel shall regularly monitor the parking lot and any adjacent property under the establishment's control to ensure the areas are (a) free of people loitering or causing a disturbance and (b) are cleared of patrons and their vehicles one-half hour after closing.

The establishment shall correct any safety or security problem or security plan violation as soon as possible after receiving written notice of such problem from the Fresno Police Department. After the initial security plan is approved and implemented, it is the responsibility of the owner or owner's representative to contact the Fresno Police Department to inquire about police calls for service or public safety problems at the location. Contact may be made in person, by telephone or by electronic mail. Review of police calls for services may be conducted at any time by the Fresno Police Department.

The applicant will maintain a copy of the current Security Plan and *shall* present the Security Plan immediately upon request by a peace officer.

If it is determined that police calls for service become "Frequent" (see definition below) the Fresno Police Department may initiate proceedings to amend these conditions to require state licensed uniformed security and/ or to recommend suspension or revocation proceedings.

The total number of state licensed uniformed security guards shall be based upon the maximum permitted occupancy as established by the Fresno Fire Department, and determined as follows:

0-100 guests: No state licensed uniformed security required. Onsite manager and employees will be responsible for monitoring and controlling the behavior of patrons.

101-200 guests: A minimum of one (1) state licensed uniformed security guard.

201-300 guests: A minimum of two (2) state licensed uniformed security guards.

301-400 guests: A minimum of three (3) state licensed uniformed security guards.

If the maximum permitted occupancy exceeds 400 guests, one additional state licensed uniformed security guard shall be required for each additional one-hundred guests.

The Maximum Permitted Occupancy for the entire premises, including any patios, shall be included on the Security Plan maintained at the business, to be made available immediately upon request of a Fresno Police Officer.

All on-duty licensed security guards shall comply with the uniform requirements set forth in California Business & Professions code section 7582.26.

“Frequent” as used in this subsection means police response is occurring more than 1.50 times than the average number of such responses for property of a similar size in character in the same “policing district” established by the police chief. (See FMC Sections 10-708-g).

7. Consumption of Alcoholic Beverages and Loitering.

- 7.1 At all times when the premises are exercising the privileges of their license, the sale of food, in compliance with Section 23038 of the Business and Professions Code, shall be offered and available for purchase. The sale of food shall be restricted to the interior of the establishment. Therefore, the licensee(s) and/or their agent shall not allow food to be sold outside of the restaurant and/or the area adjacent to the premises over which they have control (i.e., food carts, food trucks, etc.).
- 7.2 The restaurant will take measures to ensure that those the legal drinking age are not served by utilizing an ID scanning system that will check the validity of the ID and age of the customer. Out of State IDs must be approved by the shift lead or manager to additionally check validity.
- 7.3 Management shall have the ability to use the video surveillance system to monitor the interior of the restaurant to further ensure that those under 21 years of age are not being served and/or consuming any alcoholic beverages.
- 7.4 No more than three (3) alcoholic beverages shall be sold or served to any single patron.
- 7.5 Containers/glasses for beers shall not exceed 16 ounces.
- 7.6 The establishment shall not allow alcoholic beverages to be consumed outside the building premises or any other adjacent property under its control. No alcoholic beverage will be consumed on any property adjacent to the premises (i.e., parking

lot and sidewalks). If the alcoholic beverages are consumed on the exterior portion of adjacent property not owned or controlled by the applicant, the applicant shall immediately report such consumption to the Fresno Police Department.

7.7 The establishment shall not allow any loitering on building premises or any adjacent property under its ownership or control.

7.8 The establishment shall not allow any gambling on building premises or any adjacent property under its control.

8. Property Responsibility

“Frequent” responses by the Fresno Police Department arising out of or relating to the operation or management of the real property owned or controlled by the permittee causing any combination of the following: animal disturbances; violent criminal acts; illegal consumption of intoxicants in public view; gaming activities; and juvenile disturbances, or any of the other activities set forth in the Fresno Municipal Code section 10-708(g) may result in an FPD recommendation to the Director of Planning and Development to commence proceedings to revoke the Conditional Use Permit for violation of the Management of Real Property Ordinance. In addition to recommending the commencement of revocation proceedings, the FPD may pursue any of the other remedies set forth in FMC, section 10-710, including assessing fines against the proprietor for the violations of the Management of Real Property Ordinance.

9. Revocation of Conditional Use Permit

The City is permitted to revoke a Conditional Use Permit for “good cause” pursuant to the procedures set forth in FMC, sections 15-5016, 10-414 and 10-419.

10. Posting hours of operation and address

The owner and/or proprietor and /or applicant shall be responsible to conspicuously post the hours of operation for each phase type (i.e., restaurant, nightclub) near the entrance of the establishment. It shall be 8.5x11 inches in size, to be provided for by the City. This posting shall be made available to City officials upon request. Additionally, the address of each facility shall be posted in compliance with all City codes.

11. Posting Property

The applicant shall post the property with the appropriate Fresno Municipal Code signs advising that consumption of alcoholic beverages, gambling, trespassing or loitering will be in violation of municipal ordinances. The applicant shall send a letter to the Fresno Police Department, signed and dated by the applicant, every 180 days that authorizes FPD peace officers to enter the applicant’s real property and/or establishment to enforce

against the aforementioned activities at the business. The owners and employees are responsible for abating those activities when they occur during business hours.

The establishment shall not allow alcoholic beverages to be consumed outside the building premises or any other adjacent property under its control. No alcoholic beverage will be consumed on any property adjacent to the premises (i.e., parking lot and sidewalks). If the alcoholic beverages are consumed on property not owned or controlled by the applicant, the applicant shall immediately report such consumption to the Fresno Police Department.

The establishment shall not allow any loitering on building premises or any adjacent property under its ownership or control.

The establishment shall not allow any gambling on building premises or any adjacent property under its control.

There shall be no amusement devices or Billiard tables maintained upon the premises without the proper permits issued through the City of Fresno Business Tax Division.

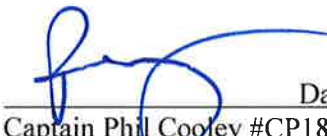
12. **The establishment shall ensure that all employees are aware of and comply with these conditions. The establishment shall have each employee sign a written acknowledgment that he/she has reviewed and understood each of these conditions. The written acknowledgement shall be maintained by the establishment and made available to the Fresno Police Department upon reasonable request.**

FRESNO POLICE DEPARTMENT

 Date: 3/26/19
Detective Curtis Bunch #1144
Central District P.O.P. Officer

 Date: 3/26/19
Sergeant Robert Dewey #S175
Central District Investigations Sergeant

 Date: 3/26/19
Lieutenant Joe Alvarez #L45
Central District Lieutenant

 Date: 3-26-19
Captain Phil Cooley #CP18
Central District Captain