



Dear Director Clark:

The Police Department has serious concerns regarding the request for major revision to the existing City of Fresno CUP at 9455 N. Fort Washington Road, Suite #101, known as Vxyn. The applicant is requesting to extend the hours of operation and alcohol service until 2:00 a.m., seven days a week.

As the commander of the Northeast Policing District, Chief Andrew Hall and I request that the Director deny the application for the business to operate until 2:00 a.m. Alternatively, the Police Department requests that the matter be referred to the Planning Commission for a public hearing and decision on the matter. Lastly, should the application for bar operating hours through 2:00 a.m. be granted by the Planning Department, the Police Department still requests other standard conditions and security plan for similarly licensed businesses be imposed.

These requests are based upon the following:

It is our understanding that the Director must make certain findings before a Conditional Use Permit can be approved and granted. The findings relevant to the Police Department's concerns are FMC Sec. 15-5306.C & D which read in relevant part:

A Conditional Use Permit shall only be granted if the decision-maker determines that the project as submitted or as modified conforms to all of the following criteria. If the decision-maker determines that it is not possible to make all of the required findings, the application shall be denied. The findings which must be made in order to grant the CUP include the following:

C. 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;

D. 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

Based upon the number and types of calls for police service at another business (Luxs) owned by this same applicant / operator; along with the fact that police officers have encountered a verified criminal street gang presence at Luxs, the Police Department believes that the requisite findings under subsections C and D, which are cited above, cannot be made.

This applicant/operator is seeking to extend the operating hours to 2:00 a.m. at Vxyn, located at 9455 N. Fort Washington Road, Suite #101. The main concern of the Police Department is that this applicant/operator has not been able to sufficiently mitigate gang and other criminal activities at his other business (Luxs). This has created an unsafe, and sometimes dangerous environment for that location. So far this year, Luxs and its patrons have generated over 26 calls for police service involving weapons, alcohol related and physical disturbances.

Included in the calls for service was an incident in January 2018 where multiple firearms were recovered from Luxs patrons after a disturbance in the parking lot. In October 2019, a shooting occurred in the parking lot involving Luxs patrons that required the response of 18 uniformed officers

from three policing districts. Evidence was recovered indicating approximately 12 shots were fired at the scene. One subject was hospitalized as a result of a gunshot wound he sustained in the parking lot of Luxs. The Police Department has documented evidence that at least two local criminal street gangs have been active at this operator's other business (Luxs) and it is apparent that gang members are attracted to the Luxs venue. Both of these gangs have been associated with multiple violent confrontations throughout Fresno and are involved with human trafficking.

The vast majority of calls for service at Luxs have occurred between midnight and 2:00 a.m., at which time Northeast District staffing is reduced to approximately nine officers on-duty. These calls for service have taken public safety resources away from the rest of the community, increasing response times to other emergency calls and preventing proactive policing efforts. The Northeast District has handled the most calls for service of all five policing districts in 2019, and is responsible for policing a population of 130,000 residents, covering approximately 30 square miles. There is no reason to believe that this operator/applicant will not bring the same type of public safety issues to the proposed location at 9455 N. Fort Washington Road. The fact that this operator generates a significant number of serious police calls for service at his other business raises the issue of whether or not the Director can make the requisite finding that:

"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"

(FMC Sec. 15-5306.C)

Additionally, the Police Department believes that the finding under subsection D of 15-5306 also cannot be made. Subsection D reads:

"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;"

The manner in which the applicant/operator has conducted his business known as Luxs, is indicative of what can be expected if he is allowed to operate after midnight at the proposed location. If the entitlement is granted where the applicant/operator is allowed to stay open until 2:00 a.m., established businesses in the same shopping center that do not have a recent history of excessive calls for service can expect their patrons to be exposed to the same circumstances that have generated police calls at the operator's current business (Luxs). These circumstances could result in serious threat to the patrons of the existing businesses and to the residents who live in a neighborhood which has exceptionally low crime rates.

On these two grounds the application to upgrade the alcohol license and to extend the hours of operation should be denied.

In the alternative, the Police Department Requests that the Planning Director Refer the decision on the application to the Planning Commission who will conduct a Public Hearing to make decision on the matter.

FMC Section 15-5303 authorizes the Director of Planning and Development to refer the decision whether to grant or deny the entitlement application to the Planning Commission.

FMC Section 15-5303 reads:

"The Director shall approve, conditionally approve, or deny applications for Conditional Use Permits based on consideration of the requirements of this article. The Director may, at their discretion, refer any application that may have significant public interest to the Planning Commission"

for a decision. In the event of a referral, the Planning Commission shall hold a public hearing prior to making the decision."

Based upon the information above, as well as the fact that the Council Member who currently represents the Council District where the subject property is located, has expressed concerns about the ramifications relative to a granting of the entitlement, the Police Department would respectfully request that the Director refer the application and the decision upon whether not to grant or deny the proposed revision to the existing CUP to the Planning Commission. This way there can be a public hearing on the matter and the public can weigh in on the risks of having this business operate until 2:00 a.m. in their community.

The decision on this application does present a matter of significant public interest. The council member for this district was elected by at least a majority of the voters in this council district. Therefore, it is reasonable to believe citizens in this council district share the same concerns as the council member.

The public notice requirement for the CUP in this case was sent to property owners as required, however it included a mere 40 property owners within a 1,000 foot radius from the parcel on which the business is located. Another reason for referring this matter to the Planning Commission pursuant to FMC 15-5303 is that geographic location of the subject property hinders significant public notice for those who would be impacted, but reside outside the 1,000 foot radius. The subject property is situated within a large shopping center complex and the "legal" notice radius does not reach a significant number of the residents who would necessarily be impacted by the proposed use. In fact, at least half of the "Public Notice" area is vacant land. Therefore, a public hearing would assist the City in determining whether or not the proposed use, including the upgrading of the alcohol license and extension of the operating hours is compatible with the community and with existing land uses.

Thank you for your courtesy and cooperation in this matter.

Sincerely,



Captain Mindy Casto

