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Title: HEARING to consider Text Amendment Application No. P24-01100 and related Environmental Finding for Environmental Assessment No. P24-01100, amending Section 15-2706, 15-7604, and 15-6802 of the Fresno Municipal Code, relating to the sale of alcoholic beverages for off-site consumption, Commercial Use Classification of General Market, and definitions.

1. ADOPT Environmental Assessment No. P24-01100, dated April 15, 2024, that Text Amendment Application No. P24-01100 is exempt from the California Environmental Quality Act (CEQA) pursuant to the commonsense 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, 15-6704, and 15-6802 of the Fresno Municipal Code, relating to the sale of alcoholic beverages for off-site consumption, Commercial Use Classification of General Market, and definitions.

Sponsors: Planning and Development Department, Miguel Angel Arias, Luis Chavez, Nelson Esparza

Indexes:

Code sections:

Attachments: 1. Exhibit A - Text Amendment No. P24-01100, 2. Exhibit B - Environmental Finding of No Possibility of Significant Effect Environmental Assessment No. P24-01100, 3. Exhibit C - Notice of Public Hearings, 4. Exhibit D - Planning Commission Resolution No. 13847, 5. Exhibit E - Ordinance and Bill, 6. Exhibit F - Power Point Presentation

Date	Ver.	Action By	Action	Result
5/23/2024	1	City Council	APPROVED	Pass

REPORT TO THE CITY COUNCIL

FROM: JENNIFER K. CLARK, AICP, Director
Planning and Development Department

THROUGH: PHILLIP SIEGRIST, Planning Manager
Current Planning Division

BY: LEEFONG MOUAVANGSOU, Project Liaison
Current Planning Division

SUBJECT

HEARING to consider Text Amendment Application No. P24-01100 and related Environmental Finding for Environmental Assessment No. P24-01100, amending Section 15-2706, 15-7604, and 15-6802 of the Fresno Municipal Code, relating to the sale of alcoholic beverages for off-site consumption, Commercial Use Classification of General Market, and definitions.

1. ADOPT Environmental Assessment No. P24-01100, dated April 15, 2024, that Text Amendment Application No. P24-01100 is exempt from the California Environmental Quality

Act (CEQA) pursuant to the commonsense 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, 15-6704, and 15-6802 of the Fresno Municipal Code, relating to the sale of alcoholic beverages for off-site consumption, Commercial Use Classification of General Market, and definitions.

RECOMMENDATION

Staff recommends that the City Council take the following actions:

1. ADOPT Environmental Assessment No. P24-01100, dated April 15, 2024, that Text Amendment Application No. P24-01100 is exempt from the California Environmental Quality Act (CEQA) pursuant to the commonsense 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, 15-6704, and 15-6802 of the Fresno Municipal Code, relating to the sale of alcoholic beverages for off-site consumption, Commercial Use Classification of General Market, and definitions.

EXECUTIVE SUMMARY

Text Amendment Application No. P24-01100 proposes to amend Section 15-2706, Section 15-6704, and Section 15-6802 of the Citywide Development Code, that pertain to the Responsible Neighborhood Market Act (RNMA), commercial use classifications, and definitions.

The RNMA provides regulations relating to the sale of alcoholic beverages for off-site consumption. In addition, the proposed text amendment will define Full-Service Grocery Store and its exclusions.

The proposed text amendment would provide greater flexibility for Full-Service Grocery Stores seeking to operate with off-site alcohol sales by allowing an exception from the Location Restrictions set forth in Section 15-2706-F of the Fresno Municipal Code (FMC) and an exemption from the Cancel and Transfer requirements as set forth in Section 15-2706-S of the FMC. In addition, the amendment proposes to add Full-Service Grocery Store to the General Market use classification identified in Section 15-6704 (Commercial Use Classifications) of the FMC. Lastly, the proposed text amendment will amend Section 15-6802 of the FMC to add definitions for Full-Service Grocery Store, Limited-Service Restaurants, Convenience Retailers, Gasoline Stations with Convenience Stores, Department Stores, Pharmacies and Drug Retailers, Warehouse Clubs and Supercenters, and All Other General Merchandise Retailers.

Under the proposed text amendment, qualifying establishments would not be subject to applicable Location Restrictions for New Establishments or the Cancel and Transfer Provisions, provided the establishment meets the definition of a Full-Service Grocery Store, including a supermarket, neighborhood grocery store or a Healthy Food Grocer as defined in the Fresno Municipal Code.

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 April 19, 2024. 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 notice of public hearing is attached as **Exhibit C**.

The subject application was scheduled for consideration by the Fresno City Planning Commission at its regularly scheduled meeting on May 1, 2024. Staff will provide record of the Planning Commission Resolution and recommendation at, or prior to, City Council consideration.

BACKGROUND

Establishments engaged in the off-sale of alcoholic beverages may 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 A**).

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 of the FMC, 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 A**) of the FMC.

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 A). In addition, there is a separate exception under Section 15-2706-F-7 for existing establishments seeking to relocate. However, the proposed location must meet all five (5) of the findings and the original location will be required to forfeit its existing alcohol entitlements for the original location (included in **Exhibit A**).

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 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 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(s).

Text Amendment Application No. P24-01100

Text Amendment Application No. P24-01100 proposes to amend use regulations for off-site alcohol sales uses within the City of Fresno.

Specifically, Text Amendment Application No. P24-01100 proposes to amend Section 15-2706 (Alcohol Sale - The Responsible Neighborhood Market Act), Section 15-6704 (Commercial Use Classifications), and Section 15-6802 (Definitions) of the Citywide Development Code to:

1. **Provide Flexibility for Full-Service Grocery Stores seeking to operate.** The proposed text amendment would provide flexibility for Full-Service Grocery Stores seeking to operate with off- site alcohol sales by adding an additional exception to Location Restrictions set forth in Section 15-2706-F of the FMC and allow an exemption from the Cancel and Transfer requirements as set forth in Section 15-2706-S of the FMC.
 - a) **Full-Service Grocery Store Exception to Location Restriction.** New establishments may be excepted from the location restrictions if the primary use of the establishment, based on information provided by the applicant, has been determined by the Review Authority to meet the definition of a Full-Service Grocery Store, including a supermarket, neighborhood grocery store or a Healthy Food Grocer as defined in the Fresno Municipal Code.
 - b) **Full-Service Grocery Store Exemption to Cancel and Transfer.** New establishments may be exempt from the cancel and transfer requirements if the primary use of the establishment, based on information provided by the applicant, has been determined by the Review Authority to meet the definition of a Full-Service Grocery Store, including a supermarket, neighborhood grocery store or a Healthy Food Grocer as defined in the Fresno Municipal Code.
2. **Defines Full-Service Grocery Store and its exclusions.** The proposed text amendment will add “Full-Service Grocery Store” to the existing General Market use classification identified in Section 15-6704 (Commercial Use Classifications) of the FMC. In addition, the proposed text amendment will amend Section 15-6802 (Definitions) to further define: *Full-Service Grocery Store, Limited-Service Restaurants, Convenience Retailers, Gasoline Stations with Convenience Stores, Department Stores, Pharmacies and Drug Retailers, Warehouse Clubs and Supercenters, and All Other General Merchandise Retailers.*

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.

PUBLIC NOTICE AND INPUT

Airport Land Use Commission

The Fresno County Airport Land Use Commission (ALUC) reviewed the proposed text amendment on April 8, 2024.

The ALUC voted unanimously to recommend approval of the proposed text amendment.

Council District Project Committees

The recommendations of the Council District Project Review Committees are as noted below:

Council District 1

On April 12, 2024, the Council District 1 Project Review Committee voted 4-0 (1 member absent) to recommend approval of the proposed text amendment.

Council District 2

There is no Council District 2 Project Review Committee at this time.

Council District 3

On April 23, 2024, the Council District 3 Project Review Committee voted 4-0 to recommend approval of the proposed text amendment.

Council District 4

On April 4, 2024, the Council District 4 Project Review Committee voted 3-0 (1 member absent) to recommend approval of the proposed text amendment.

Council District 5

On April 24, 2024, the Council District 4 Project Review Committee voted 3-0 (2 members absent) to recommend approval of the proposed text amendment.

Council District 6

On April 10, 2024, the Council District 6 Project Review Committee was scheduled to review the proposed text amendment. A meeting was not held, and no official vote or recommendation was made due to lack of a quorum. However, Staff did present the item to the committee members in attendance (3 out of 8 members).

Council District 7

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

Tower District

On April 2, 2024, the Tower District Advisory Committee voted 3-0 to recommend approval of the proposed text amendment.

Notice of Planning Commission 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 April 19, 2024, 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. The notice of public hearing is attached as **Exhibit C**.

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 commonsense 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 commonsense 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 B**.

FRESNO MUNICIPAL CODE FINDINGS

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. P24-01100 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. P24-01100 is consistent with said plans.

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 Full-Service Grocery Stores (with alcohol sales) seeking to operate, to comply with new regulations and provisions, which will promote the growth of the city in an orderly and sustainable manner. This proposed text amendment concerns the issue of Full-Service Grocery Stores and the requirements and exceptions that will apply. Food access is one of the leading indicators of community health and well-being. A lack of access to fresh, healthy foods contributes to poor diets, higher levels of obesity, and other health-related diseases. Full-Service Grocery Stores serve to benefit the health of the community, as these establishments provide access to fresh foods, produce, and groceries to the surrounding area. The modification to the established regulations under the proposed Text Amendment seeks to maintain, promote, and protect the public health, safety, and general welfare of what the current Code requires. 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 thus it can be concluded that Text Amendment Application No. P24-01100 is consistent with the purpose of the Development Code.

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. P24-01100 is appropriate.

LOCAL PREFERENCE

Local preference was not considered because the text amendment does not include a bid or award of a construction or services contract.

FISCAL IMPACT

There is no impact to the City's General Fund as a result of this action.

Attachments:

- Exhibit A - Text Amendment No. P24-01100
- Exhibit B - Environmental Finding of No Possibility of Significant Effect Environmental Assessment No. P24-01100
- Exhibit C - Notice of Public Hearing
- Exhibit D - Planning Commission Resolution No. 13847
- Exhibit E - Ordinance and Bill
- Exhibit F - Staff PowerPoint Presentation