



Legislation Details (With Text)

File #: ID 24-592 **Version:** 1 **Name:**
Type: Action Item **Status:** Agenda Ready
File created: 4/23/2024 **In control:** City Council
On agenda: 5/23/2024 **Final action:**

Title: HEARING to Consider an appeal regarding Cannabis Conditional Use Permit Application No. P23-03086 and related Environmental Assessment for property located at 4555 East Kings Canyon Road on the northeast corner of East Kings Canyon Road and South Jackson Avenue (Council District 5) - Planning and Development Department

1. ADOPT - Environmental Assessment No. P23-03086 dated November 9, 2023, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) Guidelines through a Section 15301/Class 1 Categorical Exemption.
2. DENY the appeal and UPHOLD the action of the Planning and Development Department Director in the approval of Cannabis Conditional Use Permit Application No. P23-03086 authorizing the establishment of a cannabis retail business in an approximately 2,100 square foot existing commercial building, subject to the following:
 - a. Development shall take place in accordance with the Conditions of Approval for Cannabis Conditional Use Permit Application No. P23-03086 dated January 9, 2024.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A - Aerial Map, 2. Exhibit B - Appeal Letter of Planning Commission's Decision [4-4-2024], 3. Exhibit C - Public Hearing Notice Radius Map (1,000 feet), 4. Exhibit D - Fresno Municipal Code Findings, 5. Exhibit E - Conditions of Approval for Cannabis Conditional Use Permit Application No. P23-03086 [1-9-2024], 6. Exhibit F - Operational Statement [10-4-2023], 7. Exhibit G - Site Plan, Floor Plan, and Elevations [10-4-2023], 8. Exhibit H - Comments and Requirements from Responsible Agencies, 9. Exhibit I - Environmental Assessment No. P23-03086 [11-9-2023], 10. Exhibit J - Neighborhood Responsibility Plan [10-4-2023], 11. Exhibit K - Odor Management and Control Plan [10-4-2023], 12. Exhibit L - Planning Commission Resolution No. 13844

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

REPORT TO THE CITY COUNCIL

FROM: JENNIFER CLARK, Director
Planning and Development Department

THROUGH: ISRAEL TREJO, Planning Manager
Planning and Development Department

BY: ROB HOLT, Supervising Planner
Planning and Development Department

SUBJECT
HEARING to Consider an appeal regarding Cannabis Conditional Use Permit Application No. P23-

03086 and related Environmental Assessment for property located at 4555 East Kings Canyon Road on the northeast corner of East Kings Canyon Road and South Jackson Avenue (Council District 5) - Planning and Development Department

1. ADOPT - Environmental Assessment No. P23-03086 dated November 9, 2023, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) Guidelines through a Section 15301/Class 1 Categorical Exemption.
2. DENY the appeal and UPHOLD the action of the Planning and Development Department Director in the approval of Cannabis Conditional Use Permit Application No. P23-03086 authorizing the establishment of a cannabis retail business in an approximately 2,100 square foot existing commercial building, subject to the following:
 - a. Development shall take place in accordance with the Conditions of Approval for Cannabis Conditional Use Permit Application No. P23-03086 dated January 9, 2024.

RECOMMENDATIONS

1. ADOPT Environmental Assessment No. P23-03086 dated November 9, 2023, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) Guidelines through a Section 15301/Class 1 Categorical Exemption.
2. DENY the appeal and UPHOLD the action of the Planning and Development Department Director in the approval of Cannabis Conditional Use Permit Application No. P23-03086 authorizing the establishment of a cannabis retail business in an approximately 2,100 square foot existing commercial building, subject to the following:
 - a. Development shall take place in accordance with the Conditions of Approval for Cannabis Conditional Use Permit Application No. P23-03086 dated January 9, 2024.

EXECUTIVE SUMMARY

Cannabis Conditional Use Permit Application No. P23-03086 was filed by Yuma Way CA and pertains to approximately 0.54 acres of property located at 4555 East Kings Canyon Road. The applicant proposes the establishment of a cannabis retail business within an approximately 2,100 square foot existing commercial building.

On January 9, 2024, the Planning and Development Director approved Cannabis Conditional Use Permit Application No. P23-03086 based upon the project's compliance with the required findings for Conditional Use Permits pursuant to Fresno Municipal Code (FMC) Sections 15-2739-R and 15-5306 (**Exhibit E**). An Environmental Impact Report (EIR) State Clearinghouse No. (SCH) 2019070123 was certified by the City Council on September 17, 2020, for the text amendment to the FMC which permits the sale of cannabis within the limits of the City of Fresno. Environmental Impact Report SCH No. 2019070123 identified environmental concerns surrounding the operation of future cannabis businesses. The conditions of approval for this subject cannabis conditional use permit has been written and issued to address these concerns.

Fresno City Planning Commission Action

On March 20, 2024, the Planning Commission considered the item as presented by staff, followed by a presentation by the applicant. After a complete hearing, the Planning Commission voted to uphold the Planning and Development Department Director's decision to approve the project and deny the appeal subject the following condition that has been added to the conditions of approval dated January 9, 2024:

- There shall be increased security provided during the Big Fresno Fair and the Hmong New Year celebration.

The Planning Commission Resolution is attached for more information (**Exhibit L**).

On April 4, 2024, Councilmember Luis Chavez, District 5, filed an appeal of the Planning Commission's decision (**Exhibit B**).

It is noted that prior to the Planning Commission meeting, the following issues were raised by the public:

- The sale of drugs near residential homes.
- The operation of a cannabis retail business in a high crime area.

BACKGROUND

The subject property is located along the Kings Canyon Road corridor, which provides a mix of various commercial uses. Immediately to the north are single-family residential uses. Immediately to the east and west are various retail businesses and restaurants. Immediately to the south across East Kings Canyon Road is the Fresno Fairgrounds property.

History (Parking Lot Property)

The subject property consists of a parking lot located on the north side of the alley and a commercial building area on the south side of the alley. Rezone Application No. R-4969 was adopted by the Fresno City Council on September 5, 1974 that rezoned the parking lot property from the R-1 (*Single-Family Residential*) zone district to the P (*Off-Street Parking*) zone district for purposes of being developed as a parking lot in conjunction with development of a drive-thru use on the property across the alley. Site Plan Review Application No. S-3386 was approved by the City of Fresno Department of Planning and Inspection on October 22, 1974 to allow for the development of the parking lot. A covenant agreement required the parking lot to serve the development of the property south across the alley (the existing commercial building property to be converted to a cannabis retail space).

The parking lot property is specifically only to be used for additional parking, as covenanted, for the proposed cannabis retail business and no building or cannabis retail business will be established on the parking lot property. It should be noted that the required minimum number of parking spaces for the cannabis retail business are provided solely on the existing commercial building property.

Cannabis Retail Business Proposal

The request to establish a cannabis retail business is consistent with the Fresno General Plan, Downtown Neighborhoods Community Plan, and the Corridor/Center Mixed-Use planned land use designation, which is the land use designation for the proposed site. Pursuant to FMC Section 15-2739(B)(1)(a), Cannabis Retail Businesses are only permitted in certain zone districts, including Corridor/Center Mixed Use districts. Cannabis retail businesses are uses subject to approval of a Cannabis Conditional Use Permit, in accordance with FMC Sections 15-2739-N (*Cannabis Conditional Use Permit*).

The applicant proposes the establishment of a cannabis retail business within an approximately 2,100 sq. ft. existing commercial building. The business proposes to operate between the hours of 8:00 a.m. and 10:00 p.m., seven days per week. The business will generate minimal amounts of cannabis waste consisting of returned or defective products. All cannabis waste will be securely stored within the premises in a locked container in a limited access area.

All cannabis businesses can only obtain their Commercial Cannabis Business Permit after they have received approval of a Cannabis Conditional Use Permit, sign-off from the Project Manager of the Office of Cannabis Oversight (including final inspection and final Building Permits), approval from the State of California, then final sign-off and approval from the City Manager. Once the City Manager approves the Commercial Cannabis Business Permit, that becomes the “effective date.”

Relocation

Pursuant to FMC Section 9-3307(b), up to 3 cannabis retailers are allowed per Council District. The subject property is located within Council District 5. Currently, Council District 5 has three Cannabis Conditional Use Permits for retail approved and the subject cannabis retail business (Yuma Way) has one of these three approved Cannabis Conditional Use Permits located at 3849 East Ventura Street (north side of East Ventura Street between South Eighth and South Ninth Streets). Should the subject application be approved, this would require the extinguishment of the business’ currently approved Cannabis Conditional Use Permit prior to operating at the subject location (4555 East Kings Canyon Road). It should be noted that the new Francine & Murray Farber Educational Campus is under construction and within 800 feet of the approved 3849 East Ventura Street location, requiring the CUP to be extinguished and relocate elsewhere.

As noted above, there are three cannabis Conditional Use Permits approved in Council District 5. The location and operating status of said locations are as follows:

- 2590 South Maple Avenue (northwest corner of East Jensen and South Maple Avenues) - currently in operation
- 4686 East Kings Canyon Road (south side of East Kings Canyon Road between South Sierra Vista and South Becker Avenues) - not in operation
- 3849 East Ventura Street (north side of East Ventura Street between South Eighth and South Ninth Streets) - not in operation (proposed to be relocated to 4555 East Kings Canyon Road - subject appeal)

Neighborhood Responsibility Plan

Pursuant to the requirements of FMC Sections 9-3307(7)(d)(8) and 15-2739(B)(1)(c), the applicant submitted a Neighborhood Responsibility Plan (**Exhibit I**) that indicates the business and its operating characteristics will not be detrimental to the public health, safety, convenience, or welfare of persons residing, working, visiting, or recreating in the surrounding neighborhood and may not result in the creation of a nuisance.

Within the applicant’s Neighborhood Responsibility Plan (“Plan”), the business has a community relations contact and General Manager that will work together to proactively contact any business within a 500-foot radius of the project location and inform those businesses of the operation, develop a long-lasting relationship, and provide them with direct contact information for any complaints or

suggestions. The community relations contact will attend meetings with the City Manager during the first year of operations, and be available to meet with other interested parties moving forward to discuss costs, benefits, and other community issues.

The Plan also includes a Crime Prevention Through Environmental Design (CPTED) approach to the location, design, and operation of the facility, which identifies a result in reduction of robberies compared to non-intervention locations. The exterior of the building will be monitored by trained security personnel as required by FMC Section 9-3310(b)(1)(xii).

The Plan also includes an intent to play a cooperative and leading role in community education to raise environmental awareness at a neighborhood and community level that involves working closely with local community organizations which will connect their environmental partner organization with local communities. Additionally, the Plan intends to include sponsorship of educational events and seminars, providing a venue for other businesses and organizations to participate in environmental education for residents of local neighborhoods.

The Plan also includes a complaint program to log and respond to complaints related to noise, light, odor, and vehicle and pedestrian traffic generated by the business. Additionally, the Plan will implement a client service plan to avoid lengthy wait times and build-up of pedestrian and vehicle traffic which includes:

- Four Point of Sale (POS) locations throughout the store with an average service time from admittance to check out of between six and eight minutes;
- Encouraged use of online ordering with faster check-out times with a four-minute service average;
- Encouraged use of delivery to further minimize vehicle and pedestrian traffic in the area by approximately 20-25 percent; and,
- Installation of additional bicycle racks in front of the store, based on demand.

The Plan includes the creation of an Environmental Committee that will review the incident log, daily and monthly walk-through and maintenance logs, and revisit the Plan initiatives quarterly.

Streets and Access Points

The Fresno General Plan designates East Kings Canyon Road as a major street (arterial) and South Jackson Avenue as a local street. The project will take access from one access point on East Kings Canyon Road via a public driveway entrance and two access points from South Jackson Avenue via an alleyway and a separate driveway approach.

The Public Works Department, Traffic Engineering Division has reviewed the proposed project and potential traffic related impacts for the proposed application and has determined that the streets adjacent to and near the subject site will be able to accommodate the quantity and kind of traffic which may be potentially generated subject to the requirements stipulated within the memoranda from the Traffic Engineering Division dated November 29, 2023. These requirements include: (1) Right-of-way dedications and improvements ; and, (2) Payment of applicable impact fees (including,

but not limited to, the Traffic Signal Mitigation Impact (TSMI) Fee, and the Fresno Major Street Impact (FMSI) Fee.

Council District Project Review Committee

On December 11, 2023, the Council District 5 Project Review Committee (Committee) reviewed the project. The Committee expressed concern of the location of the proposed cannabis retail business being in close proximity to Roosevelt High School (approximately 0.28 miles northwest of the subject property) and in close proximity to billboards of fentanyl warnings that were required to be installed by the Fresno County Department of Health. There were also concerns of the subject property being near another approved cannabis retail business. The Committee voted to recommend denial of the project, 3 votes to 0.

Response:

Fresno Municipal Code (FMC) Section 15-2739.B provides requirements for permitted locations of cannabis retail businesses. Cannabis retail businesses are required to be a minimum distance of 800 feet from other approved cannabis retail businesses and public schools. The proposed cannabis retail business is located approximately 1,600 feet from the nearest approved cannabis retail business and approximately 1,400 feet from Roosevelt High School. The proposed cannabis retail business is further than 800 feet from the nearest approved cannabis retail business and public school, therefore complies with the location requirements for cannabis retail businesses.

ANALYSIS OF THE APPEAL LETTER

On April 4, 2024, Councilmember Luis Chavez (District 5) submitted a letter to the Planning and Development Department requesting an appeal of the Planning Commission's decision of the Cannabis Conditional Use Permit Application No. P23-03068.

(1) Below is an analysis of the issues raised in the appeal letter dated April 4, 2024 (**Exhibit B**).

Issue #1: Allow for discussion among the City Council to assess the net impact on the surrounding neighborhood.

Response:

The Planning Commission heard the project by presentations from staff and the applicant, and allowed for public comment, and voted to deny the appeal and uphold the action for approval from the Planning and Development Director subject to increased security being provided during the Big Fresno Fair and the Hmong New Year celebration. Further details are provided in the Planning Commission Resolution (**Exhibit L**).

Issue #2: Allow the public an opportunity to comment.

Response:

The project was presented at the Council District 5 Project Review Committee on December 11, 2023. A neighborhood notice was mailed on November 13, 2023 allowing all property owners within 1,000 feet of the subject property to provide comment within ten days of the

mailed notice. Additionally, a Planning Commission hearing was held on March 20, 2024. Prior to the Planning Commission meeting, the following concerns were raised by members of the public:

- The sale of drugs near residential homes.
- The operation of a cannabis retail business in a high crime area.

Notice of City Council Hearing

The Planning and Development Department mailed notices of this City Council hearing to all surrounding property owners within 1000 feet of the subject property on May 10, 2024, pursuant to Section 15-5007 of the FMC (**Exhibit D**).

Land Use Plans and Policies

The project is consistent with the following Fresno General Plan goals and objectives related to land use and the urban form:

- Increase opportunity, economic development, business, and job creation.
- Provide for a diversity of districts, neighborhoods, housing types (including affordable housing), residential densities, job opportunities, recreation, open space, and educational venues that appeal to a broad range of people throughout the city.

The proposed cannabis retail business would provide a retail store that would cumulatively result in the creation of jobs, job growth, and opportunity for residents.

These goals contribute to the establishment of a comprehensive citywide land use planning strategy to meet economic development objectives and achieve efficient and equitable use of resources and infrastructure in accordance with Objective LU-1 of the Fresno General Plan.

Objective ED-1 supports economic development by maintaining a strong working relationship with the business community and improving the business climate for current and future businesses.

Objective LU-6 calls for the retainment and enhancement of existing commercial areas to strengthen Fresno's economic base and site new office, retail, and lodging use districts to serve neighborhoods and regional visitors.

Policy LU-1-a promotes new development, infill, and rehabilitation of existing building stock in the Downtown Planning Area, along BRT corridors, in established neighborhoods generally south of Herndon Avenue, and on other infill sites and vacant land within the city.

The proposed cannabis retail business will utilize existing land where the necessary infrastructure and facilities are available to serve the property. The proposed project is consistent with many of the goals and policies of the Fresno General Plan. The proposed project promotes diverse land uses and preserves and protects resources by developing within the city limits.

Therefore, it is staff's opinion that the proposed project is consistent with respective general and

community plan objectives and policies as supported by the above-described General Plan goals, policies and objectives, and will not conflict with any applicable land use plan, policy or regulation of the City of Fresno.

Downtown Neighborhoods Community Plan

Upon reviewing the policies contained in the Downtown Neighborhoods Community Plan, staff has determined that there are no policies that are applicable or are more restrictive than those contained in the FMC or the Fresno General Plan.

ENVIRONMENTAL FINDINGS

The California Environmental Quality Act (CEQA), Public Resource Code Section 2100 et seq., permits a public agency to determine whether a particular project is exempt from CEQA. A determination of a Categorical Exemption from Section 15301/Class 1 was made and Environmental Assessment P23-03086 was completed for this project on November 9, 2023 (**Exhibit J**).

FRESNO MUNICIPAL CODE FINDINGS

Based upon analysis of the applications, staff concludes that the required findings contained within Section 15-5306 et seq. of the Fresno Municipal Code. These findings are attached as **Exhibit E**.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan and the Downtown Neighborhoods Community Plan; compliance with the provisions of the FMC; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment and exhibits. Staff concludes that the required findings contained within Section 15-5306 et seq. of the FMC can be made. Upon consideration of this evaluation, it can be concluded that the proposed project is appropriate for the project site.

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 & Development Department.

Attachments:

Exhibit A - Aerial Map

Exhibit B - Appeal Letter of Planning Commission's Decision [4-4-2024]

Exhibit C - Public Hearing Notice Radius Map (1,000 feet)

Exhibit D - Fresno Municipal Code Findings

Exhibit E - Conditions of Approval for Cannabis Conditional Use Permit Application No. P23-03086 [1-9-2024]

Exhibit F - Operational Statement [10-4-2023]

Exhibit G - Site Plan, Floor Plan, and Elevations [10-4-2023]

Exhibit H - Comments and Requirements from Responsible Agencies

Exhibit I - Environmental Assessment No. P23-03086 [11-9-2023]

Exhibit J - Neighborhood Responsibility Plan [10-4-2023]

Exhibit K - Odor Management and Control Plan [10-4-2023]

Exhibit L - Planning Commission Resolution No. 13844