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**Title:** Consideration of Conditional Use Permit Application C-17-006ABCUP, for the Family Market located on the southwest corner of East Olive Avenue and North Fisher Street (Council District 7) - Development and Resource Management Department.

Based upon the evaluation contained in this report and appeal received from the project applicant, staff recommends that the Planning Commission take the following action:

1. DENY the applicant's appeal and UPHOLD the action of the Development and Resource Management Department Director to deny Conditional Use Permit Application No. C-17-006, requesting authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 License (Package Store - sale of beer and wine for consumption off the premises where sold) to buy and sell beer and wine for Family Market located on the subject property.

a. Based upon substantial evidence detailed in this staff report, staff has determined that Findings A, B, C & D contained in Section 15-5306 of the Fresno Municipal Code cannot be made. Therefore, the Conditional Use Permit cannot be approved.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A Vicinity Map.pdf, 2. Exhibit B 2015 Aerial Photograph of Site.pdf, 3. Exhibit C Planned Land Use Map.pdf, 4. Exhibit D Zoning Map.pdf, 5. Exhibit E Site and Floor Plan.pdf, 6. Exhibit F Crime Rate Comparison.pdf, 7. Exhibit G Comments from Responsible Agencies.pdf, 8. Exhibit H Noticing Map.pdf, 9. Exhibit I Opposition Letter Dated March 6 2017.pdf, 10. Exhibit J Opposition Letter Received on March 10 2017.pdf, 11. Exhibit K Environmental Assessment.pdf, 12. Exhibit L Fresno Municipal Code Findings.pdf, 13. Exhibit M Operational Statement.pdf, 14. Exhibit N - Applicant Appeal Letter.pdf, 15. Exhibit O - Draft Conditions for Approval.pdf

Date	Ver.	Action By	Action	Result
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**REPORT TO THE PLANNING COMMISSION**

**May 3, 2017**

**FROM:** MIKE SANCHEZ, Assistant Director  
Development Services Division

**THROUGH:** WILL TACKETT, Supervising Planner  
Development Services Division

**BY:** MARGO LERWILL, Planner  
Development Services Division

## **SUBJECT**

Consideration of Conditional Use Permit Application C-17-006ABCUP, for the Family Market located on the southwest corner of East Olive Avenue and North Fisher Street (Council District 7) - Development and Resource Management Department.

Based upon the evaluation contained in this report and appeal received from the project applicant, staff recommends that the Planning Commission take the following action:

1. **DENY** the applicant's appeal and **UPHOLD** the action of the Development and Resource Management Department Director to deny Conditional Use Permit Application No. C-17-006, requesting authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 License (Package Store - sale of beer and wine for consumption off the premises where sold) to buy and sell beer and wine for Family Market located on the subject property.
  - a. Based upon substantial evidence detailed in this staff report, staff has determined that Findings A, B, C & D contained in Section 15-5306 of the Fresno Municipal Code cannot be made. Therefore, the Conditional Use Permit cannot be approved.

## **EXECUTIVE SUMMARY**

Conditional Use Permit Application No. C-17-006 was filed by Fahmi Yahya Abdulla Murshed and pertains to the ±1,785 square foot grocery store, Family Market, located on ±0.34 acres of property located on the southwest corner of East Olive Avenue and North Fisher Street. The applicant proposes to acquire a State of California Alcoholic Beverage Control (ABC) Type 20 License (Package Store - sale of beer and wine for consumption off the premises where sold) to buy and sell beer and wine.

On March 13, 2017, Conditional Use Permit Application No. C-17-006 was denied based on market saturation, high crime in the area, and the danger to neighborhood children posed by public consumption of alcohol. The decision has been appealed by the applicant. Staff recommends upholding the denial based on substantial evidence detailed in this staff report that Findings A, B, C, and D contained in Section 15-5306 of the Fresno Municipal Code cannot be made and, therefore, the Conditional Use Permit cannot be approved. In addition, Article 27 (Standards for Specific Uses and Activities), Section 15-2706 (Alcohol Sales), Sub-Section E (Location Restrictions for New Establishments) prohibits new off-sale alcohol establishments that are under 10,000 square feet if they are within a high concentration and high crime area. The proposed project site is located in both a high concentration area and high crime area as determined by ABC.

## **BACKGROUND**

Conditional Use Permit Application No. C-17-006 was filed by Fahmi Yahya Abdulla Murshed and pertains to the ±1,785 square foot grocery store, Family Market, located on ±0.34 acres on the southwest corner of East Olive Avenue and North Fisher Street. The applicant proposes to acquire a Type 20 License (Package Store - sale of beer and wine for consumption off the premises where sold) to buy and sell beer and wine. Per Table 15-1202, a General Market is permitted by right in the CG (Commercial - General) zone district. Alcohol sales may be allowed subject to an approved

Conditional Use Permit and the requirements of Section 15-2706 of the Fresno Municipal Code.

### **Police Department Review**

The Southeast Policing District does not oppose the project but has requested conditions addressing compliance with Fresno Municipal Codes limiting noise and unlawful nuisance, compliance with State of California Alcoholic Beverage Control (ABC) rules and employee education, video camera surveillance, limitations on alcohol types and servings, and limitations on on-site alcohol consumption and loitering.

The Southeast Policing District provided statistics indicating that the half-mile radius around this location has a crime rate roughly double that of a comparable nearby area. Over a period of approximately one year, from January 2016 through January 2017, the area around the proposed project location experienced crimes against persons (as compared to crimes against property) at a rate significantly higher than the block immediately east of the location (Exhibit F).

### **Fresno Unified School District (FUSD) Review**

FUSD provided comments indicating the district does not support this application. Their comment letter expressed concerns regarding potentially dangerous interactions between students and the proposed operation.

### **Other Agencies**

The County of Fresno Department of Public Health provided comments indicating the location has failed to comply with California Health and Safety Codes, California Retail Food Code for Food Facilities. The most recent inspection took place on September 22, 2016. The County of Fresno Department of Public Health requests in their comments that the application only be approved subject to compliance with the corrections noted in the September 2016 inspection report. The applicant indicated to City of Fresno staff that the violations have been corrected and are awaiting re-inspection.

See Exhibit G for all agency comments received.

### **Alcohol Sales**

As noted within the Public Utilities and Services section of the Fresno General Plan, the location and prevalence of off-sale alcohol sales can have a negative effect on neighborhood health. In public meetings held during the development of the General Plan, the following concerns were discussed:

- **Market saturation.** Some neighborhoods feel they have an overabundance of establishments with off-sale licenses to sell alcohol.
- **Fear of crime.** Community members often see a strong relationship between establishments with off-sale licenses to sell liquor and rates of nuisances and crime.
- **Danger to schools.** Residents are concerned when alcohol sales are allowed too close to schools because of the impact on teenage drinking.

It has been suggested that alcohol sales 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. For this purpose, Section 15-2706 of the Fresno Municipal Code contains restrictions on the location for new establishments proposing to sell alcohol.

These restrictions are based upon proximity to schools, public parks, playgrounds and recreational areas, as well as other youth facilities such as day care facilities. In addition restrictions apply based upon proximity to alcohol or drug abuse recovery or treatment facilities, proximity to other establishments which sell alcoholic beverages; and, within areas of high crime. The City of Fresno relies on information from the Police Department and the Alcoholic Beverage Control (ABC) in the consideration of permit applications respective to areas of high crime or an over-concentration of ABC licenses.

### **Alcoholic Beverage Control Regulations**

In addition to obtaining a Conditional Use Permit from the City of Fresno, the applicant is required to obtain a license from the California Department of Alcoholic Beverage Control (ABC) in order to sell alcohol. Prior to the issuance of an ABC license, ABC is awaiting the decision on the subject Conditional Use Permit Application.

#### Number of Existing and Allowed ABC Licenses

According to the ABC, census tract 25.02 has six currently active off-sale alcohol licenses, one more than has been authorized for that census tract, so the census tract is over concentrated.

### **New Citywide Development Code**

Article 27 (Standards for Specific Uses and Activities), Section 15-2706 (Alcohol Sales), Sub-Section E (Location Restrictions for New Establishments) prohibits new off-sale alcohol establishments that are under 10,000 square feet if they are within one of the following areas:

1. **Near Sensitive Uses.** The establishment shall not be located within 500 feet of the following:
  - a. A public park, playground, recreational area, or youth facility, including a nursery school, preschool, or day care facility;
  - b. A public or private State-licensed or accredited school; or
  - c. An alcohol or other drug abuse recovery or treatment facility.
2. **Near Other Alcoholic Beverage Establishments.** The establishment shall not be located within 500 feet of an existing establishment, nor may it lead to a grouping of more than four establishments within a 1,000 foot radius.
3. **Within High Crime Areas.** The establishment shall not be located 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 (ABC).

- 4. Within High Concentration Areas.** The establishment shall not be located in an area of high concentration, as defined by the California Business and Professions Code 23958.4(a)(3) et seq., and as determined by the Department of Alcoholic Beverage Control.

Since the proposed project is located with both a high concentration and high crime area (according to ABC) the proposed new alcohol CUP is prohibited. The only way around this requirement is for the Review Authority to make one of the following exceptions:

1. The proposed use is not located within an area in which the Chief of Police has determined, based upon quantifiable information, that the proposed use a) would be detrimental to the public health, safety, or welfare of persons located in the area, or b) would increase the severity of existing law enforcement or public nuisance problems in the area.
2. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.
3. The proposed outlet for the off-premises sale of alcoholic beverages would act as a public convenience or necessity to an underserved portion of the community and/or enhance the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety.

The Director was unable to make any of these findings and therefor, denied the application. Since the Director's action was appealed, the Planning Commission is now the Review Authority.

The project is in compliance with the three other locational requirements/restrictions. The proposed project would be only the third such establishment within a 1,000 square foot radius and would not be within 500 feet of any of the identified sensitive uses or other alcoholic beverage establishments. The proposed location is located within one-half mile of one public park, four elementary schools, and one middle school.

## Letters of Opposition

On February 23, 2017, a Notice of Intent to Take Action was mailed to residents and businesses within 1,000 feet of the location (see Exhibit H for Noticing Map). One telephone call anonymously expressing protest and two letters of opposition were received (Exhibits I and J, respectively).

In the opposition letter dated March 6, 2017 (Exhibit I), the issues included a large apartment complex in the area and the respondent's concern for the large number of children living there being put at risk by people hanging around the store.

The opposition letter received on March 10, 2017 (Exhibit J), expressed concern regarding over concentration of off-sale alcohol sales points in the neighborhood and pointed to the 2016 Moratorium Counties/Cities, produced by the ABC, indicating that all of Fresno County is considered over concentrated for Type 20 licenses and falls under the moratorium on new licenses (but not the

purchase or transfer of licenses). The letter also expressed concern for parents and children walking to and from local schools.

## **Land Use Plans and Policies**

### Fresno General Plan

The Fresno General Plan provides objectives and policies to guide development. The following are excerpts of such objectives.

Objective HC-6 states: Improve access to schools and their facilities for the community.

Implementing Policy HC-6-a states (in part): Continue to improve the conditions for youth walking and bicycling in the areas surrounding schools by working with the school districts....to implement a safe route to school program.

High exposure to liquor stores and the easy availability of alcohol in the neighborhood affects public health, safety, and quality of life in the neighborhood. On a students' walk to school, he may be exposed to public drunkenness and criminal activities - like gambling and drug dealing - that contribute to an environment of social disorder around many liquor stores. Furthermore, there may be a higher probability of exposure to drivers under the influence of alcohol in close proximity to a liquor store.

A high density of liquor stores contributes to economic and social disintegration (See Reference 1). Similar to power plants and refineries, alcohol outlets represent a form of unwanted land use that conflicts with desirable land uses such as schools, parks, and residences. The over-concentration of liquor stores increases the perceived lack of safety and limits walkability in a neighborhood. Moreover, concentrations of liquor stores in a neighborhood can constrain economic opportunities for current and new business and therefore are both a symptom and accelerator of economic decline (See Reference 2).

Finally, a high density of liquor stores can contribute to a variety of health and safety problems. Studies show that neighborhoods with higher concentrations of liquor stores also have higher rates of alcohol-related hospitalizations, drunk driving accidents, and pedestrian injuries (See Reference 3, 4).

While the project location is not located within 500 feet of a park or school, as noted earlier, it is located within one-half mile of Romain Park, Kermit Koontz Elementary, Webster Elementary, Tehipite Middle School, Miguel Hidalgo Elementary, Mayfair Elementary, and San Joaquin Memorial High School.

### Roosevelt Community Plan

Upon reviewing the policies contained in the Roosevelt 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.

However, it should be noted that the Roosevelt Community Plan identifies community issues and concerns for citizens living within its planning area. These concerns include development that

generates a negative perception about the community, crime, alcohol abuse, and at-risk youth.

The following is an excerpt from the Roosevelt Community Plan.

Goal 1-11 states: Enhance the appearance and compatibility of existing and proposed commercial development.

Goal 1-11.10 recommends annual review and abatement procedures addressing commercial establishments which sell alcoholic beverages. In addition to addressing associated incidents of serious crimes, such as drugs sales or use and violent crime, the goal is intended to reduce public disturbances, drunkenness, and other behavior of patrons or employees which may be harmful to nearby residents.

Increasing the number of alcohol sales establishments within the Roosevelt Community Plan area, with the associated negative community and economic impacts described and cited above and within close proximity of existing sales locations and to an elementary school, conflicts with community concerns and is not in compliance with Plan Goal 1-11 to enhance the compatibility of proposed commercial development in the area.

### **District 7 Plan Implementation Committee**

Council District 7 does not have a formal committee to provide comments on projects in the area. The Council District staff member who receives notification of projects did not provide comments.

### **Notice of Planning Commission Hearing**

The Development and Resource Management Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property (Exhibit H). Staff also sent notices, via U.S. mail and email, to individuals who requested notification.

## **ENVIRONMENTAL FINDINGS**

The California Environmental Quality Act permits a public agency to determine whether a particular project is exempt from CEQA. A determination of a Categorical Exemption under Section 15301/Class 1 of the CEQA Guidelines was made and Environmental Assessment No. C-17-006 was completed for this project on February 22, 2017 (Exhibit K).

A Section 15301/Class 1 exemption from CEQA requirements applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing structures and facilities involving negligible or no expansion of use beyond that existing at this time.

Conditional Use Permit Application No. C-17-006 requests a license to include alcohol sales with its grocery products but does not include a physical expansion or an expansion of use, such as extended hours. The proposed project poses no additional environmental impacts beyond those already existing. The above described project complies with all conditions described in Section 15301/Class 1 of the California CEQA Guidelines.

## **FRESNO MUNICIPAL CODE FINDINGS**

The required findings under Section 15-5306 of the Fresno Municipal Code are as follows:

- a. 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; and,
- b. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted; and,
- 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; and,
- 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,
- e. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.

If the Planning Commission decides to grant approval of the proposed project, the Commission must find that there is substantial evidence in the administrative record to make these findings.

Staff believes the findings cannot be met.

Finding A: 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; and,

*The project is located in both a high crime and high concentration area and is prohibited pursuant to Section 15-2706-E of the Fresno Municipal Code, unless an exception finding can be made.*

Finding B: The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted; and,

- *The subject property is in close proximity to high density residential housing, a park, and several schools*
- *The subject property is within the Roosevelt Community Plan area*

*The proposed project is not considered to be in compliance with the Fresno General Plan objective to improve access to schools and facilities for the community or with the policy to continue to improve the conditions for youth walking and bicycling in the areas surrounding schools. The proposed project is not considered to be consistent with the Roosevelt Community Plan's goals addressing concerns with development that generates a negative perception about the community, crime, alcohol abuse, and at-risk youth.*

Finding 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;

- *The proposed use is within a census tract that has an over concentration of alcohol licenses*
- *The subject property is in a high crime area*

*As noted within the Public Utilities and Services section of the Fresno General Plan, the location and prevalence of liquor stores can have a negative effect on neighborhood health. Alcohol sales 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. According to measures determined by the ABC, Census Tract 25.02, where the proposed project is located, is over concentrated with off-sale alcohol licenses. The Fresno Police Department has also indicated that the proposed project is located in a high crime area. Therefore, the proposed use is considered to be substantially adverse to the public health, safety, or general welfare of the community, and detrimental to surrounding properties or improvements.*

Finding 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,

- *The proposed activity is incompatible with the location's housing development and the area's issues with high crime*

*The general market is surrounded by medium density and medium high density residential uses, with some general heavy commercial. However, the proposed activity, the establishment of an off-sale alcohol license in an over concentrated area, is not considered to be compatible with residential land uses in the vicinity, given conflicts with objectives in the Fresno General Plan and with goals in the Roosevelt Community Plan and with the area's high crime rate.*

Staff believes there is evidence to support finding E.

- e. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.

*The proposed establishment of a State of California Alcoholic Beverage Control Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold) is consistent with the allowable land use and intensity requirements per the underlying zone district. Adequate access, parking, utilities and services has been provided to serve the property and were reviewed for consistency with the requirements of the CGH (General Heavy Commercial) planned land use and the CG (Commercial - General) zone district.*

Original staff findings are included in Exhibit L.

## **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 Roosevelt Community Plan; compliance with the provisions of the Fresno Municipal Code; 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. Upon consideration of this evaluation, it can be concluded that Conditional Use Permit Application No. C-17-006 is not appropriate for the project site.

Action by the Planning Commission is final unless appealed to City Council in accordance with Section 15-5017 of the FMC.

Attachments:

- Exhibit A - Vicinity Map
- Exhibit B - 2015 Aerial Photograph of Site
- Exhibit C - Planned Land Use Map
- Exhibit D - Zoning Map
- Exhibit E - Site Plan, Floor Plan
- Exhibit F - Crime Rate Comparison
- Exhibit G - Comments from Responsible Agencies
- Exhibit H - Noticing Map
- Exhibit I - Public Opposition Letter dated March 6, 2017
- Exhibit J - Public Opposition Letter received March 10, 2017
- Exhibit K - Environmental Assessment
- Exhibit L - Fresno Municipal Code Findings
- Exhibit M - Operational Statement
- Exhibit N - Applicant Appeal Letter received March 24, 2017
- Exhibit O - Draft Conditions for Approval dated May 03, 2017

**References**

- 1 Maxwell, A., and D. Immergluck. (1997). Liquorlining: liquor store concentration and community development in lower-income Cook County (IL) neighborhoods. Chicago, IL: Woodstock Institute
- 2 Moore, E., and S. Prakash. (2009) Measuring What Matters: *Neighborhood Research for Economic and Environmental Health and Justice in Richmond, North Richmond, and San Pablo*. 57
- 3 Rabow, J., and R. Watts. (1983). Alcohol availability and alcohol-related problems in 213 California cities. *Alcoholism: Clinical and Experimental Research*. 7:47-58
- 4 Scribner, R.A., D. MacKinnon, and J. Dwyer. (1994). Alcohol outlet density and motor vehicle crashes in Los Angeles County cities. *Journal of Studies on Alcohol*. 55:447-453