



Legislation Details (With Text)

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Title: RESOLUTION - Initiating a Text Amendment to The Zoning Ordinance of the City of Fresno to Amend Chapter 15, Article 27, Section 15-2706 of The Fresno Municipal Code Relating to the Sale of Alcoholic Beverages for Offsite Consumption, and to Further Amend Section 15-2706 to be Titled "The Responsible Neighborhood Market Ordinance", Pursuant to Fresno Municipal Code Section 15-5803-A(1)

Sponsors: Miguel Angel Arias, Nelson Esparza, Luis Chavez

Indexes:

Code sections:

Attachments: 1. ABC Report Memo revised 04.18.19 .pdf, 2. Reso & Ord.pdf, 3. Supplement - Updated Exhibit A.pdf, 4. Power Point Presentation.pdf, 5. Late Submission (2) PowerPoint Presentation.pdf, 6. Late Submission - Amended Staff Report.pdf, 7. Late Submission - Amended Ordinance.pdf

Date	Ver.	Action By	Action	Result
5/1/2019	1	City Council	adopted	Pass

REPORT TO THE CITY COUNCIL

April 25, 2019

FROM: Vice President Arias, District 3
Councilmember Esparza, District 7
Councilmember Chavez, District 5

SUBJECT

RESOLUTION - Initiating a Text Amendment to The Zoning Ordinance of the City of Fresno to Amend Chapter 15, Article 27, Section 15-2706 of The Fresno Municipal Code Relating to the Sale of Alcoholic Beverages for Offsite Consumption, and to Further Amend Section 15-2706 to be Titled "The Responsible Neighborhood Market Ordinance", Pursuant to Fresno Municipal Code Section 15-5803-A(1)

RECOMMENDATION

It is recommended the Council approve a Resolution of Initiation (ROI) to start the process of amending the Municipal Code to make changes concerning liquor sales and Conditional Use Permits (CUPs), with the primary goal of reducing the density of liquor stores and "C" store sales of liquor for off-site consumption and more stringent regulations to address related concerns.

EXECUTIVE SUMMARY

Excessive saturation of liquor stores, as well as sales of single serving containers of alcohol, have a detrimental effect on the quality of life of the community. The City currently has alcohol sales regulations that are insufficient and difficult to enforce, as there are a variety of existing CUP types with various provisions, and revocation of a CUP can be difficult and costly to pursue. Moving to regulations that provide for uniform CUPs that expire, unless renewed, will dramatically improve conditions related to these stores and their effects on the surrounding community. This ROI would begin a process that will take about six months to complete, and will include community and industry input.

BACKGROUND

The Problem

According to the Fresno Bee:

Among California's 10 largest cities, Fresno has the highest concentration of retail stores licensed by the state to sell beer, wine and liquor - more stores per 10,000 residents than Los Angeles, San Diego, San Jose or San Francisco, and more than the statewide average, a Fresno Bee analysis shows. The number of licensees exceeds what state law typically allows in a community.

The concentration comes with a geographic imbalance. Seven out of every 10 retailers licensed for off-sale beer, wine and liquor sales (for consumption off the store premises) are south of the Shaw Avenue commercial corridor, often cited as the economic dividing line between north and south Fresno, and nearly eight out of 10 bars or nightclubs in the city are south of Shaw.

The state has rules that govern how many alcohol licenses for selling beer, wine and distilled spirits can be granted in a community. A formula in the state's Business and Professions Code says the number should be no more than one for every 1,250 residents. In Fresno, that would work out to 416 off-sale licensees.

Fresno, however, had 468 licensees - or 52 more than specified by the formula in the law - as of mid-2016 to serve the 522,053 inhabitants of California's fifth largest city.

Tim Sheehan, Fresno Bee, July 30, 2017
(<https://www.fresnobee.com/news/local/article164024002.html>)

Investigation

The City conducted an investigation of over 200 liquor store locations, which found many serious CUP and legal violations, as well as excessive police calls for service, demonstrating the need for legislative changes. A report from the City Attorney's Office is attached as exhibit A.

Proposed Changes

The proposed policy changes include the following:

1. An inspection program to ensure compliance with state and local regulations with input from stakeholders. The inspection program will be under the purview of the City Attorney's Office.
2. A new fine structure will be established with input from stakeholders.
3. Adopting regulations for wholesalers as follows:
 - a. Limiting sale of single serve beer, malt liquor, and wine coolers to factory packaging of four or more. The exception is craft beer, which may be sold in single bottle packaging.
 - b. Limiting sale of wine in containers of less than 750 milliliters.
 - c. Limiting sale of distilled spirits in less than 75 milliliters.
4. Separating the ABC CUP of a business from an CUP for the underlying use; that is, if a store needs a CUP to operate the store and also wants to sell alcohol, the operator must get a CUP to operate the store and a separate CUP to sell alcohol. The ABC CUP is distinct and severable from the underlying CUP. The ABC CUP could expire or

be terminated, but the underlying store CUP may continue. This allows stores to fully realize the benefit of their investment in the facility, but allows the City to adequately regulate alcohol sales.

5. New ABC CUPs: Alcohol CUPs would expire five years from issuance of the certificate of occupancy, or if no certificate is required, five years from commencement of the use. Having an ABC CUP that expires, unless it is affirmatively renewed by the operator with the City, ensures the operator is fully complying with all regulations and is a contributing member of the community, or risk non-renewal of the ABC CUP.
 - a. ABC CUPs for new operators that have no previous history of an ABC license in good standing expire one year from certificate of occupancy (or commencement of the use if no certificate of occupancy), and then the operator must apply for a new ABC CUP. This is essentially a “probationary period” for a new operator.
 - b. ABC CUPs that are the first application for a particular location shall also have the same one year probationary period as above.
 - c. When an operator’s ABC CUP expires and that operator applies for a new ABC CUP for the same site, then the application is a renewal with reduced fees (but the City retains discretion not to renew).
6. Existing Alcohol CUPs: ABC CUP’s already in place will be subject to a phased expiration plan with the oldest expiring two years from adoption, the next phase expiring three years from adoption, and the last phase expiring four years from adoption. Once an existing business reaches its expiration date, it must cease all sale of alcohol and apply for an ABC CUP. It may continue non-alcohol sales.
7. Window signage is limited to 5% of the square footage of each window.
8. Freestanding signs are prohibited on the exterior, and freestanding advertising or alcohol displays cannot be visible from the outside
9. Director shall deny the ABC CUP if the ABC license is transferred from outside the City or if it has been surrendered.
10. Director shall deny an ABC CUP when the operator seeks a new additional ABC license. Instead, the operator must transfer a license in good standing from inside the Council District or City. An operator must transfer existing licenses in good standing, as follows:
 - a. For stores under 10,000 square feet, a 1:1 transfer of licenses from within that Council District is required (that is, granting one license and surrendering one existing license).
 - b. For stores of 10,000 feet to 30,000 feet, a 1:2 transfer of licenses from within that Council District is required (granting 1 license and surrendering 2 existing licenses).
 - c. For stores over 30,000 feet, a 1:3 transfer is required, but transferred licenses can come from any area of the City (granting one license and surrendering 3 existing licenses).
11. ABC CUPs will be limited to a total of one for every 2,500 residents
12. ABC CUPs within 1,000 feet of a school, park, and youth activity centers will not be approved.
13. A retail business with an existing CUP will be permitted to retain the CUP, unless it fails an inspection and also then fails to fully correct violations found in the inspection within 30 days.
14. Even if a business with an existing CUP is required to obtain a new CUP, it will not be denied a new CUP or face termination of a CUP solely due to proximity to sensitive uses, like schools, or due to saturation limits.

The matter will return to Council following detailed analysis and preparation, and processing through the Airport Land Use Commission and the Planning Commission.

ENVIRONMENTAL IMPACT

This ROI is not a project pursuant to CEQA.

FISCAL IMPACT

No net financial effect is expected.

ATTACHMENTS:

Resolution & Ordinance
ABC Report Memo Revised