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**Title:** Consideration of Conditional Use Permit Application No. P20-02558, a request for authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 21 alcohol license (Off-Sale General [Package Store] - sale of beer, wine, and distilled spirits for consumption off the licensed premises) for a vacant parcel located at 10032 North Maple Avenue #101+ at the northeast corner of North Maple and East Behymer Avenues (Council District 6).

1. CONSIDER Environmental Assessment No. P20-02558, dated October 26, 2020, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 32 Categorical Exemption; and,
2. DENY the applicant's appeal and UPHOLD the action of the Planning and Development Department Director to deny Conditional Use Permit Application No. P20-02558 requesting authorization to establish an ABC Type 21 alcohol license (Off-Sale General [Package Store] - sale of beer, wine, and distilled spirits for consumption off the licensed premises).

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Photograph, 3. Exhibit C - Planned Land Use, 4. Exhibit D - Zoning Map, 5. Exhibit E - Project Information Tables, 6. Exhibit F - Noticing Map, 7. Exhibit G - Master Application/Owner's Letter of Authorization, 8. Exhibit H - Operational Statement, 9. Exhibit I - Exhibits (Site Plan, Elevations, Floor Plans), 10. Exhibit J - Notice of Intent to Take Action, 11. Exhibit K - Policy and Prodedure No. C-005, Specialty Grocery Stores, 12. Exhibit L - P20-02558 CUP Denial Letter, 13. Exhibit M - Applicant Appeal Letter, 14. Exhibit N - Public Hearing Notice, 15. Exhibit O - Fresno Municipal Code Findings, 16. Exhibit P - Draft Conditions of Approval, 17. Exhibit Q - Environmental Assessment dated October 26, 2020, 18. Exhibit R - Letters of Protest, 19. SUPPLEMENTAL 1.pdf

Date	Ver.	Action By	Action	Result
11/4/2020	1	Planning Commission	approved as amended	Pass

**REPORT TO THE PLANNING COMMISSION**

**November 4, 2020**

**FROM:** Dan Zack, Assistant Director  
Planning & Development Department

**THROUGH:** MARGO LERWILL, Supervising Planner  
Development Services Division

**BY:** MARISELA MARTINEZ, Planner I  
Development Services Division

## **SUBJECT**

Consideration of Conditional Use Permit Application No. P20-02558, a request for authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 21 alcohol license (Off-Sale General [Package Store] - sale of beer, wine, and distilled spirits for consumption off the licensed premises) for a vacant parcel located at 10032 North Maple Avenue #101+ at the northeast corner of North Maple and East Behymer Avenues (Council District 6).

- 1. CONSIDER** Environmental Assessment No. P20-02558, dated October 26, 2020, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 32 Categorical Exemption; and,
- 2. DENY** the applicant's appeal and **UPHOLD** the action of the Planning and Development Department Director to deny Conditional Use Permit Application No. P20-02558 requesting authorization to establish an ABC Type 21 alcohol license (Off-Sale General [Package Store] - sale of beer, wine, and distilled spirits for consumption off the licensed premises).

## **CONTINUED HEARING FROM OCTOBER 21, 2020**

This item was originally presented before the Planning Commission on October 21, 2020. After the staff presentation, applicant presentation, and public comment period, the Planning Commission voted to continue the item in order to allow for an environmental determination to be made for the project.

## **EXECUTIVE SUMMARY**

Conditional Use Permit Application No. P20-02558 was filed by Jenna Chilingirian, on behalf of Precision Civil Engineering on behalf of Sethi Management, Inc., and requests authorization to establish an ABC Type 21 alcohol license (Off-Sale General [Package Store] - sale of beer, wine, and distilled spirits for consumption off the licensed premises) only. No physical development is proposed under this special permit application. The application does not include an approval request for an actual project site.

The applicant has represented that it intends to bring a subsequent application to develop a project site of less than five acres in property to be comprised of a Service Station that will include: a 5,094 square foot fuel canopy and 16 fuel pump stations, a convenience store, and sit down quick serve restaurant within a proposed building of 5,234 square feet.

On September 29, 2020, the Planning & Development Department Director denied the Conditional Use Permit application based upon the project's noncompliance with the required location restrictions of Section 15-2706-E of the Fresno Municipal Code (FMC) and the inability to make the required findings for Conditional Use Permits under FMC Section 15-5306 (**Exhibit L**, Denial Letter).

The Director's denial was appealed by the applicant on October 1, 2020 (**Exhibit M**).

Staff recommends upholding the denial based on substantial evidence detailed in this staff report that; 1) the special permit application will not meet the location restrictions for an off-sale alcohol

license nor the exception provisions specified under FMC Section 15-2706-E; and 2) staff is unable to make the required findings for a Conditional Use Permit as specified in FMC Section 15-5306.

## **BACKGROUND**

The applicant is requesting authorization to establish an ABC Type 21 alcohol license (Off-Sale General [Package Store] - sale of beer, wine, and distilled spirits for consumption off the licensed premises) at a future development on the subject parcel.

The subject property is zoned CC/UGM (*Commercial-Community/Urban Growth Management*). Pursuant to Table 15-1202 of the FMC, alcohol sales are permitted in the CC zone district subject to an approved Conditional Use Permit and compliance with the requirements of Section 15-2706 of the FMC.

FMC Section 15-2706-C states that any proposed new establishment that requests to sell alcoholic beverages for off-site consumption must obtain a Conditional Use Permit in compliance with the standards of the section, including applicable location restrictions, 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.

### **Alcoholic Beverage Control (ABC) Regulations**

In addition to obtaining a Conditional Use Permit from the City of Fresno, the applicant is required to obtain a license from ABC awaiting the decision on the subject Conditional Use Permit Application.

#### Number of Existing and Allowed ABC Licenses

The subject site is located in Census Tract 55.04. According to ABC, Census Tract 55.04 currently has no active off-sale alcohol licenses. Per ABC, a total of two off-sale alcohol licenses are allowed in Census Tract 55.04. If allowed to operate under the requested Type 21 alcohol license, Census Tract 55.04 would have one ABC Type 21 alcohol license.

### **Citywide Development Code**

The proposed conditional use permit shall comply with the requirements of FMC Section 15-2706.

#### Location Restrictions

According to FMC Section 15-2706-E (Location Restrictions for New Establishments), new off-sale alcohol establishments that are under 10,000 square feet are prohibited 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.

*The project site is not located within 500 feet of any of the sensitive uses listed above. The nearest school, Copper Hills Elementary, is located approximately 1,300 feet south of the project site. The nearest park, Todd Beamer Park, is located approximately 800 feet south of the project site. The nearest day care, Kids Kare River Bluff, is located approximately 2,000 feet east of the subject site. There are no known alcohol or drug recovery or treatment facilities within 500 feet of the project site.*

- 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.

*The project site is located within 500 feet of an existing off-sale establishment (Vallee Food Stores [Type 21] across the street). For informational purposes, the aforementioned establishment is located within a different Census Tract (Census Tract 55.17) than the subject establishment (Census Tract 55.04).*

- 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).

*The average number of offenses per districts within the City of Fresno is 452.83. The number of offenses shall not exceed 20% of the average number of offenses which is 543. According to Alcoholic Beverage Control Fresno County office, the subject crime reporting district has a total of 179 offenses. Therefore, the establishment is not located in an area of high crime.*

- 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.

*As mentioned in the ABC Regulations Section above, the establishment is not located in an area of high concentration.*

The proposed alcohol use is not in compliance with the aforementioned location restrictions pursuant to FMC Section 15-2706-E. It is located within 500 feet of an existing off-sale alcoholic beverage establishment (Vallee Food Stores). Therefore, the proposed new alcohol CUP is prohibited per the FMC.

#### Exception from Location Restrictions

According to FMC Section 15-2706-E-5, a new establishment may be excepted from the location restrictions if the Review Authority determines any one of the following:

- a. 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.

- b. 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.
- c. 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 therefore, denied the request to establish a Type 21 alcohol license on September 29, 2020.

The Director has established a formal policy to allow for an exception to be made to allow alcohol sales at Specialty Grocery Stores if the store includes eight key elements. This policy is attached as **Exhibit K** (Policy and Procedure No. C-005). According to a site plan submitted by the applicant for a subsequent development proposal, the future Service Station does not contain these eight elements and thus the Director could not make this exception based on this Policy.

### **Fresno Police Department Review**

The Northeast Policing District reviewed the subject application and does not oppose the project provided the applicant agrees to the conditions listed in its memorandum dated September 22, 2020 and submits a complete security plan. Conditions include compliance with Fresno Municipal Code sections 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, limitations on on-site alcohol consumption and loitering, and completion of a security plan.

### **Clovis Unified School District (CUSD) Review**

CUSD reviewed the subject application and had no comments or conditions.

### **Other Agencies**

All comments received from the applicable agencies have been incorporated into the draft conditions of approval for Conditional Use Permit Application No. P20-02558. See **Exhibit P** for all written agency comments received.

### **Public Notice and Input**

#### Council District Project Committee Review

The Council District 6 Project Review Committee reviewed this project on August 17, 2020 and voted (5-0) to approve it with no additional recommendations.

#### Public Notice

In accordance with Section 15-5305 of the FMC, the Planning and Development Department mailed a Notice of Intent to Take Action to surrounding property owners within 1,000 feet of the subject site on September 10, 2020 (**Exhibit J**). Two members of the public provided comments to the Department. The main concerns mentioned were related to the existing alcohol establishment across

the street and the desire for other kinds of development, such as a Whole Foods or Trader Joe's.

### Notice of Planning Commission Hearing

In accordance with Section 15-5007 of the FMC, the Planning and Development Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property on October 9, 2020 (**Exhibit N**). No comments have been received to date.

## **LAND USE PLANS AND POLICIES**

The Fresno General Plan designates the subject property for Commercial Community planned land use and provides objectives to guide in the development of this project. The Commercial Community planned land use designation is intended for commercial development that primarily serves local needs such as convenience shopping and small offices. Many of the city's current commercial districts fall into this designation. Specific uses allowed include medium scale retail, office, civic and entertainment uses, supermarkets, drug stores and supporting uses

The Fresno General Plan provides goals, objectives, and policies to guide development. The following are applicable goals from the Urban Form, Land Use & Design, and Public Utilities & Services elements of the Fresno General Plan:

- **Goal 9:** *Promote a city of healthy communities and improve quality of life in established neighborhoods.*
- **Goal 16:** *Protect and improve public health and safety.*

### Alcohol Sales

High exposure to the easy availability of alcohol sales affects public health, safety, and quality of life in a neighborhood. Alcohol sales outlets that are near other outlets or are in close proximity to sensitive uses increase the perceived lack of safety in a neighborhood. Moreover, concentrations of such outlets can contribute to a variety of health and safety problems including higher rates of alcohol-related hospitalizations, drunken driving accidents, and pedestrian injuries.

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 FMC 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 overconcentration of ABC licenses.

### **Woodward Park Community Plan**

Upon reviewing the goals and policies contained in the Woodward Park Community Plan, staff has determined that there are no applicable policies restrictive to alcohol sales than those already provided in the Fresno General Plan and the Fresno Municipal Code.

### **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.

Based upon analysis of the application, staff concludes that the required findings made by the Director to deny the special permit under FMC Section 15-5306 (A, B, C, D, & E) are appropriate. These findings are attached as **Exhibit O**.

If the Planning Commission decides to grant approval of the request to obtain a Type 21 ABC license, the Commission must find that there is substantial evidence in the administrative record to make all the findings mentioned above and amend them to include the sale of alcohol. The Planning Commission shall also find that there is substantial evidence in the administrative record to determine any of the following exceptions in accordance with FMC Section 15-2706-E-5 apply:

- a. 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.
- b. 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.
- c. 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.

## ENVIRONMENTAL FINDINGS

No environmental findings are necessary to adopt a staff recommendation for denial for the project. However, should the Planning Commission make the required findings in accordance with FMC Sections 15-2706 and 15-5306 and grant approval of the request to establish a Type 21 ABC license then adoption of a Section 15332/Class 32 Categorical Exemption, pursuant to the State of California Environmental Quality Act (CEQA) Guidelines, is considered appropriate in accordance with the following.

The California Environmental Quality Act permits a public agency to determine whether a particular project is exempt from CEQA.

A Section 15332/Class 32 exemption addresses projects involving in-fill development projects.

None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

Therefore, if the Planning Commission makes the necessary findings required by FMC Sections 15-2706-E-5 and 15-5306 to approve the proposed project, a determination of a Categorical Exemption under Section 15332/Class 32 of the CEQA Guidelines may be considered appropriate for the proposed project; and, the attached Categorical Exemption which was prepared for Environmental Assessment No. P20-02558 and dated October 26, 2020 (**Exhibit Q**) may be adopted.

## CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan, the Woodward Park Community Plan, compliance with the specific provisions of Development 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. Upon consideration of this evaluation, it can be concluded that Conditional Use Permit Application No. P20-02558, a request to operate a Type 21 alcohol license, is not appropriate for the subject property.

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 that the project can be excepted from the location restrictions pursuant to FMC Section 15-2706-E and make the required findings of FMC Section 15-5306. Should the Planning Commission make the required findings, approval of the conditional use permit application shall be subject to the applicant's compliance with the Draft Conditions of Approval dated November 4, 2020 (**Exhibit P**).

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 - Aerial Photograph
- Exhibit C - Planned Land Use
- Exhibit D - Zoning Map
- Exhibit E - Project Information Tables
- Exhibit F - Noticing Map
- Exhibit G - Master Application / Owner's Letter of Authorization
- Exhibit H - Operational Statement
- Exhibit I - Exhibits (Site Plan, Elevations, Floor Plans)
- Exhibit J - Notice of Intent to Take Action
- Exhibit K - Policy and Procedure No. C-005, Specialty Grocery Stores
- Exhibit L - P20-02558 CUP Denial Letter
- Exhibit M - Applicant Appeal Letter
- Exhibit N - Public Hearing Notice
- Exhibit O - Fresno Municipal Code Findings
- Exhibit P - Draft Conditions of Approval
- Exhibit Q - Environmental Assessment dated October 26, 2020
- Exhibit R - Letters of Protest