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**Title:** CONTINUED HEARING to consider Conditional Use Permit Application Nos. P18-03222 and P18-03223, located on the northwest corner of North Cedar Avenue and East Tulare Street (Council District 7)

1. ADOPT Environmental Assessment Nos. P18-03222 and P18-03223 dated February 20, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 32 Categorical Exemption.
2. ADOPT findings pursuant to Government Code Section 65863(b)(2) that there is substantial evidence in the record that remaining sites identified in the Housing Element can accommodate the City of Fresno's share of the Regional Housing Needs Assessment (RHNA).
3. APPROVE Conditional Use Permit Application No. P18-03222 requesting authorization to develop a 3,052-square-foot convenience store and service station with eight fueling positions, subject to compliance with the Conditions of Approval dated February 20, 2019.
4. DENY Conditional Use Permit Application No. P18-03223 requesting authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold) license for the proposed convenience market.

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Aerial Photograph of Subject Property, 2. Exhibit B - Planned Land Use Map, 3. Exhibit C - Zoning Map, 4. Exhibit D - Noticing Map, 5. Exhibit E - Project Information Tables, 6. Exhibit F - Exhibits (Site Plan, Elevations, Floor Plans), 7. Exhibit G - Operational Statement, 8. Exhibit H - Conditions of Approval Package, 9. Exhibit I - Fresno Municipal Code Findings, 10. Exhibit J - Categorical Exemption, 11. Exhibit K - Fresno CA Code Ordinances, 12. Exhibit L - Application, 13. Exhibit M - Planning Commission Resolutions, 14. Late Submission - Letter to Withdraw Project.pdf

Date	Ver.	Action By	Action	Result
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**REPORT TO THE CITY COUNCIL**

**May 2, 2019**

**FROM:** JENNIFER K. CLARK, Director  
Development and Resource Management Department

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

McKENCIE PEREZ, Supervising Planner

Development Services Division

**BY:** JARRED OLSEN, Planner III  
Development Services Division

**SUBJECT**

CONTINUED HEARING to consider Conditional Use Permit Application Nos. P18-03222 and P18-03223, located on the northwest corner of North Cedar Avenue and East Tulare Street (Council District 7)

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2. **ADOPT** findings pursuant to Government Code Section 65863(b)(2) that there is substantial evidence in the record that remaining sites identified in the Housing Element can accommodate the City of Fresno's share of the Regional Housing Needs Assessment (RHNA).
3. **APPROVE** Conditional Use Permit Application No. P18-03222 requesting authorization to develop a 3,052-square-foot convenience store and service station with eight fueling positions, subject to compliance with the Conditions of Approval dated February 20, 2019.
4. **DENY** Conditional Use Permit Application No. P18-03223 requesting authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold) license for the proposed convenience market.

**RECOMMENDATIONS**

Staff recommends that the City Council take the following actions:

1. ADOPT Environmental Assessment No. P18-03222 and P18-03223 dated February 20, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 32 Categorical Exemption.
2. ADOPT findings pursuant to Government Code Section 65863(b)(2) that there is substantial evidence in the record that remaining sites identified in the Housing Element can accommodate the City of Fresno's share of the Regional Housing Needs Assessment (RHNA).
3. APPROVE Conditional Use Permit Application No. P18-03222 requesting authorization to develop a 3,052-square-foot convenience store and service station with eight fueling positions, subject to compliance with the Conditions of Approval dated February 20, 2019.
4. DENY Conditional Use Permit Application No. P18-03223 requesting authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold) license for the proposed convenience market.

## EXECUTIVE SUMMARY

Conditional Use Permit Application No. P18-03222 and P18-03223 was filed by Terri Dickerhoff of CGR Development on behalf of Jim Shehadey of Red Triangle, and pertains to approximately ±0.55 acres located on the northwest corner of North Cedar Avenue and East Tulare Street. The applicant requests authorization to develop a 3,052-square-foot convenience store and service station with eight fueling positions and to establish an ABC Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold) alcohol license for the proposed convenience store. Staff is recommending denial of the Type 20 alcohol license request.

At a hearing on February 20, 2019, the Planning Commission voted to approve Conditional Use Permit Application No. P18-03222 for the convenience store and service station, and deny Conditional Use Permit Application No. P18-03223 for alcohol sales. Councilmember Esparza appealed this decision on February 21, 2019 in accordance with FMC 15-5017-A-2, setting aside the Planning Commission action.

Staff recommends denial of Conditional Use Permit Application No. P18-03223 requesting an alcohol use based on substantial evidence detailed in this staff report that Findings B, C, and D contained in Section 15-5306, as well as a Finding of Section 15-2706-E-5 of the Fresno Municipal Code (FMC) cannot be made due to documented high crime, over concentration of licenses in the area, and close proximity to sensitive uses.

## BACKGROUND

**Conditional Use Permit Application No. P18-03222** requests to develop the site with an eight fuel position service station and 3,052-square-foot convenience market. Per FMC Table 15-1102, service stations are permitted in the NMX (Neighborhood Mixed Use) zone district subject to an approved Conditional Use Permit and additional regulations pursuant to FMC Section 15-2755.

**Conditional Use Permit Application No. P18-03223** requests authorization to establish a State of California Alcoholic Beverage Control Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for the proposed market. Per FMC Table 15-1102, alcohol sales are permitted in the NMX (Neighborhood Mixed Use) zone district subject to an approved Conditional Use Permit and additional regulations pursuant to FMC Sections 15-2706.

### Police Department Review

Although the sale of alcohol is allowed with a conditional use permit on the subject site, the Fresno Police Department does not support the establishment of a State of California Alcoholic Beverage Control (ABC) license at this location due to being located within a high crime reporting district, an over concentration of licenses in the area, and close proximity to Roosevelt High School. The typical reporting district experienced an average of 453 criminal offenses. The reporting district in which the subject establishment is located has experienced approximately 1,044 offenses-approximately 130% higher than average. Therefore, the Fresno Police Department recommends denial of the application as the proposed use would be detrimental to the public health, safety, or welfare of persons and businesses located in the surrounding area.

Crime Reporting District Number	2561
Total Number of Reporting Districts	504

Total Number of Offenses in All Reporting Districts	228,678
Average Number of Offenses per District	452.83
120% of Average Number of Offenses	543
Total Number of Offenses in Reporting District	1,044

Source: California Department of Alcohol and Beverage Control

The Fresno Police Department did not provide conditions to be incorporated into the Conditions of Approval dated February 20, 2019 (Exhibit H). However, should the City Council decide to grant approval of the request to establish a Type 20 ABC license, the Standard Fresno Police Department ABC CUP Conditions contained in the attached Conditions of Approval dated February 20, 2019 (see Exhibit H) shall apply. Standard ABC CUP conditions include compliance with the FMC limiting noise and unlawful nuisance, compliance with ABC rules and employee education, video camera surveillance, limitations on alcohol types and servings, and limitations on on-site alcohol consumption and loitering.

Fresno Unified School District (FUSD) Review

FUSD provided comments indicating the district did not support this application. The proposed convenience store is diagonally opposite of Roosevelt High School.

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 the California Department of Alcoholic Beverage Control.

Number of Existing and Allowed ABC Licenses

Census Tract Number	26.01
Census Tract Population	5,821
Off-Sale Licenses Allowed in Census Tract	5
Off-Sale Licenses Existing in Census Tract	7

Source: California Department of Alcohol and Beverage Control

Other Agencies

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application Nos. P18-03222 and P18-03223. See Exhibit H for all written agency comments received.

Citywide Development Code

Alcohol Sales

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.

In addition to being in an area of high crime, and an over concentrated Census Tract, the proposed location is diagonally adjacent to Roosevelt High School-a public school. Since the proposed project cannot comply with the four criteria above, the proposed alcohol sale use is prohibited, unless one of the following exceptions can be met:

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 and the Planning Commission were unable to make any of these findings-nor has the Chief of Police provided staff with any determination-and therefore, the Department is recommending denial of the authorization to sell alcohol.

Should the City Council allow the alcohol use, one of the three exceptions findings above must be made. Additionally, Downtown Neighborhoods Community Plan Policy 2.13.3 encourages demonstration of annual compliance with Conditional Use Permits. Should the alcohol use permit be granted, staff recommends conditioning the Conditional Use Permit(s) to require the bearer of the permit demonstrate to the City annually that the conditional use is operating in compliance with the imposed conditions.

### *Service Stations*

Article 27 (Standards for Specific Uses and Activities), Section 15-2755 (Service Stations) establishes specific requirements for these types of uses. The proposed service station complies with all applicable standards, subject to the Conditions of Approval found in Exhibit H.

### **Public Notice and Input**

#### Council District Plan Implementation Committee

The District 7 does not have a Plan Implementation Committee and therefore could not make a recommendation on the project.

#### Fresno City Planning Commission

The Planning Commission held a public hearing at its regularly scheduled meeting on February 20, 2019 to consider the Conditional Use Permit applications, along with relevant environmental findings.

No members of the public spoke in support of the proposed project, and six spoke in opposition. The opposing speakers provided a list of surrounding residents who also opposed the proposed project. Opposition was mainly centered on the concentration of service stations and public health-related issues associated with the sale of alcohol, and unhealthy products associated with convenience stores, such as tobacco and vaping products, and junk food. Following a complete hearing, the Commission voted to approve Conditional Use Permit Application No. P18-03222 and the associated Categorical Exemption, and to deny Conditional Use Permit Application No. P18-03223. The Planning Commission resolutions (Exhibit M) are attached for more information.

### **Notice of Hearing**

The Development and Resource Management Department mailed notices of this Council Hearing to surrounding property owners within 1,000 feet of the subject property (Exhibit D). No comments have been received to date.

## **LAND USE PLANS AND POLICIES**

### **Fresno General Plan**

The Fresno General Plan designates the subject property for the Neighborhood Mixed Use planned land use and provides objectives to guide in the development of this project. The Neighborhood planned land use designation allows a minimum of 50 percent residential uses and provides for

mixed-use districts of local-serving, pedestrian-oriented commercial development, such as convenience shopping and professional offices in two- to three-story buildings. Development is expected to include ground-floor neighborhood retail uses and upper-level housing or offices, with a mix of small lot single family houses, townhomes, and multi-family dwelling units on side streets, in a horizontal or vertical mixed-use orientation. The built form will have a scale and character that is consistent with pedestrian-orientation, to attract and promote a walk-in clientele, with small lots and frequent roadway and pedestrian connections permitting convenient access from residences to commercial space. Automobile-oriented uses are not permitted. Residential densities range between 12 and 16 units per acre and the maximum Floor Area Ratio (FAR) is 1.5.

The Fresno General Plan provides goals, objectives, and policies to guide development. The following are applicable goals from the Fresno General Plan.

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. 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.

The proposed convenience store and service station promotes increased opportunity, economic development, and business to serve the neighborhood and it preserves and protects resources within the City by not expanding development onto sites where infrastructure and services do not exist. However, the proposed alcohol related 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. Therefore, it is the opinion of staff that the proposed project is not consistent with respective general plan objectives and policies and may conflict with applicable land use plans, policies 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.

### **Housing Element**

This project is on a site listed in the Housing Element Sites Inventory. The Housing Sites Inventory establishes the minimum capacity of this site to be seven units with an affordability categorization of Moderate; the proposed project does not include housing.

State law requires that when a jurisdiction permits development on a Housing Element site at less than the established minimum residential capacity, the following findings-supported by substantial evidence-must be made at the time of approval:

- The reduction is consistent with the adopted General Plan, including the Housing Element;

and,

- The remaining sites identified in the Housing Element are adequate to accommodate the City of Fresno's share of the Regional Housing Needs Assessment (RHNA).

As of the date of this analysis, the remaining sites identified in the Element are adequate to meet the requirements of Section 65583.2 of the California Government Code and to accommodate the City's share of the regional housing need pursuant to Section 65584. Approval of this project will decrease the 2013-2023 RHNA capacity for moderate units by seven units, which will reduce the excess capacity from 1,861 to 1,854 units. The 2013-2023 RHNA obligation for moderate is 3,228 units, and the total capacity remaining after the proposed decrease is 5,082.

## **FRESNO MUNICIPAL CODE FINDINGS**

### **Conditional Use Permit**

The required findings under Section 15-5306, Conditional Use Permit, of the FMC 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 of FMC Section 15-5306 can be made for the service station, but not for the alcohol use. The Planning Commission was unable to make a finding allowing an exception to the new establishment locational restrictions, and the high crime nature of the area would be detrimental to the public health, safety, or welfare of persons and businesses located in the surrounding area. These findings are attached as Exhibit K.

If the City Council decides to grant approval of the request to establish a Type 20 ABC license, the City Council must find that there is substantial evidence in the administrative record to make all the findings mentioned above, as well an exception found in Section 15-2706-E-5 and amend them to include the sale of alcohol.

## **ENVIRONMENTAL FINDINGS**

15332/Class 32 **In-Fill Development Projects**; consists of projects characterized as in-fill development meeting the conditions described as follows:

- (a) The project use is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable regulations;

*The General Plan Land Use Designation for the site is Neighborhood Mixed Use with a consistent zone district classification of NMX (Neighborhood Mixed Use).*

- (b) The proposed project occurs within city limits on a site of no more than five acres substantially surrounded by urban uses;

*The project is located within the city limits on a total of approximately 0.55-acre site which is surrounded by other urban uses.*

- (c) The project parcel has no value as a habitat for endangered, rare or threatened species;

*The undeveloped vacant site is not a habitat for any endangered, rare or threatened species. The site is mostly vacant and is surrounded by existing urban development on all sides making the site not well-suited for endangered species.*

- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality;

*The project is being developed on land that is surrounded by similar uses and other urbanized developments and therefore there will not be any significant effects to traffic, noise, and air and water quality.*

- (e) The site can be adequately served by all required utilities and public services;

*The project is being served by existing roadways, utilities and related public services which currently serve the surrounding commercial and residential uses.*

None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project. Furthermore, the proposed project is not expected to have a significant effect on the environment. Accordingly, a categorical exemption, as noted above, has been prepared for the project and the area is not environmentally sensitive.

## **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. Upon consideration of this evaluation, it can be concluded that approval of the Conditional Use Permit Application No. P18-03222, for the development of a convenience store and service station is appropriate for the project site, however the approval of the alcohol use of Conditional Use Permit Application No. P18-03223 is not.

If the City Council decides to grant approval of the proposed project, the City Council must find that

there is substantial evidence in the administrative record that the project can make the required findings of FMC Sections 15-2706-E-5 and 15-5306. Should the City Council make the required findings, approval of the conditional use permit application shall be subject to the applicant's compliance with the Conditions of Approval dated February 20, 2019.

Action by the City Council is final.

## **LOCAL PREFERENCE**

Local preference was not considered because this approval 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 Development and Resource Management Department.

### Attachments:

- Exhibit A - Aerial Photograph of Subject Property
- Exhibit B - Planned Land Use Map
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