



Legislation Details (With Text)

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Title: Consideration of an appeal filed regarding Cannabis Conditional Use Permit Application No. P23-00801 and related Environmental Assessment for property located at 7363 North Blackstone Avenue on the northwest corner of West Pinedale and North Blackstone Avenues (Council District 2).

1. APPROVE Environmental Assessment No. P23-00801 dated May 23, 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. P23-00801 authorizing the establishment of a cannabis retail business in an approximately 1,438 sq. ft. existing commercial tenant suite, subject to the following:
 - a. Development shall take place in accordance with the Conditions of Approval for Cannabis Conditional Use Permit Application No. P23-00801 dated July 18, 2023.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A - Aerial Map, 2. Exhibit B - Appeal Letter [07-24-2023], 3. Exhibit C - Appeal Letter [07-24-2023], 4. Exhibit D - Public Hearing Notice Radius Map (1,000 feet), 5. Exhibit E - Fresno Municipal Code Findings, 6. Exhibit F - Conditions of Approval for Cannabis Conditional Use Permit Application P23-00801 [07-18-2023], 7. Exhibit G - Operational Statement [04-12-2023], 8. Exhibit H - Site Plan & Floor Plan [05-31-2023], 9. Exhibit I - Comments & Requirements from Responsible Agencies, 10. Exhibit J - Environmental Assessment No. P23-00801 [5-23-2023], 11. Exhibit K - Neighborhood Responsibility Plan [04-12-2023], 12. Exhibit L - Traffic Trip Generation Analysis [3-29-2023], 13. Exhibit M - Odor Management & Control Plan [4-12-2023], 14. Exhibit N - Community Meeting Summary, 15. Exhibit O - Opposition Written Communications, 16. Exhibit P - Support Written Communications, 17. Supplemental Exhibit Q - Additional Comments Received 08-15-2023

Date	Ver.	Action By	Action	Result
8/16/2023	1	Planning Commission	REJECTED	Pass

REPORT TO THE PLANNING COMMISSION

August 16, 2023

FROM: ISRAEL TREJO, Planning Manager
Planning and Development Department

BY: ROB HOLT, Supervising Planner

Planning and Development Department

SUBJECT

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EXECUTIVE SUMMARY

Cannabis Conditional Use Permit Application No. P23-00801 was filed by Embarc and pertains to an approximately 0.62-acre parcel located at 7363 North Blackstone Avenue. The applicant proposes the establishment of a cannabis retail business within an approximately 1,438 sq. ft. existing commercial tenant suite.

On July 18, 2023, the Planning and Development Director approved Cannabis Conditional Use Permit Application No. P23-00801 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 D**).

A Notice of Action was posted with the Fresno City Clerk on July 18, 2023. On July 24, 2023, two concerned citizens filed an appeal of the Director's decision (**Exhibits B and C**).

Staff recommends upholding the Director's approval based on substantial evidence in this staff report that shows the cannabis retail business is a permitted use in the CMX (*Corridor/Center Mixed Use*) zone district, compliant with all provisions of the Citywide Development Code, and consistent with applicable policies of the Fresno General Plan and Bullard Community Plan.

BACKGROUND

The subject property is located within an area that has been significantly developed with commercial retail development to the north, east, and south. Immediately west of the subject property is a single-family residential neighborhood.

The request to establish a cannabis retail business is consistent with the Fresno General Plan, Bullard Community Plan, and the Corridor/Center Mixed-Use planned land use designation.

Cannabis retail businesses are permitted uses, subject to approval of a Cannabis Conditional Use Permit, in accordance with FMC Sections 15-2739.B and N (*Location and Design of Cannabis Retail Business; Cannabis Conditional Use Permit*).

The applicant proposes the establishment of a cannabis retail business within an approximately 1,438 sq. ft. existing commercial tenant suite. The business proposes to operate between the hours of 6:00 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. Cannabis waste will be destroyed and rendered unusable and unrecognizable before disposal pursuant to 16 CCR § 5054.

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.”

A Notice of Intent to Take Action (NOITTA) for Conditional Use Permit Application No. P23-00801 was mailed on June 13, 2023, with a due date for comments to be submitted by no later than close of business on June 23, 2023. There was a total of 179 persons in opposition of the project through written communications and petition signatures (**Exhibit O**), and a total of 1,006 persons in support of the project through written communications and support signatures (**Exhibit P**).

Relocation

Pursuant to FMC Section 9-3307(b), 3 cannabis retailers are allowed per Council District. The subject property is located within Council District 2. Currently, Council District 2 has three Cannabis Conditional Use Permits for retail approved and the subject cannabis retail business (Embarc) has one of these three approved Cannabis Conditional Use Permits for 1784 West Shaw Avenue (northeast corner of Shaw and West Avenues). 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 (7363 North Blackstone Avenue).

As noted above, there are three cannabis Conditional Use Permits approved in Council District 2. The location and operating status of said locations are as follows:

- 7835 North Palm Avenue #103 (southwest corner of Palm and Nees Avenues) - currently in operation
- 6926 North Weber Avenue (east side of North Weber Avenue between West Farrington and West Elgin Avenues) - not in operation
- 1784 West Shaw Avenue (northeast corner of Shaw and West Avenues) - not in operation (proposed to be relocated to 7363 North Blackstone Avenue - subject appeal)

Neighborhood Responsibility Plan

The applicant submitted a Neighborhood Responsibility Plan (**Exhibit K**) that indicates the business and its operating characteristics may 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 intends to hire a Head of Community Relations that will form a Community Advisory Board comprised of prominent members of the Fresno Community to provide input on how the business can make a lasting positive impact on its neighbors and address any potentially problematic issues before they arise. The Plan also includes a Good Neighbor Policy to respond to complaints regarding neighborhood nuisances to noise, light, odor, litter, vehicle, and pedestrian traffic. The Good Neighbor Policy includes conditions of operations including the following:

- Create a safe exterior environment through design and site management.
- Manage parking and traffic to negate impacts to surrounding areas.
- Enforce appropriate customer behavior outside the facility and in adjacent areas.
- Post notices at all public entrances to and exits from the establishment that are clear, well-lit, prominently displayed and maintained.
- Provide adequate and appropriate ventilation to ensure odor controls result in no emission of noxious odors.
- Be a benefit to surrounding parcels.

The Plan also includes addressing and mitigating complaints from citizens, customers, and other businesses in the area. This includes a step-by-step report which will document the concern or complaint, immediately report the concern or complaint, develop, and execute a plan of action, follow up with complainant, and document the incident and resolution. This complaint report will be distributed to ownership and kept for a minimum of five years, unless otherwise required by law.

The Plan also includes implementing a variety of measures to combat and mitigate excessive noise. No sound production or reproduction systems inside the facility will be maintained at a volume level higher than what is necessary. The business will prohibit horns or signal devices on any of the company or employee vehicles, except as a danger signal or to give warning. Any construction activities will only occur with a special permit from the City between reasonable or preapproved hours. If there is anyone on the premises causing a disturbance or being excessively loud, the individual will be escorted off the premises and, if necessary, reported to law enforcement.

The Plan also includes mitigation measures to provide adequate lighting for security purposes without posing a nuisance.

This includes white light exterior lighting using LED lamps with full cutoff fixtures to limit glare and light trespass and shielding of exterior lighting to prevent illumination spillover into adjacent streets and properties.

The Plan also includes odor mitigating techniques through their Odor Mitigation Plan (**Exhibit M**) which includes maintaining all records relating to odor management, including system installation, maintenance, equipment malfunctions and deviations from the plan. The General Manager will regularly inspect the system and complete a weekly odor control maintenance log. In the event of an odor complaint, there is a plan to log the complaint, identify within 30 minutes the source of the odor, and dispose of any cannabis product that may be causing the odor. The odor management system will also be inspected to ensure there are no malfunctions.

The Plan also includes litter control methods, providing ample waste receptacles for customers and

staff, and maintaining and enforcing a strict no-littering policy for all employees and customers. If any littering occurs, a written warning will be provided followed by increasing disciplinary actions if it continues.

The Plan also includes mitigations for vehicle and pedestrian traffic. The business will designate an employee to manage customer parking and traffic flow in the parking lot. The business will also offer pre-ordering promotions and other discounts to encourage patrons to visit the store during non-peak hours to reduce vehicle traffic during peak hours. In the event that the business has a large gathering of customers, there will be clearly delineated lines and a waiting area to ensure that customers are waiting in an orderly fashion and avoiding a pileup of pedestrian traffic outside of the business.

Streets and Access Points

Vehicle Miles Traveled (VMT)

Senate Bill (SB) 743 requires that relevant CEQA analysis of transportation impacts be conducted using a metric known as Vehicle Miles Traveled (VMT) instead of Level of Service (LOS). VMT measures how much actual auto travel (additional miles driven) a proposed project would create on California roads. If the project adds excessive car travel onto our roads, the project may cause a significant transportation impact.

The State CEQA Guidelines were amended to implement SB 743, by adding Section 15064.3. Among its provisions, Section 15064.3 confirms that, except with respect to transportation projects, a project's effect on automobile delay shall not constitute a significant environmental impact. Therefore, LOS measures of impacts on traffic facilities are no longer a relevant CEQA criteria for transportation impacts.

CEQA Guidelines Section 15064.3(b)(4) states that “[a] lead agency has discretion to evaluate a project's vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure. A lead agency may use models to estimate a project's vehicle miles traveled and may revise those estimates to reflect professional judgement based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revision to model outputs should be documented and explained in the environmental document prepared for the project. The standard adequacy in Section 15151 shall apply to the analysis described in this section.”

On June 25, 2020, the City of Fresno adopted CEQA Guidelines for Vehicle Miles Traveled Thresholds, pursuant to Senate Bill 743 to be effective of July 1, 2020.

The thresholds described therein are referred to herein as the City of Fresno VMT Thresholds. The City of Fresno VMT Thresholds document was prepared and adopted consistent with the requirements of CEQA Guidelines Sections 15064.3 and 15064.7. The December 2018 Technical Advisory on Evaluating Transportation Impacts in CEQA (Technical Advisory) published by the Governor's Office of Planning and Research (OPR), was utilized as a reference and guidance document in the preparation of the City of Fresno VMT Thresholds.

The City of Fresno VMT Thresholds adopted a screening standard and criteria that can be used to screen out qualified projects that meet the adopted criteria from needing to prepare a detailed VMT analysis.

The City of Fresno VMT Thresholds Section 3.0 regarding Project Screening discusses a variety of projects that may be screened out of a VMT analysis including specific development and transportation projects. For development projects, conditions may exist that would presume that a development project has a less than significant impact. These may be size, location, proximity to transit, or trip making potential.

The following eligible screening criteria of the City of Fresno VMT Thresholds Section 3.0 apply to the proposed project:

- The project is located within 0.5 miles of a Transit Priority Area or a High-Quality Transit Area, as designated in the transit priority areas and high-quality transit areas map (Figure 4) of the City of Fresno VMT Thresholds Section 3.0.
- The project generates a low volume of daily traffic, which is considered less than 500 average daily trips (ADT), pursuant to the City of Fresno VMT Thresholds Section 3.0. The Traffic Trip Generation Analysis dated March 29, 2023 (**Exhibit L**) found that a cannabis retail business on the subject property would generate 304 ADT. This is less than the 500 ADT considering the project to generate a low volume of daily traffic. Additionally, the PM peak-hour is when traffic is heaviest in most communities. The proposed cannabis retail business anticipates generating the addition of nine PM peak-hour trips from the previous check cashing business. A key finding of the above noted analysis states “It is unlikely that the addition of 9 PM peak-hour trips would trigger the need for additional traffic operations analysis.”

The proposed project is eligible to screen out because it is located within 0.5 miles of a Transit Priority Area or a High-Quality Transit Area, as designated in Figure 4 of the City of Fresno VMT Thresholds Section 3.0 and has a low volume of daily traffic, specifically less than 500 ADT.

Council District Project Review Committee

On May 8, 2023, the Council District 2 Project Review Committee reviewed the project and voted to continue it to the next scheduled meeting to allow the applicant to hold a neighborhood meeting and receive feedback from the Pinedale community regarding the proposed cannabis retail business project.

The applicant held a voluntary neighborhood meeting on June 7, 2023, at Hyatt Park Place at 7333 North Fresno Street from 7:00 to 9:00 p.m. Notices were sent to property owners within 1,000 feet of the subject property. There were more than 50 people in attendance.

Pursuant to the meeting summary the applicant provided the City (**Exhibit N**), thirty-eight attendees expressed support for the project via comment cards and/or public comment, citing increased security in the area, desire to see access to legal cannabis, appreciation for investment near the Pinedale community, and interest in the local jobs and benefits associated with this project.

Seven attendees expressed opposition to the project via comment cards and/or public comment, citing concerns of increased vagrancy, encouragement of youth drug use, presence of armed security guards, additional harm to the area, and lack of input from Clovis Unified.

On June 12, 2023, the Council District 2 Project Review Committee received public comment with at least 12 in opposition to the project and 5 in support of the project, relaying similar sentiments provided at the neighborhood meeting. Ultimately, the Committee voted to recommend approval of

the project, 2 votes to 0.

Notice of Planning Commission Hearing

The Planning and Development Department mailed notices of this Planning Commission hearing to all surrounding property owners within 1000 feet of the subject property on August 16, 2023, pursuant to Section 15-5007 of the FMC (**Exhibit D**).

ANALYSIS OF THE APPEAL LETTER

Two appeal letters were received in response to the Notice of Action issued for this project.

(1) Below is an analysis of the issues raised in the appeal letter dated July 24, 2023 (**Exhibit B**).

Issue #1: It will create an unsafe environment for our community. The location is next to a residential neighborhood with no barrier. The Fresno Police Department requires dispensaries to have armed guards which puts the community at great risk because of potential robberies. Dispensaries should be located away from family homes and should be located in Business Park or Industrial areas. The proposed cannabis retail business is less than 172 feet from the nearest residence.

Response:

The Security Plan provided by the applicant specifies that the business will staff at least two-armed uniformed security guards during operating hours. Any persons entering the premises are required to be verified by security personnel. Surveillance video equipment will also be installed throughout the property, approved by the City of Fresno Police Department, to further mitigate any security concerns. The applicant is required to comply with all requirements within the Police Department memorandum dated April 25, 2023.

The location restrictions of cannabis retail businesses, pursuant to FMC Sections 9-3309 and 15-2739.B, do not include residential property as a restriction.

Issue #2: There is not adequate parking and will impact families, especially those who use the laundromat. The parking lot is always full currently without the operation of the cannabis retail business.

Response:

The subject property has 30 existing parking stalls to serve all uses on the property. The parking requirement for all non-residential uses in the CMX zone district is one parking space per 600 sq. ft. of gross floor area. The parking breakdown (minimum requirement) for each use on the subject property is as follows:

- Little Caesar's (Restaurant) at 1,451 sq. ft. - 2.42 parking spaces required.

- Taco Grande (Restaurant) at 885 sq. ft. - 1.48 parking spaces required.
- Capital Donuts (Restaurant) at 885 sq. ft. - 1.48 parking spaces required.
- Ming Ho Kitchen (Restaurant) at 863 sq. ft. - 1.44 parking spaces required.
- Embarc (Proposed Retail) at 1,438 sq. ft. - 2.40 parking spaces required.
- D's Wash & Dry (Retail) at 1,960 sq. ft. - 3.30 parking spaces required.

The total number of parking spaces required for the subject property equates to 12.52 parking spaces, which would be rounded up to 13. With 30 parking stalls provided, the minimum parking requirements are met. Furthermore, the subject property is located along North Blackstone Avenue which is designated as a Bus Rapid Transit (BRT) route providing service at peak hours every 15 minutes or less.

(2) Below is an analysis of the issues raised in the appeal letter dated July 24, 2023 (**Exhibit C**) not already addressed in the above-mentioned appeal letter.

Issue #1: Pinedale Elementary School is one-half mile from the proposed dispensary. Although it is 1,000 feet away, which is 200 feet more than the maximum 800-foot buffer requirement for public schools, this should still be considered.

Response:

The closest school to the subject property is Pinedale Elementary at approximately 1,040 feet where 800 feet is the minimum distance requirement pursuant to FMC Sections 9-3309 and 15-2739. B. The subject property is located at the northernmost point of the surrounding neighborhood along North Blackstone Avenue with River Park, Universal Park, and Villaggio shopping centers adjacent to the north and no other nearby residences to the north.

Issue #2: The applicant anticipates 300 vehicles per day. Why was a full traffic study not completed?

Response:

A Traffic Trip Generation analysis was required as part of the application submittal (**Exhibit L**), pursuant to Mitigation Measure 4.17-2 of the Cannabis Environmental Impact Report. The Department of Public Works determined that a Traffic Trip Generation analysis is sufficient to comply with the aforementioned mitigation measure and their review of the analysis did not result in any significant impact or infrastructure requirements.

Clovis Unified School District

The Clovis Unified School District (CUSD) memorandum dated April 28, 2023 (**located within attached Exhibit I**) stated that the proposed cannabis retail business is located to close to Pinedale Elementary School (approximately 1,000 feet). CUSD asserts that the proposal would result in an attractive nuisance for students and create serious supervision problems for school staff, and likely become a nuisance for the community and pose potential health and welfare problems for the

students.

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.

Bullard Community Plan

Upon reviewing the policies contained in the Bullard 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 FINDING

Environmental Impact Report (EIR) State Clearinghouse No. (SCH) 2019070123 was prepared for cannabis uses in the City of Fresno. EIR SCH No. 2019070123 was certified by the City Council on September 24, 2020. The EIR included mitigation measures that all future cannabis businesses in the City of Fresno are required to comply with and are conditioned as a component of all Cannabis CUP approvals.

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 P23-00801 was completed for this project on May 23, 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 Bullard 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.

ATTACHMENTS:

- Exhibit A - Aerial Map
- Exhibit B - Appeal Letter [7-24-2023]
- Exhibit C - Appeal Letter [7-24-2023]
- Exhibit D - Public Hearing Notice Radius Map (1,000 feet)
- Exhibit E - Fresno Municipal Code Findings
- Exhibit F - Conditions of Approval for Cannabis Conditional Use Permit Application P23-00801 [7-18-2023]
- Exhibit G - Operational Statement [4-12-2023]
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