



Legislation Details (With Text)

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**File created:** 7/24/2017    **In control:** Planning Commission  
**On agenda:** 8/2/2017    **Final action:**  
**Title:** Consider Text Amendment Application No. TA-17-005, initiated by City Council Resolution on December 17, 2015, and the related environmental finding. The purpose of this text amendment is to bring establishments that sell alcoholic beverages for off-site consumption into compliance with the current development code (Section 15-2706), primarily in regards to locational restrictions and operational requirements. (Citywide)

1. RECOMMEND APPROVAL (to the City Council) of the environmental finding approving a Finding of No Possibility pursuant to Section 15061 (b)(3) of the Environmental Quality Act Guidelines
2. RECOMMEND APPROVAL (to the City Council) of Text Amendment Application No. TA-17-005, amending section 15-2706 of the Fresno Municipal Code

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Proposed Text Amendment TA-17-005, 2. Exhibit B - Council Resolution 2015-249 and original text amendment proposal, 3. Exhibit C - Map depicting all locations with alcohol licenses within the City of Fresno which may be subject to the text amendment changes (excludes grocery and drug store chains), 4. Exhibit D- Map depicting all off-sale licenses within Fresno, including some County properties, 5. Exhibit E - Environmental Assessment for TA-17-05

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

**August 2, 2017**

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

**BY:** BONIQUE EMERSON, AICP, Planning Manager  
Development Services Division

**SUBJECT**

Consider Text Amendment Application No. TA-17-005, initiated by City Council Resolution on December 17, 2015, and the related environmental finding. The purpose of this text amendment is to bring establishments that sell alcoholic beverages for off-site consumption into compliance with the current development code (Section 15-2706), primarily in regards to locational restrictions and

operational requirements. (Citywide)

1. RECOMMEND APPROVAL (to the City Council) of the environmental finding approving a Finding of No Possibility pursuant to Section 15061 (b)(3) of the Environmental Quality Act Guidelines
2. RECOMMEND APPROVAL (to the City Council) of Text Amendment Application No. TA-17-005, amending section 15-2706 of the Fresno Municipal Code

## EXECUTIVE SUMMARY

Text Amendment Application No. TA-17-005 was initiated by City Council Resolution 2015-249 on December 17, 2015. The purpose of this text amendment is to bring establishments that sell alcoholic beverages for off-site consumption into compliance with the current development code (Section 15-2706), primarily in regards to locational restrictions and operational requirements. The reason this amendment is necessary is because currently, this section of the code primarily regulates new establishments, but it has little impact on existing establishments. The proposed text amendment would expire existing non-conforming off-sale establishments so that they can be subject to Section 15-2706. The text amendment also proposes additional restrictions on these establishments including requiring new licenses to be obtained from within the City, restricting indoor advertising structures, and also establishes a regular renewal process to hold businesses that violate the their conditions of approval accountable.

## BACKGROUND

### Existing Development Code

Section 15-2706 was originally intended to address concerns related to liquor stores raised by community members. The following comes directly from the Fresno General Plan:

*The location and prevalence of liquor stores can have a negative effect on neighborhood health. In recent public meetings, three interrelated concerns have arisen:*

- *Market saturation. Some neighborhoods feel they have an overabundance of establishments with off-sale or on-sale licenses to sell liquor. The Downtown and the area immediately east have a larger number of venues for the sale and consumption of alcoholic beverages within a small area than other areas of the city. Blackstone and Shaw Avenues also feature a high concentration of these stores.*
- *Fear of crime. Community members often see a strong relationship between establishments with off-sale or on-sale licenses to sell liquor and rates of nuisances and crime.*
- *Danger to schools. Related to the above point, residents are concerned when alcohol sales are allowed too close to schools because of the impact on teenage drinking.*

Currently, Section 15-2706 does the following to address these concerns:

1. It imposes the following locational restrictions for off-sale establishments:
  - a. Cannot be located within 500-feet of sensitive uses (parks, schools and substance abuse treatment facilities)
  - b. Cannot be located within 500-feet of an existing establishment that sells alcohol or lead to a grouping of 4 establishments within a 1,000 foot radius.
  - c. Cannot be located within a high crime area.
  - d. Cannot be located within a high concentration area.
2. It requires site improvements (lighting, landscaping, appropriate signage, etc.)
3. It requires additional operational conditions related to litter and graffiti removal, security, training, and the prohibition of the sale of certain products.

### **Proposed Development Code Changes**

As mentioned above, the Fresno City Council, by resolution 2015-249 moved to initiate changes to Section 15-2706 of the Fresno Municipal Code. This section of the code places special requirements and restrictions on establishments that are less than 10,000 square feet in size that sell alcoholic beverages for off-site consumption. According to the City Council resolution, the sale of alcoholic beverages for off-site consumption creates unique challenges for the City of Fresno in maintaining the public health, safety, and welfare and initiated these code changes in order to refine the standards required of establishments that sell alcohol for off-site consumption so as to ensure continued public health, safety, and welfare of the City's residents.

Text Amendment No. TA-17-006 proposes to add the following components to Section 15-2706:

1. Proposes to require that a separate alcohol conditional use permit (ABC CUP) be filed for the off-sale of alcohol, rather than bundling the alcohol use permit with another use permit or a development permit for a new building or building additions.
2. Proposes to give new ABC CUP requests a 5 year life (1 year for the first ABC CUP requested at a location or for a new applicant), after which an applicant must file for a renewal.
3. Proposes to require that existing establishments that currently sell alcoholic beverages for off-site consumption to file for a new ABC CUP application after either 2, 3 or 4 years from the date of the adoption of this ordinance, depending on when the original ABC CUP was first obtained.
4. Proposes to limit the number of ABC CUPs within each Council District.
5. Proposes to require that establishments seeking a new ABC CUP obtain an alcohol license that is transferred from another establishment located within the City.

6. Proposes to restrict the display of alcoholic beverages or freestanding advertising structures within 10-feet of the customer entrance.
7. Proposes to exempt craft beer from the limitation on “single sales”
8. Proposes to exempt wholesalers for the entire section with the exception of the requirement to not distribute certain sizes of alcoholic containers to retailers.

## **ENVIRONMENTAL FINDINGS**

An environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA) Guidelines.

The State Guidelines for the implementation of the California Environmental Quality Act provide for the exemption of projects which will have no potential for causing a significant effect on the environment. More specifically, Section 15061 (b) (3) of the CEQA Guidelines states: “...CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

The City of Fresno has determined that a Finding of No Possibility that the project will have impacts on the environment pursuant to Section 15061(b)(3) of the CEQA Guidelines is appropriate for the proposed text amendment. Given that the proposed text amendment will only modify application processing, compliance requirements, and operations of these existing establishments, the revisions will not result in a change to the physical environment. Individual establishments that require a new or renewed ABC CUP are subject to CEQA review at the time of application submittal.

## **FRESNO MUNICIPAL CODE FINDINGS**

Pursuant to the Fresno Municipal Code (FMC), the Planning Commission shall not recommend and the City Council shall not approve an application unless the proposed amendment meets the following criteria:

Development Code Text Amendment findings:

1. *The Code text amendment is consistent with the General Plan and any applicable operative plans;*

The proposed project is consistent with the Fresno General Plan. For example, it is noted in the Public Utilities and Services section of the Fresno General Plan that the location and prevalence of off-sale alcohol sales can have a negative effect on neighborhood health. In addition, General Plan Policy PU-1-h states the following: “Assist community groups seeking information on conversion of establishments with off-site or on-site liquor sales licenses to other retail products that better meet community needs”. Although the proposed text amendment will not convert these establishments to other uses, it will provide a mechanism for older establishments that do not meet current code requirements to come into compliance, and may result in existing establishments located in over-concentrated areas to relocate or close.

In addition to the Fresno General Plan, the proposed text amendment complies with other

applicable community plans, including the Roosevelt Community Plan. 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.

Requiring existing establishments to come into compliance with Section 15-2706 of the Fresno Municipal Code and requiring a regular renewal process for ABC CUPs would be meet the objective of these goals in the Roosevelt Community Plan.

- 2. The amendment is consistent with the purpose of the Development Code to promote the growth of the city in an orderly and sustainable manner and to promote and protect the public health, safety, peace, comfort, and general welfare.*

The proposed text amendment promotes growth of the city in an orderly and sustainable manner by continuing to allow new retail uses proposing the off-sale of alcohol within limits. These limits, which include requiring a regular renewal process to ensure continued compliance, will help promote and protect the public health, safety, peace, comfort, and general welfare of citizens of the City of Fresno.

## **PUBLIC NOTICE**

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

Pursuant to the requirements of FMC section 15-5806 (and 15-5007.D), notice of this public hearing was published in the Fresno Bee on July 21, 2017, which is at least 10 days prior to the public hearing. Section 15-5007.D allows the posting of a public hearing notice, in at least one newspaper of general circulation, as an alternative noticing method for large mailings.

### **Airport Land Use Commission**

The Fresno County Airport Land Use Commission (ALUC) will review the proposed text amendment on August 7, 2017.

### **Council District Advisory Committees**

The recommendations of the Council District Plan Implementation Committees are as noted below.

#### *Council District 1*

On July 18, 2017, the Council District 1 Plan Implementation Committee voted 1-0 to recommend approval of the proposed text amendment. It is noted that there was no quorum at this meeting; however, it has been difficult for this committee to achieve a quorum due to low attendance. The committee member in attendance was concerned about the enforcement of the regulations related to

craft beer and also felt that the one year expiration and renewal for first time permit holders was too short of a turnaround. The committee member also felt that the renewal fees could be a burden on business owners and recommended that these fees be significantly reduced.

### Council District 2

On July 17, 2017, the Council District 2 Plan Implementation Committee voted 5-0 to recommend approval of the proposed text amendment.

### Council District 3

There is no Council District 3 Plan Implementation Committee at this time.

### Council District 4

On July 24, 2017, the Council District 4 Plan Implementation Committee voted 5-0 to recommend approval of the proposed text amendment. There was a concern regarding the fairness of expiring existing ABC CUPs, especially with the possibility of the new application being denied.

### Council District 5

On July 24, 2017, the Council District 5 Plan Implementation Committee voted 2-0 to recommend approval of the proposed text amendment. It is noted that there was no quorum at this meeting; however, it has been difficult for this committee to achieve a quorum due to low attendance.

### Council District 6

There is no Council District 6 Plan Implementation Committee at this time due to low membership.

### Council District 7

There is no Council District 7 Plan Implementation Committee at this time.

### Fulton-Lowell

On July 17, 2017, the Fulton-Lowell Advisory Committee reviewed the text amendment and unanimously recommended that the text amendment change the section requiring graffiti removal within 48 hours to within 24 hours. Two of the three members present recommended stipulating that the graffiti removal occur at the owner's expense rather than by a City graffiti abatement program. They also expressed concern, though no recommendation was made, with how the City would handle the expiring CUP's affected by the locational restrictions and whether the first ones to expire would always be denied in over-concentrated areas.

### Tower District

This item is scheduled to go before the committee on August 1, 2017.

## **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 other applicable operative plans; 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 Text Amendment Application No. TA-17-05 is appropriate for the subject properties. Action by the Planning Commission will be a recommendation to City Council.

Attachments:

Exhibit A - Proposed Text Amendment TA-17-005

Exhibit B - Council Resolution 2015-249 and original text amendment proposal

Exhibit C - Map depicting all locations with alcohol licenses within the City of Fresno which may be subject to the text amendment changes (excludes grocery and drug store chains)

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Exhibit E - Environmental Assessment for TA-17-05