



Legislation Details (With Text)

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**Title:** Consideration of Conditional Use Permit Application No. P20-00808, a request to upgrade an existing Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) to a Type 21 alcohol license (Package Store - sale of beer, wine, and distilled spirits for consumption off the premises where sold) for the existing Tower Beer & Wine mini mart located at 441 West Olive Avenue at the southeast corner of West Olive and North Fruit Avenues (Council District 3) - Planning & Development Department.

Based upon the evaluation contained in this report and appeal received from the applicant, staff recommends that the Planning Commission take the following action:

1. CONSIDER Environmental Assessment No. P20-00808, dated August 5, 2020, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 (Existing Facilities) 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. P20-00808 requesting to upgrade the Tower Beer & Wine Type 20 Off-Sale Beer & Wine alcohol sales license to a Type 21 Off-Sale General License to include distilled spirits.

**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 Authorization Letter, 8. Exhibit H - Operational Statement, 9. Exhibit I - Exhibits (Site Plan, Elevation Photos and Floor Plans), 10. Exhibit J -Policy and Procedure No. C-005, Specialty Grocery Stores, 11. Exhibit K - P20-00808 CUP Denial Letter, 12. Exhibit L - Applicant Appeal Letter, 13. Exhibit M - Public Hearing Notice & Noticing Map, 14. Exhibit N - Fresno Municipal Code Findings, 15. Exhibit O - Environmental Assessment, 16. Exhibit P - Draft Conditions of Approval and Department Comments

Date	Ver.	Action By	Action	Result
8/5/2020	1	Planning Commission	approved	Pass

**REPORT TO THE PLANNING COMMISSION**

**August 5, 2020**

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

**THROUGH:** RALPH KACHADOURIAN, Supervising Planner  
Development Services Division

**BY:** PHILLIP SIEGRIST, Planner III  
Development Services Division

**SUBJECT**

Consideration of Conditional Use Permit Application No. P20-00808, a request to upgrade an existing Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) to a Type 21 alcohol license (Package Store - sale of beer, wine, and distilled spirits for consumption off the premises where sold) for the existing Tower Beer & Wine mini mart located at 441 West Olive Avenue at the southeast corner of West Olive and North Fruit Avenues (Council District 3) - Planning & Development Department.

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2. **DENY** the applicant's appeal and **UPHOLD** the action of the Planning and Development Department Director to deny Conditional Use Permit Application No. P20-00808 requesting to upgrade the Tower Beer & Wine Type 20 Off-Sale Beer & Wine alcohol sales license to a Type 21 Off-Sale General License to include distilled spirits.

**EXECUTIVE SUMMARY**

Conditional Use Permit Application No. P20-00808 was filed by Davinder Singh, of Tower Beer & Wine mini mart, and requests authorization to upgrade from an existing State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license (Off-Sale Beer & Wine [Package Store] - sale of beer and wine for consumption on off the premises where sold) to a Type 21 alcohol license (Off-Sale General [Package Store] - sale of beer, wine, and distilled spirits for consumption on the licensed premises). No physical development is proposed under this special permit application.

On May 21, 2020, the Planning & Development Department Director denied the Conditional Use Permit application as the project does not satisfy the required location restrictions of Section 15-2706 -E of the Fresno Municipal Code (FMC) which prohibit an upgrade for an off-sale establishment that is within a high crime and high concentration area, and the inability to make the required findings for conditional use permits under FMC Section 15-5306 (**Exhibit K**, Denial Letter).

The Director's decision to deny the request was appealed by the applicant on June 3, 2020 (**Exhibit L**). Therefore the subject application is being considered by the Planning Commission.

Staff recommends upholding the denial based on substantial evidence detailed in this staff report that; 1) that the special permit application will not meet the location restrictions for alcohol sales nor the exception provisions specified under Section 15-2706-E; and 2) specific Findings made by the Director in denial of the Conditional Use Permit contained in Section 15-5306 remain valid.

## BACKGROUND

The existing Tower Beer & Wine mini mart has a Type 20 off-sale alcohol license (beer & wine) and the applicant is requesting to upgrade to a Type 21 off-sale general license to include the sale of distilled spirits. There are no other changes being proposed by the applicant to the current retail operations of the market. The market operates from 7:00 am - 10:00 pm seven (7) days a week.

The subject property is zoned CMS (*Commercial - Main Street*). Pursuant to Table 15-1302 of the FMC, alcohol sales are permitted in the CMS zone district subject to an approved Conditional Use Permit and the requirements of Section 15-2706 of the FMC.

The current ABC Type 20 license (license #596532) on the premises was issued by the State of California Department of Alcoholic Beverage Control on October 22, 2018. The establishment of the use was authorized under the granting of Conditional Use Permit No. C-14-002.

While the establishment has an existing Type 20 alcohol license, FMC Section 15-2706-C states that any existing establishment that requests to modify their alcohol license type must obtain a (new) Conditional Use Permit in compliance with the standards of the section, including applicable location restrictions.

### 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 (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 21. According to ABC, Census Tract 21 currently has eight (8) active off-sale alcohol licenses. Of the eight active off-sale alcohol licenses there are three (3) ABC Type 20 alcohol licenses (one of which is the applicant's) and five (5) ABC Type 21 alcohol licenses.

ABC authorizes four off-sale alcohol licenses per 1,109 people within Census Tract 21, which has an approximate population of 5,419. Per ABC, a total of four (4) off-sale alcohol licenses are allowed in Census Tract 21. Therefore, there are four (4) more off-sale alcohol licenses in Census Tract 21 than permitted for that census tract.

If allowed to operate under the requested Type 21 alcohol license, the applicant would be required to withdraw the establishment's current Type 20 alcohol license which would not increase the number of existing ABC off-sale licenses within Census Tract No. 21. Should the proposed request be authorized, Census Tract 21 would have two (2) ABC Type 20 alcohol licenses and six (6) ABC Type 21 alcohol licenses.

### Fresno Police Department Review

The Fresno Police Department, Central Policing District reviewed the subject application and does not support the issuance of a State of California ABC Type 21 alcohol license at this location as set forth in their letter dated August 26, 2019 (See **Exhibit P**). The first issue of concern to the Police

Department is overconcentration, the census tract in which the subject site is located is currently above the designated saturation level for ABC licenses. Second, the subject property is located within Police Crime Zone 2453 which is a documented high crime area. The typical reporting district experiences an average of 453 criminal offenses per year. The reporting district in which subject establishment is located has experienced approximately 1,495 offenses; almost triple the 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.

Because the Fresno Police Department does not support the applicant's request for an upgrade, they did not provide conditions to be incorporated into the Draft Conditions of Approval dated August 5, 2020 (**Exhibit P**). However, should the Planning Commission resolve to approve the request to upgrade to a Type 21 ABC license, the Standard Fresno Police Department ABC CUP conditions contained in the attached Draft Conditions of Approval dated August 5, 2020 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 serving sizes, and limitations on on-site alcohol consumption and loitering.

### 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 establishment is not located within 500 feet of a sensitive use.*

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 establishment is not located within 500 feet an existing off-sale establishment nor would 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).

*As demonstrated in the Police Department Review section above, the establishment is located in a documented high crime area.*

- 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 census tract in which the establishment is located is currently above the designated saturation level for off-sale ABC licenses with 8 active off-sales alcohol licenses in Census Tract 21. Therefore, the establishment is located within a high concentration area.*

The establishment/proposed project is not in compliance with two of the aforementioned location restrictions pursuant to FMC Section 15-2706-E. It is located within high crime and high concentration areas. 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 May 21, 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 8 key elements. This policy is attached as **Exhibit J** (Policy and Procedure No. C-005). The Tower Beer & Wine mini mart does not contain these 8 elements and thus the Director could not make this exception based on this Policy.

#### **Fresno Unified School District (FUSD) Review**

FUSD provided comments indicating the district did not support this application. The FUSD comment letter, dated April 17, 2020, expressed concerns regarding potentially dangerous interactions between students and the proposed operation but indicated their response was subject to the

Alcoholic Beverage Control Act and the Fresno Police Department's review and support of the proposed project. The District's letter noted that this establishment is approximately 2,720 feet from Muir Elementary School. A copy of the FUSD comment letter is attached (See Exhibit P).

### **Other Agencies**

All comments received from the applicable agencies have been incorporated into the draft conditions of approval for Conditional Use Permit Application No. P20-00808. See **Exhibit P** for all written agency comments received.

### **Public Notice and Input**

#### Council District Project Committee Review

The Council District 3 Project Review Committee reviewed this project on April 28, 2020 and unanimously voted (6-0-0) to deny it with no additional comments and/or recommendations.

#### Tower District Specific Plan Design Review Committee Review

The Tower District Specific Plan Design Review Committee reviewed this project on July 28, 2020 and unanimously voted (5-0-0) to deny it with no additional comments and/or recommendations.

#### 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 July 24, 2020 (**Exhibit M**). No comments have been received to date.

### **LAND USE PLANS AND POLICIES**

The Fresno General Plan designates the subject property for Main Street Commercial planned land use and provides objectives to guide in the development of this project. The Main Street Commercial planned land use designation encourages a traditional Main Street character with active storefronts, outdoor seating and pedestrian-oriented design. This designation promotes primarily one to two story retail uses. It also preserves small-scale, fine-grain character in neighborhoods where single-family residential and townhomes are predominant.

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.

### **Fresno High - Roeding Community Plan**

Upon reviewing the goals and policies contained in the Fresno High - Roeding 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.

### **Tower District Specific Plan**

Upon reviewing the goals and policies contained in the Tower District Specific 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 for a conditional use permit 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 N**.

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 required by Section 15-5306 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 Section 15-5306 and grant approval of the request to upgrade to a Type 21 ABC license then adoption of a Section 15301/Class 1 (Existing Facilities) 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 15301/Class 1 exemption addresses projects involving existing facilities. Projects that fall within Class 1 consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

The proposed special permit request is for an upgrade of an existing Type 20 off-sale alcohol license for an established general retail use. The proposed project is consistent with the exemption because the project is requesting authorization to establish licensing for alcoholic beverage sales which is permitted in the existing CMS (*Commercial - Main Street*) zone district by conditional use permit and is consistent with the planned Community Commercial land use designation applicable to the site. The proposed project is subject to authorization by special permit. No adverse environmental impacts will occur as a result of the proposed project. The site has no value as habitat for endangered, rare, or threatened species and complies with all conditions of the Class 1 Categorical Exemption.

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 resolves to approve the proposed project, a determination of a Categorical Exemption under Section 15301/Class 1 of the CEQA Guidelines may be considered appropriate for the proposed project; and, the attached Categorical Exemption which was prepared for Environmental Assessment No. P20-00808 and dated August 5, 2020 (**Exhibit O**) 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, Fresno High - Roeding Community Plan, Tower District Specific 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. P20-00808, a request for an alcohol license upgrade, 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 August 5, 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  
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