



## Legislation Details (With Text)

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**File created:** 11/1/2018    **In control:** Planning Commission  
**On agenda:** 11/7/2018    **Final action:**  
**Title:** Consideration of Conditional Use Permit Application P18-00687, for the Johnny Quik convenience store located on the northwest corner of West Clinton and North Marks Avenues (Council District 3) - Development and Resource Management Department.

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

1. DENY Conditional Use Permit Application No. P18-00687, requesting authorization to upgrade a State of California Alcoholic Beverage Control (ABC) Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold) alcohol license to an ABC Type 21 (Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold) license for the existing Johnny Quik convenience store located on the subject property.

a. Based upon substantial evidence detailed in this staff report, staff has determined that Findings A, B & C contained in Section 15-5306 of the Fresno Municipal Code cannot be made. Therefore, the Conditional Use Permit cannot be approved.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Map, 3. Exhibit C - Planned Land Use Map, 4. Exhibit D - Zoning Map, 5. Exhibit E - Noticing Map, 6. Exhibit F - Project Information Tables, 7. Exhibit G - Exhibits, 8. Exhibit H - Operational Statement, 9. Exhibit I - Conditions of Approval, 10. Exhibit J - FMC Findings, 11. Exhibit K - Categorical Exemption

Date	Ver.	Action By	Action	Result
11/7/2018	1	Planning Commission		

## REPORT TO THE PLANNING COMMISSION

**November 7, 2018**

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

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

**BY:** JOSE VALENZUELA, Planner III  
Development Services Division

## SUBJECT

Consideration of Conditional Use Permit Application P18-00687, for the Johnny Quik convenience store located on the northwest corner of West Clinton and North Marks Avenues (Council District 3) - Development and Resource Management Department.

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

1. **DENY** Conditional Use Permit Application No. P18-00687, requesting authorization to upgrade a State of California Alcoholic Beverage Control (ABC) Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold) alcohol license to an ABC Type 21 (Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold) license for the existing Johnny Quik convenience store located on the subject property.
  - a. Based upon substantial evidence detailed in this staff report, staff has determined that Findings A, B & C contained in Section 15-5306 of the Fresno Municipal Code cannot be made. Therefore, the Conditional Use Permit cannot be approved.

## EXECUTIVE SUMMARY

Conditional Use Permit Application No. P18-00687 was filed by Darshan Mann, and pertains to approximately ±2,500 square feet of tenant space located on the northwest corner of West Clinton and North Marks Avenues. The applicant requests to upgrade to an ABC Type 21 (Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold) alcohol license from a Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold) alcohol license for the existing Johnny Quik convenience store. Staff is recommending denial of the Type 21 alcohol license.

Staff recommends denial of Conditional Use Permit Application No. P18-00687 based on substantial evidence detailed in this staff report that Findings B, C, and D contained in Section 15-5306 of the Fresno Municipal Code (FMC) cannot be made due to documented high crime and over concentration of licenses in the area. Therefore, the Conditional Use Permit cannot be approved.

## BACKGROUND

Conditional Use Permit Application No. P18-00687 proposes to expand a State of California Alcoholic Beverage Control Type 20 (Package Store - sale of beer and wine for consumption off the premises where sold) license 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 Johnny Quik convenience store. The subject property is zoned CG (*Commercial General*). Per FMC Table 15-1202, alcohol sales are permitted in the CG (*Commercial General*) zone district subject to an approved Conditional Use Permit and additional regulations pursuant to FMC Section 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 issuance of a State of California Alcoholic Beverage Control (ABC) license at this location due to being located within a high crime reporting district and an over

concentration of licenses in the area. The typical reporting district experiences an average of 543 criminal offenses per year. The reporting district in which subject establishment is located has experienced approximately 863 offenses so far this year. 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.

The Fresno Police Department did not provide conditions to be incorporated into the Conditions of Approval dated November 7, 2018 (Exhibit I). However, should the Planning Commission decide to grant approval of the request to expand to a Type 21 ABC license, the Standard Fresno Police Department ABC CUP Conditions contained in the attached Conditions of Approval dated November 7, 2018 (see Exhibit I) 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.

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

CUSD did not provide comments indicating the district did not support this application. The existing Johnny Quik convenience store is approximately 2,500 feet from Hanh Phan Tilley Elementary School.

### **Other Agencies**

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application No. P18-00687. See Exhibit I for all written agency comments received.

### **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

The subject site is located in Census Tract 38.05. According to ABC, Census Tract 38.05 currently has 8 active off-sale alcohol licenses. ABC authorizes one off-sale alcohol license per 1,088 people per census tract. Census Tract 38.05 has a population of 6,999. Per ABC, six off-sale alcohol licenses are allowed in Census Tract 38.05. Therefore, there are two more off-sale alcohol licenses in Census Tract 38.05 than authorized for that census tract. There are three ABC Type 20 alcohol licenses, one of which is the applicant's and there are five ABC Type 21 alcohol licenses existing in Census Tract No. 38.05.

### **Citywide Development Code**

#### Alcohol Sales

The location restrictions outlined in FMC Section 15-2706-E are for new establishments. The location restrictions are not applicable to this conditional use permit. This conditional use permit shall comply with all other requirements in FMC Section 15-2706.

## LAND USE PLANS AND POLICIES

### Fresno General Plan

The Fresno General Plan designates the subject property for the Commercial General planned land use and provides objectives to guide in the development of this project. The Commercial General planned land use designation is intended to accommodate a range of retail and service uses that are not appropriate in other areas because of higher volumes of vehicle traffic and potential impacts on other uses. Examples of allowable uses include: building materials, storage facilities with active storefronts, equipment rental, wholesale businesses, and specialized retail not normally found in shopping centers. The focus of district development standards is to ensure structures fit into the surrounding development pattern and architectural or traffic conflicts are minimized. 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 existing Johnny Quik convenience store 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 staff's opinion 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.

### West Area Community Plan

Upon reviewing the policies contained in the West Area 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.

### Public Notice and Input

#### Council District Plan Implementation Committee

The District 3 Plan Implementation Committee is currently inactive.

### Notice of Planning Commission Hearing

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

### **FRESNO MUNICIPAL CODE FINDINGS**

The required findings under Section 15-5306 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 (a, b, & c) cannot be made. These findings are attached as Exhibit J.

If the Planning Commission decides to grant approval of the request to upgrade to a Type 21 ABC license, the Commission must find that there is substantial evidence in the administrative record to make all the findings mentioned above and amend them to include the sale of alcohol.

### **ENVIRONMENTAL FINDINGS**

No Environmental findings are necessary to adopt a staff recommendation of 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 obtain a Type 21 ABC license, then a Section 15301/Class 1 Categorical Exemption (see attached Exhibit K: Categorical Exemption) will be made in accordance with the State of California Environmental Quality Act (CEQA) Guidelines.

Section 15301 of the CEQA Guidelines 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 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 CG (*Commercial General*) zone district by conditional use permit and is consistent with the Commercial General planned 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.

## 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 West Area 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 Conditional Use Permit Application No. P18-00687 is not appropriate for the project site.

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 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 Conditions of Approval dated November 7, 2018.

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 Map
- Exhibit D - Zoning Map
- Exhibit E - Noticing Map
- Exhibit F - Project Information Tables
- Exhibit G - Exhibits (Site Plan, Elevations, Floor Plans)
- Exhibit H - Operational Statement
- Exhibit I - Conditions of Approval dated November 7, 2018; including memoranda from responsible or commenting agencies
- Exhibit J - Fresno Municipal Code Findings
- Exhibit K - Categorical Exemption