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Title: HEARING to consider Conditional Use Permit Application No. P21-06064, (Council District 1) - Planning & Development.
 1. DENY the appeal and UPHOLD the action of the Planning Commission to deny Conditional Use Permit Application No. P21-06064 requesting authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license (Off-Sale beer and wine) for a proposed Arco AM/PM combination automobile service station and convenience store.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Photograph, 3. Exhibit C - Zoning Map, 4. Exhibit D - Project Information Tables, 5. Exhibit E - Noticing Map, NOITTA, NOA, NPH, 6. Exhibit F - Master Application Owner's Letter of Authorization, 7. Exhibit G - Operational Statement, 8. Exhibit H - Exhibits Site Plan, Elevations, Floor Plan, 9. Exhibit I - Appeal Letter, 10. Exhibit J - Draft Conditions of Approval [03/06/2024], 11. Exhibit K - Fresno Municipal Code Findings, 12. Exhibit L - Denial Letter, 13. Exhibit M - Policy & Procedure C-005, 14. Exhibit N - Categorical Exemption, 15. Exhibit O - Planning Commission Resolution No. 13842, 16. Exhibit P - Appeal Letter from Council President Perea, 17. Exhibit Q - Notice of Public Hearing for City Council, 18. Exhibit R - Staff Presentation

Date	Ver.	Action By	Action	Result
5/23/2024	1	City Council	TABLED	

REPORT TO THE CITY COUNCIL

FROM: JENNIFER K. CLARK, Director
Planning & Development Department

THROUGH: PHILLIP SIEGRIST, Planning Manager
Development Services Division

BY: ERIK YOUNG, Supervising Planner
Development Services Division

SUBJECT

HEARING to consider Conditional Use Permit Application No. P21-06064, (Council District 1) - Planning & Development.

1. DENY the appeal and UPHOLD the action of the Planning Commission to deny Conditional Use Permit Application No. P21-06064 requesting authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license (Off-Sale beer and wine) for a proposed Arco AM/PM combination automobile service station and convenience store.

RECOMMENDATIONS

Staff recommends that the City Council take the following actions:

1. DENY the appeal and UPHOLD the action of the Planning Commission and the Planning and Development Department Director to deny Conditional Use Permit Application No. P21-06064, a request to establish a State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license (Off-Sale beer and wine - sale of beer and wine for consumption off the premises where sold) for a proposed Arco AM/PM combination automobile service station and convenience store to be located at 4390 West Ashlan Avenue at the northeast corner of West Ashlan and North Blythe Avenues.

EXECUTIVE SUMMARY

Conditional Use Permit Application No. P21-06064 was filed by Samer Sabbah of Omni Development Inc. and pertains to ±1.33 acres of vacant property located at 4390 West Ashlan Avenue on the northeast corner of West Ashlan and North Blythe Avenues.

Conditional Use Permit Application No. P21-06063 (Commercial Building)

Related Conditional Use Permit Application No. P21-06063 was filed for purposes of facilitating physical development of the site with a ±6,690 square-foot commercial shell building to be utilized by a combination automobile service station and convenience store (±3,800 square feet), a quick-serve restaurant (±1,750 square feet), and an attached automated car wash tunnel (± 1,140 square feet). The combination service station and convenience store will be operated by Arco AM/PM.

The service station component will also include a ±4,620 square-foot detached fuel canopy with eight (8) fuel islands (16 fuel pumps). On December 11, 2023, the Planning and Development Director approved Conditional Use Permit Application No. P21-06063. No appeals pertaining to the Director's approval of related Conditional Use Permit Application No. P21-06063 were received.

Conditional Use Permit Application No. P21-06064 (Off-Site Alcohol Sales)

The subject application being considered, Conditional Use Permit Application No. P21-06064, was filed for purposes of establishing a State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license (off-sale general: beer and wine for consumption off the premises where sold) for the convenience store component of the proposed Arco AM/PM service station and convenience store.

On December 11, 2023, the Planning & Development Department Director approved related Conditional Use Permit Application No. P21-06063 authorizing the physical development of the property, subject to conditions of approval dated December 11, 2023.

On December 11, 2023, the Director of Planning and Development denied Conditional Use Permit Application No. P21-06064 as the project does not satisfy the required location restrictions of Section 15-2706-F of the Fresno Municipal Code (FMC) which prohibit a new off-sale establishment that is near other alcoholic beverage establishments, within a high concentrated area, when the number of sites selling alcohol for off-site consumption exceeds one (1) license per 2,500 residents, and the inability to make the required findings for conditional use permits under FMC Section 15-5306 (**Exhibit K**, Fresno Municipal Code Findings and **Exhibit L**, Denial Letter).

The Director's decision to deny the request to establish an off-sale alcohol license was appealed by Paige Gosney of Allen Matkins Leck Gamble Mallory & Natsis LLP, on behalf of Omni Development Inc., on December 21, 2023 (**Exhibit I**, Appeal Letter). No appeals pertaining to the Director's approval of the related Conditional Use Permit Application No. P23-06063 were received. Therefore,

only the alcohol related application was considered by the Planning Commission.

On March 6, 2024, the Planning Commission voted 6-0 to deny the appellant's appeal and uphold the Planning and Development Department Director's decision for denial based on substantial evidence detailed in the Planning Commission staff report that; 1) the special permit application did not meet the location restrictions for alcohol sales nor the exception provisions specified under Section 15-2706-F; and 2) specific findings required for a Conditional Use Permit by Fresno Municipal Code Section 15-5306 could not be made by the Director and supported a denial of the Conditional Use Permit (**Exhibit O**, Planning Commission Resolution No. 13842).

Council President Annalisa Perea provided an appeal letter to the Planning & Development Department on March 20, 2024 (See **Exhibit P**). Therefore, the subject application is being considered by the City Council.

Staff recommends the City Council deny the appeal and uphold the Planning Commission's denial of Conditional Use Permit Application No. P21-06063 based on substantial evidence detailed in this staff report that; 1) the conditional use permit application does not meet the location restrictions for alcohol sales nor the exceptions to location restrictions provisions specified under Section 15-2706-F-6; and 2) specific Findings made by the Director in denial of the conditional use permit contained in Section 15-5306 remain valid.

BACKGROUND

Related Conditional Use Permit Application No. P21-06063, as approved with conditions dated December 11, 2023, authorizes the construction of a ±6,690 square-foot commercial shell building to be utilized by a combination automobile service station and convenience store (±3,800 square feet), a quick-serve restaurant (±1,750 square feet), and an attached automated car wash tunnel (± 1,140 square feet). The combination service station and convenience store will be operated by Arco AM/PM and will also include a ±4,620 square-foot detached fuel canopy with eight (8) fuel islands with 16 fuel pumps. No tenants were identified for the quick-serve restaurant component. Additional on-site improvements to be provided include but are not limited to parking, landscaping, 3-cell trash enclosure, and utilities. Off-site improvements primarily exist; however, the project will be required to provide sidewalk drains, street tree wells, and accessibility improvements.

According to the floor plan and operational statement submitted as part of the application (Exhibit F dated August 14, 2023 and Exhibit O dated November 3, 2023), approximately ±2,171 square feet of the proposed AM/PM store will be dedicated to sales and display area (mercantile area); approximately ten percent of which (approximately ±225 square feet) will be dedicated to the display and sale of fresh produce and grocery products, while the remaining area will be dedicated to general convenience items including but not limited to bagged chips, packaged dry meats and jerky, nuts & seeds, packaged baked goods, candy, novelty retail items, granola/nutritional bars, ice cream, etc. In addition, the mercantile floor area will include self-serve beverage (soda and coffee) and hot food areas. The store will also include: two (2), seven-door refrigerated coolers for general beverages (e.g. soda, juice, dairy, water, beer, and wine) and various cold food items; one (1), two-door freezer for ice and ice cream; and a ±180 square-foot beer cave. Approximately 4.3 percent of overall floor area (±93 square feet) of refrigerator and general mercantile floor area will be dedicated to the display and sale of alcoholic beverages.

The proposed hours of operation for the combination service station and convenience store is 24

hours a day, seven (7) days a week.

The subject Conditional Use Permit Application No. P21-06064 requests authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license (Off-Site - sale of beer and wine for consumption off the premises where sold) for the proposed Arco AM/PM convenience retail store component.

The subject property is located within the boundaries of the Fresno General Plan and West Area Community Plan. These plans designate the subject site for Commercial - General planned land uses. The existing underlying CG (*Commercial General*) zone district is consistent with the planned land use designation.

Pursuant to Table 15-1202 and Section 15-2706-D-1 of the FMC, convenience retail and restaurants without alcohol are permitted in the CG (*Commercial General*) zone district, while automobile service stations and new establishments which sell alcoholic beverages for off-site consumption (off-sale) are permitted with an approved conditional use permit.

Use Classification Analysis

Pursuant to Chapter 15, Article 67, use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification. The Director shall determine whether a specific use shall be deemed to be within one or more use classifications, or not within any classification in this article. The Director may also determine that a specific use shall not be deemed to be within a classification, whether or not generally named within the classification, if its unique characteristics are substantially incompatible with those typical of uses named within the classification.

FMC Section 15-6704 (Commercial Use Classifications) lists and describes several food and beverage and retail sales use classifications which are as follows:

- **General Market.** Retail food markets of food and grocery items for off-site preparation and consumption. Typical uses include supermarkets, neighborhood grocery stores, and specialty food stores, such as retail bakeries; candy, nuts, and confectionary stores; meat or produce markets; vitamin and health food stores; cheese stores; and delicatessens. This classification may include small-scale specialty food production such as pasta shops with retail sales.

It's noted the Development Code does not provide a specific use classification or description for Specialty Food Stores. However, the Planning and Development Director has established a formal policy that allows for an exception to be made to allow alcoholic sale at Specialty Grocery Stores if the store includes eight (8) key elements related to minimum gross floor area, ceiling and shelving height, lighting, flooring material, window signage, fresh food display, and architecture. Moreover, this policy (attached as Exhibit M (Policy and Procedure No C-005)) provides a definition for Specialty Food Grocer which is as follows:

- **Specialty Food Grocer.** A food and beverage retail sales establishments that (1) dedicates at least 70% of retail space to a specialized category of food products such as foods from a specific country, ethnicity, or locality; and (2) dedicates at least 10% of retail space to fresh foods such as dairy, (excluding ice cream), produce, meat, poultry, and fish. Alcohol may be sold, but may not constitute more than 5% of retail floor area.

While the project proposes to dedicate approximately 10 percent of the overall retail space (approx. ±225 square feet) to the display and sale of fresh produce and grocery products, the project as proposed does not demonstrate compliance with all eight (8) of the required elements for Specialty Food Grocers nor is 70 percent of the retail space dedicated to a specialized category of food products such as foods from a specific country, ethnicity, or locality. Thus, the project does not meet the definition of a Specialty Food Grocer.

- **Healthy Food Grocer.** A food and beverage retail sales establishment that (1) dedicates at least 50 percent of retail space to a general line of grocery products intended for home preparation, consumption and use; and (2) dedicates at least 30 percent of retail space to perishable goods including dairy, fresh, produce, fresh meats, poultry and fish, and frozen foods.

The project does not propose to dedicate at least 50 percent of the retail space to a general line of grocery products intended for home preparation, consumption and use nor does the project propose to dedicate at least 30 percent of the retail space to perishable goods including dairy, fresh, produce, fresh meats, poultry and fish, and frozen foods.

- **Liquor Stores.** An establishment less than 10,000 square feet in size that sells liquor for off-site consumption and/or that devotes 30 percent or greater floor area to the selling of packaged alcoholic beverages (such as ale, beer, wine, and liquor) for off-site consumption.

Based on the floor plan and operational statement (Exhibit F dated August 14, 2023 and O dated November 3, 2023), the project would not be considered a liquor store given the overall area dedicated to alcohol display is 4.3 percent (< 30 percent).

- **Convenience Retail.** Establishments primarily engaged in the provision of frequently or recurrently needed small personal items or services for residents within a reasonable walking distance. These include various general retail sales and personal services of an appropriate size and scale to meet the above criteria. Liquor Stores shall not be considered Convenience Retail.

Based on the exhibits submitted as part of the conditional use permit application, the use was determined to be classified as Convenience Retail and not a General Market, Specialty Food Grocer, or Healthy Food Grocer. While the store proposes to dedicate a portion of the floor area to grocery products including fresh produce, it is limited in comparison to the general convenience store items (chips, candy, soda, etc.) to be sold. This determination is further supported by the project operational statement (Exhibit G dated November 3, 2023) which refers to the use as “Convenience Store” and/or “C-Store”.

For informational purposes, the North American Industry Classification System (NAICS) is the standard used by the Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the auspices of the Office of Management and Budget (OMB), to allow for a high level of comparability in business statistics among the North American countries.

NAICS provides Industry codes for several grocery and retail use classifications which are as follows:

- **Code 5411 - Grocery Stores:** Stores, commonly known as supermarkets, food stores, and grocery stores, primarily engaged in the retail sale of all sorts of canned foods and dry goods, such as tea, coffee, spices, sugar, and flour; fresh fruits and vegetables; and fresh and prepared meats, fish, and poultry.
- **Code 445110 - Supermarkets and Other Grocery (except Convenience Stores):** This industry comprises establishments generally known as supermarkets and grocery stores primarily engaged in retailing a general line of food, such as canned and frozen foods; fresh fruits and vegetables; and fresh and prepared meats, fish, and poultry. Included in this industry are delicatessen-type establishments primarily engaged in retailing a general line of food.
- **Code 457110 - Gasoline Stations with Convenience Store/Convenience Food with Gasoline Stations:** This industry comprises establishments primarily engaged in retailing automotive fuels (e.g., gasoline, diesel fuel, gasohol, alternative fuels) in combination with a limited line of groceries. These establishments can either be in a convenience store (i.e., food mart) setting or a gasoline station setting. These establishments may also provide automotive repair services.

Based on the established NAICS code descriptions and exhibits submitted as part of the conditional use permit application, the proposed business/use would be classified as a Gasoline Station with Convenience Store/Convenience Food and not a Grocery Store or Supermarket.

Alcoholic Beverage Control 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). ABC is awaiting the City's decision on the subject Conditional Use Permit Application.

Number of Existing and Allowed ABC Licenses

The subject site is located in Census Tract 38.09. According to ABC, Census Tract 38.09 currently has six (6) active off-sale alcohol licenses; four (4) Type 20 and two (2) Type 21.

ABC authorizes one (1) off-sale alcohol license per 1,120 people within Census Tract 38.09, which has an approximate population of 5,300. Per ABC, a total of four (4) off-sale alcohol licenses are allowed in Census Tract 38.09. Therefore, there are currently two (2) more off-sale alcohol licenses in Census Tract 38.09 than permitted for that census tract.

It's noted that a request to establish a Type 21 alcohol license within Census Tract 38.09 was recently granted by the Planning Commission on December 6, 2023 under Conditional Use Permit No. P19-04757. While this newly authorized license has not yet been established, Census Tract 38.09 will have seven (7) off-sale licenses. Therefore, if Conditional Use Permit No. P21-06064 were to be granted, Census Tract 38.09 will have eight (8) off-sale licenses; four (4) more than allowed.

Additionally, according to information provided by the California Department of Alcoholic Beverage Control, ABC-Form 245, this census tract is not located in a high-crime area but has a high concentration of off-sale alcohol licenses.

Citywide Development Code

The proposed CUP shall comply with the Responsible Neighborhood Market Act (RNMA) requirements of FMC Section 15-2706. The RNMA was adopted by the City Council on October 15, 2020 and took effect on November 15, 2020. The Act amended Chapter 15, Article 27, Section 15-2706 of the FMC relating to the sale of alcoholic beverages for off-site consumption.

The proposed ABC CUP shall comply with the requirements of FMC Section 15-2706. Pursuant to FMC Section 15-2706-D-1 (Applicability - New or Expanded Use), any new establishment must obtain a CUP in compliance with the standards of the section, including applicable location restrictions, to ensure that establishments operate in a manner that is mutually beneficial to surrounding uses and to also provide mechanisms to prevent and correct any associated problems.

Location Restrictions for New Establishments

According to FMC Section 15-2706-F (Location Restrictions for New Establishments), new and/or existing establishments that must obtain a CUP pursuant to the RNMA, off-sale alcohol establishments are prohibited if they are within one of the following areas:

1. **Near Sensitive Uses.** The establishment shall not be located within 1,000 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 project complies. The proposed alcohol use is not located within 1,000 feet of a sensitive use.

2. **Near Other Alcoholic Beverage Establishments.** The establishment shall not be located within 1,000 feet of an existing establishment, nor may it lead to a grouping of more than four (4) establishments within a 1,000 foot radius. Notwithstanding this requirement, an establishment shall not be located within 500 feet of an existing establishment when an establishment is located in a Census Tract that is not oversaturated with off-sale licenses.

The project does not comply. The proposed establishment is located near four (4) existing off-sale alcohol establishments. Super Liquor IV (4430 West Ashlan Avenue), which holds an active Type 21 alcohol license (License No. 405041) is located approximately 200 feet from the project site. Johnny Quik Store (4395 West Ashlan Avenue) which holds an active Type 21 alcohol license (License No. 609828) is located 290 feet from the project site. Valero Service Station and Convenience Store (4245 West Ashlan Avenue) is approximately 952 feet from the subject site and holds a Type 21 alcohol license (License No. 576138). Seven Eleven convenience store (4246 West Ashlan Avenue) holds an active Type 20 alcohol license (License No. 538800) and is located approximately 900 feet from the subject site.

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.

The project complies. According to ABC and data collected by the Fresno Police Department, Census Tract 38.09 is not located within a high crime area. The project site is located within Crime Reporting District No. 1847. The total number of offenses in the reporting district is 42, which is under 543 (120% of average number of offenses per reporting district). Therefore, the proposed use is not located in a high crime area as defined by California Business and Professions Code (CBPC) 23958.4(a)(3) et seq. Furthermore, “reported crimes” means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

- 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.

The project does not comply. The proposed alcohol use is located within Census Tract No. 38.09, which has a population of approximately 5,300 residents. Given the county ratio for off-sale alcohol licenses one license per of 1,123 residents, the subject census tract is permitted to have only four (4) off-sale alcohol licenses per ABC regulations. Currently, there are six (6) active off-sale alcohol licenses with Census Tract 38.09.

Given that only four (4) alcohol licenses are permitted, the referenced census tract is overconcentrated by two (2) licenses. If the request is to be approved, the census tract would be overconcentrated by three (3) licenses.

As previously mentioned, a request to establish a Type 21 alcohol license within Census Tract 38.09 was recently granted by the Planning Commission on December 6, 2023 under Conditional Use Permit No. P19-04757. While this newly authorized license has not yet been established, Census Tract 38.09 will have seven (7) off-sale licenses. Therefore, Census Tract 38.09 will have eight (8) off-sale licenses; four (4) more than allowed.

- 5. Citywide Ratio.** No establishment shall be granted a Conditional Use Permit under this Section if the number of sites selling alcohol for off-site consumption exceeds one license per 2,500 residents. This ratio requirement shall not apply to: (1) existing establishments that must obtain a CUP pursuant to this ordinance due to proposed expansion or improvement of an existing use that is currently operating pursuant to a CUP issued prior to the effective date of this ordinance; (2) new establishments that utilize the Cancel and Transfer provisions stated in Section S., below; or (3) an existing establishment that is in good standing which has a change in the ABC license holder, specifically partner franchisees.

The project does not comply. According to the United States Census Bureau, the City of Fresno has an estimated population of 545,567 residents (2022 Census). Per the established citywide ratio requirements noted above (one per 2,500 residents), there shall be no more than 218 off-sale licenses within the City of Fresno.

According to the State of California Alcoholic Beverage Control there are a total of 502 active off-sale alcohol licenses (Type 20 & 21) currently within the City of Fresno. Therefore, the current citywide ratio of existing off-sale licenses is one license per 1,084 residents, which exceeds the established ratio. Furthermore, this request to establish a new off-sale alcohol license at this location is not due to a proposed expansion or improvement of an existing use

that is currently operating pursuant to a CUP issued prior to the effective date of this ordinance nor does the request involve an existing establishment that is in good standing which has a change in the ABC license holder, specifically partner franchisees. However, if approved, the operator would be required to comply with the Cancel and Transfer provisions stated in Section S of FMC Section 15-2706, because none of the exemptions under FMC Section 15-2706(S)(3) apply given that this is a brand new establishment.

The proposed alcohol beverage establishment is not in compliance with three (3) of the five (5) location restrictions pursuant to FMC Section 15-2706-F, as the site is located within 1,000 feet of an existing off-sale alcohol beverage establishment, is located in an already overconcentrated census tract, and exceeds the citywide ratio for off-site alcohol licenses. Therefore, the proposed alcohol use would not be allowed per the FMC unless the exceptions (below) are found to be applicable.

Exceptions from Location Restrictions

According to FMC Section 15-2706-F-6, a new establishment may be excepted from the location restrictions if the Review Authority determines all 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.

The project does not qualify. As stated above, the project site's reporting district has a total of 42 offenses for the year 2022 and is therefore not located in a high crime area as defined by California Business and Professions Code (CBPC) 23958.4(a)(3) et seq. However, no statement from the Chief of Police has been provided to confirm or deny that the proposed alcohol use would be detrimental to the public health, safety, or welfare of persons located in the area, and that it would increase the severity of existing law enforcement or public nuisance problems in the area. The only evidence provided by the Fresno Police Department is statistics for reported crimes involving homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citation. On September 13, 2022, the Fresno Police Department reviewed the application and provided a letter stating they do not oppose the project, provided their conditions are included in any potential approval. These conditions have been included in the draft conditions of approval (**Exhibit J**) dated March 6, 2024 should the appeal be approved and Conditional Use Permit granted.

- 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.

The project qualifies. The sales floor area devoted to the sale of alcohol is approximately 10 percent. The total mercantile area is approximately 2,171 square feet. Further, the proposed project includes additional services such as car wash, gasoline sales, and a restaurant within the building. It can be stated that the proposed alcohol sales area is incidental to a larger retail use.

- 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 project does **not** qualify. As previously stated, the nearby alcohol-use establishments include Super Liquor IV (4430 West Ashlan Avenue), Johnny Quik (4395 West Ashlan Avenue), Valero (4245 West Ashlan Ave), Seven Eleven (4246 West Ashlan Avenue). The census tract is oversaturated, and no evidence has been provided that would support the proposed alcohol use would serve as a public convenience or necessity to an underserved portion of the community.

- d. The primary use of the establishment, based on information provided by the applicant, has been determined by the Review Authority to meet the definition of a General Market including a supermarket, neighborhood grocery store or a Healthy Food Grocer.

The project does **not** qualify. According to the revised operational statement dated November 3, 2023, the proposed project consists of a 24-hour convenience store which will occupy approximately 3,800 square feet of the proposed building and will consist of an Arco AM-PM. The project's operational statement further states that approximately 10 percent of floor area will be designated to the sale of fresh produce and grocery products. The revised floor plan depicts a floor area dedicated to the sale of fresh produce and grocery products. No further evidence provides for the type of grocery products which will be sold at the proposed Arco AM-PM store. Staff could not conclude that the proposed establishment can meet the definition of a Specialty Grocery Store and/or General Market. The Director has established a formal policy to allow for an exception to be made to allow alcoholic sale at Specialty Grocery Stores if the store includes eight (8) key elements. This policy is attached as **Exhibit M** (Policy and Procedure No C-005). The project, as proposed, does not contain these eight (8) elements and, thus, the Director could not make this exception based on this policy.

Based upon the use classification analysis above, Finding (b) could be made, as the proposed use (alcohol sales for off-site consumption) is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience. However, the Director was unable to make the remainder of the above-stated exception findings (a, c, and d) as there is insufficient quantifiable evidence to demonstrate the site is not located within an area in which the Chief of Police has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area; or would increase the severity of existing law enforcement or public nuisance problems in the area; that 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; and that the primary use of the establishment meets the definition of a General Market including a supermarket, neighborhood grocery store or a Healthy Food Grocer.

Given the Director was unable to make all of the aforementioned exceptions to the location restrictions pursuant to FMC Section 15-2706-F-6, the request to establish a new alcohol license at this location was denied by the Director on December 11, 2023.

Fresno Police Department Review

The Northwest Policing District reviewed the subject application and does not oppose the project provided the applicant agrees to the conditions listed in its memorandum dated September 13, 2022 (

Exhibit J) and submits a complete security plan. Conditions include compliance with the FMC sections limiting noise and unlawful nuisance, compliance with State of California Alcoholic Beverage Control rules and employee education, video camera surveillance, limitations of alcohol types and servings, limitations of on-site alcohol consumption and loitering, and completion of a security plan. As previously mentioned, these conditions have been included in the draft conditions of approval (**Exhibit J**) dated March 6, 2024 should the appeal be approved and Conditional Use Permit granted.

Central Unified School District Review

The school district did not provide comments during the commenting period.

Other Agencies

The project was routed to several partner departments and agencies for comment. However, due to the Director's denial of Conditional Use Permit Application No. P21-06064, comments and conditions received from the applicable agencies were not included in the conditions of approval for related Conditional Use Permit Application No. P21-06063, dated December 11, 2023. See **Exhibit J** for all written agency comments received.

Public Notice and Input

Council District 1 Project Committee Review

The project was reviewed by the Council District 1 Project Review Committee on November 10, 2022. The committee recommended the denial of the subject application.

Notice of Intent

Pursuant to FMC Sections 15-5007 and 15-5305, the Planning and Development Department mailed a Notice of Intent to Take Action (**Exhibit E**) - a neighborhood notice, to surrounding property owners within 1,000 feet of the subject site on February 28, 2023. No responses in support or opposition of the project were received.

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 and to the appellant on February 23, 2024 (**Exhibit E**).

Fresno City Planning Commission Action

Conditional Use Permit Application No. P21-06064 was considered by the Fresno City Planning Commission at its meeting on March 6, 2024. After a complete hearing, the Commission was unable to find substantial evidence in the administrative record to determine any of the exceptions in accordance with FMC Section 15-2706-F-6 apply and was unable to make the required findings pursuant to FMC Section 15-5306. Therefore, the Commission voted unanimously to uphold the Director's decision and denied Conditional Use Permit Application No. P21-06064. See **Exhibit O** for Planning Commission Resolution No. 13842.

The Planning Commission's decision was appealed by Council President Annalisa Perea on March 20, 2024. See **Exhibit P** for Council President's appeal letter.

Notice of City Council Hearing

In accordance with Section 15-5007 of the FMC, a notice of public hearing was mailed to surrounding property owners within 1,000 feet of the subject site on May 10, 2024. See **Exhibit Q** for Notice of City Council Hearing.

LAND USE PLANS AND POLICIES

The Fresno General Plan and West Area Community Plan designate the subject site for Commercial - General planned land uses and provide objectives to guide the development of these projects. The CG (*Commercial General*) zone district 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 project will meet applicable goals, policies, and objectives of the Fresno General Plan per elements from the Urban Form, Land Use & Design, Historic Resources, and Healthy Communities:

Goal: Increase opportunity, economic development, business, and job creation. Use urban form, land use, and Development Code policies to streamline permit approval, promote local educational excellence and workforce relevance, significantly increase business development and expansion, retain and attract talented people, create jobs and sustained economic growth, strategically locate employment lands and facilities, and avoid over-saturation of a single type of housing, retail, or employment.

- 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 nuisance 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.

West Area Community Plan

Upon reviewing the policies contained in the West Area Community Plan, staff has determined that there are no applicable policies restrictive to alcohol sales compared to those already provided in the Fresno General Plan and the Fresno Municipal Code.

FRESNO MUNICIPAL CODE FINDINGS

The required findings for a CUP 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; and,
- f. The proposed use is consistent with the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5.

Based upon analysis of the application, staff concludes that the required findings made by the Director to deny the conditional use permit under FMC Section 15-5306 (A, B, C, D, E & F) are appropriate. 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 Council 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. The City Council shall also find that there is substantial evidence in the administrative record to determine all of the following elements in accordance with FMC Section 15-2706-F-6, Exceptions 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.
- d. The primary use of the establishment, based on information provided by the applicant, has been determined by the Review Authority to meet the definition of a General Market including a supermarket, neighborhood grocery store or a Healthy Food Grocer.

ENVIRONMENTAL FINDINGS

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15270(a), CEQA does not apply to projects which a public agency rejects or disapproves. Therefore, no environmental findings are necessary to adopt a staff recommendation for denial of Conditional Use Permit Application No. P21-06064, to establish a Type 20 (Off-Sale beer and wine) alcohol sales license.

However, should the City Council: (1) find the project meets all of the exceptions to the location restrictions in accordance with FMC Section 15-2706-F-6; (2) make the required findings in accordance with FMC Section 15-5306; and (3) grants approval of the request to obtain a Type 20 ABC license, then adoption of a Section 15332/Class 32 (In-Fill Development Projects) Categorical Exemption, pursuant to the California Environmental Quality Act (CEQA) Guidelines, is considered appropriate. The attached Categorical Exemption was prepared for Environmental Assessment No. P21-06063/P21-06064, dated December 11, 2023 (**Exhibit N**) may be adopted by the City Council if the required findings are made as set forth above.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan, the West Area Community Plan, compliance with specific provisions of the 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 CUP Application No. P21-06064, a request to establish a Type 20 alcohol license, is not appropriate for the subject property.

If the City Council decides to grant approval of the proposed project, the Council 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-F-6 and make the required findings of FMC Section 15-5306. Should the City Council make the required findings, approval of the CUP application shall be subject to the applicant's compliance with the Draft Conditions of Approval (**Exhibit J**).

Attachments:

- Exhibit A - Vicinity Map
- Exhibit B - Aerial Photograph
- Exhibit C - Zoning Map
- Exhibit D - Project Information Tables
- Exhibit E - Noticing Map, NOITTA, NOA, NOPH
- Exhibit F - Master Application, Owner's Letter of Authorization
- Exhibit G - Operational Statement
- Exhibit H - Exhibits (Site Plan, Elevations, Floor Plan)
- Exhibit I - Appeal Letter
- Exhibit J - Draft Conditions of Approval dated March 6, 2024
- Exhibit K - Fresno Municipal Code Findings
- Exhibit L - Denial Letter
- Exhibit M - Policy & Procedure C-005
- Exhibit N - Categorical Exemption
- Exhibit O - Planning Commission Resolution No. 13842
- Exhibit P - Appeal Letter from Council President Perea
- Exhibit Q - Notice of Public Hearing for City Council
- Exhibit R - Staff Presentation