



## Legislation Details (With Text)

<b>File #:</b>	ID17-634	<b>Version:</b>	1	<b>Name:</b>	
<b>Type:</b>	Action Item	<b>Status:</b>		Agenda Ready	
<b>File created:</b>	4/24/2017	<b>In control:</b>		Planning Commission	
<b>On agenda:</b>	5/3/2017	<b>Final action:</b>			
<b>Title:</b>	Consider the appeal of Conditional Use Permit Application No. C-17-001, located at the southeast corner of West Figarden Drive and North Brawley Avenue. (Council District 2) - Development and Resource Management Department.				
	<ol style="list-style-type: none"><li>1. ADOPT Environmental Assessment No. C-17-001 dated January 23, 2017, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 Categorical Exemption; and,</li><li>2. DENY the appeal and UPHOLD the Director's Approval of Conditional Use Permit Application No. C-17-001 to authorize the upgrade of a Type 41 to Type 47 alcohol license, subject to compliance with the Conditions of Approval dated February 28, 2017.</li></ol>				
<b>Sponsors:</b>					
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. Exhibit 1 - Vicinity Map.pdf, 2. Exhibit 2 - 2015 Aerial Photograph.pdf, 3. Exhibit 3 - Public Hearing Notice Mailing List Vicinity Map.pdf, 4. Exhibit 4 - Fresno General Plan Planned Land Use Map.pdf, 5. Exhibit 5 - Zoning Map.pdf, 6. Exhibit 6 - Conditions of Approval.pdf, 7. Exhibit 7 - Environmental Assessment.pdf, 8. Exhibit 8 - Appeal Letter.pdf, 9. Exhibit 9 - Comments from Responsible Agencies.pdf, 10. Exhibit 10 - Conditional Use Permit Findings.pdf				

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## REPORT TO THE PLANNING COMMISSION

**May 3, 2017**

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

**THROUGH:** BONIQUE EMERSON, Planning Manager  
Development Services Division

MCKENCIE CONTRERAS, Supervising Planner  
Development Services Division

**BY:** JARRED OLSEN, Planner  
Development Services Division

## SUBJECT

Consider the appeal of Conditional Use Permit Application No. C-17-001, located at the southeast corner of West Figarden Drive and North Brawley Avenue. (Council District 2) - Development and Resource Management Department.

1. **ADOPT** Environmental Assessment No. C-17-001 dated January 23, 2017, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 Categorical Exemption; and,
2. **DENY** the appeal and **UPHOLD** the Director's Approval of Conditional Use Permit Application No. C-17-001 to authorize the upgrade of a Type 41 to Type 47 alcohol license, subject to compliance with the Conditions of Approval dated February 28, 2017.

## EXECUTIVE SUMMARY

Santos Arevalo of Sabormx Mexican Grill, has filed Conditional Use Permit Application No. C-17-001, pertaining to an existing building in a 2.39 acre shopping center located at 4045 West Figarden Drive, Suite 101. The applicant requests authorization to upgrade to a State of California Alcoholic Beverage Control Type 47 alcohol license (*Restaurant-sale of beer, wine and distilled spirits for consumption on or off the premises where sold*) from a Type 41 alcohol license (*Restaurant-sale of beer and wine for consumption on or off the premises where sold*) for the Sabormx Mexican Grill restaurant. Restaurants with Alcohol Sales are an allowed use, subject to a Conditional Use Permit, in the O/AE/UGM/cz (*Office/Airport Environs/Urban Growth Management/conditions of zoning*) zone district accordance with Table 15-1302 (Use Regulations - Employment Districts) of the Fresno Municipal Code (FMC).

A Notice of Action was mailed and an appeal was received in response to the Notice of Action. The Department recommends that Conditional Use Permit Application No. C-17-001 be approved subject to the recommended conditions of approval, dated February 28, 2017.

## BACKGROUND

### Project Description

Conditional Use Permit Application No. C-17-001 requested authorization to upgrade from a Type 41 alcohol license (*Restaurant-sale of beer and wine for consumption on or off the premises where sold*) to a Type 47 alcohol license (*Restaurant-sale of beer, wine and distilled spirits for consumption on or off the premises where sold*) and establish an outdoor dining area of 746 square feet for the Sabormx Mexican Grill restaurant. Restaurants with Alcohol Sales is a permitted use, subject to a Conditional Use Permit, in accordance with Table 15-1302 (Use Regulations - Employment Districts) of the FMC. The project shall comply with the FMC, subject to the Conditions of Approval dated February 28, 2017.

### Previous Entitlements

The Development and Resource Management Department approved Conditional Use Permit Application No. C-15-018 on April 14, 2015. C-15-018 was filed by Santos Arevalo of Sabormx Mexican Grill Restaurant and requested authorization for a Type 41 alcohol license (*Restaurant-sale of beer and wine for consumption on or off the premises where sold*). All previous conditions have been met.

## **Fresno General Plan**

The Fresno General Plan designates a land use of Office for the subject site. The purpose of the office land use designation is to primarily serve local needs such as convenience shopping and offices. Conditional Use Permit Application No. C-17-001 is consistent with policies and objectives of the Fresno General Plan.

This project satisfies Fresno General Plan Policy LU-2-a, "Infill Development and Redevelopment. Promote development of vacant, underdeveloped, and re-developable land within the City Limits where urban services are available by considering the establishment and implementation of supportive regulations and programs." The tenant is expanding the restaurant use into an adjacent, vacant tenant space, where city services currently exist.

The Sabormx Mexican Grill restaurant is located in an existing shopping center in a single use format, which serves the surrounding area. A restaurant with alcohol sales is consistent with the intent of the planned land use designation and is an appropriate use for the existing shopping center.

The project will utilize existing land where the necessary infrastructure and facilities are currently serving the property. The project promotes diverse land uses and preserves and protects resources by developing within the city limits.

## **Bullard Community Plan**

Upon reviewing the policies contained in the Bullard Community Plan, staff has determined that there are no policies that are applicable or are more restrictive than those contained in the FMC or the Fresno General Plan.

## **PUBLIC INPUT AND NOTICING**

### **District 2 Plan Implementation Committee**

The Council District 2 Plan Implementation Committee has reviewed this project and recommended approval with no conditions on February 13, 2017.

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

The subject project was routed to FUSD for comment. FUSD commented that the proposed project location is approximately 580 feet from Figarden Elementary School. FUSD has concerns regarding potentially dangerous interaction between students and the proposed operation. FUSD's response on the project is subject to the Alcoholic Beverage Control Act and the Fresno Police Department's review and support of the project with regard to the concentration and use of alcohol-related business in close proximity to school sites.

## **Fresno Police Department (PD)**

The subject project was routed to the Fresno PD for comment. Fresno PD commented that they were in support of the project, subject to their conditions. Staff included PD's recommended conditions as part of the Conditions of Approval, dated February 28, 2017.

## **Notice of Intent to Take Action**

The Development and Resource Management Department mailed notices of the Intent to Take Action on this project to surrounding property owners within 1,000 feet of the subject properties (Exhibit 3), pursuant to Sections 15-5007 and 15-5305 of the FMC on February 10, 2017. Fresno Unified School District was the only person or entity to express an interest to protest.

## **Notice of Action**

The Development and Resource Management Department mailed notice of the Director's approval of the project to the entity that expressed an interest in protesting the project, pursuant to Sections 15-5007 and 15-5009-B of the FMC on February 28, 2017. The FUSD was the only entity to issue an appeal within the 15-day appeal period.

## **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 3) pursuant to Sections 15-5007 and 15-5017 of the FMC.

## **ANALYSIS OF THE APPEAL LETTER**

There was one appeal letter received in response to the Notice of Action issued for the project. The appeal letter was signed by one person on behalf of the FUSD.

**Below is an analysis of the issue raised in the appeal letter dated March 2, 2017 (Exhibit 8):**

The District does not support the license upgrade approval and continues to have concerns regarding the potentially dangerous interaction between the District's students and the proposed operation.

**Response:**

A research inquiry was conducted into the applicant's current alcohol license. There are no current or previous disciplinary actions issued by the California Department of Alcoholic Beverage Control, including those where alcohol had been served to minors. Therefore, there is no substantial evidence in the record to deny the application.

**ENVIRONMENTAL FINDINGS**

An environmental assessment was prepared for this project in accordance with the requirements of the CEQA Guidelines. This process included the distribution of requests for comment from other responsible or affected agencies and interested organizations.

Section 15301/Class 1 exempts the licensing of existing public or private structures or facilities involving negligible or no expansion of use beyond that exists at the time of the lead agency's determination.

The proposed project is consistent with the exemption because the project is requesting licensing and a permit for alcoholic beverage sales and an outdoor dining area, respectively, both of which are permitted in the O zone district. The outdoor dining area is approximately 746 square feet, which compared to the 2,000 square feet of floor area of the restaurant, does not result in an increase of more than 50 percent.

No adverse environmental impacts will occur as a result of the proposed project. None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

**FRESNO MUNICIPAL CODE FINDINGS**

Based upon analysis of the applications, staff concludes that the required findings of Section 15-5306 of the FMC can be made. These findings are attached as Exhibit 10.

**CONCLUSION**

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan and the Bullard Community Plan; 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 Conditional Use Permit Application No. C-17-001 is appropriate for the subject site.

Action by the Planning Commission regarding the Conditional Use Permit application and associated environmental assessment is final unless appealed to the City Council in accordance with Section 15-5017 of the FMC.

**Attachments:**

- Exhibit 1: Vicinity Map
- Exhibit 2: 2015 Aerial Photograph
- Exhibit 3: Public Hearing Notice Mailing List Vicinity Map
- Exhibit 4: Fresno General Plan Planned Land Use Map
- Exhibit 5: Zoning Map
- Exhibit 6: Conditions of Approval dated February 28, 2017
- Exhibit 7: Environmental Assessment No. C-17-001 dated January 23, 2017
- Exhibit 8: Appeal Letter dated March 2, 2017
- Exhibit 9: Comments from Responsible Agencies
- Exhibit 10: Conditional Use Permit Findings