



Legislation Details (With Text)

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Title: HEARING to consider Text Amendment Application No. TA-17-002 and related Environmental Finding for Environmental Assessment No. TA-17-002, proposing to modify zoning and use regulations for California Redemption Value (CRV) Recycling Centers within the City of Fresno (Citywide)

1. Adopt Environmental Assessment No. TA-17-002 dated July 26, 2017 prepared for this matter approving a Finding of No Possibility pursuant to Section 15061 (b)(3) of the Environmental Quality Act Guidelines
2. BILL - (For introduction) - Approving Text Amendment Application No. TA-17-002 addressing CRV Recycling Centers by amending subsection (B) of Section 15-2750 of the Fresno Municipal Code.

Sponsors: Paul Caprioglio, Oliver L. Baines III

Indexes:

Code sections:

Attachments: 1. Exhibit A, 2. Exhibit B, 3. Exhibit C, 4. Exhibit D, 5. Exhibit E, 6. Exhibit F, 7. Exhibit G, 8. Exhibit H, 9. Exhibit I, 10. Supplement - Letter from Chamber of Commerce.pdf, 11. Supplement - Letter from KSC LLP.pdf, 12. Constituent Letters Regarding Recycling Submitted During Council Meeting.pdf

Date	Ver.	Action By	Action	Result
9/21/2017	2	City Council	approved	Pass

REPORT TO THE CITY COUNCIL

September 21, 2017

FROM: Jennifer K. Clark, AICP, Director
Development and Resource Management Department

THROUGH: Mike Sanchez, AICP, MCRP, Assistant Director
Development and Resource Management Department

BY: Bonique Emerson, AICP, Planning Manager
Development and Resource Management Department

SUBJECT

HEARING to consider Text Amendment Application No. TA-17-002 and related Environmental Finding for Environmental Assessment No. TA-17-002, proposing to modify zoning and use regulations for California Redemption Value (CRV) Recycling Centers within the City of Fresno (Citywide)

1. **Adopt** Environmental Assessment No. TA-17-002 dated July 26, 2017 prepared for this matter approving a Finding of No Possibility pursuant to Section 15061 (b)(3) of the Environmental Quality Act Guidelines
2. **BILL** - (For introduction) - Approving Text Amendment Application No. TA-17-002

addressing CRV Recycling Centers by amending subsection (B) of Section 15-2750 of the Fresno Municipal Code.

RECOMMENDATION

1. Adopt the Finding of No Possibility of Significant Adverse Effect as prepared for Environmental Assessment No. TA-17-002 dated July 26, 2017.
2. Approve Text Amendment Application No. TA-17-002, to modify zoning and use regulations for California Redemption Value (CRV) Recycling Centers within the City of Fresno.

EXECUTIVE SUMMARY

Text Amendment Application No. TA-17-002 was initiated pursuant to Fresno City Council Resolution No. 2016-263 (Exhibit A) and proposes to amend subsection (B) of Section 15-2750 of the Fresno Municipal Code (FMC), relating to California Redemption Value (CRV) Recycling Centers. The text amendment to the Citywide Development Code proposes to modify zoning and use regulations for CRV Recycling Centers within the City of Fresno (Exhibit B). As noted in Resolution No. 2016-263, over the years, Council District Offices have received complaints about CRV Recycling Centers interfering with the quiet enjoyment of nearby residents and of transients “hanging out” as they become intoxicated and leave litter behind. Businesses located in the City have also called to express concern about the negative impact CRV Recycling Centers have on them. In addition to this, the Fresno Police Department has received over 260 calls for service at CRV Recycling Centers between June 1, 2016, and December 15, 2016. As such, the City Council desires to formally address CRV Recycling Centers within the Development Code.

The proposed text amendment changes include, but are not limited to the following: limit CRV Recycling Centers to within the permitted footprint of a business subject to California Public Resources Code section 14571.6; and require that existing CRV Recycling Centers comply with the proposed text amendment either 6 months or 1 year from the effective date of the ordinance, depending on if the facility is located within a temporary or permanent structure, after which the operator must file a new entitlement application (Conditional Use Permit) to lawfully operate after the grace period.

BACKGROUND

Text Amendment Application No. TA-17-002 was initiated pursuant to Fresno City Council Resolution No. 2016-263 (Exhibit A) and proposes to amend subsection (B) of Section 15-2750 of the Fresno Municipal Code (FMC), relating to CRV Recycling Centers. The proposed text amendment changes include, but are not limited to the following: limit CRV Recycling Centers to within the permitted footprint of a business subject to California Public Resources Code section 14571.6; and require that existing CRV Recycling Centers comply with the proposed text amendment either 6 months or 1 year from the effective date of the ordinance, depending on if the facility is located within a temporary or permanent structure, after which the operator must file a new entitlement application (Conditional Use Permit) to lawfully operate after the grace period.

Issues related to CRV Recycling Centers

The issues associated with CRV Recycling Centers have been ongoing for over 10 years. Issues related to the siting and operation of these facilities has been raised by advisory committees, Councilmembers, the police department, and the community at large. These issues include crime at the CRV Recycling Centers that often spreads into adjacent neighborhoods, theft of recyclable beverage containers from recycling and trash bins, visual blight, and overconcentration of these facilities. The City regularly receives complaints from the public about CRV Recycling Centers interfering with the quiet enjoyment of nearby residents, and transients “hanging out” as they become intoxicated and leaving their litter behind. In addition, the Fresno Police Department has received over 260 calls for service at CRV Recycling Center locations within the City between June 1, 2016, and December 15, 2016, further demonstrating the need to tighten the standards and regulations related to CRV Recycling Centers.

Summary of Text Amendment

Text Amendment Application No. TA-17-002 proposes a revision to the existing section of the Citywide Development Code that places special conditions on CRV Recycling Centers. As proposed, the proposed text amendment includes:

1. Restricting the use to within the permitted footprint of a business subject to California Public Resources Code section 14571.6.
2. Removing all references to temporary structures given that as proposed the use may now only be established within a permanent building.
3. Requiring compliance for existing CRV Recycling Centers. If located in a permanent structure, the operator will have a one year grace period from the effective date of the ordinance to comply with the proposed text amendment. If located in a temporary structure, the operator will have a six month grace period from the effective date of the ordinance to comply with the proposed text amendment. The operator must file a new entitlement application (Conditional Use Permit) to lawfully operate after the grace period.

State of California - Department of Resources Recycling and Recovery

The State of California, Department of Resources Recycling and Recovery (CalRecycle), provided a letter dated March 21, 2017, to DARM in response to the request for comment sent on the proposed project (Exhibit C). In their letter, CalRecycle explains that state law prohibits payments to cities that pass or enforce ordinances prohibiting the siting of recycling centers at supermarket sites. Furthermore, the letter explains that at proposed text amendment would prohibit at least one supermarket recycling center from operating. In 2016, the City of Fresno received over \$330,000 in payments through the Beverage Container Recycling Program that the City may no longer be eligible for in the future if the proposed ordinance is adopted. The City addressed this concern by changing the text to allow for CRV Recycling Centers within the permitted footprint of a supermarket; thus, the City should be eligible to receive funding from CalRecycle.

Secondly, the letter explains that if recycling centers close in Fresno, it may reduce opportunities for Fresno residents to redeem their recyclables. The City addressed this concern by allowing CRV Recycling Centers to operate within the permitted footprint of a supermarket, letting residents recycle at such a business. Further, many stores located within an unserved convenience zone choose to accept CRV materials for redemption, which would allow residents to recycle at a neighborhood store.

Lastly, the letter explains that if convenience zones in Fresno are not served by recycling centers, beverage retailers (i.e. supermarkets with over \$2 million in annual gross sales) in the newly unserved zones will be required to redeem CRV in-store or pay a \$100 fee per day to CalRecycle. This fee may be avoided if the store allows residents to redeem CRV material at the store location. Additionally, a reverse vending machine may be installed to serve the convenience zone.

Stakeholder Meeting

A meeting to discuss the proposed text amendment with stakeholders and other interested parties was held on March 30, 2017. The purpose of the meeting was to inform interested parties of the proposed text amendment and to receive comments. In response to this meeting, three letters were received, including on April 3, April 13 and June 4, 2017, and are attached as Exhibits D, E and F, respectively.

Airport Land Use Commission

The Fresno County Airport Land Use Commission (ALUC) reviewed the proposed text amendment on April 3, 2017. The ALUC voted unanimously to recommend approval of the proposed text amendment.

Council District Advisory Committees

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

Council District 1

On April 4, 2017, the Council District 1 Plan Implementation Committee voted 1-0 to recommend denial of the proposed text amendment. It is noted that there was no quorum at this meeting; however, it has been difficult for this committee to achieve a quorum due to low attendance. The reasons given for recommending denial were that the operation and location restrictions should be more reasonable and consistent with State of California rules and regulations related to CRV Recycling Centers.

Council District 2

On July 17, 2017, the Council District 2 Plan Implementation Committee voted 4-0 to recommend approval of the proposed text amendment.

Council District 3

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

Council District 4

On March 27, 2017, the Council District 4 Plan Implementation Committee voted 5-0 to recommend approval of the proposed text amendment.

Council District 5

On March 27, 2017, the Council District 5 Plan Implementation Committee voted 1-0 to recommend approval of the proposed text amendment. It is noted that there was no quorum at this meeting; however, it has been difficult for this committee to achieve a quorum due to low attendance.

Council District 6

There is no Council District 6 Plan Implementation Committee at this time.

Council District 7

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

Fulton-Lowell

On July 17, 2017, the Fulton-Lowell Advisory Committee decided to not make a recommendation on the text amendment but instead to express concern that it might run afoul of State of California recycling mandates.

Tower District

On April 4, 2017, the Tower District Advisory Committee voted 3-0 to recommend approval of the proposed text amendment with the recommendation that the following separation requirements not be included, including, one mile from residential uses, two miles from parks and two miles from schools.

Planning Commission

On August 2, 2017, the Planning Commission, by a unanimous vote, recommended denial of the proposed text amendment citing concerns related to access to recycling by the community and negative impacts to existing recycling businesses.

Notice of City Council Hearing

Pursuant to the requirements of Fresno Municipal Code section 15-5806 (and 15-5007.D), notice of this public hearing was published in the *Fresno Bee* on September 9, 2017, which is at least 10 days prior to the public hearing. Section 15-5007.D allows the posting of a public hearing notice, in at least one newspaper of general circulation, as an alternative noticing method for large mailings.

A courtesy email was sent on September 8, 2017, notifying various interested parties and stakeholders of the City Council Hearing.

Development Code Text Amendment Findings

Pursuant to the Fresno Municipal Code, the City Council shall not approve a text amendment unless the proposed amendment meets the following criteria:

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

Response: Text Amendment Application No. TA-17-002 has been examined with respect to its

consistency with the Fresno General Plan and applicable operative plans and it was concluded that Text Amendment Application No. TA-17-002 is consistent with said plans.

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

Response: As noted in Fresno City Council Resolution No. 2016-263, Council District Offices have received complaints about CRV Recycling Centers interfering with the quiet enjoyment of nearby residents, transients “hanging out” as they become intoxicated and leave litter behind, business located in the City have called to express concern about the negative impact CRV Recycling Centers have on them and the Fresno Police Department has received over 260 calls for service at CRV Recycling Centers between June 1, 2016 and December 15, 2016. As such, the amendment is consistent with the purpose of the Development Code.

ENVIRONMENTAL FINDINGS

An environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA) Guidelines. This process included the distribution of the project proposal for comment from other responsible or affected agencies.

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

The City of Fresno has determined that a Finding of No Possibility that the project will have impacts on the environment pursuant to Section 15061(b) (3) of the CEQA Guidelines is appropriate for the proposed text amendment. Given that the proposed text amendment will only modify application processing, locational restrictions and operational requirements of existing establishments, and further refine the already limited locations where new CRV Recycling Centers may locate, the revisions will not result in a significant change to the physical environment. Individual establishments that require a new Conditional Use Permit are subject to CEQA review at the time of application submittal.

An opposition e-mail contesting the CEQA finding was submitted asserting that the City was piece-mealing. The CEQA analysis is not piece-mealing. Piece-mealing is when an agency chops a large project into many little ones - each with a minimal potential impact on the environment - which cumulatively may have consequences.

In this case, enforcing these code regulations on existing facilities will only result in fewer impacts to the physical environment, not more. It will reduce traffic, noise and aesthetic concerns within existing neighborhoods, thus it is clear, looking at the cumulative effect of this text amendment, that there is no possibility that the activity in question may have a significant effect on the environment.

Although the text amendment could result in existing recycling facilities closing their doors because they cannot comply, this will not prevent consumers from recycling because of the following:

- Supermarkets will still be allowed to accept recyclables within their doors
- There are several Light Processing facilities located within the City in industrial areas that will continue to operate
- The City has a strong curbside recycling program. The City hauled 32,445.59 tons of Recycling in 2016.
- The City, according to Policy RC-11-a in the Fresno General Plan, has several policies and programs that facilitate and encourage recycling.

LOCAL PREFERENCE

N/A

FISCAL IMPACT

N/A

Attachments:

- Exhibit A: Fresno City Council Resolution No. 2016-263
- Exhibit B: Text Amendment No. TA-17-002 amending Subsection (B) of Section 15-2750 of the FMC
- Exhibit C: State of California, Department of Resources Recycling and Recovery (CalRecycle), letter dated March 21, 2017
- Exhibit D: Stakeholder letter dated April 3, 2017
- Exhibit E: Stakeholder letter dated April 13, 2017
- Exhibit F: Stakeholder letter dated June 4, 2017
- Exhibit G: Stakeholder letter dated August 2, 2017
- Exhibit H: Finding of No Possibility of Significant Adverse Effect as prepared for Environmental Assessment No. TA-17-002 dated July 26, 2017
- Exhibit I: PowerPoint Presentation