



## Legislation Details (With Text)

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**Title:** Consideration of Conditional Use Permit Application No. C-17-090, located on the southeast corner of West Shaw and North Marks Avenues. (Council District 1) - Development and Resource Management Department.

1. DENY Conditional Use Permit Application No. C-17-090 requesting to establish a State of California Alcoholic Beverage Control Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for an existing convenience store.

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Photo, 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 (Site Plan, Floor Plan, Exterior Photos), 8. Exhibit H - Operational Statement, 9. Exhibit I - Conditions of Approval dated October 18, 2017; including memoranda from responsible commenting agencies, 10. Exhibit J - Fresno Municipal Code Findings, 11. Exhibit K - Applicant's Supplemental Operational Statement, 12. Exhibit L - Policy and Procedure No. C-005, 13. Exhibit M - Categorical Exemption

Date	Ver.	Action By	Action	Result
10/18/2017	1	Planning Commission	approved	Pass

## REPORT TO THE PLANNING COMMISSION

**October 18, 2017**

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

**THROUGH:** MCKENCIE CONTRERAS, Supervising Planner  
Development Services Division

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

## SUBJECT

Consideration of Conditional Use Permit Application No. C-17-090, located on the southeast corner of West Shaw and North Marks Avenues. (Council District 1) - Development and Resource Management Department.

1. **DENY** Conditional Use Permit Application No. C-17-090 requesting to establish a State of California Alcoholic Beverage Control Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for an existing convenience store.

## EXECUTIVE SUMMARY

Conditional Use Permit Application No. C-17-090 was filed by Sarkis Mkrtchyan, and pertains to approximately ±2,750 square feet of tenant space within the Peppertree Plaza Shopping Center located on the southeast corner of West Shaw and North Marks Avenues. The applicant requests to establish a State of California Alcoholic Beverage Control Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for the existing Uptown Market convenience store. Staff is recommending denial of the Type 20 alcohol license.

Staff recommends denial of Conditional Use Permit Application No. C-17-090 based on substantial evidence detailed in this staff report that Findings A, B, C, and D contained in Section 15-5306 of the Fresno Municipal Code (FMC) cannot be made due to documented high crime in the area, and, therefore, the Conditional Use Permit cannot be approved.

## BACKGROUND

Conditional Use Permit Application No. C-17-090 proposes to establish a State of California Alcoholic Beverage Control Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for the existing Uptown Market convenience store. The subject property is zoned CMX (*Corridor/Center Mixed Use*). Per FMC Table 15-1302, alcohol sales are permitted in the CMX (*Corridor/Center Mixed Use*) 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. 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 1,293 offenses so far this year; more than double the average. Furthermore, the subject location is located within Police Zone 1750, which is one of the most problematic areas within the city of Fresno. The Fresno Police Department and the Anti-Slum Enforcement Team (ASET) recently conducted a multi-agency operation directed at addressing guns, gangs, drugs, and domestic issues within Zone 1750. In addition, Zone 1750 borders Slater Elementary School, which will be the center of a Restore Fresno Project focused on addressing crime issues within Police Zone 1850 and neighboring zones 1750 and 1751. 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 October 18, 2017 (Exhibit I). However, should the Planning Commission decide to grant approval of the request to obtain a Type 20 ABC license, the Standard Fresno Police

Department ABC CUP Conditions contained in the attached Conditions of Approval dated October 18, 2017 (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.

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

FUSD provided comments indicating the district did not support this application. Their comment letter expressed concerns regarding potentially dangerous interactions between students and the proposed operation but indicated their response was subject to the Alcoholic Beverage Control Act and the Fresno Police Department's review and support of the proposed project. The location is approximately 1,650 feet from Slater 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. C-17-090. 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 47.01. According to ABC, Census Tract 47.01 currently has two active off-sale alcohol licenses. ABC authorizes one off-sale alcohol license per 1,075 people per census tract. Census Tract 47.01 has a population of 6,682. Per ABC, six off-sale alcohol licenses are allowed in Census Tract 47.01. Therefore, there are four fewer off-sale alcohol licenses in Census Tract 47.01 than authorized for that census tract.

### **Citywide Development Code**

#### Location Restrictions

According to FMC Section 15-2706-E (Location Restrictions for New Establishments), new off-sale alcohol establishments that are under 10,000 square feet are prohibited if they are within one of the following areas:

- 1. Near Sensitive Uses.** The establishment shall not be located within 500 feet of the following:
  - a. A public park, playground, recreational area, or youth facility, including a nursery school, preschool, or day care facility;
  - b. A public or private State-licensed or accredited school; or
  - c. An alcohol or other drug abuse recovery or treatment facility.

- 2. Near Other Alcoholic Beverage Establishments.** The establishment shall not be

located within 500 feet of an existing establishment, nor may it lead to a grouping of more than four establishments within a 1,000 foot radius.

3. **Within High Crime Areas.** The establishment shall not be located in an area of high crime, as defined by the California Business and Professions Code 23958.4(a)(1) et seq., and as determined by the Department of Alcoholic Beverage Control (ABC).
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 proposed establishment is in compliance with three of the locational restrictions as it would not be located within 500 feet of any of the identified sensitive uses, near other alcoholic beverage establishments, nor located within a high concentration area. However, as explained in the Police Department Review section above, the proposed establishment would be located within a high crime area. Therefore, because the proposed establishment is not in compliance with one of the four location restrictions pursuant to FMC Section 15-2706-E, the proposed new alcohol CUP is prohibited per the FMC.

#### Exception from Location Restrictions

According to FMC Section 15-2706-E-5, a new establishment may be excepted from the location restrictions if the Review Authority determines any one of the following:

- a. The proposed use is not located within an area in which the Chief of Police has determined, based upon quantifiable information, that the proposed use a) would be detrimental to the public health, safety, or welfare of persons located in the area, or b) would increase the severity of existing law enforcement or public nuisance problems in the area.
- b. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.
- c. The proposed outlet for the off-premises sale of alcoholic beverages would act as a public convenience or necessity to an underserved portion of the community and/or enhance the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety.

The Director was unable to make any of these findings and therefore, is denying the request to establish a Type 20 alcohol license.

In response to staff's recommendation for denial and the Director not being able to make any of the exception findings in accordance with FMC Section 15-2706-E, the applicant submitted a revised operational statement (see attached Exhibit K: Applicants Supplemental Operational Statement) and stated that the Uptown Market operates more like a specialty market than a typical convenience store as the establishment also caters to Armenian/Middle Eastern patrons. In addition to a wide selection of everyday convenience store items, the establishment also includes a deli featuring imported and

specialty prepared meats, cheeses, handmade kebabs and sandwiches, as well as locally sourced and imported grocery goods such as seasonal produce, baked breads, imported chocolates, and specialty pastries. Being able to provide imported beer and wine that pairs with the specialty deli items would provide a more comprehensive shopping experience for the Armenian and Middle Eastern customers that frequent the store.

The Director has established a formal policy to allow for an exception to be made to allow alcohol sales at Specialty Grocery Stores if the store includes 8 key elements. This policy is attached as Exhibit L (Policy and Procedure No. C-005). Uptown Market does not contain these 8 elements and thus the Director could not make this exception based on this Policy.

Although the store does not comply with the exception outlined in Policy and Procedure C-005, the applicant requests the Planning Commission to reconsider and make the exception from the location restrictions on the basis that the sale of alcoholic beverages would provide for a more complete and convenient shopping experience and would act as a public convenience or necessity to an underserved portion of the community and/or would enhance the vitality of an existing commercial area without presenting a significant impact on health or safety pursuant to FMC Section 15-2706-E-5-b & c.

## LAND USE PLANS AND POLICIES

### Fresno General Plan

The Fresno General Plan designates the subject property for the Corridor/Center Mixed Use planned land use and provides objectives to guide in the development of this project. The Corridor/Center Mixed Use planned land use designation is intended to allow for horizontal and vertical mixed-use development in multiple story buildings along key circulation corridors where height and density can be easily accommodated. Ground-floor retail and upper-floor residential or offices are the primary uses, with personal and business services and public and institutional space as supportive uses. Development will facilitate the transformation of existing transportation corridors into vibrant, highly walkable areas with broad, pedestrian friendly sidewalks, trees, landscaping, and local-serving uses with new buildings that step down in relationship to the scale and character of adjacent neighborhoods. 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 Uptown Market 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.

### **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 Notice and Input**

#### Council District Plan Implementation Committee

This project is scheduled to go to the Council District 1 Plan Implementation Committee for recommendation on October 17, 2017.

#### 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 & c) cannot be made. These findings are attached as Exhibit J.

If the Planning Commission decides to grant approval of the request to obtain a Type 20 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. The Planning Commission shall also find that there is substantial evidence in the administrative record to determine any of the following exceptions in accordance with FMC Section 15-2706-E-5 apply:

- a. The proposed use is not located within an area in which the Chief of Police has determined, based upon quantifiable information, that the proposed use a) would be detrimental to the public health, safety, or welfare of persons located in the area, or b) would increase the severity of existing law enforcement or public nuisance problems in the area.
- b. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.
- c. The proposed outlet for the off-premises sale of alcoholic beverages would act as a public convenience or necessity to an underserved portion of the community and/or enhance the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety.

## ENVIRONMENTAL FINDINGS

No Environmental findings are necessary to adopt a staff recommendation 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 20 ABC license then a Section 15301/Class 1 Categorical Exemption (see attached Exhibit L: 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 CMX (*Corridor/Center Mixed Use*) zone district by conditional use permit and is consistent with the planned Corridor Center Mixed Use 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 Bullard 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. C-17-090 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 be excepted from the location restrictions pursuant to FMC Section 15-2706-E and make the required findings of FMC Section 15-5306. Should the Planning Commission make the required findings, approval of the conditional use permit application shall be subject to the applicant's compliance with the Conditions of Approval dated October 18, 2017.

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
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