



## Legislation Details (With Text)

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**Title:** Consideration of Development Permit Application No. D-17-109, Planned Development Permit Application No. P18-03876, and related Environmental Assessment No. D-17-109/P18-03876, located on the easterly side of H Street, between Mono and Inyo Streets, in downtown Fresno (Council District 3) - Planning & Development Department.

1. ADOPT Environmental Assessment No. D-17-109/P18-03876 dated September 18, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Section 15332/Class 32 Categorical Exemption;

2. ADOPT findings pursuant to Government Code Section 65863(b)(2) that there is substantial evidence in the record that remaining sites identified in the Housing Element can accommodate the City of Fresno's share of the Regional Housing Needs Assessment (RHNA).

3. APPROVE Development Permit Application No. D-17-109 subject to compliance with the Conditions of Approval dated September 18, 2019; and

4. APPROVE Planned Development Permit Application No. P18-03876 subject to compliance with the Conditions of Approval dated September 18, 2019.

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Photograph, 3. Exhibit C - Planned Land Use, 4. Exhibit D - Zoning Map, 5. Exhibit E - Project Information Tables, 6. Exhibit F - Noticing Map, 7. Exhibit G - Master Application, 8. Exhibit H - Operational Statement, 9. Exhibit I - Site Plan and Exhibits, 10. Exhibit J - Development Code Modifications Tables, 11. Exhibit K - Conditions of Approval, 12. Exhibit L - Notice of Intent, 13. Exhibit M - Emails & Letters in Response, 14. Exhibit N - Notice of Action, 15. Exhibit O - Appeal Letter in Response to Notice of Action, 16. Exhibit P - Notice of Planning Commission Hearing, 17. Exhibit Q - Analysis of Appeal, 18. Exhibit R - Environmental Assessment, 19. Exhibit S - Fresno Municipal Code Findings

Date	Ver.	Action By	Action	Result
9/18/2019	1	Planning Commission	approved	Pass

## REPORT TO THE PLANNING COMMISSION

**September 18, 2019**

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

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

RALPH KACHADOURIAN, Supervising Planner  
Development Services Division

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

## **SUBJECT**

Consideration of Development Permit Application No. D-17-109, Planned Development Permit Application No. P18-03876, and related Environmental Assessment No. D-17-109/P18-03876, located on the easterly side of H Street, between Mono and Inyo Streets, in downtown Fresno (Council District 3) - Planning & Development Department.

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3. **APPROVE** Development Permit Application No. D-17-109 subject to compliance with the Conditions of Approval dated September 18, 2019; and
4. **APPROVE** Planned Development Permit Application No. P18-03876 subject to compliance with the Conditions of Approval dated September 18, 2019.

## **EXECUTIVE SUMMARY**

Ian Robertson, of iT Architecture, Inc., on behalf of Terrance Frazier of TFS Investments, LLC, has filed Development Permit Application D-17-109 and related Planned Development Permit Application No. P18-03876 pertaining to the entire ±1.37 acre block located on the easterly side of H Street, between Mono and Inyo Streets, in Downtown Fresno. The subject applications request authorization to redevelop the subject properties in four phases.

Phase I proposes an outdoor retail & entertainment center to be constructed from shipping containers. Phase II proposes the demolition of existing buildings and parking lot and construction of a 4-story mixed use apartment building. Phase III proposes partial demolition of existing buildings and construction of a new single story restaurant, bar and entertainment venue. Specific plans for Phase IV are not known at this time. Related Planned Development Permit Application No. P18-03876 was filed concurrently and applies only to Phase I of the proposed project. The related application was filed in order to allow greater flexibility than already provided in the Development Code by requesting authorization to modify certain property development standards. Specific modifications are outlined below. The subject property is zoned DTN (*Downtown Neighborhood*).

The Planning and Development Director approved Development Permit Application D-17-109 and related Planned Development Permit Application No. P18-03876 on June 26, 2019. In response to

the Notice of Action granting the special permit, an appeal of the Director's decision was received in accordance with FMC Section 15-5017-A-1. Therefore, the subject applications are being considered by the Planning Commission.

## BACKGROUND

### Project Description

The applicant proposes to redevelop entire  $\pm 1.37$  acre block located in downtown Fresno in four phases.

#### Phase I

Phase I will consist of developing the vacant parcel located at 702 H Street (corner of H and Mono Streets) for purposes of providing an integrated retail & entertainment center by utilizing shipping containers, shade structures, and creative use of materials and design. The proposed facility will feature two initial restaurants (one future for a total of three), two bars, a stage for music and live performances, outdoor seating area, restrooms, and an office.

#### Phase II

Phase II will include the demolition of existing buildings and parking lot located at 740-762 H Street (corner of H and Inyo Streets) for purposes of constructing a 4-story mixed use apartment building consisting of approximately 7,000 square feet of ground floor retail and 48 one and two bedroom residential units with private balconies located on the second, third, and fourth floors (approximately 50,364 total square feet). In addition, Phase II will include 45 parking spaces located on the ground floor behind the proposed retail/commercial space.

#### Phase III

Phase III will include the partial demolition of existing buildings located at 710-714 H Street and construction of a new single story metal building for a restaurant, bar and entertainment venue.

#### Phase IV

Specific plans for Phase IV are not known at this time. However, for master plan purposes, Phase IV calls for the future demolition and/or adaptive reuse of the existing building located at 704 H Street.

The subject property is zoned DTN (*Downtown Neighborhood*). Furthermore, the subject property has three street frontages (H Street, Mono Street, and Inyo Street). Pursuant to FMC Section 15-1501-C and FMC Figure 15-1501, H and Inyo Streets are classified as Activity Class B Streets and Mono Street is identified as an Activity Class C Street.

Streets in Activity Class C are walkable urban corridors with moderate pedestrian activity. As put forth in Table 15-1502, retail, restaurant, and entertainment uses are appropriate in these areas, but ground floor residential or office uses are also appropriate. Streets in Activity Class C are walkable and comfortable for pedestrians, but are not the most active streets within Downtown. Ground floor residential or office uses are appropriate, but retail uses should be small and restricted to corners. For review and staff analysis purposes, when a project is located at the intersection of two streets with different Activity Classifications, the requirements of the higher activity class shall wrap the corner and prevail over the lower order classification for a distance determined by the Review Authority.

Pursuant to Table 15-1502 of the Fresno Municipal Code (FMC), a mixed use multi-family residential

development is permitted “by-right” in the DTN-Activity Class B zone district/activity classification and not subject to Specific Limitations of Table 15-1502 or additional regulations of Article 27. Eating and Drinking Establishments, including Restaurants with Alcohol Sales and Bars/Nightclubs/Lounges, are also permitted “by right” in the DTN-Activity Class B & C zone district/activity classifications but are subject to Specific Limitation numbers 3 and 4. Specifically, Limitation No. 3 permits eating and drinking establishments (w/ or w/out alcohol) “by-right” only on the ground floor of buildings located along an Activity Class B street frontage. However, eating and drinking establishments are permitted on the uppermost floors of buildings over four stories in height. In addition, Limitation No. 4 permits eating and drinking establishments (w/ or w/out alcohol) “by-right” only on ground floor at the intersection of two public streets and may not exceed 2,500 square feet in floor area.

Pursuant to Table 15-1502 of the Fresno Municipal Code (FMC), Small Scale Entertainment, which includes smaller and primarily indoor facilities such as bowling alleys, are permitted “by-right” in the DTN-Activity Class B zone district/activity classification and not subject to Specific Limitations of Table 15-1502 but are subject to additional regulations of FMC Section 15-2708, Arcades, Video Games, and Family Entertainment Centers. In addition, a bar or restaurant operating in conjunction with an entertainment use is also subject to applicable additional regulations of Article 27.

The proposed uses, except multi-family residential, are Special Uses and are subject to additional regulations pursuant to Sections 15-2708 (Arcades, Video Games, and Family Entertainment Centers), 15-2744 (Outdoor Dining and Patio Areas), and 15-2751 (Restaurants w/ Alcohol Sale; Bars, Nightclubs, and Lounges) of the FMC. Furthermore, prior to the sale and consumption of alcohol (both on-site and within the public right-of-way in association with a business), individual establishments must first obtain an approved Zone Clearance in accordance with City of Fresno Policy and Procedure Nos. C-006 (Outdoor Dining within the Public Right-of-Way) and C-007 (Downtown ABC On-Site Sales).

As mentioned above, the integrated retail & entertainment center proposed under Phase I will incorporate shipping containers, shade structures, and a mix of alternative design and building materials not typically utilized. As proposed, Phase I will comply with the majority of development standards. However, in order to implement the proposed alternative design the applicant has requested the review authority to allow flexibility for certain development standards.

Pursuant to FMC Section 15-5901, Planned Development approval is required for projects on infill sites that desire greater flexibility than already provided for in the development code. Therefore, related Planned Development Permit Application No. P18-03876 was filed concurrently in order to modify required Site Design and Façade Design Development Standards in accordance with FMC Sections 15-1504 & 15-1505; specifically for Phase I. Requested development standard modifications include: minimum height requirements, commercial sidewalk connections, window and door opening designs, horizontal alignment, and required façade elements.

## **Fresno Municipal Code**

Given the conditions of approval dated September 18, 2019 (Exhibit K), Development Permit Application No. D-17-109 meets all the provisions of the FMC and complies with all applicable design guidelines of the DTN (*Downtown Neighborhood*) zone district except for the specific development code modifications requested by Planned Development Permit Application No. P18-03876 which are specific only to Phase I. A complete list of the requested modifications associated with the Planned Development is outlined in the attached list of modification table (Exhibit J).

## LAND USE PLANS AND POLICIES

### Fresno General Plan

The Fresno General Plan designates the subject property for Downtown Neighborhood planned land uses and provides objectives to guide in the development of this project. Downtown Neighborhood is intended to create lively, walkable, mixed-use urban neighborhoods surrounding the Downtown Core. The proposed project will facilitate development of the site with a four story mixed use commercial/residential building and multiple eating and drinking/entertainment establishments with outdoor dining opportunities which is the intent of the Fresno General Plan for this property. Objectives and policies within the Fresno General Plan support a successful and competitive Downtown and protect, preserve, and enhance historic resources. Some of those objectives and policies are outlined below:

- Objective UF-1: Emphasize the opportunity for a diversity of districts, neighborhoods, and housing types.
  - ✓ Policy UF-1-b: **Revitalized Downtown Planning Area.** Support adoption of community plans or Specific Plans, Downtown Development Code, programs, and streamlined regulations to support a revitalized Downtown Planning Area as the Primary Activity Center for Fresno and the surrounding region.
- Objective UF-3: Revitalize the Downtown to be the economic and cultural heart of Fresno and the region.
- Objective UF-5: Promote a greater concentration of buildings and people in the Downtown.
- Objective UF-12: Locate roughly one-half of future residential development in infill areas-defined as being within the City on December 31, 2012-including the Downtown core area and surrounding neighborhoods, mixed-use centers and transit-oriented development along major BRT corridors, and other non-corridor infill areas, and vacant land.
- Objective LU-1: Establish a comprehensive citywide land use planning strategy to meet economic development objectives, achieve efficient and equitable use of resources and infrastructure, and create an attractive living environment.
  - ✓ Policy LU-1-a: **Promote Development within the Existing City Limits as of December 31, 2012.** Promote new development, infill, and rehabilitation of existing building stock in the Downtown Planning Area, along BRT corridors, in established neighborhoods generally south of Herndon Avenue, and on other infill sites and vacant land within the City.
- Objective LU-2: Plan for infill development that includes a range of housing types, building forms, and land uses to meet the needs of both current and future residents.
  - ✓ 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.

- Objective LU-3: Support the successful fulfillment of plans when adopted for the Downtown Planning Area.
- Objective LU-5: Plan for a diverse housing stock that will support balanced urban growth, and make efficient use of resources and public facilities.
- Objective LU-6: Retain and enhance existing commercial areas to strengthen Fresno's economic base and site new office, retail, and lodging use districts to serve neighborhoods and regional visitors.
  - ✓ Policy LU-6-a: **Design of Commercial Development.** Foster high quality design, diversity, and a mix of amenities in new development with uses through the consideration of guidelines, regulations and design review procedures.

## Downtown Neighborhoods Community Plan

The Downtown Neighborhoods Community Plan designates the subject property for Downtown Neighborhood planned land uses and provides policies and objectives to guide in the development of this project. Some of those objectives and policies are outlined below:

- Goal 2.1: Enhance the unique sense of character and identity of the Downtown Neighborhoods' different planning areas.
  - ✓ Policy 2.1.8: Establish Downtown Fresno as the most prominent center for cultural arts, high density urban living, and employment in the San Joaquin Valley.
- Goal 2.2: Revitalize Downtown Fresno to be the economic and cultural heart of the city and the region.
  - ✓ Policy 2.2.1: Prioritize the transformation of Downtown into a clean and safe multi-use place by introducing and mixing high-density housing, office, retail, restaurants and entertainment uses.
- Goal 2.4: Promote a greater concentration of buildings and people in Downtown Fresno.
  - ✓ Policy 2.4.1: Require new commercial development to be designed with continuous building facades along street frontage and with a high percentage of site coverage (CAP Urb 2-1).
  - ✓ Policy 2.4.2: Require parking structures constructed adjacent to any street frontage or pedestrian way to contain ground floor tenant spaces and human scale design

elements of public interest along the pedestrian sidewalk (CAP Urb 2-1).

- ✓ Policy 2.4.5: Ensure that all new buildings, including mid- to high-rise buildings, provide a pedestrian scale ground-level street frontage.
- ✓ Policy 2.4.7: Encourage infill of vacant or underutilized land with buildings that are compatible with the existing physical, climatic, cultural, and historical context.
- Goal 2.5: Promote a diverse mix of uses in Downtown Fresno.
  - ✓ Policy 2.5.1: Allow for the introduction of a variety of housing choices and building types in Downtown.
  - ✓ Policy 2.5.5: Promote Downtown as an entertainment district that includes entertainment venues such as theaters, nightclubs, and rooftop bars and accommodates late-night activity.
- Goal 2.6: Develop each of Downtown's subareas, as established by the Fulton Corridor Specific Plan, according to its unique character.
  - ✓ Transform South Stadium into a mixed-use district that introduces a diversity of new uses, including housing, creative businesses, and specialty retail businesses, while embracing its raw, industrial charm.

Based upon the Fresno General Plan and Downtown Neighborhoods Community Plan goals and policies, the proposed project would serve to meet many of the above listed goals and policies as it would improve economic vitality in the City of Fresno and allow development of existing properties within the City of Fresno. The project is an infill, mixed-use and commercial project that will not only provide commercial/retail spaces along Inyo, H, and Mono Streets, but also multi-family residential units within a couple of blocks from Bus Rapid Transit stops and the proposed High-Speed Rail station. The project will enhance and revitalize Downtown Fresno by promoting a greater concentration of buildings that provide pedestrian scale ground-level frontage and a high percentage of street frontage coverage while utilizing vacant, underdeveloped land and vacant and underutilized land and buildings that is compatible with the existing physical and historic context. Furthermore, the project will help establish the South Stadium Neighborhood as a mixed-use entertainment district by providing a combination of housing and entertainment venues inclusive of restaurants, bars, nightclubs, and rooftop bars.

## Housing Element

This project is on sites listed in the Housing Element Sites Inventory (2008-2013 RHNA). The Housing Sites Inventory (2008-2013 RHNA) establishes the minimum capacity of this site to be 70

units with an affordability categorization of Very Low/Low. The proposed project include 48 Above Moderate (market rate) units, therefore this project represents a reduction of 70 Very Low/Low units.

State law requires that when a jurisdiction permits development on a Housing Element Site at less than the established minimum residential capacity, the following findings (supported by substantial written evidence) must be made at the time of approval: the reduction is consistent with the adopted general plan, including the housing element, and that the remaining sites identified in the Housing Element are adequate to accommodate the City of Fresno's share of the RHNA.

As of the date of this analysis, the remaining sites identified in the Housing Element are not adequate to meet the requirements of Section 65583.2 of the California Government Code or to accommodate the City's share of the regional housing need pursuant to Section 65584. Approval of this project will reduce the 2008-2013 RHNA capacity for Very Low/Low units by 70 units, which is more than the current excess capacity of 59 units. The 2008-2013 RHNA obligation for Very Low/Low is 4,873 units, and the total capacity remaining after the proposed decrease is 4,862 units. Per Section 65863 of the California Government Code a housing project cannot be denied because it would reduce the capacity of the Housing Sites Inventory to below the City's RHNA obligation in any one income category. In keeping with Section 65863, the City will have 180 days after the approval of this project to identify and make available additional adequate sites to increase the capacity of the Housing Sites Inventory (2008-2013 RHNA) to accommodate the City's share of the regional housing need.

## **Public Notice and Input**

### *Council District Project Review Committee*

As mentioned in the project information table, there was no District 3 Project Review Committee to recommend approval of the project, therefore no comments or recommendations were received.

### *Airport Land Use Commission*

As previously mentioned, the subject property is designated for Urban uses in accordance with the Fresno County Airport Land Use Compatibility Plan and is located within the Inner-City Boundary and within Traffic Pattern Zone 6 of the Fresno Chandler Executive Airport. The proposed project falls outside of the Chandler Airport noise contours and is therefore not subject to any restrictions. The proposed project was considered by the Fresno County Airport Land Use Commission at its meeting on June 3, 2019. After a complete hearing, the Commission voted unanimously to recommend approval of the project with the following condition:

- 1) A Part 77, Form 7460 shall be filed with the Federal Aviation Administration.

### *Notice of Intent to Take Action*

Pursuant to FMC Section 15-5205, Development Permits do not require public notice. However, pursuant to FMC Section 15-5903-A, Planned Development Permit Applications shall be processed as a Conditional Use Permit, according to the procedures of Article 53. Therefore, public notice was required for Planned Development Permit Application No. P18-03876. The Planning and Development Department mailed a Notice of Intent to Take Action (Exhibit L) to surrounding property owners within 1,000 feet of the subject site on June 7, 2019, in accordance with FMC Section 15-5007. One phone call and two emails were received. One of the emails was from the individual who opposed the project by telephone. The other included an attached protest letter dated June 17, 2019.



The emails and letter of concern, attached as Exhibit M, primarily focused on a lack of adequate time to respond to the Notice of Intent and impacts related to the applicants Temporary Use/Special Event Permit (Alley Wave).

### Notice of Action

The Director of the Planning and Development Department approved Development Permit Application No. D-17-109 and related Planned Development Permit Application No. P18-03876 on June 26, 2019. In accordance with FMC Sections 15-5007 and 15-5009, the Planning and Development Department mailed a Notice of Action (Exhibit N) only to those individuals who responded to the Notice of Intent. In response to the mailed Notice of Action, one formal appeal letter, dated July 9, 2019, was received. The appeal letter, attached as Exhibit O, listed several reasons for the appeal including but not limited to the perceived association with a separate Temporary Use/Special Event Permit (Alley Wave) that was obtained by the applicant; trash, drug use, underage drinking, and gang fights associated with said Temporary Use/Special Event Permit; lack of parking; and lack of required completion/timeline for subsequent phases. Pursuant to FMC Section 15-5017-A-1, the Director has referred this application to the Planning Commission for action.

### 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 on August 23, 2019 (Exhibit P). No comments have been received to date.

### **Analysis of Comments & Concerns**

An analysis of the comments and concerns expressed in the letters and emails that were received in response to the Notice of Intent to Take Action and the Notice of Action is attached as Exhibit Q.

### **ENVIRONMENTAL FINDINGS**

The California Environmental Quality Act (Public Resource Code Section 21000 et seq.) permits a public agency to determine whether a particular project is exempt from CEQA. A determination of a Categorical Exemption from Section 15332/Class 32 was made and Environmental Assessment D-17-109/P18-03876, dated September 18, 2019 (Exhibit R), was prepared for this project. A Section 15332/Class 32 exempts from the provisions of CEQA the construction of projects characterized as in-fill development meeting the following conditions: a) the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations, b) the proposed development occurs within city limits on a project site of no more than five acre and is substantially surrounded by urban uses, c) the project site has no value as habitat for endangered, rare or threatened species, d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality, and e) the site can be adequately served by all required utilities and public services.

This site is located within the City limits and is consistent with the Fresno General Plan designation, policies, and zoning. The existing DTN zone district is consistent with the Downtown Neighborhoods land use designation approved for this site by the Fresno General Plan and the Downtown Neighborhoods Community Plan. The proposed development occurs on a project site of

approximately  $\pm 1.37$  acres, which is less than the five acre maximum, and is substantially surrounded by urban uses. The site has no value as habitat for endangered, rare or threatened species and can be adequately served by all required utilities and public services. 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. Furthermore, the proposed project is not expected to have a significant effect on the environment. Accordingly, a categorical exemption, as noted above, has been prepared for the project.

## **FRESNO MUNICIPAL CODE FINDINGS**

Based upon analysis of the applications, staff concludes that the required findings of Sections 15-5206 and 15-5905 of the FMC and the Housing Element (California Government Code §§ 65863, et seq.) can be made. These findings are attached as Exhibit S to this staff report.

## **CONCLUSION**

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Downtown Community Plan and Fresno General 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 the proposed Development Permit Application No. D-17-109 and related Planned Development Permit Application No. P18-03876 are appropriate for the project site.

Planning Commission action of the proposed Development Permit and Planned Development Permit is final, unless appealed to the City Council in accordance with FMC Section 15-5017.

### **Attachments:**

- Exhibit A - Vicinity Map
- Exhibit B - Aerial Photograph
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