



Legislation Details (With Text)

File #: ID19-11413 **Version:** 1 **Name:** P18-03953
Type: Action Item **Status:** Agenda Ready
File created: 10/4/2019 **In control:** Planning Commission
On agenda: 10/16/2019 **Final action:**
Title: Consideration of Conditional Use Permit Application No. P18-03953 for the Dollar General at 4785 East Church Avenue, located on the northwest corner of East Church Avenue and South Chestnut Avenue (Council District 5) - Planning and Development Department.

Based upon the evaluation contained in this report and appeal received from the project applicant, staff recommends that the Planning Commission take the following actions:

1. ADOPT Environmental Assessment No. P18-03953 dated July 25, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 Categorical Exemption.

2. DENY the applicant's appeal and UPHOLD the action of the Planning and Development Department Director to deny Conditional Use Permit Application No. P18-03953, requesting authorization to establish a State of California Alcoholic Beverage Control Type 20 License (Package Store - sale of beer and wine for consumption off the premises where sold) at the Dollar General grocery and consumer goods store to the address noted above.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A - Vicinity map, 2. Exhibit B - Aerial Photograph of Subject Property, 3. Exhibit C - Land Use / Zoning Maps, 4. Exhibit D - Public Hearing Notice / Map, 5. Exhibit E - Operational Statement, 6. Exhibit F – Exhibits A, F (Site / Floor Plans), 7. Exhibit G - Applicant's Appeal Letter, 8. Exhibit H - Police Dept./FUSD/District 5 Committee Comments, 9. Exhibit I - Project Information Tables, 10. Exhibit J - Fresno Municipal Code Findings, 11. Exhibit K - Environmental Determination, 12. Exhibit L - Conditions of Approval dated October 16, 2019

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

REPORT TO THE PLANNING COMMISSION

OCTOBER 16, 2019

FROM: MIKE SANCHEZ, Assistant Director
Development Services Division

THROUGH: MARGO LERWILL, Supervising Planner
Development Services Division

BY: KAO VANG, Planner
Development Services Division

SUBJECT

Consideration of Conditional Use Permit Application No. P18-03953 for the Dollar General at 4785 East Church Avenue, located on the northwest corner of East Church Avenue and South Chestnut Avenue (Council District 5) - Planning and Development Department.

Based upon the evaluation contained in this report and appeal received from the project applicant, staff recommends that the Planning Commission take the following actions:

1. **ADOPT** Environmental Assessment No. P18-03953 dated July 25, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 Categorical Exemption.
2. **DENY** the applicant's appeal and **UPHOLD** the action of the Planning and Development Department Director to deny Conditional Use Permit Application No. P18-03953, requesting authorization to establish a State of California Alcoholic Beverage Control Type 20 License (Package Store - sale of beer and wine for consumption off the premises where sold) at the Dollar General grocery and consumer goods store to the address noted above.

EXECUTIVE SUMMARY

Conditional Use Permit Application No. P18-03953 was filed by Steve Rawlings on behalf of an existing Dollar General store pertaining to .36 acres at 4785 East Church Avenue, located on the northwest corner of East Church Avenue and South Chestnut Avenue. The applicant requests a finding of public convenience or necessity to establish a State of California Alcoholic Beverage Control Type 20 license (Package Store - sale of beer and wine for consumption off the premises where sold) for the Dollar General grocery and consumer goods store. (Exhibit F)

On July 3, 2019, Conditional Use Permit Application No. P18-03953 was denied based on the close proximity of the requested alcohol sales use to a public school and to an established convenience store with an alcohol sales license. The decision was appealed by the applicant on July 3, 2019 (Exhibit G). Staff recommends upholding the denial based on substantial evidence detailed in this staff report that 1) specific Findings for the Conditional Use Permit contained in Section 15-5306 cannot be made and 2) that the application will not meet the Exceptions provisions for location restrictions under Section 15-2706-E-5.

BACKGROUND

Police Department Review

The Police Department reviewed the alcohol sales request and indicated that they are in opposition to the application because there is a high concentration of Type 20 and Type 21 alcohol licenses in the area. (See Exhibit H). The criminal offenses reported in this crime reporting district is 445. Meanwhile, the average number of reported criminal offenses is 453. The reported number of criminal offenses in this area does not currently exceed the average number, however, if this project obtains approval, the number of criminal offenses in this area will likely increase or possibly exceed the reported average number of criminal offenses. The Police Department is also in opposition because it is located within a mile of three public schools: Aynsworth Elementary (directly across the street), Terronez Middle School, and Phoenix Secondary School.

Crime Reporting District Number	2961
Total Number of Reporting Districts	504
Total Number of Offenses in All Reporting Districts	228,678
Average Number of Offenses per District	452.83
120% of Average Number of Offenses	543
Total Number of Offenses in Reporting District	445

Source: California Department of Alcohol and Beverage Control

Should the Planning Commission decide to grant approval of the request to establish a Type 20 ABC license, the conditions of approval will include Police Department requirements for submittal of a security plan and compliance with the Standard Fresno Police Department ABC-CUP conditions, which include compliance with the FMC limiting noise and unlawful nuisance, compliance with ABC rules and employee educations, video camera surveillance, limitations on alcohol types, and limitations on on-site alcohol consumption and loitering.

Fresno Unified School District Review

Fresno Unified School District reviewed this application and did not support the request due to the close proximity to Aynesworth Elementary School, which is located directly across the street from the Dollar Tree. This school is within approximately 175 feet to the south of the store. (See Exhibit H)

Council District 5 Project Review Committee

The District 5 Committee reviewed this application on April 22, 2019 and recommended denial with the vote of 2 yes and 1 no (Exhibit H). In the meeting, it was discussed that four off-sale alcohol licenses are allowed within Census Tract 12.02 and currently there are two existing off-sale licenses. The two active licenses are located on the southeast corner of East Church and South Maple (Church Market-4620 East Church and T&J Food/Liquor-4602 East Church). There is a 7-Eleven across the street at 2397 South Chestnut Avenue at the northeast corner of Chestnut and Church, which is located within Census Tract 14.10. However, if the requested application was to be approved, there would be a total of three alcohol licenses in Census Tract 12.02 with a total of four off-sale alcohol license establishments within a half-mile distance on Church Avenue.

LAND USE PLANS AND POLICIES

Fresno General Plan

The Fresno General Plan provides objectives and policies to guide development. The following are excerpts of the applicable General Plan goals:

Goal 8 states: *Develop Complete Neighborhoods and districts with an efficient and diverse mix of residential densities, building types, and affordability which are designed to be healthy, attractive, and centered by schools, parks, and public and commercial services to provide a sense of place and that provide as many services as possible within walking distance.*

While the proposed request for alcohol sales is intended to enhance the shopping experience of local residents by providing alcohol as part of a greater range of products conveniently available within a single store and within walking distance of nearby residential developments, three other locations

from the subject site already provide off-sale alcohol; directly across the street on South Chestnut Avenue and ½ mile west on East Church Avenue at South Maple Avenue.

Goal 9 states: *Promote a city of healthy communities and improve quality of life in established neighborhoods.*

Goal 16 states: *Protect and improve public health and safety.*

High exposure to the easy availability of alcohol sales affects public health, safety, and quality of life in the neighborhood. A local resident or pedestrian may be exposed to public drunkenness and criminal activities - such as gambling, loitering and drug dealing - that contribute to an environment of social disorder around many alcohol sales outlets. Furthermore, there may be a higher probability of exposure to drivers under the influence of alcohol in close proximity to such sales outlets.

A high concentration of retail stores providing alcohol sales contributes to economic and social disintegration. Similar to power plants and refineries, alcohol outlets represent a form of unwanted land use that conflicts with desirable land uses such as schools, parks, and residences. The over-concentration of alcohol sales outlets increases the perceived lack of safety and limits walkability in a neighborhood. Moreover, concentrations of such outlets in a neighborhood can constrain economic opportunities for current and new business and therefore are both a symptom and accelerator of economic decline.

Finally, a greater amount of retail outlets providing alcohol sales can contribute to a variety of health and safety problems. Studies show that neighborhoods with higher concentrations of these outlets also have higher rates of alcohol-related hospitalizations, drunken driving accidents, and pedestrian injuries.

Roosevelt Community Plan

Upon reviewing the policies contained in the Roosevelt 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.

However, it should be noted that the Roosevelt Community Plan identifies community issues and concerns for citizens living within its planning area. These concerns include development that generates a negative perception about the community, such as crime, alcohol abuse, and at-risk youth. The following are applicable goals identified in the Community Plan:

Goal 1-11 states: Enhance the appearance and compatibility of existing and proposed commercial development.

Goal 1-11.10 recommends annual review and abatement procedures addressing commercial establishments which sell alcoholic beverages. In addition to addressing associated incidents of serious crimes, such as drugs sales or use and violent crime, the goal is intended to reduce public disturbances, drunkenness, and other behavior of patrons or employees which may be harmful to nearby residents.

Increasing the number of alcohol sales establishments within the Roosevelt Community Plan area, with the associated negative community and economic impacts described and cited above and within

close proximity of existing sales locations, including a nearby elementary school, conflicts with community concerns and is not in compliance with the aforementioned Plan Goals.

Alcohol Sales

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 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.

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 Fresno Municipal Code 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 over-concentration of ABC licenses.

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 (ABC) in order to sell alcohol. Prior to the issuance of an ABC license, ABC is awaiting the decision on the subject Conditional Use Permit Application.

Number of Existing and Allowed ABC Licenses

According to the ABC, four off-sale alcohol licenses are allowed in Census Tract 12.02. An ABC report shows that this census tract is not over concentrated and is not located in a high crime reporting district. Currently, there are two existing off-sale alcohol licenses.

Citywide Development Code

Under Article 27 (Standards for Specific Uses and Activities), Section 15-2706 (Alcohol Sales), Sub-Section E (Location Restrictions for New Establishments) prohibits new off-sale alcohol

establishments that are under 10,000 square feet 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.

Based on the aforementioned location restrictions for new establishments, the Director denied the application since the alcohol sales request is located within 500 feet of a public school (Aynesworth Elementary across the street), and within 500 feet of another off-sale alcoholic beverage establishment (the 7-11 across the street on South Chestnut Avenue). A new establishment may be excepted from location restrictions if the Review Authority determines any of the following applies:

- 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.

Notice of Planning Commission Hearing

The Planning and Development Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property (Exhibit D). Staff also sent notices, via U.S. mail and via email, to individuals who requested notification.

FRESNO MUNICIPAL CODE FINDINGS

The required findings under Article 53, Section 15-5306 for Conditional Use Permits of the Fresno Municipal Code 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 cannot be made for the requested alcohol sales use given its proximity to an elementary school and another alcoholic beverage establishment and therefore would be detrimental to the public health, safety or welfare of persons and businesses located in the surrounding area. These findings are attached as Exhibit J.

If the Planning Commission decides to grant approval of the request to establish a Type 20 ABC license, the Commission must find that there is substantial evidence in the administrative record to make the necessary findings for the Conditional Use Permit, as well as determine that an exception from the locational restrictions identified under Section 15-2706-E-5 applies, and amend the Findings for the Conditional Use Permit to allow the sale of alcohol

ENVIRONMENTAL DETERMINATION

A determination of a Categorical Exemption, under Section 15301/Class 1 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines was made and Environmental Assessment No. P18-03953 was completed for this project on June 25, 2019. (Exhibit K)

Class 1 consists 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 existing or former use. The key consideration is whether the project involves negligible or no expansion of an existing use. The proposed project complies with the Class 1 exemption, as the project will involve no expansion of the physical location or of the established and operating use. None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Roosevelt 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 Conditional Use Permit Application No. P18-03953 is not appropriate for the site.

If the Planning Commission decides to grant approval of the application request, the Commission must find that there is substantial evidence in the administrative record that the project can make the required findings of FMC Section 15-5306, and an exception from the locational restrictions under Section 15-2706-E-5. Approval of the conditional use permit application will be subject to compliance with the drafted Conditions of Approval dated October 16, 2019. (Exhibit L

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 of Subject Property
- Exhibit C - Land Use / Zoning Maps
- Exhibit D - Public Hearing Notice / Map
- Exhibit E - Operational Statement
- Exhibit F - Exhibits A, F (Site / Floor Plans)
- Exhibit G - Applicant's Appeal Letter
- Exhibit H - Police Dept./FUSD/District 5 Committee Comments
- Exhibit I - Project Information Tables
- Exhibit J - Fresno Municipal Code Findings
- Exhibit K - Environmental Determination
- Exhibit L - Conditions of Approval dated October 16, 2019