



## Legislation Details (With Text)

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**On agenda:** 1/8/2020    **Final action:** 1/8/2020  
**Title:** Consideration of Conditional Use Permit Application No. P19-01019, request to upgrade the A&M Westside Market Type 20 Off-Sale Beer & Wine License (Package Store - sale of beer and wine for consumption off the premises where sold) to a Type 21 Off-Sale General License (Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold) located at 10 East Whitesbridge Avenue at the southeast corner of South Thorne Avenue. (Council District 3).

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

1. ADOPT Environmental Assessment for P19-01019 dated June 5, 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. P19-01019 request to upgrade the A&M Westside Market Type 20 Off-Sale Beer & Wine alcohol sales license to a Type 21 Off-Sale General License to include distilled spirits.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Vicinity Map, 2. Exhibit B - Land Use & Zoning Map, 3. Exhibit C - Project Information Tables, 4. Exhibit D - Master Application / Owner's Letter of Authorization, 5. Exhibit E - CUP C-94-86 Approval 9-19-94, 6. Exhibit F - Operational Statement / Site Plan & Floor Plan, 7. Exhibit G - Correspondence, 8. Exhibit H - P19-01019 CUP Denial Letter, 9. Exhibit I - Applicant Appeal Letter, 10. Exhibit J - D3 Project Review Committee Record, 11. Exhibit K - Public Hearing Notice & Noticing Map, 12. Exhibit L - ABC License Reports (Census Tract 2), 13. Exhibit M - Environmental Assessment, 14. Exhibit N - Fresno Municipal Code Findings

Date	Ver.	Action By	Action	Result
1/8/2020	1	Planning Commission	approved	Pass

## REPORT TO THE PLANNING COMMISSION

**January 8, 2020**

**FROM:** JENNIFER K. CLARK, AICP, Director  
Planning & Development Department

**THROUGH:** MIKE SANCHEZ, AICP, Assistant Director

Development Services Division

**BY:** RALPH KACHADOURIAN, Supervising Planner  
Development Services Division

**SUBJECT**

Consideration of Conditional Use Permit Application No. P19-01019, request to upgrade the A&M Westside Market Type 20 Off-Sale Beer & Wine License (*Package Store - sale of beer and wine for consumption off the premises where sold*) to a Type 21 Off-Sale General License (*Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold*) located at 10 East Whitesbridge Avenue at the southeast corner of South Thorne Avenue.  
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Based upon the evaluation contained in this report and appeal received from the applicant, staff recommends that the Planning Commission take the following actions:

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2. DENY the applicant's appeal and UPHOLD the action of the Planning and Development Department Director to deny Conditional Use Permit Application No. P19-01019 request to upgrade the A&M Westside Market Type 20 Off-Sale Beer & Wine alcohol sales license to a Type 21 Off-Sale General License to include distilled spirits.

**EXECUTIVE SUMMARY**

Conditional Use Permit Application No. P19-01019 was filed by Abdulaziz Muthana pertaining to the property located at 10 East Whitesbridge Avenue on the southeast corner of South Thorne Avenue. The applicant is requesting to upgrade the existing A&M Westside Market State of California Alcoholic Beverage Control Type 20 Off-Sale Beer & Wine License (*Package Store - sale of beer and wine for consumption off the premises where sold*) to a Type 21 Off-Sale General License (*Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold*). The market is located within the RS-5 (*Residential Medium Density / Neighborhood Revitalization Overlay*) zone district.

On August 27, 2019, Conditional Use Permit Application No. P19-01019 was denied based on concerns expressed and raised by City Council District 3 from the surrounding community and neighborhood with the overconcentration of alcohol licenses issued in the neighborhood, and with the site located in a reported high crime area. (Exhibit H)

The Director's decision was appealed by the applicant on September 16, 2019. Staff recommends upholding the denial based on substantial evidence detailed in this staff report that; 1) specific Findings made by the Director in denial of the Conditional Use Permit contained in Section 15-5306 remain valid; and 2) that the special permit application will not meet the locational restrictions for alcohol sales nor the exception provisions specified under Section 15-2706-E.

**BACKGROUND**

The existing market currently has a Type 20 off-sale alcohol license (beer & wine) and the applicant is requesting to upgrade to a Type 21 off-sale general license to include the sale of distilled spirits. There are no other changes being proposed by the applicant to the current retail operations of the market. The market operates from 7:30am - 10:00pm seven days per week. The requested upgrade to a Type 21 license is subject to obtaining a Conditional Use Permit, which is in accordance with Section 15-2706-C, which states that any existing establishment that requests to modify their alcohol license type must obtain a (new) Conditional Use Permit.

Pursuant to Section 15-1611 B.6 of the Fresno Municipal Code (FMC), General Retail is permitted in Residential Medium Density / Neighborhood Revitalization Overlay zone district if located within 100 feet of a corner and which is 3,000 square feet or less. The market is located at the southeast corner of Whitesbridge and Thorne Avenues and occupies a building of approximately 1,500 square feet; therefore the use meets the overlay zone district requirements for general retail.

As stated above, the existing market is a permitted use in the RS-5 zone district and is considered a "Corner Commercial" use defined as "a small-scale, neighborhood-serving use that provides convenient and walkable access to the community and value to the surrounding neighborhood". However, as a Corner Commercial use, the existing market is legal non-conforming since it does not meet some of the corner commercial provisions identified under Section 15-2722, specifically the general regulation that alcohol sales are prohibited.

The following identifies comments and correspondence expressing concerns regarding the requested use including emails by the Fresno Police Department and City Council District 3 regarding the project: (Exhibit G)

- On April 11, 2019, the Fresno Unified School District submitted a letter stating they do not support this conditional use permit request to upgrade the alcohol license.
- On July 1, 2019, Council District 3 Chief of Staff informed the director that the councilmember was not in support of the alcohol license upgrade given the oversaturation of liquor licenses in the area and the efforts of the proposed Responsible Neighborhood Market Ordinance.
- On July 2, 2019, a letter was submitted by the Golden Westside Planning Committee and southwest residents expressing opposition to the issuance of the Type 21 off-sale alcohol license application due to oversaturation concerns, and approval of the license upgrade to include sale of distilled spirits would increase problems in the community.
- On July 2, 2019, staff provided background information to the Fresno Police Department that the current ABC Type 20 license on the premises was grandfathered in under a Master Alcohol Conditional Use Permit, C-94-86. (Exhibit E) There were no specific conditions restricting the alcohol use at this location that were imposed under C-94-86.
- On July 12, 2019, the Police Department informed Council District 3 they received only 5 calls for service in the past year with none of those calls related to any crimes. Additional contact was made to ABC on any recent violations they had received and none were reported. Council District 3 advised the Fresno Police Department that there is an oversaturation (over-concentration) of alcohol licenses in the District and there close proximity to neighborhoods. The Council District

had received community concerns expressing similar opposition to this use and therefore, was not in support of this special permit approval.

## Appeal Request

An appeal of the Director's decision to deny the conditional use permit application was received by staff on September 16, 2019, (Exhibit I) and was submitted 5 days after the 15 day appeal period ended, which was on September 11, 2019. The appeal was requested based on the lack of notice (limited notice) to one of the partners of the business use who did not receive the denial letter and as a result, requested that the appeal should be heard by the Planning Commission.

The conditional use permit denial letter was sent to the applicants/owners; Abdulaziz Muthana and Zamzami Abdo, on August 27, 2019, via electronic mail to the e-mail address listed on their CUP application. The Owner's Letter of Authorization form signed by the property owner, also lists both names as well as a choice of email addresses. (Exhibit D)

## Council District 3 Project Review Committee

On November 6, 2019, Council District 3 Chief of Staff requested that the appeal be brought before the committee prior to it being heard by the Planning Commission. On November 26, 2019, the D3 Committee reviewed the appeal request and expressed their concerns regarding the number of alcohol licenses located within District 3. The committee felt strongly that the Director's denial was warranted and by a 4/2 vote (two absent), recommended that the Planning Commission uphold the Director's denial of the CUP for the alcohol license upgrade. (Exhibit J)

## Number of Existing and Allowed ABC Licenses

According to the ABC, there are four off-sale alcohol licenses issued within Census Tract 2 and only two are allowed. The census tract is over concentrated and is located in a high crime reporting district (Crime Reporting District 2752) as follows. (Exhibit L)

Crime Reporting District Number	2752
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	908

Source: California Department of Alcohol and Beverage Control (ABC-245)

## LAND USE PLANS AND POLICIES

The Fresno General Plan Elements identified under Urban Form, Land Use & Design, and Public Utilities & Services, provide the following applicable goals:

**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 a neighborhood. The over-concentration of alcohol sales outlets increases the perceived lack of safety in a neighborhood. Moreover, concentrations of such outlets can contribute to a variety of health and safety problems including higher rates of alcohol-related hospitalizations, drunken driving accidents, and pedestrian injuries.

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. As such, Section 15-2706 of the Fresno Municipal Code contains restrictions on the location for 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 including 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.

### **Downtown Neighborhoods Community Plan**

Upon reviewing the goals and policies contained in the Downtown Neighborhoods Community Plan, staff has determined that there are no applicable policies restrictive to alcohol sales than those already provided in the Fresno General Plan and the Fresno Municipal Code.

## **CITYWIDE DEVELOPMENT CODE (FMC CHAPTER 15)**

Article 16, Section 15-1611 B.6 general retail is permitted in the Residential Medium Density /

Neighborhood Revitalization Overlay zone district if located within 100 feet of a corner and which is 3,000 square feet or less. As previously stated, the Market occupies a building of approximately 1,500 square feet and meets the overlay zone district requirements for general retail.

Article 27, Section 15-2706 provides regulations for establishments that sell alcoholic beverages for off-site consumption. These establishments possess certain characteristics that have the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, and to ensure that establishments operate in a manner that is mutually beneficial to surrounding uses to provide mechanisms to prevent and correct any associated problems.

Section 15-2706-C, Any proposed new establishment or any existing establishment that requests to modify their alcohol or business license type(s), reinstate their alcohol or business license(s) after an expiration or revocation, extend their hours of operation, or expand their floor area, shall obtain a Conditional Use Permit issued in compliance with the standards of this section.

Section 15-2706-E sets forth the following specific location restrictions for establishments unless the establishment can be found qualified for exception by the Review Authority (under subsection E-5):

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

As an existing establishment, the applicant's request to modify their alcohol license does not meet the location restrictions under the development code since the establishment is located within a high crime reporting district and a high concentration area.

Section 15-2706-E-5 further states that the establishment may be excepted from location restrictions if the Review Authority determines any 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.

Per the analysis provided, the establishment does not meet any one of the three exception provisions from location restrictions.

## **ENVIRONMENTAL FINDINGS**

A determination of a Categorical Exemption, Section 15301/Class 1 of the California Environmental Quality Act (CEQA) Guidelines was made and the Environmental Assessment for this special permit was completed on June 5, 2019. (Exhibit M)

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 proposed special permit request is for an upgrade of an existing Type 20 off-sale alcohol license for an established general retail use. None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

## **Public Noticing**

The Public Hearing Notices were sent by U.S. mail to the property owners within 1,000 feet of the subject site on December 27, 2019. (Exhibit K) The notices were also sent via electronic mail, to individuals who requested notification, including the project applicant and property owner.

## **FRESNO MUNICIPAL CODE FINDINGS**

Based upon analysis of the application, staff concludes that the required findings made by the Director to deny the special permit under Section 15-5306 of the Fresno Municipal Code are appropriate. These findings are attached as Exhibit N.

## **CONCLUSION**

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan, the Downtown Neighborhoods Community Plan, and the specific provisions of Development Code; 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. P19-01019 for the alcohol license upgrade is not appropriate for the subject property.

**Attachments:**

- Exhibit A - Vicinity Map
- Exhibit B - Planned Land Use & Zoning Map
- Exhibit C - Project Information Tables
- Exhibit D - Master Application / Owner's Letter of Authorization
- Exhibit E - CUP C-94-86 Approval 9/19/94
- Exhibit F - Operational Statement / Site Plan & Floor Plan
- Exhibit G - Correspondence
- Exhibit H - P19-01019 CUP Denial Letter
- Exhibit I - Applicant Appeal Letter
- Exhibit J - District 3 Project Review Committee Record
- Exhibit K - Public Hearing Notice & Noticing Map
- Exhibit L - ABC License Reports (Census Tract 2)
- Exhibit M - Environmental Assessment
- Exhibit N - Fresno Municipal Code Findings