



## Legislation Details (With Text)

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<b>On agenda:</b>	2/5/2020	<b>Final action:</b>			
<b>Title:</b>	<p>Consider the appeal of Conditional Use Permit Application No. P19-04266, amending Conditional Use Permit No. C-11-121. The application requests a modification to a California Alcoholic Beverage Control Type 47 alcohol license (Restaurant - sale of beer and wine for consumption on or off the premise where sold), to extend alcohol serving hours until 2:00 a.m. for an existing restaurant, and further requests to expand an existing outdoor patio area. The restaurant is located at 9455 North Fort Washington Road, Suite 101 (Council District 6).</p> <p>1. ADOPT Environmental Assessment P19-04266, dated September 23, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 "Existing Facilities" and Class 11 "Accessory Structures" Categorical Exemption.</p> <p>2. DENY the applicant's appeal and UPHOLD the action of the Planning and Development Department Director to:</p> <p>a. APPROVE Conditional Use Permit Application No. P19-04266, subject to the conditions of approval, dated November 26, 2019; and</p> <p>b. DENY the applicant's request to extend alcohol sales, service, and consumption hours to 2:00 a.m.</p>				
<b>Sponsors:</b>	Planning and Development Department				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. Exhibit A -Vicinity Map, 2. Exhibit B - Planned Land Use Map, 3. Exhibit C - Zoning Map, 4. Exhibit D - CUP C-11-121, 5. Exhibit E - Operational Statement (Bar and Restaurant), 6. Exhibit F - P19-04622 Conditions of Approval, 7. Exhibit G - Applicant's Appeal Letter, 8. Exhibit H - Public Hearing Notice, 9. Exhibit I - Environmental Assessment, 10. Exhibit J - Fresno Police Department Northeast Policing District Letter, 11. Exhibit K - Owner's Letter of Authorization, 12. Exhibit L - Site Plan and Floor Plan, 13. Exhibit M - Findings, 14. Exhibit N - P19-04266 Conditional Approval Package				

Date	Ver.	Action By	Action	Result
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## REPORT TO THE PLANNING COMMISSION

**February 5, 2020**

**FROM:** Jennifer K. Clark, AICP, HDFH, Director  
Planning and Development Director

**THROUGH:** Mike Sanchez, AICP, Assistant Director  
Development Services Division

**BY:** Rodney Horton, Planner III  
Development Services Division

## **SUBJECT**

Consider the appeal of Conditional Use Permit Application No. P19-04266, amending Conditional Use Permit No. C-11-121. The application requests a modification to a California Alcoholic Beverage Control Type 47 alcohol license (Restaurant - sale of beer and wine for consumption on or off the premise where sold), to extend alcohol serving hours until 2:00 a.m. for an existing restaurant, and further requests to expand an existing outdoor patio area. The restaurant is located at 9455 North Fort Washington Road, Suite 101 (Council District 6).

1. **ADOPT** Environmental Assessment P19-04266, dated September 23, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 “Existing Facilities” and Class 11 “Accessory Structures” Categorical Exemption.
2. **DENY** the applicant’s appeal and **UPHOLD** the action of the Planning and Development Department Director to:
  - a. APPROVE Conditional Use Permit Application No. P19-04266, subject to the conditions of approval, dated November 26, 2019; and
  - b. DENY the applicant’s request to extend alcohol sales, service, and consumption hours to 2:00 a.m.

## **EXECUTIVE SUMMARY**

Conditional Use Permit Application No. P19-04266 was filed by Lewis Everk (the Applicant) of Vyxn Restaurant and Lounge (Vyxn) pertaining to property located at 9455 North Fort Washington Road, Suite 101. The applicant is requesting authorization to expand an existing State of California Alcoholic Beverage Control Type 47 alcohol license (Restaurant - sale of beer and wine for consumption on or off the premise where sold) by extending alcohol serving hours until 2:00 a.m. for an existing restaurant. Furthermore, the applicant is requesting authorization to expand an existing outdoor patio area. The establishment is located in Council District 6, and is situated in the CC/EA/UGM/cz (Commercial-Community/Expressway Area/Urban Growth Management/conditions of zoning) zone district.

On November 26, 2019, Conditional Use Permit Application No. P19-04266 was conditionally approved, allowing the expansion of the existing outdoor patio, and permitting the onsite service and consumption of alcohol. The conditions of approval limited the onsite service and consumption of alcohol until 12:00 a.m. A copy of the conditions of approval, dated November 25, 2019, was electronically sent to applicant on November 25, 2019.

Subsequently, the Applicant filed a timely appeal of the Director’s decision on December 3, 2019 through his legal representative.

Staff recommends the Planning Commission take the following action: 1) adopt Environmental Assessment P19-04266, dated September 23, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 “Existing Facilities” and Class 11 “Accessory Structures” Categorical Exemption, 2) deny the applicant’s appeal and uphold the action of the Planning and Development Department Director to approve Conditional Use

Permit Application No. P19-04266, subject to the conditions of approval, dated November 26, 2019 and deny the applicant's request to extend service/consumption hours to 2:00 a.m.

## BACKGROUND

Conditional Use Permit Application No. P19-04266 is an application to amend previously approved Conditional Use Permit Application No. C-11-121 by requesting authorization to expand the existing outdoor dining patio use. The patio currently exists in a small area in front of the building to one side of the main entrance. The application also requests authorization to modify the existing Type 47 alcohol sales license (*Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises*) to extend the end of alcohol sales from 11:00pm to 2:00am.

Pursuant to Section 15-1202 of the Fresno Municipal Code (FMC), restaurants with alcohol sales are permitted in the CC/EA/UGM/cz District by Conditional Use Permit (originally obtained for this location through CUP Application No. C-05-135). In addition, restaurants with alcohol sales and bars may be established in accordance with specific standards under Section 15-2751.

Under the issuance of a Type 47 ABC license, distilled spirits may be sold on the premises. In addition, the restaurant must operate and maintain the licensed premises as a bona fide eating place; maintain suitable kitchen facilities; and must make actual and substantial sales of meals for consumption on the premises. The license also allows minors to be on the premises.

Pursuant to FMC Section 15-2744 Outdoor Dining and Patio Areas, the expansion of alcohol and food service/consumption to the outdoor patio area east of the restaurant building must comply with all requirements related to outdoor dining, including restrictions related to lighting, music, shade structures, and accessibility.

Staff recommends approval of the service/consumption expansion to include the outdoor patio area besides the building but to approve extending service/consumption hours only until 12:00a.m.

### Noise

Local residents located in the residential development south of the subject property have complained to the Development Services Division about loud noise and loud music reverberating off the rear wall of businesses in this commercial center. These concerns have existed since a former establishment (*Limon*) occupied the restaurant space at the subject site.

### Public Noticing and Input

On October 16, 2019, a 10-day "Notice of Intent to Take Action" on the Conditional Use Permit was mailed to property owners within 1,000 foot radius of the property. To date, staff has not received any comments from the mailed public notice.

At their October 21, 2019 meeting, the Council District 6 Project Review Committee (Committee) unanimously recommended approval of Conditional Use Permit Application No. P19-04266, without conditions. During deliberations, the Committee expressed support for the applicant's request.

On January 13, 2020, a notice of the Planning Commission's Hearing was mailed to property owners within 1,000 ft. radius of the affected property. To date, staff has not received any comments from the

mailed public notice.

## LAND USE PLANS AND POLICIES

### *The Fresno General Plan*

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.*

As noted within the Public Utilities and Services section of the Fresno General Plan, the location, operation, and prevalence of on-sale or off-sale alcohol sales can have a negative effect on neighborhood health.

Implementing Policy No. PU-1-c indicates that the Fresno Police Department continue to identify and apply appropriate safety, design and operational measures as conditions of development approval, including, but not limited to, street access control measures, lighting and visibility of access points and common areas, functional and secure on-site recreational and open space improvements within residential developments, and use of State licensed, uniformed security.

### *The Woodward Community Plan*

Upon reviewing the policies contained in the Woodward Community Plan, staff has determined that there are no policies that are more restrictive than those contained in the FMC or the Fresno General Plan. The following is an excerpt of such objectives.

## CITYWIDE DEVELOPMENT CODE (FRESNO MUNICIPAL CODE, CHAPTER 15)

Fresno Municipal Code Section 15-2751-N indicates that the Police Department shall make a recommendation to the Director for security measures for each application based upon the function of the establishment as described in the operational statement. Additional and/or security measures such as reduced hours of operation, security guards, door monitors, and burglar alarm systems may be required if harm, nuisance, or related problems are demonstrated to occur as a result of business practices or operations. This will be determined on a case-by-case basis upon review by the Police Department.

The Planning and Development Department is reliant upon the information provided from the Fresno Police Department and the California Alcoholic Beverage Control (ABC) in the consideration of permit applications, pertaining to alcohol sales, service, and consumption, throughout the City.

### *Fresno Northeast Policing District*

The Fresno Police Northeast Policing District opposes the proposal to extend alcohol service and consumption to 2:00 a.m. and has provided conditions of approval for service and consumption to be Monday - Sunday, 9:00 a.m. - 12:00 a.m. The Fresno Police Northeast Policing District concerns stem from operational failures to maintain security at another establishment (Luxs) operated by the

Applicant.

Since January 2018, Fresno Police officers have responded to approximately 26 calls for service directly related to activities at Luxs. These calls include numerous physical disturbances, a noise complaint, alcohol related issues and a shooting between rival Fresno gang members in October 2019. This incident required the response of 18 uniformed officers from 3 policing districts and there was evidence of approximately 12 shots fired at the scene. The majority of calls for service at Luxs have occurred between midnight and 2:00 am at which time the Northeast District staffing is reduced to 9 officers on-duty. These calls for service take public safety resources away from the rest of the community, resulting in increased response times to other emergency calls and preventing proactive policing efforts. These incidents suggest a similar failure to maintain safe operations for the patrons of this and neighboring establishments. By comparison, nearby restaurant/bar Campagnia has had 3 alcohol and disturbance calls for service, and another similar establishment (The Standard) has had 10.

In accordance with Table 15-2751-G (Special Standards) restaurants are bound to end sales, service, and consumption of alcohol at 12:00 a.m. For this application, the Applicant's operational statement indicates the restaurant function of the establishment will operate to be Monday - Sunday, 9:00 a.m. - 12:00 a.m., and the lounge (bar) portion of the establishment will operate until 2:00 a.m. With the condition to limit service and consumption until 12:00 a.m., Vyxn will be considered a restaurant as established in Table 15-2751-G. Therefore, alcohol sales, service, and consumption will be required to end at 12:00 a.m.

Section 15-5306 of the Fresno Municipal Code requires that findings are made in order to conditionally approve a Conditional Use Permit Application. These findings are considered for this appeal:

<i>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,</i>	
Finding a:	Per Section 15-1202 of the FMC, the use of sales and bars are permitted by Conditional provisions for Restaurants with Alcohol Sale Lounges under Section 15-2751 and specific Seating under Section 15-2744. Section 15-2744 states that restaurants with alcohol sales are permitted in the Northeast District by Conditional Use Permit.
<i>b. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted; and,</i>	

Finding b:	The proposed use is consistent with the General Plan and Woodward Park Community Plan as neither would restrict the proposed conditionally permitted use.
<i>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,</i>	
Finding c:	The surrounding properties within River View are zoned Community Commercial, and the proposed use is consistent with that the bar cease operation at 12:00 a.m., which is in the public health, safety or general welfare, as several other businesses and alcohol sales are located in the center and the proposed use is in accordance with the conditions of approval and the Municipal Code provisions.
<i>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,</i>	
Finding d:	The proposed activity, with alcohol service and delivery from 12:00 a.m. to address safety concerns that include the proposed use is compatible with the existing uses within River View and the uses that may be established within the retail center and be consistent with the planned land use design.
<i>e. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.</i>	
Finding e:	The site is physically suitable for the type, density, and intensity of use being proposed, as the site property and the surrounding properties within River View have adequate access, emergency access, and services currently in place to serve the retail center and shopping center.

## ENVIRONMENTAL FINDINGS

The CEQA permits a public agency to determine whether a particular project is exempt from CEQA.

A determination of a Categorical Exemption, Section 15301/Class 1 of the CEQA Guidelines was made for this project on September 23, 2019.

The conditional use permit application is consistent with the general and community planned land use. The restaurant is an existing facility involving negligible or no expansion of the existing use, and is attached as Exhibit I.

## **CONCLUSION**

The appropriateness of the proposed use has been examined with respect to its consistency with goals and policies of the Fresno General Plan and the Woodward Park Community 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 Conditional Use Permit Application No. P19-04266 is appropriate for the establishment, with the condition that service and consumption of alcohol end at 12:00 a.m.

### **Attachments:**

- Exhibit A - Vicinity Map (Aerial)
- Exhibit B - Planned Land Use
- Exhibit C - Zone District Map
- Exhibit D - CUP C-11-121
- Exhibit E - Operational Statement
- Exhibit F - P19-04622 Conditions of Approval
- Exhibit G - Applicant Appeal Letter
- Exhibit H - Public Hearing Notice & Noticing Map
- Exhibit I - Environmental Assessment
- Exhibit J - Fresno Police Department Northeast Policing District Letter
- Exhibit K - Master Application / Owner's Letter of Authorization
- Exhibit L - Site Plan & Floor Plan
- Exhibit M - Findings
- Exhibit N - Conditional Approval Packet