



Legislation Details (With Text)

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Title: Consideration of Text Amendment Application No. P20-02212 and related Environmental Finding for Environmental Assessment No. P20-02212, to amend sections 15-2706, 15-6801 and 15-6802 of the Fresno Municipal Code, relating to the use regulations for alcohol sales

1. RECOMMEND APPROVAL (to the City Council), of a finding set forth in Environmental Assessment No. P20-02212 dated July 29, 2020, that Text Amendment Application No. P20-02212 is exempt from the California Environmental Quality Act (CEQA) pursuant to the common sense exemption that it can be seen with certainty that there is no possibility that the proposed text amendment may have a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3).

2. RECOMMEND APPROVAL (to the City Council) of Text Amendment Application No. P20-02212, to amend sections 15-2706, 15-6801 and 15-6802 of the Fresno Municipal Code, relating to use regulations for alcohol sales.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A: Fresno City Council Resolution No. 2019-090, 2. Exhibit B: Text Amendment No. P20-02212 amending Sections 15-2706, 15-6801 and 15-6802 of the Citywide Development Code, 3. Exhibit C: Finding of No Possibility of Significant Adverse Effect as prepared for Environmental Assessment No. P20-02212 dated July 29, 2020

Date	Ver.	Action By	Action	Result
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September 2, 2020

FROM: DAN ZACK, Assistant Director
Planning and Development Department

THROUGH: ISRAEL TREJO, Supervising Planner
Development Services Division

BY: KELSEY GEORGE, Planner
Development Services Division

SUBJECT

Consideration of Text Amendment Application No. P20-02212 and related Environmental Finding for Environmental Assessment No. P20-02212, to amend sections 15-2706, 15-6801 and 15-6802 of the Fresno Municipal Code, relating to the use regulations for alcohol sales

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2. **RECOMMEND APPROVAL** (to the City Council) of Text Amendment Application No. P20-02212, to amend sections 15-2706, 15-6801 and 15-6802 of the Fresno Municipal Code, relating to use regulations for alcohol sales.

CONTINUED HEARING FROM AUGUST 5, 2020 AND AUGUST 19, 2020.

EXECUTIVE SUMMARY

Text Amendment Application No. P20-02212 was initiated pursuant to Fresno City Council Resolution No. 2019-090 (**Exhibit A**).

In May 2019, the proposed Text Amendment was initiated by the Fresno City Council. The resolution proposes to retitle section 15-2706 of the Development Code to “The Responsible Neighborhood Market Act” and proposes additional regulations for locations that sell alcohol for off-site consumption.

The proposed text amendment would require additional regulations be met prior to obtaining an off-site alcohol sales license with the Alcohol Beverage Control Department (ABC).

BACKGROUND / ANALYSIS

Text Amendment Application No. P20-02212 was initiated pursuant to Fresno City Council Resolution No. 2019-090 (Exhibit A) to amend use regulations for off-site alcohol sales uses within the City of Fresno.

The proposed Text Amendment was initiated after the Fresno City Council adopted Resolution No. 2019-090, titled the Responsible Neighborhood Market Act. The Responsible Neighborhood Market Act proposed additional standards that establishments must meet in order to obtain a Conditional Use Permit (CUP) to sell alcoholic beverages for off-site consumption. The proposed text amendment would amend the Citywide Development Code to include these standards in order to operate an alcohol-sale use and obtain an alcohol license with the ABC.

The proposed text amendment to the Citywide Development Code proposes to amend use regulations for alcohol sales uses within the City of Fresno. The proposed Text Amendment would apply to 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, surrender or revocation, extend their hours of alcohol sales, or expand their floor area for retail sales of alcohol. Any new or expanded use will be required to obtain a CUP in compliance with the proposed amendment to the Citywide Development Code.

The proposed Text Amendment does not relate to any physical project and will not result in any physical change to the environment. The approval of this text amendment does not approve any

development or specific project. Rather, it clarifies the additional requirements of operating an alcohol use in the City.

The regulations are 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, especially when such establishments are concentrated near one another. In order to ensure that establishments operate in a manner that is mutually beneficial to surrounding uses and to also provide mechanisms to prevent and correct any associated problems, the proposed Text Amendment provides special regulations.

Summary of Text Amendment

Text Amendment Application No. P20-02212 proposes to amend Section 15-2706 of the Citywide Development Code that conditionally permits alcohol uses in applicable Mixed Use, Commercial, Employment, Public and Semi-Public, and Downtown zone districts. As proposed, the proposed Text Amendment includes:

- 1. a. Changes to the Location Restrictions for New Establishments.** The proposed Text Amendment would restrict new establishments from being located within 1,000 feet from sensitive uses and other alcoholic beverage establishments. The current location restriction vicinity is 500 feet. These location restrictions shall apply to existing establishments that must obtain a CUP pursuant to this ordinance due to proposed expansion or improvement of an existing use that is currently operating pursuant to a CUP issued prior to the effective date of this ordinance unless that proposed expansion or improvement is a necessary repair or only with respect to bringing the existing building into compliance with current Building, Fire or Electrical Codes.
- b. Implementation of a Citywide Ratio.** No establishment shall be granted a Conditional Use Permit under this Section if the number of sites selling alcohol for off-site consumption will exceed one license per 2,500 residents.

There are proposed exceptions to the restrictions noted above if new establishments meet all 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
- d. The primary use of the establishment, based on information provided by the applicant, has been determined by the Review Authority to meet the definition of a General Market including a supermarket, neighborhood grocery store or a Healthy Food Grocer.

2. Additional regulations to permitted signage. Displays of alcoholic beverages, freestanding advertising structures of any kind such as cardboard floor stands, or other free-standing signs shall be prohibited within 10 feet of consumer entrance points, shall not be visible from the exterior of the establishment, and shall be prohibited on the exterior of the establishment.

3. Exceptions to Prohibited Products and Single Containers. Allows craft beer to be packaged and sold in a single 22 oz. bottle.

4. Implementation of a Surrender and Cancel ratio. New establishments shall transfer and cancel the following number of ABC licenses in good standing, from within a Council District identified as having an overconcentration of ABC licenses for off-sale use, as determined by the Director following review of data prepared by the California Department of Alcoholic Beverage Control, as depicted in Table 15-2706. The cancellation of the license is to the Alcoholic Beverage Control. A cancelled license cannot be reactivated or reinstated.

TABLE 15-2706: CANCEL AND TRANSFER RATIO		
Retail Floor Area	Transfer	Cancel
Less than 10,000 square feet	2	1
10,000 to 30,000 square feet	3	2
More than 30,000 square feet	4	3

Additionally, Text Amendment Application No. P20-02212 proposes to amend Sections 15-6801 and 15-6802 of the Fresno Municipal Code to clarify the definition of Craft Beer in order to provide an exception to single containers sold for off-site consumption. The Text Amendment proposes to amend Section 15-6801 to include the term Craft Beer to the Development Code's List of Terms and Section 15-6802 to include the definition of Craft Beer as the following:

A beer or malt beverage manufactured by a brewer with an annual production of six million barrels of beer or less, where less than 25 percent of the craft brewery is owned or controlled by an alcohol industry member, and where a majority of total beverage alcohol volume is beer that derives flavor from traditional or innovative brewing ingredients and their fermentation.

Airport Land Use Commission

The Fresno County Airport Land Use Commission (ALUC) reviewed the proposed text amendment on August 6, 2020. The ALUC voted unanimously to recommend approval of the proposed text amendment.

Council District Advisory Committees

The recommendations of the Council District Plan Implementation Committees are as noted below.

Council District 1

On August 6, 2020, the Council District 5 Plan Implementation Committee voted 3-0 to recommend approval of the proposed text amendment.

Council District 2

On July 13, 2020 the Council District 2 Plan Implementation Committee voted 4-0 to recommend

approval of the proposed text amendment.

Council District 3

On July 28, 2020, the Council District 3 Plan Implementation Committee voted 6-0 to recommend approval of the proposed text amendment.

Council District 4

On July 27, 2020, the Council District 4 Plan Implementation Committee voted 3-0 to recommend approval of the proposed text amendment.

Council District 5

This Item is scheduled for review by the Council District 5 Plan Implementation Committee on August 10, 2020.

Council District 6

On July 20, 2020, the Council District 6 Plan Implementation Committee voted 7-0 to recommend approval of the proposed text amendment.

Council District 7

There is no Council District 7 Plan Implementation Committee at this time.

Fulton-Lowell

On August 3, 2020 the Lowell District Advisory Committee voted 3-0 to recommend approval of the proposed text amendment.

Tower District

On July 28, 2020 the Tower District Advisory Committee voted 3-0 to recommend approval of the proposed text amendment.

The draft of the proposed text amendment has varied slightly since going to the District Committees. These changes did not affect the intent of the proposed text amendment, but rather added clarifying language. The clarification changes made to the proposed text amendment relate to the definition of General Market and location restrictions to existing establishments.

Development Code Text Amendment Findings

The Planning Commission shall not recommend and the City Council shall not approve an application unless the proposed amendment meets the following criteria, as set forth in Fresno Municipal Code section 15-5811:

1. The Code text amendment is consistent with the General Plan, the Fresno County Airport Land Use Compatibility Plan, and any applicable operative plans; and

Response: Each project applying for a conditional use permit under the proposed text amendment will be individually reviewed and assessed for consistency with the General Plan, the Fresno County Airport Land Use Compatibility Plan, the underlying base zone district, and any applicable specific or community plans. Text Amendment Application No. P20-02212 has been examined with respect to its consistency with the Fresno General Plan and applicable operative plans and it was concluded that Text Amendment Application No. P20-02212 is

consistent with said plans.

2. The amendment is consistent with the purpose of the Development Code to promote the growth of the city in an orderly and sustainable manner and to promote and protect the public health, safety, peace, comfort, and general welfare.

Response: The purpose of the proposed text amendment is to provide a process for locations that sell alcohol with a new or expanded alcohol license for off-site consumption to comply with new regulations and provisions, which will promote the growth of the city in an orderly and sustainable manner. The additional regulations of the proposed Text Amendment seek to promote and protect the public health, safety and general welfare beyond what the current Code requires. The proposed text amendment was routed to responsible agencies, including the Fresno Police Department, Fresno Fire Department, and all school districts within City limits, for comment regarding its impacts to public health, safety, peace, comfort, and general welfare. No such impacts were identified thus it can be concluded that Text Amendment Application No. P20-02212 is consistent with the purpose of the Development Code.

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:

1. **Market saturation.** Some neighborhoods feel they have an overabundance of establishments with off-sale licenses to sell alcohol.
2. **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.
3. **Danger to schools.** Residents are concerned when alcohol sales are allowed too close to schools because of the impact on teenage drinking.

ENVIRONMENTAL FINDING

An environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA) Guidelines.

CEQA Guidelines Section 15061(b)(3) states that a project is exempt from CEQA if it is “covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

Staff has conducted a preliminary review of the project and has determined that it is exempt from CEQA pursuant to CEQA Guidelines Section 15061 (b)(3) under the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed Text Amendment changes the Zoning Code and establishes a framework for future land use planning and approvals and does not commit the City to any specific project, or development on any particular site. It does not intensify the use of alcohol sales beyond what is already in place. Further, the proposed Text Amendment requires that future applications for off-site consumption alcohol sales meet the additional regulations to obtain discretionary approval from the

City via a CUP, at which time the particular impacts of each known proposed project will be assessed. Because the text amendment merely creates a procedure for applying for an alcohol license and does not approve any individual CUPs with its adoption, it can be seen with certainty that there is no possibility that adoption of the Text Amendment may have a significant effect on the environment. Therefore, this action is exempt from CEQA pursuant to CEQA Guidelines Section 15061 (b)(3); the Environmental Assessment is attached as **Exhibit C**.

Notice of Planning Commission Hearing

Pursuant to the requirements of Fresno Municipal Code section 15-5806 (and 15-5007.D), notice of this public hearing was published in the *Fresno Bee* on July 24, 2020, which is at least 10 days prior to the public hearing. Section 15-5007-D allows the posting of a public hearing notice, in at least one newspaper of general circulation, as an alternative noticing method for large mailings.

CONCLUSION

The appropriateness of the proposed text amendment has been examined with respect to its consistency with stated goals of the Fresno General Plan; compatibility with surrounding existing and proposed uses; and avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment. Upon completion of this evaluation, it can be concluded that Text Amendment Application No. P20-02212 is appropriate.

Attachments:

- Exhibit A: Fresno City Council Resolution No. 2019-090
- Exhibit B: Text Amendment No. P20-02212 amending Sections 15-2706, 15-6801 and 15-6802 of the Citywide Development Code
- Exhibit C: Finding of No Possibility of Significant Adverse Effect as prepared for Environmental Assessment No. P20-02212 dated July 29, 2020