



Legislation Details (With Text)

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File created:	9/2/2020	In control:		City Council	
On agenda:	9/17/2020	Final action:		9/17/2020	
Title:	<p>HEARING to consider Text Amendment Application No. P19-02978, ordinance amendments, and related Final Environmental Impact Report (FEIR), regarding the proposed regulation and permitting of commercial cannabis activities in the city of Fresno.</p> <p>1. REVIEW AND CONSIDER Final Environmental Impact Report (SCH No. 2019070123), for the proposed regulation and permitting of commercial cannabis activities, apply the Council's independent judgment and analysis to the review, and then adopt the resolution certifying the FEI, as having been completed in compliance with the California Environmental Quality Act (CEQA) based on the Planning Commission's recommendations on the proposed Final EIR and comments thereon; and,</p> <p>a. ADOPT Findings of Fact as required by Public Resources Code Section 21081(a) and CEQA Guidelines, Section 15091; and,</p> <p>b. ADOPT the Statement of Overriding Considerations as required by Public Resources Code, Section 21081(b) and CEQA Guidelines, Section 15093; and</p> <p>c. APPROVE the Mitigation Monitoring and Reporting Program as required by Public Resources Code Section 21081.6 and CEQA Guidelines, Section 15097; and</p> <p>d. ADOPT the Water Supply Assessment (WSA) attached to the FEIR as Appendix H in compliance with Section 10910 of the California Water Code and Section 15155 of the CEQA Guidelines, and adopt the WSA as a technical addendum to the Environmental Impact Report</p> <p>2. BILL - (For introduction) - Repealing Sections 15-2739 and 15-2739.1 of the Fresno Municipal Code and replacing with Section 15-2739 relating to adult use and medicinal cannabis retail business and commercial cannabis business regulation.</p> <p>3. BILL - (For introduction) - Amending Section 12-2104 of the Fresno Municipal Code relating to marijuana cultivation.</p> <p>4. BILL - (For introduction) - Amending Section 12-2302 of the Fresno Municipal Code relating to Money Back Guarantee/Business Streamlining Act to exclude Cannabis Conditional Use Permits.</p>				
Sponsors:	Planning and Development Department				
Indexes:					
Code sections:					
Attachments:	<p>1. Exhibit A-1 Draft Environmental Impact Report - Vol. 1, 2. Exhibit A-2 Draft Environmental Impact Report - Vol.2 Appendices, 3. Exhibit B Response to Comments, 4. Exhibit C Mitigation Monitoring Reporting Program, 5. Exhibit D Findings of Fact, 6. Exhibit E Statement of Overriding Considerations, 7. Exhibit F Text Amendment No. P19-02978, 8. Exhibit G Regulatory Ordinance (Article 33, Chapter 9 of the FMC), 9. Exhibit H Amendment to Article 21 of Chapter 12 of the FMC, 10. Exhibit I Amendment to Article 23 of Chapter 12 of the FMC, 11. Exhibit J Text Amendment Findings, 12. Exhibit K Water Supply Assessment (attached to the FEIR as Appendix H), 13. Exhibit L Letter received dated August 18, 2020, 14. Exhibit M Planning Commission Resolution No. 13676 (Text Amendment), 15. Exhibit N EIR Certification Resolution with EIR, 16. Exhibit O PowerPoint presentation</p>				

Date	Ver.	Action By	Action	Result
9/17/2020	1	City Council	approved	Pass

REPORT TO THE CITY COUNCIL

September 17, 2020

FROM: JENNIFER CLARK, Director
Planning and Development Department

THROUGH: DAN ZACK, Assistant Director
Development Services Division

BY: ISRAEL TREJO, Supervising Planner
Development Services Division

SUBJECT

HEARING to consider Text Amendment Application No. P19-02978, ordinance amendments, and related Final Environmental Impact Report (FEIR), regarding the proposed regulation and permitting of commercial cannabis activities in the city of Fresno.

1. REVIEW AND CONSIDER Final Environmental Impact Report (SCH No. 2019070123), for the proposed regulation and permitting of commercial cannabis activities, apply the Council's independent judgment and analysis to the review, and then adopt the resolution certifying the FEI, as having been completed in compliance with the California Environmental Quality Act (CEQA) based on the Planning Commission's recommendations on the proposed Final EIR and comments thereon; and,
 - a. ADOPT Findings of Fact as required by Public Resources Code Section 21081(a) and CEQA Guidelines, Section 15091; and,
 - b. ADOPT the Statement of Overriding Considerations as required by Public Resources Code, Section 21081(b) and CEQA Guidelines, Section 15093; and
 - c. APPROVE the Mitigation Monitoring and Reporting Program as required by Public Resources Code Section 21081.6 and CEQA Guidelines, Section 15097; and
 - d. ADOPT the Water Supply Assessment (WSA) attached to the FEIR as Appendix H in compliance with Section 10910 of the California Water Code and Section 15155 of the CEQA Guidelines, and adopt the WSA as a technical addendum to the Environmental Impact Report
2. **BILL - (For introduction)** - Repealing Sections 15-2739 and 15-2739.1 of the Fresno Municipal Code and replacing with Section 15-2739 relating to adult use and medicinal cannabis retail business and commercial cannabis business regulation.
3. **BILL - (For introduction)** - Amending Section 12-2104 of the Fresno Municipal Code relating to marijuana cultivation.
4. **BILL - (For introduction)** - Amending Section 12-2302 of the Fresno Municipal Code relating to Money Back Guarantee/Business Streamlining Act to exclude Cannabis Conditional Use Permits.

EXECUTIVE SUMMARY

The subject text amendment proposes to implement the provisions of the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA") to accommodate the needs of medically-ill persons in need of and provide access to cannabis for medicinal purposes as recommended by their health care provider(s), as well as provide access to adult use cannabis, while imposing sensible

regulations on the use of land to protect the city's residents, neighborhoods, and businesses from disproportionately negative impacts. As such, it is the purpose and intent of this text amendment to regulate commercial cannabis activities in the City of Fresno in a responsible manner and to protect the health, safety, and welfare of the residents of the city and to enforce rules and regulations consistent with state law. Text Amendment Application No. P19-02978 requests authorization to amend Sections 15-2739 and 15-2739.1 of the Fresno Municipal Code (FMC), regarding the proposed regulation and permitting of commercial cannabis activities.

Fresno City Planning Commission Action

The subject application was considered by the Fresno City Planning Commission at its meeting on August 19, 2020 (Exhibit M). After hearing testimony from city staff, the Planning Commission voted to recommend approval of the proposed application by a vote of 3 to 1, with the following recommendations:

- i) An applicant for a Cannabis Conditional Use Permit shall be required to conduct a neighborhood meeting prior to submittal of an application.
- ii) The operating hours of a cannabis retail business be reduced from 6 a.m. - 10 p.m. to 9 a.m. - 10 p.m.
- iii) All buildings in which a cannabis retail business is located, shall be increased from the currently proposed 800 feet to 1000 feet, to the property boundary containing the following: a school providing instruction for any grades pre-school through 12 (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12).

Letter received

In response to the Planning Commission hearing notification provided, one letter was received on August 18, 2020, and is attached as Exhibit L. The letter discusses various aspects of the proposed project and was distributed to the Planning Commission.

BACKGROUND

On November 8, 2016, the State of California voters approved Proposition 64, The Adult-Use Marijuana Act, with 57.1% of the vote. Additionally, 51.4% of the citizens in Fresno voted in favor of Proposition 64. This measure allowed the State of California to set forward a process to regulate and license cannabis businesses within California.

In July 2017, the Governor signed Senate Bill 94, entitled the Medical and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which took effect immediately. MAUCRSA reconciles the State's MCRSA with AUMA's nonmedical/recreation adult-use cannabis regulations. The State issued the newly revised regulations on November 16, 2017, under their emergency rule making process, and readopted their emergency regulations on June 4, 2018.

On December 14, 2017, the Fresno City Council directed staff to initiate the process to amend the zoning code to allow medicinal cannabis operations, cultivation, manufacturing, extraction, testing, distribution, delivery, and dispensaries within the City. Subsequently, On March 8, 2018 and July 2, 2019, the Director of the Planning and Development Department initiated amendments to the zoning code to allow for adult use cannabis cultivation, manufacturing, extraction, testing, distribution, and retail. On December 13, 2018, the Fresno City Council adopted a cannabis regulatory ordinance

which includes requirements for medicinal and adult use cannabis permits, operation requirements, location restrictions, and application requirements. The current regulatory ordinance, found under Article 33, Chapter 9 of the FMC, is attached as Exhibit G.

The key components of the requested actions are described below, followed by a summary of environmental impacts.

Key Components of Requested Action

Environmental Impact Report. An “EIR” or “Environmental Impact Report” is a detailed statement prepared under the California Environmental Quality Act (CEQA) describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects. The term “EIR” may mean either a draft or a final EIR depending on the context. The Final EIR consists of the Draft EIR plus the Response to Comments document in which the City must address all comments and propose changes to the Draft EIR if needed. These documents are provided in Exhibits A-1, A-2 and B.

Response to Comments (RTC) This document provides responses to comments on the Draft EIR and makes revisions to the Draft EIR, as necessary, in response to those comments or to make clarifications in the Draft EIR. This document, together with the Draft EIR, constitutes the Final EIR for the proposed project. Six comment letters were received, and the letters and responses are contained in the RTC, which is provided in Exhibit B.

Mitigation Monitoring and Reporting Program (MMRP) This document contains a table with the required mitigation measures, the responsible party or parties for implementing the measure, and the timing of implementation. The MMRP is contained in Exhibit C.

Findings of Fact and Statement of Overriding Considerations When an EIR has been certified that identifies one or more significant environmental impacts, the approving agency must make one or more findings, accompanied by a brief explanation of the rationale, pursuant to CEQA Guidelines Section 15091, for each identified significant impact. The Findings of Fact are attached as Exhibit D. The Statement of Overriding Considerations is attached as Exhibit E.

Text Amendment Application No P19-02978 requests authorization to amend Sections 15-2739 and 15-2739.1 of the Fresno Municipal Code, regarding the proposed regulation and permitting of commercial cannabis activities. The proposed text amendment is provided in Exhibit F and summarized below.

It is noted that there was one clarification change made to the proposed text amendment and relates to cultivators, distributors, or manufacturers located within the Cannabis Innovation Zone. Cultivators, distributors, or manufacturers proposed in the Cannabis Innovation Zone are not subject to distance requirements to sensitive uses.

Cultivation, Distribution, and Manufacturing

- 8 businesses would be permitted inside the Cannabis Innovation Zone, defined as the area bounded by State Route 41, Golden State Blvd., Church Ave., East Ave., and Parallel Ave.
- 8 businesses would be permitted within industrial zoned property within ½ mile of Highway 99 between Shaw and Clinton Aves., or within 1 mile of Highway 99 north of Shaw and south of

Clinton Aves., or within 1 mile of Highway 180 west of Highway 99. If not located within the Cannabis Innovation Zone, all buildings in which a cultivator, distributor, or manufacturer is located shall be located no closer than one thousand (1,000) feet from any property boundary containing a residentially zoned parcel, school, daycare, or youth center.

Testing Laboratories

- Testing laboratories may take place in a Commercial, Employment, or Downtown District. There is no limit on how many may be permitted.

Cannabis Retailers

- 21 total possible cannabis retail locations - this includes up to 14 medicinal and/or adult use cannabis retail locations (2 per Council District); with the potential to add 7 additional retailers (1 additional per Council District) upon Council Resolution.
- Retailers would be restricted to the DTN (Downtown Neighborhood), DTG (Downtown General), CMS (Commercial Main Street), CC (Commercial Community), CR (Commercial Regional), CG (Commercial General), CH (Commercial Highway), NMX (Neighborhood Mixed-Use), CMX (Corridor/Center Mixed Use), or RMX (Regional Mixed-Use) zone districts. In addition, retailers would be required to maintain a minimum distance of 800 feet from any property boundary containing another cannabis retailer, school, daycare center, or youth center (i.e. parks, playgrounds, facilities hosting activities for minors)
- Hours of operation for retailers would be limited to 6:00 am to 10:00 pm
- Retail delivery allowed if part of store-front operation

Cannabis Cultivation

- An amendment to Section 12-2104 of the FMC is before Council to make the citywide prohibition against cannabis cultivation not apply to a private residence with 6 plants or less grown indoors (to comply with current state law) or to any person/property that obtains a City commercial cannabis business permit.

Draft Text Amendment

The proposed draft text amendment was emailed and routed to the various interested parties and stakeholders on April 29, 2020, for comment.

School District Comments

Central Unified School District

The Central Unified School District provided a letter dated June 1, 2020, which states that marijuana use by youth is the highest in states that have legalized commercial sales and use. The commenter states marijuana is addictive to youth and causes harmful health effects. The commenter further states commercialization of cannabis will increase availability and normalize the use. The commenter states the City of Fresno should set aside a portion of tax revenue from the sale of cannabis to help fund school programs to provide wellness education and counseling to students.

Staff response: The recently adopted Cannabis Retail Business and Commercial Cannabis Business Ordinance, Section 9-3309 (m) (3), contains requirements for all commercial cannabis businesses or cannabis retail businesses to develop City-approved public outreach and education programs geared toward youth organizations and educational institutions. This program will outline the risks of youth use of cannabis and identify resources available to youth related to drugs and drug addiction.

Additionally, Fresno Municipal Code Section 7-1419, requires businesses to pay apportioned share of tax based on proportioned taxed activity carried on in the City.

Fresno Unified School District

The Fresno Unified School District (FUSD) provided a letter dated May 1, 2020, which explains that FUSD does not support the proposed sale or distribution of commercial cannabis.

Staff response: There are various safeguards implemented into the proposed operation requirements for a retailer, including a minimum distance of 800' separation between a school, daycare center, or youth center (i.e. parks, playgrounds, facilities hosting activities for minors).

It is noted that pursuant to section 26054 of the Business and Professions Code of the State of California, a retailer shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12. As such, the proposed text amendment requires a greater distance to schools that what is required by the State.

Additionally, Cannabis Conditional Use Permit applications shall be routed for review to the respective school district in which the property is located. Recommendations, on the conditions of approval, can be made to the Planning Department on a proposed retailer.

Finally, the recently adopted Cannabis Retail Business and Commercial Cannabis Business Ordinance, Section 9-3309 (m) (3), contains requirements for all commercial cannabis businesses or cannabis retail businesses to develop City-approved public outreach and education programs geared toward youth organizations and educational institutions. This program will outline the risks of youth use of cannabis and identify resources available to youth related to drugs and drug addiction.

EIR PROCESS/PUBLIC INPUT AND NOTICING

The City, as the lead agency under the CEQA, contracted with QK Inc. to prepare the EIR. The preparation of the EIR followed the process prescribed by CEQA as described below:

Notice of Preparation (NOP) and Scoping Meeting: Upon the City's determination that an EIR was required for this project, a NOP was made available to the general public and responsible trustee agencies to solicit input on issues of concern that should be addressed in the EIR. The NOP was issued on July 5, 2019 announcing a 30-day comment period and a scoping meeting to be held on July 16, 2019. Comment letters were received from several public agencies and were incorporated into the Draft EIR. Approximately 11 members of the public attended the scoping meeting. Outreach was as follows:

- NOP was circulated to relevant agencies, community organizations and cannabis stakeholders and other interested parties
- NOP was mailed to the Office of Planning and Research State Clearinghouse

- NOP notice was published in the Fresno Bee
- NOP was posted by the Fresno County Clerk for 30 days
- NOP was posted by the Fresno City Clerk for 30 days, including the public counter, website, and City Hall bulletin boards.

Draft Environmental Impact Report. Upon completion of the Draft EIR, the City issued a Notice of Availability (NOA) announcing the release of the document for a 45-day public comment period beginning April 24, 2020. Due to the closures of public facilities in response to COVID-19, the Draft EIR was available for viewing via the following the methods:

- Via web link on the City of Fresno webpage
- Copies of the Draft EIR were made available for check-out at Fresno City Hall
- Via email by contacting the assigned staff person.

Six comment letters were received. None of these comments contained new information that revealed any potentially new or more significant environmental impacts that could have required recirculation of the Draft EIR pursuant to CEQA Guidelines Section 15088.5.

Final EIR/Response to Comments: The Final EIR consists of the Draft EIR plus the Response to Comments document in which the City must address all comments and possibly propose changes to the Draft EIR, if needed. After the close of the public review period for the Draft EIR described above, the City prepared formal responses to the written comments received. CEQA Guidelines, Section 15088(b), requires the City's responses to comments to be provided to commenting public agencies 10 days prior to final certification of the FEIR. As noted above, six comment letters were received, and the letters and responses are contained in the Response to Comments, which is provided in Exhibit B.

Summary of Environmental Impacts

Impacts Analyzed

The EIR analyzed impacts to the following environmental areas, as these were the areas determined to have potential impacts (see Chapter 4 of the Draft EIR):

Aesthetics	Land Use and Planning
Agriculture and Forestry Resources	Mineral Resources
Air Quality	Noise
Biological Resources	Population and Housing
Cultural Resources	Public Services
Energy	Recreation
Geology and Soils	Transportation and Traffic
Greenhouse Gas Emissions	Tribal Cultural Resources
Hazards and Hazardous Materials	Utilities and Service Systems
Hydrology and Water Quality	Wildfire

Under CEQA, environmental impacts can be classified as either less than significant (LTS), less than significant with mitigation (LSM), or significant and unavoidable (SU). The environmental areas above were found to have impacts in the Draft EIR as noted below:

Less Than Significant

Aesthetics
Land Use and Planning
Mineral Resources
Population and Housing
Recreation

Less Than Significant with Mitigation

Agriculture and Forestry Resources
Biological Resources
Cultural Resources
Energy
Geology and Soils
Hazards and Hazardous Materials
Hydrology and Water Quality
Noise
Public Services
Transportation and Traffic
Tribal Cultural Resources
Utilities and Service Systems
Wildfire

Significant and Unavoidable The conclusion of Significant and Unavoidable does not exempt the topic area from mitigation: to the contrary, mitigation is required in order to lessen the impact as much as possible. However the analysis included in the Draft EIR indicates that, even with maximum mitigation, some potential environmental impacts under the following topic areas would still be significant and unavoidable.

Air Quality
Greenhouse Gas Emissions

CEQA requires decision makers to balance the benefits of the proposed project against its unavoidable environmental risks when determining whether to approve the project. If the benefits of the project outweigh the unavoidable adverse effects, those effects may be considered "acceptable" (CEQA Guidelines Section 15093[a]). CEQA requires the lead agency to support, in writing, the specific reasons for considering a project acceptable when significant impacts are infeasible to mitigate. Such reasons must be based on substantial evidence in the Final EIR or elsewhere in the administrative record (CEQA Guidelines Section 15093[b]). The agency's statement is referred to as a "Statement of Overriding Considerations." The following sections provide a description of each of the project's significant and unavoidable impacts and the justification for adopting a statement of overriding considerations.

According to Section 15355 of the CEQA Guidelines, the term cumulative impacts "refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." Individual effects that may contribute to a cumulative impact may be from a single project or a number of separate projects. Individually, the impacts of a project may be relatively minor, but when considered along with impacts of other closely related or nearby projects, including newly proposed projects, the effects could be cumulatively considerable.

Summary of Significant Impacts

The EIR identified Air Quality and Greenhouse Gas Emissions as having significant impacts.

Air Quality

Project Impacts

Impact 4.3-1 NOx emissions during construction would result in temporary increases above the established thresholds. NOx emissions during project operation would exceed SJVAPCD thresholds. Since the project would conflict with the applicable air quality plans by generating criteria pollutants, temporary (construction) and permanent (operation) impacts are considered significant and unavoidable.

Cumulative Impacts

Although implementation of mitigation measures 4.3.4-1 and 4.3.4-4 are expected to reduce emissions, exact construction and operational mitigation is on an individual project basis and is unknown at this time. It would be speculative to conclude emissions could be reduced to below the threshold for the total buildout of the Project. For these reasons, the proposed Project would have a significant and unavoidable cumulatively considerable contribution to conflicting with implementation of an applicable air quality plan.

Project Impacts

Impact 4.3-2 NOx emissions during project operation would exceed SJVAPCD thresholds. Since the project would generate criteria pollutants for which the project region is under non-attainment, permanent (operation) impacts are considered significant and unavoidable.

Cumulative Impacts

Although implementation of mitigation measures 4.3.4-1 and 4.3.4-4 are expected to reduce emissions, exact construction and operational mitigation is on an individual project basis and is unknown at this time. It would be speculative to conclude emissions could be reduced to below the threshold for the total buildout of the Project. For these reasons, the proposed Project would have a significant and unavoidable cumulatively considerable contribution to increasing criteria pollutants for which the region is in nonattainment.

Greenhouse Gas Emissions

Project Impacts

Impact 4.8-1 Although implementation of these mitigation measures are expected to reduce emissions that can impact greenhouse gases, the proposed Project's preliminary GHG analysis demonstrates that the Project will not meet a 29% reduction in GHG emissions from BAU. Therefore, GHG emissions would be considered significant and unavoidable.

Cumulative Impacts

Although many other agencies with the necessary jurisdiction are currently taking action to reduce GHG emissions, the City cannot assure that these measures would ultimately be implemented or sufficient to address climate change. Therefore, GHG emissions would be considered cumulatively

significant and unavoidable.

Tribal Consultation

The City is required to notify various tribes of the opportunity to conduct consultation when preparing an environmental assessment for which a Notice of Preparation is filed. Notification letters were sent to local tribes by certified mail on August 9, 2019. The City received no letters in response.

Council District and Specific Plan Committees

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

Council District 1

On July 2, 2020, the Council District 1 Plan Implementation Committee voted 3-0 to recommend approval of the proposed text amendment.

Council District 2

On June 8, 2020, the Council District 2 Plan Implementation Committee voted 3-2 to recommend approval of the proposed text amendment.

Council District 3

On June 23, 2020, the Council District 3 Committee recommended to continue the item for so that further research can be conducted on specific questions. On July 7, 2020, the Council District 3 Plan Implementation Committee voted 2-1-1 to recommended approval of the text amendment with the following recommendation: (a) that language be added regarding signage and outreach to inform non-citizens of potential consequences of cannabis employment and uses.

Council District 4

On June 8, 2020, the Council District 4 Plan Implementation Committee voted 3-1 to recommend denial of the proposed text amendment.

Council District 5

On June 22, 2020, the Council District 5 Plan Implementation Committee voted 3-0 to recommend approval of the proposed text amendment.

Council District 6

On June 15, 2020, the Council District 6 Committee recommended to continue the item for so that further research can be conducted on specific questions. On July 20, 2020, the Council District 6 Committee recommended approval of the text amendment by a vote of 5-1-1 with the following recommendations: (a) that the distance between K-12 schools be increased to from 800' to one mile and (b) that the CUPs expire after 3 years (instead of 5).

It is noted that pursuant to section 26054 of the Business and Professions Code of the State of California, a retailer shall not be located within a 600-foot radius of a school providing instruction in

kindergarten or any grades 1 through 12. As proposed, the text amendment requires a greater distance (800') to schools that what is required by the State.

Council District 7

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

Tower District

On June 9, 2020, the Tower District Advisory Committee voted 3-0 to recommend approval of the proposed text amendment.

Fulton-Lowell

On July 3, 2020, the Fulton-Lowell Advisory Committee recommended approval of the project with the following recommendations: (a) language be added stating that graffiti is removed at the owner/operator expense (not at City expense) and (b) direct notification be given to each school(s) located between 801'-2000' of a retailer and direct notification be given to each school(s) located between 1001'-2000' of a cultivator, distributor or manufacturer.

As noted above, pursuant to section 26054 of the Business and Professions Code of the State of California, a retailer shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12. As proposed, the text amendment requires a greater distance (800') to schools that what is required by the State.

As proposed, Cannabis Conditional Use Permit applications shall be routed for review to the respective school district in which the property is located. Recommendations, on the conditions of approval, can be made to the Planning Department on a proposed retailer.

ENVIRONMENTAL FINDINGS

The CEQA Statutes (California Public Resources Code [PRC] Sections 21000, et seq.) and Guidelines (California Code of Regulations [CCR] Sections 15000, et seq.) state that if it has been determined that a project may or will have significant impacts on the environment, then an EIR must be prepared. Prior to approval of the project, the EIR must be certified pursuant to CEQA Guidelines Section 15090. When an EIR has been certified identifies one or more significant environmental impacts, the approving agency must make one or more of the following findings, accompanied by a brief explanation of the rationale, pursuant to CEQA Guidelines Section 15091, for each identified significant impact:

- a. Changes or alterations have been required in, or incorporated into, such project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- b. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency, or can and should be adopted by such other agency.

- c. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

CEQA Guidelines Section 15092 states that after consideration of an EIR, and in conjunction with making the Section 15091 findings identified above, the lead agency may decide whether or how to approve or carry out the project. A project that would result in a significant environmental impact cannot be approved if feasible mitigation measures or feasible alternatives can avoid or substantially lessen the impact.

However, in the absence of feasible mitigation, an agency may approve a project with significant and unavoidable impacts, if there are specific economic, legal, social, technological, or other considerations that outweigh the unavoidable adverse environmental effects. CEQA Guidelines Section 15093 requires the lead agency to document and substantiate any such determination in a “statement of overriding considerations” as a part of the record.

The requirements of CEQA Guidelines Sections 15091, 15092, and 15093 (as summarized above) are all addressed in the Findings of Fact and Statement of Overriding Considerations document provided in Exhibits D & E.

Water Supply Assessment

Senate Bill 610 (Chapter 643, Statutes of 2001) amended State law, effective January 1, 2002, to improve the link between information on water supply availability and land use decisions made by cities and counties. The statute requires detailed information regarding water availability to be provided to city and county decision-makers prior to approval of specified large development projects which are subject to CEQA approval. The statute also requires this detailed information to be included in the administrative record that serves as the evidentiary basis for an entitlement action by the city or county on such projects. The statute-required Water Supply Assessment (WSA) must examine the availability and sufficiency of an identified water supply under normal year, single dry year, and multiple dry year conditions over a 20-year projection, accounting for the projected water demand of the Project in addition to other existing and planned future uses of the identified water supply. The WSA prepared for the subject text amendment is attached as Exhibit K.

In review of all the data in this environmental assessment, including the 2015 Urban Water Master Plan projection tables (Section 5), the estimated Project water demands (Section 4), and the updated information regarding the City’s water system (Section 6), it is conclusively evident that the City of Fresno’s current and projected water supply is adequate to supply Project demands.

Development Code Text Amendment Findings

Based upon analysis of the proposed project, staff concludes that the required findings of Section 15-5811 of the Fresno Municipal Code can be made. These findings are provided in Exhibit J.

Fresno General Plan Policies

As proposed, the project would be consistent with the Fresno General Plan goals and objectives related to industrial land use. Section 6.10 of the Initial Study provides a list of goals, objectives and policies regarding plan consistency such as promoting economic development and job creation.

Below is a brief listing of consistent objectives the project would support

- Objective ED-1: Support economic development by maintaining a strong working relationship with the business community and improving the business climate for current and future businesses.
- 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.
- Objective LU-7: Plan and support industrial development to promote job growth.

Cultivation

It is recommended that the City Council adopt the proposed amendment to Article 21 of Chapter 12 of the FMC (Exhibit H). Currently all cultivation of cannabis is prohibited citywide. In order to comply with state law, Article 21 of Chapter 12 of the FMC, is proposed to be amended to allow for up to 6 cannabis plants to be grown indoors, per residence. The amendment would also exempt businesses with a commercial cannabis permit for cultivation from the cultivation prohibition.

Money Back Guarantee (MBG)

It is also recommended that the City Council adopt the proposed amendment to Article 23 of Chapter 12 of the FMC (Exhibit I). The amendment proposes to exempt Cannabis Conditional Use Permits from the “Money Back Guarantee/Business Streamlining Act”. It is not expected a Cannabis Conditional Use Permit will take longer than the timeline prescribed in MBG, however, due to the nature of cannabis and it being a conditionally permitted use, it may take longer to process than a typical CUP.

Notice of City Council 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 September 4, 2020. 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.

Additionally, a courtesy email was sent on September 4, 2020, notifying various interested parties and stakeholders of the City Council hearing.

LOCAL PREFERENCE

Local preference was not considered because this project does not include a bid or award of a construction or service contract.

FISCAL IMPACT

N/A.

Attachments:

Exhibit A-1: Draft Environmental Impact Report - Vol. 1

Exhibit A-2:	Draft Environmental Impact Report - Vol. 2 Appendices
Exhibit B:	Response to Comments
Exhibit C:	Mitigation Monitoring and Reporting Program
Exhibit D:	Findings of Fact
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Exhibit O:	PowerPoint presentation