



Legislation Details (With Text)

File #: ID 20-001287 **Version:** 1 **Name:** Conditional Use Permit Application No. P20-01891
Type: Action Item **Status:** Agenda Ready
File created: 9/22/2020 **In control:** Planning Commission
On agenda: 10/7/2020 **Final action:** 10/7/2020

Title: Consideration of Conditional Use Permit Application No. P20-01891, a request to upgrade a Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) to a Type 21 (Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold) alcohol license for an existing Johnny Quik Service Station located at 4395 West Ashlan Avenue at the southeast corner of West Ashlan and North Blythe Avenues (Council District 1) - Planning & Development Department.

1. CONSIDER Environmental Assessment No. P20-01891, dated October 7, 2020, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 1 Categorical Exemption; and,

2. DENY the applicant's appeal and UPHOLD the action of the Planning and Development Department Director to deny Conditional Use Permit Application No. P20-01891 requesting to upgrade to a Type 21 (Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold) alcohol sales license.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Photograph, 3. Exhibit C - Planned Land Use, 4. Exhibit D - Zoning Map, 5. Exhibit E - Project Information Table, 6. Exhibit F - Noticing Map, 7. Exhibit G - Master Application-Owner Letter of Authorization, 8. Exhibit H - Operational Statement, 9. Exhibit I - Exhibits (Site, Elevation & Floor Plans), 10. Exhibit J - Policy and Procedure No. C-005, Specialty Grocery Stores, 11. Exhibit K - P20-01891 ABC CUP Denial Letter, 12. Exhibit L - Applicant Appeal Letter, 13. Exhibit M - Public Hearing Notice, 14. Exhibit N - Fresno Municipal Code Findings, 15. Exhibit O - Environmental Assessment, 16. Exhibit P - Draft Conditions of Approval, 17. Supplemental 1- Letter to Planning Commission-Applicant, 18. Supplemental 3 CUSD Facility Planning Letter, 19. Supplemental 2 ABC Licenses Census Tract 38.09

Date	Ver.	Action By	Action	Result
10/7/2020	1	Planning Commission		

REPORT TO THE PLANNING COMMISSION

October 7, 2020

FROM: Dan Zack, Assistant Director
Planning & Development Department

THROUGH: RALPH KACHADOURIAN, Supervising Planner
Development Services Division

BY: JOSE VALENZUELA, Planner III
Development Services Division

SUBJECT

Consideration of Conditional Use Permit Application No. P20-01891, a request to upgrade a Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) to a Type 21 (Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold) alcohol license for an existing Johnny Quik Service Station located at 4395 West Ashlan Avenue at the southeast corner of West Ashlan and North Blythe Avenues (Council District 1) - Planning & Development Department.

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EXECUTIVE SUMMARY

Conditional Use Permit Application No. P20-01891 was filed by Rajdeep Sandhu, of Paramveer Food & Fuel, Inc., and requests authorization to upgrade an State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) to a Type 21 (Package Store - sale of beer, wine and distilled spirits for consumption off the premises where sold) alcohol license. No physical improvements are proposed under this conditional use permit application.

On September 1, 2020, the Planning & Development Department Director denied the Conditional Use Permit application based upon the location restrictions of Section 15-2706-E of the Fresno Municipal Code (FMC) and the inability to make the required findings for conditional use permits under FMC Section 15-5306 (**Exhibit K**, Denial Letter).

The Director's decision to deny the request was appealed by the applicant on September 4, 2020 (**Exhibit L**). Therefore the subject application is being considered by the Planning Commission.

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

BACKGROUND

The existing service station is requesting to upgrade to a Type 21 off-sale alcohol license (beer, wine & distilled spirits). There are no other changes being proposed by the applicant to the current retail operations of the convenience store. The market will continue to operate from 24 hours a day, seven (7) days a week.

The subject property is zoned CC/UGM/cz (*Community Commercial/Urban Growth Management/conditions of zoning*). Pursuant to Table 15-1202 of the FMC, alcohol sales are permitted in the CC zone district subject to an approved Conditional Use Permit and the requirements of Section 15-2706 of the FMC.

Alcoholic Beverage Control (ABC) Regulations

In addition to obtaining a Conditional Use Permit from the City of Fresno, the applicant is required to obtain a license from the California Department of Alcoholic Beverage Control (ABC) and is awaiting the decision on the subject Conditional Use Permit Application.

Number of Existing and Allowed ABC Licenses

The subject site is located in Census Tract 38.09. According to ABC, Census Tract 38.09 currently has six (6) active off-sale alcohol licenses. Of the six active off-sale alcohol licenses there are four (4) ABC Type 20 alcohol licenses and two (2) ABC Type 21 alcohol licenses.

ABC authorizes one off-sale alcohol licenses per 1,120 people within Census Tract 38.09, which has an approximate population of 4,771. Per ABC, a total of four (4) off-sale alcohol licenses are allowed in Census Tract 38.09. Currently, there is one (2) more off-sale alcohol licenses in Census Tract 38.09 than permitted for that census tract.

If allowed to operate under the requested Type 21 alcohol license, the applicant would replace the existing Type 20, therefore not increasing the number of existing ABC off-sale licenses within Census Tract No. 38.09. Should the proposed special permit request for the upgrade be authorized, Census Tract 38.09 would have three (3) ABC Type 20 alcohol licenses and three (3) ABC Type 21 alcohol licenses and the census tract would still have two (2) more off-sale alcohol licenses than permitted for that census tract.

Fresno Police Department Review

The Fresno Police Department, Northwest Policing District reviewed the subject application and was not in opposition to the issuance of a State of California ABC Type 21 alcohol license at this location. In addition, the subject property is located within Police Crime Zone 1947 which is not a documented high crime area. The typical reporting district experiences an average of 453 criminal offenses per year. The reporting district in which the subject establishment is located has experienced approximately 153 offenses; which is below the average. The Fresno Police Department indicated that its primary concern was the propensity of the operations to generate calls for service, and therefore be detrimental to public welfare.

The Fresno Police Department provided conditions to be incorporated into the Draft Conditions of Approval dated July 20, 2020 (**Exhibit P**). Should the Planning Commission resolve to approve the request to establish a Type 21 ABC license, the Standard Fresno Police Department ABC CUP conditions contained in the attached Draft Conditions of Approval dated October 7, 2020, and all conditions included in their Comment Letter dated July 20, 2020, shall apply. Standard ABC CUP conditions include compliance with the FMC limiting noise and unlawful nuisance, compliance with ABC rules and employee education, video camera surveillance, limitations on alcohol types and serving sizes, and limitations on on-site alcohol consumption and loitering.

Citywide Development Code

The proposed conditional use permit being requested shall comply with the requirements of FMC Section 15-2706 as follows:

Location Restrictions

According to FMC Section 15-2706-E (Location Restrictions for New Establishments), new off-sale alcohol establishments that are under 10,000 square feet are prohibited if they are within one of the following areas:

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

The establishment is not located within 500 feet of a listed sensitive use.

2. **Near Other Alcoholic Beverage Establishments.** The establishment shall not be located within 500 feet of an existing establishment, nor may it lead to a grouping of more than four establishments within a 1,000 foot radius.

The establishment is located within 500 feet an existing off-sale establishment, Super Liquor store, located at 4430 West Ashlan Avenue.

3. **Within High Crime Areas.** The establishment shall not be located in an area of high crime, as defined by the California Business and Professions Code 23958.4(a)(1) et seq., and as determined by the Department of Alcoholic Beverage Control (ABC).

As demonstrated in the Police Department Review section above, the establishment is not located in a high crime area.

4. **Within High Concentration Areas.** The establishment shall not be located in an area of high concentration, as defined by the California Business and Professions Code 23958.4(a)(3) et seq., and as determined by the Department of Alcoholic Beverage Control.

As mentioned in the ABC Regulations section above, the census tract in which the establishment is located is currently above the designated saturation level for off-sale ABC licenses. Therefore, the establishment is located within a high concentration area.

The establishment/proposed project is not in compliance with two of the aforementioned location restrictions pursuant to FMC Section 15-2706-E. It is located within a high concentration area and within 500 feet of an existing off-sale alcohol use. Therefore, the proposed alcohol upgrade CUP is

prohibited per the FMC.

Exception from Location Restrictions

According to FMC Section 15-2706-E-5, a new establishment may be excepted from the location restrictions if the Review Authority determines any one 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.

The Director was unable to make any of these findings and therefore, denied the request to establish a Type 21 alcohol license on September 1, 2020.

The Director has established a formal policy to allow for an exception to be made to allow alcohol sales at Specialty Grocery Stores if the store includes 8 key elements. This policy is attached as **Exhibit J** (Policy and Procedure No. C-005). The Johnny Quik convenience store does not contain these 8 elements and thus the Director could not make this exception based on this Policy.

Central Unified School District (CUSD) Review

CUSD did not provide a comment letter.

The establishment is approximately 1,550 feet from John Steinbeck Elementary School.

Other Agencies

All comments received from the applicable agencies have been incorporated into the draft conditions of approval for Conditional Use Permit Application No. P20-01891. See **Exhibit P** for all written agency comments received.

Public Notice and Input

Council District Project Committee Review

The Council District 1 Project Review Committee reviewed this project on August 6, 2020 and voted to approve with no additional comments and/or recommendations.

Notice of Planning Commission Hearing

In accordance with Section 15-5007 of the FMC, the Planning and Development Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property on September 25, 2020 (**Exhibit M**). No comments have been received to date.

LAND USE PLANS AND POLICIES

The Fresno General Plan designates the subject site for Community Commercial planned land uses and provides objectives to guide in the development of these projects. Community Commercial is intended for commercial development that primarily serves local needs such as convenience shopping and small offices. Many of the city's current commercial districts fall into this designation. Specific uses allowed include medium-scale retail, office, civic and entertainment uses, supermarkets, drug stores and supporting uses.

The Fresno General Plan provides goals, objectives, and policies to guide development. The following are applicable goals from the Urban Form, Land Use & Design, and Public Utilities & Services elements of the Fresno General Plan:

- **Goal 9:** *Promote a city of healthy communities and improve quality of life in established neighborhoods.*
- **Goal 16:** *Protect and improve public health and safety.*

Alcohol Sales

High exposure to the easy availability of alcohol sales affects public health, safety, and quality of life in a neighborhood. Alcohol sales outlets that are near other outlets or are in close proximity to sensitive uses increase 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, especially when such establishments are concentrated near one another. For this purpose, Section 15-2706 of the FMC contains restrictions on the location for new establishments proposing to sell

alcohol.

These restrictions are based upon proximity to schools, public parks, playgrounds and recreational areas, as well as other youth facilities such as day care facilities. In addition, restrictions apply based upon proximity to alcohol or drug abuse recovery or treatment facilities, proximity to other establishments which sell alcoholic beverages; and, within areas of high crime. The City of Fresno relies on information from the Police Department and the Alcoholic Beverage Control (ABC) in the consideration of permit applications respective to areas of high crime or an overconcentration of ABC licenses.

West Area Community Plan

Upon reviewing the goals and policies contained in the West Area 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.

FRESNO MUNICIPAL CODE FINDINGS

The required findings under Section 15-5306 of the Fresno Municipal Code are as follows:

- a. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code; and,
- b. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted; and,
- c. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements; and,
- d. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and,
- e. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required; and,
- f. The proposed use is consistent with the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5.

Based upon analysis of the application, staff concludes that the required findings made by the Director to deny the special permit under FMC Section 15-5306 (A, B, C, D, E & F) are appropriate. These findings are attached as **Exhibit N**.

If the Planning Commission decides to grant approval of the request to obtain a Type 20 ABC license, the Commission must find that there is substantial evidence in the administrative record to make all the findings mentioned above and amend them to include the sale of alcohol. The Planning Commission shall also find that there is substantial evidence in the administrative record to determine any of the following exceptions are applicable in accordance with FMC Section 15-2706-E-5:

- 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.

ENVIRONMENTAL FINDINGS

No environmental findings are necessary to adopt a staff recommendation for denial for the project. However, should the Planning Commission make the required findings in accordance with FMC Section 15-5306 and grant approval of the request to establish a Type 21 ABC license then adoption of a Section 15301/Class 1 Categorical Exemption, pursuant to the State of California Environmental Quality Act (CEQA) Guidelines, is considered appropriate in accordance with the following.

The California Environmental Quality Act permits a public agency to determine whether a particular project is exempt from CEQA. Section 15301/Class 1 exemption addresses projects involving existing development.

The proposed project is consistent with the exemption because the project is requesting authorization to establish licensing for alcoholic beverage sales which is permitted in the existing CC (*Community Commercial*) zone district by conditional use permit and is consistent with the planned Community Commercial land use designation applicable to the site. The proposed project is subject to authorization by special permit. However the existing service station has been previously developed and subject to the Class1/15301 exemption, which 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 site has no value as habitat for endangered, rare, or threatened species and complies with all conditions of the Class 1 Categorical Exemption. None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

Therefore, if the Planning Commission resolves to approve the proposed project, a determination of a Categorical Exemption under Section 15301/Class 1 of the CEQA Guidelines may be considered appropriate for the proposed project; and, the attached Categorical Exemption which was prepared for Environmental Assessment No. P20-01891 and dated October 7, 2020 (**Exhibit O**) may be adopted.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with

goals and policies of the Fresno General Plan, West Area Community Plan, compliance with 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. Upon consideration of this evaluation, it can be concluded that Conditional Use Permit Application No. P20-01891, a request for an off-sale alcohol license upgrade from a Type 20 to a Type 21, is not appropriate for the subject property.

If the Planning Commission decides to grant approval of the proposed project, the Commission must find that there is substantial evidence in the administrative record that the project can be excepted from the location restrictions pursuant to FMC Section 15-2706-E and make the required findings of FMC Section 15-5306. Should the Planning Commission make the required findings, approval of the conditional use permit application shall be subject to the applicant's compliance with the Draft Conditions of Approval dated October 7, 2020 (**Exhibit P**).

Action by the Planning Commission is final unless appealed to City Council in accordance with Section 15-5017-A-2 of the FMC.

Attachments:

- Exhibit A - Vicinity Map
- Exhibit B - Aerial Photograph
- Exhibit C - Planned Land Use
- Exhibit D - Zoning Map
- Exhibit E - Project Information Tables
- Exhibit F - Noticing Map
- Exhibit G - Master Application/ Owner's Letter of Authorization
- Exhibit H - Operational Statement
- Exhibit I - Exhibits (Site, Elevation & Floor Plans)
- Exhibit J - Policy and Procedure No. C-005, Specialty Grocery Stores
- Exhibit K - P20-01891 CUP Denial Letter
- Exhibit L - Applicant Appeal Letter
- Exhibit M - Public Hearing Notice
- Exhibit N - Fresno Municipal Code Findings
- Exhibit O - Environmental Assessment
- Exhibit P - Draft Conditions of Approval