



Legislation Details (With Text)

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Title: HEARING to consider Conditional Use Permit Application No. P19-04594, a request to establish a Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for a Johnny Quik Service Station located at 6940 West Barstow Avenue at the northeast corner of West Barstow and North Grantland Avenues (Council District 2) - Planning & Development Department.

Based upon the evaluation contained in this report and appeal received from the appellant, staff recommends that the City Council take the following action:

1. CONSIDER Environmental Assessment No. P19-04594, dated August 5, 2020, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 32 Categorical Exemption; and,
2. DENY the appeal and UPHOLD the action of the Planning Commission, and Planning Director, to deny Conditional Use Permit Application No. P19-04594 requesting to establish the Type 20 off-sale beer & wine alcohol sales license.

Sponsors: Planning and Development Department, Mike Karbassi

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 Tables, 6. Exhibit F - Noticing Map, 7. Exhibit G - Master Application / Owner's Letter of Authorization, 8. Exhibit H - Operational Statement, 9. Exhibit I - Exhibits (Site Plan, Elevation Photos, Floor Plans), 10. Exhibit J - Policy and Procedure No. C-005, Specialty Grocery Stores, 11. Exhibit K - P19-04594 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. Exhibit Q - Councilmember Appeal, 18. Exhibit R - Applicant's Documents Submitted at PC, 19. Exhibit S - Staff's Presentation, 20. Exhibit T - ABC Licenses in Census Tract P19-04594, 21. 20-001468 11.5.20 10.15am Hearing - Exhibit S - Powerpoint re Plan Amendment Application No. P19-04594.pdf, 22. Citizen Letter.pdf, 23. Additional Information Community Emails Received - ID 20-001468.pdf

Date	Ver.	Action By	Action	Result
11/5/2020	1	City Council	approved as amended	Pass

REPORT TO THE CITY COUNCIL

November 5, 2020

FROM: DAN ZACK, Assistant Director
Planning and Development Department

THROUGH: RALPH KACHADOURIAN, Supervising Planner
Development Services Division

BY: JOSE VALENZUELA, Planner III
Development Services Division

SUBJECT

HEARING to consider Conditional Use Permit Application No. P19-04594, a request to establish a Type 20 alcohol license (Package Store - sale of beer and wine for consumption off the premises where sold) for a Johnny Quik Service Station located at 6940 West Barstow Avenue at the northeast corner of West Barstow and North Grantland Avenues (Council District 2) - Planning & Development Department.

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2. **DENY** the appeal and **UPHOLD** the action of the Planning Commission, and Planning Director, to deny Conditional Use Permit Application No. P19-04594 requesting to establish the Type 20 off-sale beer & wine alcohol sales license.

RECOMMENDATIONS

Staff recommends that the City Council take the following actions:

1. **CONSIDER** Environmental Assessment No. P19-04594, dated August 5, 2020, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 32 Categorical Exemption; and,
2. **DENY** the appeal and **UPHOLD** the action of the Planning Commission, and Planning Director, to deny Conditional Use Permit Application No. P19-04594 requesting to establish the Type 20 off-sale beer & wine alcohol sales license.

EXECUTIVE SUMMARY

Conditional Use Permit Application No. P19-04594 was filed by Ken Vang, of VICE, Inc., and requests authorization to establish a new State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license (Off-Sale Beer & Wine [Package Store] - sale of beer and wine for consumption off the premises where sold). Proposed physical development of the Johnny Quik Convenience Store/Service Station on the subject property was approved under a separate Conditional Use Permit Application No. P19-04593 on August 5, 2020.

On August 5, 2020, the Planning & Development Department Director denied Conditional Use Permit Application No. P19-04594 for the alcohol sales use based upon the required 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 August 6, 2020 (**Exhibit L**).

At Planning Commission, Staff recommended upholding the denial based on substantial evidence set forth in the staff report which explains: 1) that 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) specific Findings made by the Director in denial of the Conditional Use Permit contained in Section 15-5306 remain valid.

Fresno City Planning Commission Action

The subject application was considered by the Fresno City Planning Commission at its meeting on September 16, 2020. After hearing testimony from city staff and the applicant, the Planning Commission voted to deny the proposed application by a vote of 3-2-2.

The Planning Commission's decision was appealed by Councilmember Karbassi on September 22, 2020 (**Exhibit Q**). Therefore the subject application is now being considered by the City Council.

BACKGROUND

The approved convenience store/service station is requesting to establish a Type 20 off-sale alcohol license (beer & wine). There are no other changes being proposed by the applicant to the current retail operations of the Johnny Quik Convenience Store/Service Station. The store will operate from 5:00 am - 1:00 a.m. 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 an alcohol sales 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 42.07. According to the ABC, Census Tract 42.07 currently has eleven (11) active off-sale alcohol licenses. Of the eleven there are six (6) ABC Type 20 alcohol licenses and five (5) ABC Type 21 alcohol licenses.

ABC authorizes one off-sale alcohol licenses per 1,120 people within Census Tract 42.07, which has an approximate population of 8,115. Per ABC, a total of seven (7) off-sale alcohol licenses are allowed in Census Tract 42.07. Therefore, the Census Tract is over-concentrated because there are four (4) more off-sale alcohol licenses issued than the seven (7) permitted for this census tract. Should the proposed request to establish an ABC Type 20 alcohol license be authorized, Census Tract 42.07 would remain over-concentrated with a total of twelve (12) off-sale licenses.

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 20 alcohol license at this location. In addition, the subject property is located within Police Crime Zone 1542 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 356 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 August 5, 2020 (**Exhibit P**). Should the City Council resolve to approve the request to establish a Type 20 ABC license, the Standard Fresno Police Department ABC CUP conditions contained in the attached Draft Conditions of Approval dated August 5, 2020, and all conditions included in their Comment Letter dated November 15, 2019, 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 must be in compliance with the requirements of FMC Section 15-2706.

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 proposed establishment is located within 500 feet of a day care facility which is located at 5590 North Grantland Avenue, approximately 440 feet from the proposed establishment. This day care facility is currently under construction.

- 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 proposed establishment is not located within 500 feet an existing off-sale establishment nor would it lead to a grouping of more than four establishments within a 1,000 foot radius.

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 proposed 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 proposed 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 proposed ABC license request is not in compliance with two of the aforementioned location restrictions pursuant to FMC Section 15-2706-E, as the proposed establishment is located within a high concentration area, and it is within 500 feet of a day care facility, which is a sensitive use. Therefore, the proposed new alcohol CUP is prohibited per the FMC unless an exception is applicable.

Exception from Location Restrictions

According to FMC Section 15-2706-E-5, a new establishment may be accepted 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 20 alcohol license on August 5, 2020. The Planning Commission was also unable to make any of these findings when it considered the project on September 16, 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 and meets the definition of a Specialty Food Grocer provided within the policy (i.e., dedication of at least 70% of retail space to specialized category of food products; dedication of at least 10% of retail space to fresh foods; and, no more than 5% of retail floor area devoted to alcohol). This policy is attached as **Exhibit J** (Policy and Procedure No. C-005). The Johnny Quik convenience store does not provide all key elements required or meet the definition of a Specialty Food Grocer and thus the Director could not make this exception based on this Policy.

Central Unified School District (CUSD) Review

CUSD provided a comment letter and did not oppose the project and cited that the proposed establishment was outside of the ABC limits for schools. The establishment is approximately 2,400 feet from World Harvest Christian Academy 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. P19-04594. See **Exhibit P** for all written agency comments received.

Public Notice and Input

Council District Project Committee Review

The Council District 2 Project Review Committee reviewed this project on March 3, 2020 and voted to approve with no additional comments and/or recommendations.

Notice of Public Hearing

In accordance with Section 15-5007 of the FMC, the Planning and Development Department mailed notices of this City Council hearing to surrounding property owners within 1,000 feet of the subject property on October 23, 2020 (**Exhibit M**). No comments have been received to date.

City of Fresno Planning Commission

On September 16, 2020, the Fresno City Planning Commission held a public hearing to consider the proposed project and Environmental Assessment No. P19-04594.

Based upon the testimony and information presented at the hearing and upon review and consideration of the environmental documentation provided, the Planning Commission took action to uphold the Director's denial of Conditional Use Permit Application No. P19-04594.

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

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

If the City Council decides to grant approval of the request to obtain a Type 20 ABC license, the Council 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 City Council shall also find that there is substantial evidence in the administrative record to determine whether any of the following exceptions in accordance with FMC Section 15-2706-E-5 apply:

- 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 City Council make the required findings in accordance with FMC Section 15-5306, and an exception listed in 15-2706-E-5, and grant approval of the request to establish a Type 20 ABC license then adoption of a Section 15332/Class 32 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.

A Section 15332/Class 32 exemption addresses projects involving in-fill development projects.

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. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. No adverse environmental impacts will occur as a result of the proposed project related to traffic, noise, air quality, or water quality. The site can be adequately served by all required utilities and public services. The site has no value as habitat for endangered, rare, or threatened species and complies with all conditions of the Class 32 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 City Council resolves to approve the proposed project with the required findings, a determination of a Categorical Exemption under Section 15332/Class 32 of the CEQA Guidelines may be considered appropriate for the proposed project; and, the attached Categorical Exemption which was prepared for Environmental Assessment No. P19-04593/04594 and dated August 5, 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. P19-04594, a request for an off-sale alcohol license, is not appropriate for the subject property.

If the City Council decides to grant approval of the proposed project, the Council must find that there is substantial evidence in the administrative record that the project can be accepted from the location restrictions pursuant to FMC Section 15-2706-E and make the required findings of FMC Section 15-5306. Should the City Council 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 August 5, 2020 (**Exhibit P**).

Action by the City Council is final in accordance with Section 15-5017-F of the FMC.

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

Affirmative action by the Council will result in timely deliverance of the review and processing of the

applications as is reasonably expected by the applicant. Prudent financial management is demonstrated by the expeditious completion of this land use application inasmuch as the applicant has paid to the city a fee for the processing of this application and that fee is, in turn, funding the respective operations of the Planning and Development Department.

Attachments:

- Exhibit A - Vicinity Map
- Exhibit B - Aerial Photograph
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