



Legislation Details (With Text)

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File created: 12/23/2020 **In control:** City Council
On agenda: 1/7/2021 **Final action:**
Title: HEARING to Consider Conditional Use Permit Application No. P20-02556 and related Environmental Assessment No. P20-01633/P20-02556 pertaining to property located at 1137 North Chestnut Avenue at the southwest corner of North Chestnut and East Olive Avenues, (Council District 7) - Planning & Development Department.

1. CONSIDER Environmental Assessment No. P20-01633/P20-02556, dated January 7, 2021, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 32 (In-fill Development Projects) Categorical Exemption; and,

2. DENY the appeal and UPHOLD the action of the Planning Commission to deny Conditional Use Permit Application No. P20-02556 requesting to establish a Type 20 Off-Sale Beer & Wine alcohol sales license for a proposed 7-Eleven convenience store and service station to be located at 1137 North Chestnut Avenue at the southwest corner of North Chestnut and East Olive Avenues.

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 Tables, 6. Exhibit F - Notice Map, 7. Exhibit G - Master Application & Owners Authorization, 8. Exhibit H - Operational Statement, 9. Exhibit I - Exhibits (Site Plan, Floor Plan, Elevations, and Landscape Plans), 10. Exhibit J - Alcohol License Map, 11. Exhibit K - Department & Agency Comments, 12. Exhibit L - Notice of Intent to Take Action, 13. Exhibit M - P20-02556 CUP Denial Letter, 14. Exhibit N - Applicant Appeal Letter, 15. Exhibit O - Planning Commission Hearing Notice & Noticing Map, 16. Exhibit P - PC Resolution No. 13698, 17. Exhibit Q - Councilmember Appeal Letter, 18. Exhibit R - Ordinance No. 2020-045 RNMA, 19. Exhibit S - City Council Hearing Notice & Noticing Map, 20. Exhibit T - Fresno Municipal Code Findings, 21. Exhibit U - Environmental Assessment, 22. Exhibit V - Draft Conditions of Approval, 23. Exhibit W - City Council PowerPoint Presentation, 24. 21-080 1.7.21_1.45pm Hearing P20-02556_P20-01633_P20-02556 Powerpoint Presentation.pdf

Date	Ver.	Action By	Action	Result
1/7/2021	1	City Council	continued	Pass

REPORT TO THE CITY COUNCIL

January 7, 2021

FROM: JENNIFER K. CLARK, Director
Planning & Development Department

THROUGH: DAN ZACK, Assistant Director

Development Services Division

WILL TACKETT, Planning Manager
Development Services Division

BY: PHILLIP SIEGRIST, Planner
Development Services Division

SUBJECT

HEARING to Consider Conditional Use Permit Application No. P20-02556 and related Environmental Assessment No. P20-01633/P20-02556 pertaining to property located at 1137 North Chestnut Avenue at the southwest corner of North Chestnut and East Olive Avenues, (Council District 7) - Planning & Development Department.

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RECOMMENDATIONS

Staff recommends that the City Council take the following actions:

1. CONSIDER Environmental Assessment No. P20-01633/P20-02556, dated January 7, 2021, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 32 (In-fill Development Projects) Categorical Exemption; and,
2. DENY the appeal and uphold the action of the Planning Commission and the Planning and Development Department Director to deny Conditional Use Permit Application No. P20-02556, a request to establish a 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) for a proposed 7-Eleven convenience store and service station to be located at 1137 North Chestnut Avenue at the southwest corner of North Chestnut and East Olive Avenues.

EXECUTIVE SUMMARY

Robert Vermeltfoort, of Vermeltfoort Architects Inc., has filed Conditional Use Permit Application Nos. P20-01633 and P20-02556 pertaining to a ±1.28 acre parcel of vacant property located at the southwest corner of North Chestnut and East Olive Avenues.

Conditional Use Permit Application No. P20-01633 (Commercial Building)

Conditional Use Permit Application No. P20-01633 was filed for purposes of facilitating physical development of the site and constructing a ±5,151 square-foot commercial shell building to be utilized as a combination 7-Eleven convenience store/automobile service station and a future drive-through restaurant (Starbucks). The 7-Eleven would occupy approximately ±4,088 square feet of the commercial shell building. On October 28, 2020, the Planning & Development Department Director approved Conditional Use Permit Application No. P20-01633. No appeals pertaining to the Director's approval of related Conditional Use Permit Application No. P20-01633 were received.

Conditional Use Permit Application No. P20-02556 (Off-Site Alcohol Sales)

The subject application being considered on appeal, Conditional Use Permit Application No. P20-02556, was filed for purposes of establishing off-site alcohol sales for the proposed 7-Eleven convenience store. 7-Eleven requests to obtain a Type 20 Off-Sale Beer & Wine alcohol sales license.

On October 22, 2020, the Planning and Development Department Director denied Conditional Use Permit Application No. P20-02556 because the project does not satisfy the required location restrictions of Section 15-2706-E of the Fresno Municipal Code (FMC) which prohibit an off-sale establishment that is near other off-sale alcoholic beverage establishments and within a high crime and over-concentrated area, and the required findings for conditional use permits under FMC Section 15-5306 cannot be made (**Exhibit M**, Denial Letter).

The Director's decision to deny the request to establish an off-sale alcohol license was appealed by the applicant on October 23, 2020 (**Exhibit N**).

On November 4, 2020, the Planning Commission voted 4-1 to deny the applicant's appeal and uphold the Planning and Development Department Director's decision for denial based on substantial evidence detailed in the Planning Commission staff report that; 1) the special permit application did not meet the location restrictions for alcohol sales nor the exception provisions specified under Section 15-2706-E; and 2) specific findings required for a Conditional Use Permit by Fresno Municipal Code Section 15-5306 could not be made by the Director (**Exhibit P**, Planning Commission Resolution No. 13698).

Councilmember Nelson Esparza provided an appeal letter to the Planning Department on November 13, 2020 (See **Exhibit Q**).

The actions of Planning Commission and the Planning and Development Department Director to deny Conditional Use Permit Application No. P20-02556 were taken prior to November 15, 2020; the date in which Ordinance No. 2020-045 (**Exhibit R**), otherwise known as the Responsible Neighborhood Market Act (RNMA), went into effect.

The RNMA, amended Chapter 15, Article 27, Section 15-2706 of the FMC relating to the sale of alcoholic beverages for off-site consumption.

Action by City Council on this item shall be reviewed with the new provisions and requirements of the RNMA.

Staff recommends upholding the Planning Commission's decision to deny, based on substantial evidence detailed in this staff report that; 1) the special permit application does not meet the location

restrictions for alcohol sales nor the exception provisions specified under Section 15-2706-F; and 2) specific findings made by the Director in denial of the Conditional Use Permit contained in Section 15-5306 remain valid.

BACKGROUND

Conditional Use Permit Application No. P20-01633, as approved with conditions dated October 28, 2020, authorizes the construction a ±5,151 square-foot commercial shell building to be utilized as a combination 7-Eleven convenience store/automobile service station and a future drive-through restaurant (Starbucks). Additional on and off-site improvements will be provided including but not limited to parking, landscaping, a two-cell trash enclosure, two points of ingress and egress, and curbs, gutters, and sidewalks.

Conditional Use Permit Application No. P20-02556 requests authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 20 alcohol license (Off-Sale Beer & Wine [Package Store] - sale of beer and wine for consumption on off the premises where sold) for the related 7-Eleven convenience store.

For informational purposes, an existing liquor store (Didier's Liquor) holds a Type 21 alcohol license (Off-Sale Beer, Wine, and Distilled Spirits - for consumption off the premises where sold) and is located on the adjacent parcel to the west. However, the applicant proposes to obtain the Type 21 alcohol license from Didier's Liquor, transfer it to the subject property, and downgrade it to a Type 20 alcohol license for use at the proposed 7-Eleven convenience store.

In addition, the applicant also proposes to purchase an additional Type 20 off-sale alcohol license from within the City of Fresno and retire it. However the location in which the additional alcohol license will be obtained from has yet to be determined.

The property is zoned CC (Community Commercial). Pursuant to Table 15-1202 (Land Use Regulations - Commercial Districts) of the FMC, alcohol sales (off-site) are permitted in the CC zone district with an approved conditional use permit and subject to additional regulations in accordance with Section 15-2706 of the FMC, including applicable location restrictions.

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). ABC is awaiting the City's decision on the subject Conditional Use Permit Application.

Number of Existing and Allowed ABC Licenses

The subject site is located in Census Tract 28. According to ABC, Census Tract 28 currently has eight (8) active off-sale alcohol licenses; seven (7) Type 20 and one (1) Type 21.

ABC authorizes one off-sale alcohol licenses per 1,120 people within Census Tract 28, which has an approximate population of 5205. Per ABC, a total of four (4) off-sale alcohol licenses are allowed in Census Tract 28. Therefore, there are currently four more off-sale alcohol licenses in Census Tract 28 than permitted for that census tract. If the Type 21 alcohol license from Didier's Liquor is transferred to the site and downgraded to the requested Type 20 alcohol license, then approval

would not result in an increase of alcohol licenses within Census Tract 28. However the census tract will still remain over concentrated with eight (8) Type 20 alcohol licenses; four more than permitted.

Fresno Police Department Review

The Fresno Police Department, Southeast Policing District reviewed the subject application and does not support the issuance of a State of California ABC Type 20 alcohol license at this location due to it being located within a documented high crime area and over concentrated census tract. The typical reporting district experiences an average of 4,354 criminal offenses per year. The Southeast Policing District in which project site is located has experienced 95,752 calls for service within the last year. A total of 762 Violent Crime Offenses were reported, and 3592 Property Crime Offenses reported for the 2019 calendar year. Furthermore, during the past 9 months, there have been excessive incident reports and calls for police service within a 1 mile radius of the premise. Between January 1 and September 23, 2020 there were approximately 699 calls for service. Of the total, 47 Violent Crime Offenses were reported, and 49 Property Crime Offenses reported. Therefore, the Fresno Police Department recommends denial of the application (P20-02556) as the proposed use would be detrimental to the public health, safety, or welfare of persons and businesses located in the surrounding area (see **Exhibit K**, Fresno Police Department letter dated September 24, 2020)..

Because the Fresno Police Department does not support the applicant's request, they did not provide alcohol related conditions to be incorporated into conditions of approval. However, should the Planning Commission resolve to approve the request to permit a Type 20 ABC license, the Standard Fresno Police Department ABC CUP conditions contained in the attached Draft Conditions of Approval dated January 7, 2021 shall apply (see **Exhibit V**). 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

Review Prior to RNMA Text Amendment

As mentioned in the Executive Summary, the previous actions of denial by the Planning and Development Director and the Planning Commission were based upon the projects compliance with Section 15-2706 of the FMC; prior to the RNMA text amendment taking affect.

The establishment/proposed project was found to not be in compliance with three of the four location restrictions pursuant to FMC Section 15-2706-E (pre-RNMA), as follows.

- **Near Other Alcoholic Beverage Establishments:** *The proposed location is within 500 feet of two existing off-sale alcoholic beverage establishments (Didier's Liquor and EZ Mart #5).*
- **Within a High Crime Area:** *The proposed location is within a documented high crime area as explained by the crime statistics provided by the Fresno Police Department.*
- **Within a High Concentration Area:** *The proposed location is in an over concentrated census tract, the tract has 8 licenses when there should be 4 licenses.*

Therefore, the proposed new alcohol CUP was found to be prohibited per the FMC unless an exception were applicable. The Planning and Development Director and the Planning Commission were unable to make any of the exception findings.

Review Under Responsible Neighborhood Market Act

The RNMA was adopted by City Council on October 15, 2020, and took effect on November 15, 2020. The Act amended Chapter 15, Article 27, Section 15-2706 of the FMC relating to the sale of alcoholic beverages for off-site consumption.

The proposed conditional use permit shall comply with the requirements of FMC Section 15-2706.

Location Restrictions

According to FMC Section 15-2706-F (Location Restrictions for New Establishments), new off-sale alcohol establishments are prohibited if they are within one of the following areas:

1. **Near Sensitive Uses.** The establishment shall not be located within 1,000 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 located within 1,000 feet of a Sensitive Use. Ewing Elementary School is located approximately 815 to the east. Therefore the proposed establishment is prohibited.

2. **Near Other Alcoholic Beverage Establishments.** The establishment shall not be located within 1,000 feet of an existing establishment, nor may it lead to a grouping of more than four establishments within a 1,000 foot radius. Notwithstanding this requirement, an establishment shall not be located within 500 feet of an existing establishment when an establishment is located in a Census Tract that is not oversaturated with off-sale licenses.

The proposed establishment is located near other existing establishments.

There are currently four existing off-sale alcoholic beverage establishments located at the intersection of North Chestnut and East Olive Avenues. (1) Didier's Liquor (Type 21) located on the adjacent parcel approximately 120 feet west; (2) Family Dollar (Type 20) located in the C & O Shopping Center at the northeast corner of Chestnut and Olive Avenues; (3) Fresno Community Market (Type 21) located in the C & O Shopping Center at the northeast corner of Chestnut and Olive Avenues; and (4) EZ Mart #5, (Type 20) located approximately 250 feet east at the southeast corner of Chestnut and Olive Avenues). All four existing establishments are within 1,000 feet of the proposed establishment and are within a 1,000 foot radius of each other.

If the operator were to obtain and transfer the Type 21 alcohol license from Didier's Liquor and downgrade it to a Type 20, the proposed establishment will still be located within 1,000 feet of three existing off-sale alcoholic beverage establishment (Family Dollar, Fresno Community Market, and EZ Mart #5) and the grouping of four establishments within a 1,000 foot radius will

still remain. Therefore the proposed establishment is prohibited.

*For informational purposes Didier's Liquor and the proposed establishment are located within Census Tract 28, Family Dollar and Fresno Community Market are located within Census Tract 29.06, and EZ Mart #5 is located within Census Tract 29.05. See **Exhibit J**, Alcohol License Map.*

- 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 explained in the Police Department Review section, the establishment is located in a documented high crime area.

The typical reporting district experiences an average of 4,354 criminal offenses per year. The Southeast Policing District in which project site is located has experienced 95,752 calls for service within the last year. A total of 762 Violent Crime Offenses were reported, and 3592 Property Crime Offenses reported for the 2019 calendar year. Furthermore, during the past 9 months, there have been excessive incident reports and calls for police service within a 1 mile radius of the premise. Between January 1 and September 23, 2020 there were approximately 699 calls for service. Of the total, 47 Violent Crime Offenses were reported, and 49 Property Crime Offenses reported. Therefore, the proposed establishment is prohibited.

- 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.

The establishment is located within a high concentration area.

The subject site is located in Census Tract 28. In this Census Tract there are eight (8) existing licenses and four (4) are allowed. Of the 8 existing licenses within Census Tract 28, seven (7) are Type 20 licenses and one (1) is a Type 21.

As mentioned in the ABC Regulations section above, the request to obtain and transfer the existing Type 21 alcohol license from Didier's Liquor and downgrade it to a Type 20 alcohol license would not result in an increase in off-sale alcoholic beverage licenses within Census Tract 28. However, the establishment is still located within an area of high concentration with eight (8) Type 20 licenses. Therefore the proposed establishment is prohibited.

- 5. 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. This ratio requirement shall not apply to: (1) 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; (2) new establishments that utilize the Cancel and Transfer provisions stated in Section S., below (Cancel and Transfer); or (3) an existing establishment that is in good

standing which has a change in the ABC License holder, specifically partner franchisees.

The RNMA's Cancel and Transfer requirement provides that new establishments less than 10,000 square feet shall transfer two (2) and cancel one (1) 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. The ABC license will be submitted to the Alcoholic Beverage Control for permanent cancellation. A canceled ABC license cannot be reactivated or reinstated.

As previously stated, the applicant/operator proposes to obtain the Type 21 alcohol license from Didier's Liquor (located on adjacent property), transfer it to the subject property, and downgrade it to a Type 20 alcohol license for use at the proposed 7-Eleven convenience store. In addition, the applicant also proposes to purchase an additional Type 20 off-sale alcohol license from within the City of Fresno and retiring it. However the location in which the additional alcohol license will be obtained from has yet to be determined.

If approved, the applicant/operator shall demonstrate compliance with the Cancel and Transfer provision of the RNMA prior to operation.

The establishment/proposed project is not in compliance with four of the five aforementioned location restrictions pursuant to FMC Section 15-2706-F. It is located near a sensitive use (Ewing Elementary School), near four existing off-sale alcoholic beverage establishments (three if approved), within a documented high crime and high concentration area. 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-F-6, a new establishment may be excepted from the location restrictions if the Review Authority determines 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.

The proposed 7-Eleven will offer for sale to the general public a wide variety of goods and services, including packaged foods, fountain soft-drinks, coffees, teas, bottled beverages, tobacco, fresh and healthy food, beer and wine. The Director is unable to make the any of the above-stated exception findings.

Fresno Unified School District (FUSD) Review

FUSD reviewed the subject application and does not support the request to establish a Type 20 alcohol license at the proposed 7-Eleven convenience store.

Other Agencies

Due to the Director's denial of Conditional Use Permit Application No. P20-02556, comments and conditions received from the applicable agencies were not included in the conditions of approval for related Conditional Use Permit Application No. P20-01633, dated October 27, 2020. See **Exhibit K** for all written agency comments received.

Should the City Council decide to grant approval of the request to obtain a Type 21 ABC license, then the conditions of approval for Conditional Use Permit Application No. P20-01633, dated October 27, 2020 shall be revised to include comments and conditions related to Conditional Use Permit Application No. P20-02556. All comments received from the applicable agencies have been incorporated into the draft conditions of approval for Conditional Use Permit Application Nos. P20-01633 and P20-02556 dated January 7, 2021 (See **Exhibit V**).

Public Notice and Input

Council District Project Committee Review

There is no Council District 7 Project Review Committee. Therefore, the proposed project was not reviewed and there is no committee recommendation.

Notice of Intent to Take Action

Pursuant to FMC Section 15-5305, the Planning and Development Department mailed a Notice of Intent to Take Action (**Exhibit L**) to surrounding property owners within 1,000 feet of the subject site on October 9, 2020, in accordance with FMC Section 15-5007. One email in opposition to the project was received (included in Exhibit L). However, concerns were not related to the sale of alcoholic beverages but rather the development of a convenience store on the property.

As mentioned in the executive summary above, the related Conditional Use Permit No P20-01633 was approved by the Planning and Development Director on October 28, 2020. A Notice of Action was delivered to the one individual who opposed the project. No appeals pertaining to the Director's approval of related Conditional Use Permit Application No. P20-01633 were received.

Notice of Planning Commission Hearing

In accordance with Section 15-5007 of the FMC, the Planning and Development Department mailed notices of the Planning Commission hearing to surrounding property owners within 1,000 feet of the

subject property on October 23, 2020 (**Exhibit O**). No comments were received.

Fresno City Planning Commission Action

Conditional Use Permit Application No. P20-02556 was considered by the Fresno City Planning Commission at its meeting on November 4, 2020. After a complete hearing, the Commission was unable to find substantial evidence in the administrative record to determine any of the exceptions in accordance with FMC Section 15-2706-E-5 apply and was unable to make the required findings pursuant to FMC Section 15-5306. Therefore, the Commission voted unanimously to uphold the Director's decision and denied Conditional Use Permit Application No. P20-02556. See **Exhibit P** for Planning Commission Resolution No. 13698.

The Planning Commission's decision was appealed by Councilmember Nelson Esparza on November 13, 2020. See **Exhibit Q** for Councilmember appeal letter.

Notice of City Council Hearing

In accordance with Section 15-5007 of the FMC, a notice of public hearing was mailed to surrounding property owners within 1,000 feet of the subject site on December 28, 2020. See **Exhibit S** for Notice of City Council Hearing.

LAND USE PLANS AND POLICIES

The Fresno General Plan designates the subject property for Community Commercial planned land use and provides objectives to guide in the development of this project. The Community Commercial planned land use designation 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.

Roosevelt Community Plan

Upon reviewing the goals and policies contained in the Roosevelt 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 County Airport Land Use Compatibility Plan

The proposed project is located within the area of influence under the Fresno County Airport Land Use Compatibility Plan (ALUCP). The project site is located within the Fresno Yosemite International Airport's (FYIA) Safety Zone 6 - Traffic Pattern Zone. Listed uses such as stadiums and similar uses are prohibited in Traffic Pattern Zone 6. The proposed off-sale establishment is not a listed prohibited use. Therefore the proposed project is compatible and in compliance with the Airport Land Use Compatibility Plan. Therefore, the City of Fresno Airports Department anticipates no adverse impacts on Fresno Yosemite International Airport as a result of the proposed project and the use is consistent with the Fresno County Airport Land Use Compatibility Plan.

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.

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

If the City Council decides to grant approval of the request to obtain and establish a Type 20 ABC license at the subject location, 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 Council shall also find that there is substantial evidence in the administrative record to determine all of the following exceptions in accordance with FMC Section 15-2706-F-6 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.
- 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.

ENVIRONMENTAL FINDINGS

No environmental findings are necessary to adopt a staff recommendation for denial of Conditional Use Permit Application No. P20-02556, to establish a Type 20 Off-Sale Beer & Wine alcohol sales license.

However, should the City Council make the required findings in accordance with FMC Section 15-

5306 and also finds an exception to the Location Restrictions, and grants approval of the request to obtain a Type 20 ABC license then adoption of a Section 15332/Class 32 (Infill Development) Categorical Exemption, pursuant to the California Environmental Quality Act (CEQA) Guidelines, is considered appropriate. The attached Categorical Exemption was prepared for Environmental Assessment No. P20-01633/P20-02556 and dated January 7, 2021 (**Exhibit U**) may be adopted by the City Council if the required findings are made as set forth above.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan, Roosevelt Community Plan, and the Fresno County Airport Land Use Compatibility 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. P20-02556, a request to obtain a Type 20 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 excepted from the location restrictions pursuant to FMC Section 15-2706-F-6 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 January 7, 2021 (**Exhibit V**).

LOCAL PREFERENCE

Local preference was not considered because this ordinance 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
- Exhibit C - Planned Land Use
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- Exhibit H - Operational Statement
- Exhibit I - Exhibits (Site Plan, Elevations, Floor Plans, and Landscape Plans)

Exhibit J - Alcohol License Map
Exhibit K - Department & Agency Comments
Exhibit L - Notice of Intent to Take Action
Exhibit M - P20-02556 CUP Denial Letter
Exhibit N - Applicant Appeal Letter
Exhibit O - Planning Commission Hearing Notice & Noticing Map
Exhibit P - Planning Commission Resolution No. 13698
Exhibit Q - Councilmember Appeal Letter
Exhibit R - Ordinance No. 2020-045 RNMA
Exhibit S - City Council Hearing Notice & Noticing Map
Exhibit T - Fresno Municipal Code Findings
Exhibit U - Environmental Assessment
Exhibit V - Draft Conditions of Approval
Exhibit W - City Council PowerPoint Presentation