



Legislation Details (With Text)

**File #:** ID 24-440      **Version:** 1      **Name:**  
**Type:** Action Item      **Status:** Agenda Ready  
**File created:** 3/22/2024      **In control:** Planning Commission  
**On agenda:** 4/3/2024      **Final action:** 4/3/2024

**Title:** Consideration of an appeal regarding the denial of Conditional Use Permit Application No. P22-03906, requesting authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 21 (Off-Sale Beer, Wine, & Distilled Spirits) alcohol license for Circle "D" Food & Liquor store located at 2520 East Olive Avenue on the southeast corner of North Fresno Street and East Olive Avenue. (Council District 7)

1. DENY the Appellant's appeal and UPHOLD the action of the Planning and Development Department Director to deny CUP Application No. P22-03906 requesting authorization to establish a State of California Alcoholic Beverage Control Type 21 (Off-Sale Beer, Wine, & Distilled Spirits) alcohol license for a Circle "D" Food & Liquor store.

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A-1 Vicinity Map, 2. Exhibit A-2 Aerial Photo, 3. Exhibit B-1 Zoning Map, 4. Exhibit B-2 Planned Land Use Map, 5. Exhibit C-1 Project Operational Statement, 6. Exhibit C-2 Project Site Plan, 7. Exhibit C-3 Project Elevations, 8. Exhibit C-4 Project Floor Plan, 9. Exhibit D - Notice of Intent to Take Action, 10. Exhibit E - Denial Letter, 11. Exhibit F - Fresno Municipal Code Findings, 12. Exhibit G - Appeal Letter, 13. Exhibit H - Notice of Public Hearing, 14. Exhibit I-1 Draft Conditions of Approval for ABCUP P22-03906, 15. Exhibit I-2 Draft Categorical Exemption for ABCUP P22-03906, 16. Exhibit J - Supplemental Materials Submitted by Applicant, 17. Supplemental Exhibit K - Applicant Submitted Letters of Support, 18. Supplemental Exhibit L - Letters of Support After Agenda Publication

Date	Ver.	Action By	Action	Result
4/3/2024	1	Planning Commission	APPROVED	Pass

**REPORT TO THE PLANNING COMMISSION**

**April 3, 2024**

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

**THROUGH:** PHILLIP SIEGRIST, Planning Manager  
Planning & Development Department

**BY:** STEVEN MARTINEZ, Planner  
Planning & Development Department

**SUBJECT**

Consideration of an appeal regarding the denial of Conditional Use Permit Application No. P22-03906, requesting authorization to establish a State of California Alcoholic Beverage Control (ABC) Type 21 (Off-Sale Beer, Wine, & Distilled Spirits) alcohol license for Circle "D" Food & Liquor store located at 2520 East Olive Avenue on the southeast corner of North Fresno Street and East Olive Avenue. (Council District 7)

1. **DENY** the Appellant's appeal and **UPHOLD** the action of the Planning and Development Department Director to deny CUP Application No. P22-03906 requesting authorization to establish a State of California Alcoholic Beverage Control Type 21 (Off-Sale Beer, Wine, & Distilled Spirits) alcohol license for a Circle "D" Food & Liquor store.

## EXECUTIVE SUMMARY

Conditional Use Permit Application No. P23-03906 was filed by Felipe Ceballos, on behalf of Baldev Khela of Circle D gas station, and pertains to an existing to ± 2,939 square-foot gas station and convenience store located on a ±0.60-acre developed site located on the southeast corner of North Fresno Street and East Olive Avenue.

The establishment previously operated with a Type 21 alcohol license at this location. However, due to a fire in 2018, the use ceased operations and considered abandoned pursuant to Fresno Municipal Code Section 15-404(F)(3). Conditional Use Permit Application No. P23-03906 requests to reestablish a State of California ABC Type 21 (Off-Sale Beer, Wine, & Distilled Spirits) alcohol license for the ± 2,939 square-foot Circle D gas station and convenience store.

On October 16, 2023, the Director of Planning and Development denied the CUP application based upon the project's non-compliance with the required location restrictions of Section 15-2706-F of the FMC which prohibit a new off-sale establishment that is near sensitive uses, near other alcoholic beverage establishments, within a high crime area, within a high concentration area, when the number of sites selling alcohol for off-site consumption exceeds one (1) license per 2,500 residents, and the inability to make the required findings for conditional use permits under FMC Section 15-5306 (**Exhibit F**, Fresno Municipal Code Findings). The denial letter is attached as **Exhibit E**.

On October 31, 2023, the Director's decision to deny the request was appealed by Baldev and Jasjit Khela of Circle D on October 31, 2023 (**Exhibit G** - Appeal Letter). Therefore, the subject appeal of the application must now be considered by the Planning Commission.

Staff recommends upholding the Director's denial of the conditional use permit based on substantial evidence detailed in this staff report that; 1) the conditional use permit application will not meet the location restrictions for alcohol sales, nor the exceptions to the locations restrictions provisions specified under Section 15-2706-F-6; 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. P23-03906 pertains to Circle D gas station and convenience store which is currently located on the southeast corner of North Fresno Street and East Olive Avenue. The subject property was developed under previously approved Site Plan Review No. S-9022 (approved July 17, 1986) which authorized construction of a Circle "K" mini-mart with a self-

service gas station and over the counter alcohol sales under a Type 20 (Off-sale Beer and Wine) alcohol license. Previously approved Conditional Use Permit Application No. C-11-160 (approved May 29, 2012) subsequently authorized an upgrade of the existing Type 20 (Off-Sale Beer and Wine) alcohol license to a Type 21 (Off-Sale Beer, Wine, and Distilled Spirits) alcohol license. It's noted that the Circle "K" mini-mart was changed to the current Circle D establishment upon change of ownership/operation.

Development and use of the subject property (service station and convenience store with off-site alcohol sales) was lawfully established prior to the adoption of the current development code regulations. However, the establishment does not fully comply with the current regulations for off-sale alcohol establishments in accordance with FMC Section 15-2706 (Alcohol Sales Responsible Neighborhood Market Act); specifically, it does not comply with applicable location restrictions as the site is located near a sensitive use, near another alcoholic beverage establishment, within a high crime area, within a high concentrated area, and the number of establishments selling alcohol (for off-site consumption) exceeds the citywide ratio for off-site alcohol licenses. Therefore, in late 2022, the use was determined to be a legal non-conforming use pursuant to Section 15-402-A (Legal Non-Conforming Status).

In 2018, a fire occurred at the subject site which caused damages to the extent the store needed to close in order to perform necessary repairs. According to records, the owners/operator did not pursue renovations at that time. To date, the store is still closed.

Pursuant to FMC Section 15-404(F)(3), for non-residential and mixed-use districts, a Legal Non-Conforming use shall not be re-established in any structure if such Legal Non-Conforming use has ceased for a consecutive 12-month period within five years of January 3, 2016 (effective date of the current development code). Furthermore, once the five-year period from the effective date of the Code has passed, a Legal Non-Conforming Use shall not be re-established in any structure in a Non-Residential District if such Legal Non-Conforming Use has ceased for a consecutive period of 90 days or more.

The fire occurred during the five-year period from the effective date of the Code. Therefore, the establishment had 12 months to re-establish both the gas station and off-site sales of alcohol uses. The uses were not re-established and consequently considered abandoned in 2019. Therefore, the reestablishment of the site required separate new conditional use permits for both the gas station and off-site sales of alcohol; application records P22-04148 and P22-03906 respectively. Note: only the denial of the ABCUP is being considered.

The property is zoned CG (*Commercial General*). Pursuant to Section 15-2706-D-1, Alcohol Sales, the Responsible Neighborhood Market Act, alcohol sales are uses subject to an approved conditional use permit.

#### Number of Existing and Allowed ABC Licenses

The subject site is located within Census Tract 24.00 which has a population of approximately 4862. The Department of Alcoholic Beverage Control (ABC) authorizes one (1) off-sale alcohol license per 1,123 people. Based on the population, Census Tract 24.00 allows up to four (4) off-sale alcohol licenses. Census Tract 24.00 currently has six (6) off-sale alcohol licenses. Should the proposed request be authorized, Census Tract 24.00 would have seven (7) off-sale alcohol licenses; three (3) more than allowed.

## Citywide Development Code

The proposed CUP shall comply with the requirements of FMC Section 15-2706: The Responsible Neighborhood Market Act.

### 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. Pursuant to FMC Section 15-2706-D-1, (Applicability - New or Expanded Use), any new or existing establishment that requests to modify their alcohol or business license (which includes upgrades in license types) must obtain a Conditional Use Permit (CUP) in compliance with the standards of the section, including applicable location restrictions, to ensure that establishments operate in a manner that is mutually beneficial to surrounding uses and to also provide mechanisms to prevent and correct any associated problems.

### Location Restrictions

Pursuant to FMC Section 15-2706-F (Location Restrictions for New Establishments), the following location restrictions shall apply to new and/or existing establishments that must obtain a CUP pursuant to the Responsible Neighborhood Market Act (RNMA).

- 1) Near Sensitive Uses.** The establishment shall not be located within 1,000 feet of the following:
- a. A public park, playground, recreational area including a trail that is immediately adjacent to a public park, 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 project does not comply with this restriction. The establishment is located approximately 650 feet from Webster Elementary School, approximately 625 feet away from a "Kids Kare" daycare facility, and approximately 875 feet away from Career Technical Education Charter (CTEC) School.*

- 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 project does not comply with this restriction. The establishment is located approximately 100 feet from another establishment (Fresno Food Mart; Type 20) which has off-site alcohol sales.*

- 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.

*The project does not comply with this restriction. Per the Department of Alcoholic Beverage Control, the establishment is located in Crime Reporting Zone No. 2547 which is considered an*

*area of high crime.*

- 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 project does not comply with this restriction. Per the Department of Alcoholic Beverage Control, the establishment is located in an area of high concentration. The project site is located in Census Tract 24.00 which currently has six (6) off-sale licenses; only four (4) are allowed.*

- 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; or (3) an existing establishment that is in good standing which has a change in the ABC License holder, specifically partner franchisees.

*The project does not comply with this restriction. According to the United States Census Bureau, the City of Fresno has an estimated population of 545,567 residents (2022). Per the established citywide ratio requirements noted above (one per 2,500 residents), there shall be no more than 218 off-sale licenses within the City of Fresno.*

*According to the State of California Alcoholic Beverage Control there are a total of 502 active off-sale alcohol licenses (Type 20 & 21) currently within the City of Fresno. Therefore, the current citywide ratio of existing off-sale licenses is one license per 1,084 residents, which exceeds the established ratio.*

#### Location Restrictions Exceptions

Pursuant to FMC Section 15-2706(F)(6), a new establishment may be excepted from location restrictions if the Review Authority determines all the following:

- 1)** 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.

*The project does not comply. As stated above, the project is located within an area of high crime as defined by California Business and Professions Code (CBPC) 23958.4(a)(3) et seq. No statement from the Chief of Police has been provided to confirm or deny that the proposed alcohol use would be detrimental to the public health, safety, or welfare of persons located in the area, and that it would increase the severity of existing law enforcement or public nuisance problems in the area. On July 20, 2023, the Fresno Police Department reviewed the application and provided a letter stating they do not oppose the project provided their conditions of approval be included should the application be approved.*

- 2)** 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.

*The project does not comply.* At the time of denial, the property owner does not have a valid Conditional Use Permit to operate a fuel station. If the facility was open, it would only be permitted to operate as a convenience store. Therefore, the alcohol sales are not automatically incidental or appurtenant to fuel sales, and alcohol sales would have to be compared to the sale of other merchandise. Per the provided operational statement, the applicant intends on selling the following items at the market: milk, bread, eggs, salads, fruits, sandwiches, chips, candy, soda, coffee, fountain drinks, juices, ice cream, canned food, frozen food, pastries; and prepared foods like hotdogs, burritos. It is unknown what percentage of sales would be from these items and what percentage from alcohol. Therefore, there is insufficient evidence in the record to determine the 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.

- 3) 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 project does not comply. The establishment is located approximately 100 feet from another establishment which has off-site alcohol sales. Therefore, the establishment would not act as a public convenience or serve an underserved portion of the community, nor would the establishment enhance the vitality of the existing area. Moreover, there are already six (6) establishments within the same Census Tract (24.00) which sell alcohol for off-site consumption.*

- 4) 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 project does not comply.* The FMC defines General Markets as retail food markets of food and grocery items for offsite preparation and consumption. Furthermore, the FMC defines Healthy Food Grocer as a food and beverage retail sales establishment that (1) dedicates at least 50 percent of retail space to a general line of grocery products intended for home preparation, consumption and use; and (2) dedicates at least 30 percent of retail space to perishable goods including dairy, fresh, produce, fresh meats, poultry and fish, and frozen foods.

*Although the convenience store will partially carry items found in a supermarket, neighborhood grocery store, or a healthy food grocer, the majority of items sold will not be food and grocery items for off-site preparation and consumption. Furthermore, the Director has established a formal policy (Policy and Procedure No. C-005) to allow for an exception to be made to allow alcohol sales at Specialty Grocery Stores if the store includes 8 key elements:*

- 1) *Minimum Gross Floor Area. The minimum gross floor area shall be 1,500 square feet.*
- 2) *Ceiling Height. The minimum ceiling height shall be 15 feet. Dropped ceilings are prohibited.*
- 3) *Lighting. Lighting shall be of efficient retail lighting design.*
- 4) *Shelving Height. Main grocery shelves shall be a minimum of 7 feet high.*
- 5) *Flooring Materials. The floor shall be finished concrete or other high quality, durable material.*

- 6) *Window Signage. Window signage is prohibited.*
- 7) *Fresh Food Display. Fresh foods shall be located in the front of the store and visible from the front door.*
- 8) *Architecture. The architectural style of the main building shall be carried into the design of all accessory structures (e.g. trash receptacles, canopy, lighting fixture, etc.). If the specialty grocery store is a standalone building within a unified shopping center the architectural design of the specialty grocery store shall be compatible with the exterior design of the unified shopping center.*

*The convenience store aspect of the project does not contain these 8 elements and thus the establishment does not meet the definition of a Specialty Grocery Store. Moreover, the establishment does not meet the definition of a General Market including: a supermarket, neighborhood grocery store, or Healthy Food Grocer. As such, the Director could not make this exception.*

The Director was unable to make all of the aforementioned exceptions to the location restrictions pursuant to FMC Section 15-2706(F)(6). Therefore, the requested alcohol license upgrade was denied by the Director on October 16, 2023.

### **Fresno Police Department Review**

The Central Policing District reviewed the subject application and does not oppose the project provided the applicant agrees to the conditions listed in its memorandum dated July 20, 2023 and complies with the completed security plan; see Exhibit I-1 - Draft Conditions of Approval for ABCUP P22-03906. Conditions include compliance with the FMC sections limiting noise and unlawful nuisance, compliance with State of California Alcoholic Beverage Control rules and employee education, video camera surveillance, limitations of alcohol types and servings, limitations of on-site alcohol consumption and loitering, and completion of a security plan.

### **Fresno Unified School District Review**

On May 24, 2023, the Fresno Unified School District provided a letter stating they did not support the alcohol license request due to the proximity to Webster 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 P22-03906. See **Exhibit I-1** for all written agency comments received.

### **Public Notice and Input**

#### Council District 7 Project Committee Review

During the processing of this application there was not an active Council District 7 Project Committee Review.

#### Public Notice

Pursuant to FMC Sections 15-5305 and 15-5007, the Planning and Development Department mailed a Notice of Intent to Take Action (**Exhibit D**), a neighborhood notice, to surrounding property owners within 1,000 feet of the subject site on September 15, 2023. No responses (letter, email, nor phone call) were received in response to the notice.

#### Notice of Action

On October 16, 2023, the Planning and Development Department issued a Notice of Action (Denial) for P23-03906. On October 31, 2023, the Director's decision to deny the request was appealed by Baldev and Jasjit Khela of Circle D on October 31, 2023 (**Exhibit G** - Appeal Letter). Therefore, the subject appeal of the application must now be considered by the Planning Commission.

#### Notice of Planning Commission Hearing

In accordance with FMC Section 15-5007, 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 March 22, 2024 (**Exhibit H**).

## LAND USE PLANS AND POLICIES

### Fresno General Plan

The Fresno General Plan designates the subject site for Commercial General planned land use and provides objectives to guide in the development of this project. The Commercial General planned land use designation is intended to accommodate a range of retail and service uses that are not appropriate in other areas because of higher volumes of vehicle traffic and potential impacts on other uses. Specific uses allowed include building materials, storage facilities with active storefronts, equipment rental, wholesale businesses, and specialized retail not normally found in shopping centers.

The Fresno General Plan provides goals, objectives, and policies to guide development. The following are applicable goals from 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 nuisance 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.

On December 12, 2023, Melanie Halajian of Land Development Services-on behalf of Circle D-requested the Planning Commission hearing date be rescheduled to a later time so that supplemental appeal materials could be submitted. The request was granted by City staff. On January 5, 2024, Halajian submitted the supplemental appeal materials. Staff's response to the initial appeal and supplemental materials are as follows.

## **ANALYSIS OF THE APPEAL**

### **Appeal Letter dated October 31, 2023**

#### Claim 1A:

*"While the Circle D convenience store is located approximately 650 linear feet from Webster Elementary School, I would like to bring to your attention that the law specifies that the ABC may deny a license only if the location is within at least 600 feet from a school, public playground, and nonprofit youth facilities. Given this clarification, I believe our application is in compliance with the stated regulations. "*

#### Response to Claim 1A:

The standards in which the City of Fresno reviews ABCUP applications are contained within Fresno Municipal Code Chapter 15 Article 27 (Responsible Neighborhood Market Act). Although the proposal may be acceptable pursuant to ABC regulations, the proposal is not compliant with the RNMA as noted in this staff report.

## Supplemental Packet dated January 05, 2024

### Claim 2A:

*“The project will comply with the City of Fresno general market criteria by providing fresh fruit and produce, cold sandwiches, and dairy products.”*

#### Response to Claim 2A:

Although the convenience store will partially carry items found in a supermarket or general market, such as dairy and produce, the majority of items sold will not be food and grocery items for offsite preparation and consumption. As shown in the supplemental packet, only five (5) refrigerators and five (5) stands are reserved for dairy, produce, and pre-made food. The equal number of refrigerators are dedicated to beer, and nearly the equal amount of shelf space is dedicated to wine and liquor. Five (5) aisles / ten (10) rows of shelf space are dedicated to other convenience store items. The amount of general market items is considerably less than the amount of convenience store items and alcohol. Therefore, the site does not comply with the general market criteria.

### Claim 2B:

*“The sale of spirits will be limited to an approximately 75 sq. ft. shelving area... Wine will be displayed on four 18-inch-deep shelves approximately 8-feet long for a total of 48 sq. ft. or having a footprint of approximately 12 sq. ft. Beer will be available in the refrigerated section of the store in five cabinets occupying an area 15 feet wide, 5 feet high and two feet deep for a total of 150 square feet...”*

#### Response to Claim 2B:

This claim identifies the shelf space that will be dedicated to the types of alcohol. It neither raises a claim against the location restrictions nor adds to the claim that the convenience store qualifies as a general market.

### Claim 2C:

Circle D Food and Liquor will not sell magazines, e-cigarettes, or drug and smoking paraphernalia.

#### Response to Claim 2C:

This claim identifies products the convenience store will not sell. It neither raises a claim against the location restrictions nor adds to the claim that the convenience store qualifies as a general market.

### Claim 2D:

Building and site improvements such as updated building colors and signage, modified landscape materials, and window additions will be done to enhance the property.

#### Response to Claim 2D:

This claim identifies various improvements that will be done to the site. It neither raises a claim against the location restrictions nor adds to the claim that the convenience store qualifies as a general market.

## FRESNO MUNICIPAL CODE FINDINGS

The required findings for a CUP under FMC Section 15-5306 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 averse 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 F**.

### **Fresno High-Roeding Community Plan**

Upon reviewing the policies contained in the Fresno High-Roeding Community Plan, staff has determined that there are no applicable policies restrictive to alcohol sales compared to those already provided in the Fresno General Plan and the Fresno Municipal Code.

If the Planning Commission decides to grant approval of the request to obtain a Type 21 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 all of the following elements in accordance with FMC Section 15-2706(F)(6), Exceptions 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

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378, this item is not a project for the purposes of CEQA.

## CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan, the Fresno High-Roeding Community Plan, compliance with specific provisions of the 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 CUP Application No. P23-03906, a request for an alcohol license upgrade, 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(F)(6) and make the required findings of FMC Section 15-5306. Should the Planning Commission make the required findings, approval of the CUP application shall be subject to the applicant's compliance with the Draft Conditions of Approval (**Exhibit I-1**).

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

## ATTACHMENTS:

- Exhibit A-1 - Vicinity Map
- Exhibit A-2 - Aerial Photo
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