



## Legislation Details (With Text)

**File #:** 23-035      **Version:** 1      **Name:**  
**Type:** Public Hearing Item      **Status:** Agenda Ready  
**File created:** 12/28/2022      **In control:** Planning Commission  
**On agenda:** 1/18/2023      **Final action:** 1/18/2023  
**Title:** SUBJECT: Conditional Use Permit #1268 and Site Plan Review #506, initiated by Circle K Stores, Inc., on behalf of Ashley Investments, LLC, property owner. This application involves a request to construct a new gas station/convenience market with tobacco sales, and beer and wine sales for off-site consumption at the southwest corner of R Street and Loughborough Drive. The subject site is located within Planned Development (PD) #8 with a General Plan designation of Regional/Community Commercial (RC). \*PUBLIC HEARING\*

**ACTION:** Approve/Disapprove/Modify  
1) Environmental Review #22-45 (Categorical Exemption)  
2) Conditional Use Permit #1268  
3) Site Plan Review #506

### SUMMARY

Circle K Stores, Inc., is requesting approval to construct an approximate 3,700-square-foot gas station/mini-market (with tobacco sales and alcohol sales for off-site consumption), and an approximate 2,592-square-foot fuel pump canopy (8 pumps) on a pending outparcel located at the southwest corner of R Street and Loughborough Drive (Attachment B). A site plan review permit is required for new developments within this Planned Development, and for gas stations with a land use designation of Regional/Community Commercial (RC). The RC designation also requires a conditional use permit for the sale of tobacco products/paraphernalia within 600 feet of a public park, and alcohol for off-site consumption (for buildings under 20,000 square feet) per MMC 20.10.020. A Finding of Public Convenience or Necessity (adopted by City Council) is also required for alcohol sales because Merced is listed under Moratorium City for Type 20 alcohol licenses by the Department of Alcoholic Beverage Control. The Police Department has determined that they would support the sale of alcohol for off-site consumption if specific conditions are included to reduce the potential for alcohol-related incidents. Staff is recommending approval of this application subject to the conditions.

### RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #22-45 [Categorical Exemption], Conditional Use Permit #1268, and Site Plan Review Permit #506, including the adoption of the Draft Resolution at Attachment A subject to the conditions in Exhibit A and the findings/considerations in Exhibit B.

### Sponsors:

### Indexes:

### Code sections:

**Attachments:** 1. Attachment A - Draft PC Resolution.pdf, 2. Attachment B - Location Map.pdf, 3. Attachment C - Site Plan.pdf, 4. Attachment D - Floor Plan.pdf, 5. Attachment E - Elevations.pdf, 6. Attachment F - Landscape Plans.pdf, 7. Attachment G - City Wide Hot Spot Map.pdf, 8. Attachment H - Incident Map.pdf, 9. Attachment I - Categorical Exemption.pdf, 10. Attachment J - Presentation.pdf

Date	Ver.	Action By	Action	Result
1/18/2023	1	Planning Commission	approved	Pass

## Planning Commission Staff Report

*Report Prepared by: Francisco Mendoza-Gonzalez, Associate Planner*

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**ACTION:** Approve/Disapprove/Modify

- 1) Environmental Review #22-45 (*Categorical Exemption*)
- 2) Conditional Use Permit #1268
- 3) Site Plan Review #506

## SUMMARY

Circle K Stores, Inc., is requesting approval to construct an approximate 3,700-square-foot gas station/mini-market (with tobacco sales and alcohol sales for off-site consumption), and an approximate 2,592-square-foot fuel pump canopy (8 pumps) on a pending outparcel located at the southwest corner of R Street and Loughborough Drive (Attachment B). A site plan review permit is required for new developments within this Planned Development, and for gas stations with a land use designation of Regional/Community Commercial (RC). The RC designation also requires a conditional use permit for the sale of tobacco products/paraphernalia within 600 feet of a public park, and alcohol for off-site consumption (for buildings under 20,000 square feet) per MMC 20.10.020. A Finding of Public Convenience or Necessity (adopted by City Council) is also required for alcohol sales because Merced is listed under Moratorium City for Type 20 alcohol licenses by the Department of Alcoholic Beverage Control. The Police Department has determined that they would support the sale of alcohol for off-site consumption if specific conditions are included to reduce the potential for alcohol-related incidents. Staff is recommending approval of this application subject to the conditions.

## RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #22-45 [*Categorical Exemption*], Conditional Use Permit #1268, and Site Plan Review Permit #506, including the adoption of the Draft Resolution at Attachment A subject to the conditions in Exhibit A and the findings/considerations in Exhibit B.

## DISCUSSION

### Project Description

The subject site is located at the southwest corner of R Street and Loughborough Drive and is part of a parking lot for a site that has currently been remodeled for the recently opened US Foods CHEF'STORE (previously In-Shape Health Club) at 3275 R Street. The project site is part of a pending out-parcel that would become independent from the US Foods CHEF'STORE and would have cross-access and shared parking agreements. This proposal would use the existing driveways located along R Street and Loughborough Drive for vehicle access to the new gas station/convenience market.

The proposal would consist of the two primary structures: a gas station canopy for 8 fuel pumps

(2,592 square feet) and a convenience market (3,700 square feet). The canopy would be located along the southern portion of the pending outparcel, and the convenience market would be located within the northern portion of the outparcel. Customer parking would be located along the main entrance adjacent to the southern elevation (16 parking stalls) and along the east elevation (8 parking stalls). The refuse enclosure would be located adjacent to the west elevation.

Surrounding uses as noted in Attachment B.

Surrounding Land	Existing Use of Land	City Zoning Designation	City General Plan Land Use Designation
North	Commercial Strip Mall (across Loughborough Drive)	Planned Development (P-D) #8	Neighborhood Commercial (CN)
South	Planet Fitness/ Best Buy	Planned Development (P-D) #8	Regional/ Community Commercial (RC)
East	Merced Mall (across R Street)	Planned Development (P-D) #1	Regional/ Community Commercial (RC)
West	Meadowlark Apartments	Planned Development (P-D) #8	Regional/ Community Commercial (RC)

Background:

The subject site was originally part of a larger annexation into the City (Fahrens Creek Annexation) which included 576 acres. The existing 19,000-square-foot building was approved and constructed in the early 1990's and was then occupied by Circuit City and subsequently operated by In-Shape Health Club. This building remained vacant over the past few years but has recently been remodeled into a grocery store (US Food CHEF'STORE). In November 2022, the Minor Subdivision Committee approved a lot split for the subject site to create an outparcel of 0.77-acres for the proposed gas station and 2.03-acres for the grocery store. Even though the lot split has been approved, the final map has yet to be recorded.

Ordinance:

The restrictions on tobacco sales near schools and youth centers were codified in 2016 as part of a comprehensive Zoning Ordinance update through the recommendation of the Merced County Health Department. In 2016, the sale of tobacco products was prohibited within 1,000 feet of schools and youth centers, with no option to obtain approval through a conditional use permit. Through community feedback, it became apparent that these restrictions made it very difficult for new establishments to sell tobacco products given the variety of sensitive uses scattered throughout town - such as schools (elementary, junior high, or high school), youth centers, playgrounds, daycares, recreation facilities, and libraries. In 2020, the City Council approved an amendment to the Merced Municipal Code 20.44.160 - Tobacco Sales Prohibited Near Schools, to still prohibit tobacco products within 1,000 feet of schools but allow tobacco sales within 600 feet of youth-oriented facilities with conditional use permit approval. In this case, the sensitive use within 600 feet of the subject site is

Fahrens Park, which is located approximately 515 feet north of the subject site (measured from property line to property line). The distance of 600 feet was selected to match the distance requirement for commercial cannabis retail permits. Approval of tobacco sales does not require approval of any specific findings other than those required for conditional use permits. Those findings are shown on the Draft Planning Commission Resolution at Attachment A (Exhibit B).

The Zoning Ordinance also requires Conditional Use Permit approval for businesses selling alcohol that are less than 20,000 square feet in size.

Findings/Considerations

Please refer to Exhibit B of the Draft Planning Commission Resolution at Attachment A.

**ATTACHMENTS**

- A. Draft Resolution
- B. Location Map
- C. Site Plan
- D. Floor Plan
- E. Elevations
- F. Landscape Plan
- G. Police Department City-Wide Incident Hot Spot Map
- H. Police Department Incident Map (500-foot-radius from Site)
- I. Categorical Exemption
- J. Presentation