City of FRESNO

REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	1 I
COUNCIL MEETING: 3/6/14	
APPROVED BY	
DARM DEPARTMENT DIRECTOR	
CITY MANAGER	

March 6, 2014

FROM: MIKE SANCHEZ, Planning Manager
Development Services Division

THROUGH: WILL TACKETT, Supervising Planner
Development Services Division

BY: ISRAEL TREJO, Planner
Development Services Division

SUBJECT: Consider Text Amendment Application No. TA-13-006 and related environmental finding for Environmental Assessment No. TA-13-006 relating to the use of outdoor dining areas, including within street easements and rights-of-way, without requiring a special permit for certain uses

RECOMMENDATION

The appropriateness of the proposed text amendment has been examined pursuant to Section 12-402 of the Fresno Municipal Code (FMC), and the Director of the Development and Resource Management Department has determined that the proposed text amendment is consistent with the goals and policies in the 2025 Fresno General Plan.

Upon consideration of staff evaluation, it can be concluded that proposed Text Amendment Application No. TA-13-006 is appropriate for citywide use. Therefore, staff recommends the City Council take the following actions:

1. APPROVE to the City Council of the environmental finding for Environmental Assessment No. TA-13-006, dated October 31, 2013, that a Negative Declaration be adopted for the project.

2. APPROVE to the City Council of Text Amendment Application No. TA-13-006, which would allow for the expansion and use of outdoor dining areas, including within street easements and rights-of-way, without requiring a special permit for certain uses.

EXECUTIVE SUMMARY

Text Amendment No. TA-13-006 was initiated by the Director of DARM, pursuant to Section 12-402.A of the FMC. Text Amendment No. TA-13-006 proposes to add Section 12-328, repeal and reserve Subsection (M) of Sections 12-220.5 and 12-231.5, amend Subsection (d) of Section 13-219, and amend Section 9-2503 of the FMC (see Ordinance Bill). The text amendment proposes to allow for the expansion and use of outdoor dining areas, including within street easements and rights-of-way (i.e. sidewalks), without requiring a special permit for certain uses. Currently, the FMC only allows outdoor dining in conjunction with a restaurant. The approval of the proposed text amendment would allow for outdoor dining at Restaurants, Taverns, Delicatessens, Ice Cream Stores, Cafeterias, Banquet Halls, Bakeries, Micro-breweries, Nightclubs and other similar uses.

PROJECT INFORMATION

PROJECT	Text Amendment No. TA-13-006 was initiated by the Director of the Development and Resource Management Department. The text amendment proposes to allow for the expansion and use of outdoor dining areas, including within street easements and rights-of-way (i.e. sidewalks), without requiring a special permit for certain uses
APPLICANT	City of Fresno – Development and Resource Management Department
LOCATION	Citywide
ENVIRONMENTAL FINDING	A Negative Declaration was filed with the Fresno County Clerk on October 31, 2013
PLAN COMMITTEE RECOMMENDATION	See Exhibit F for Council District Plan Implementation Committee recommendations
PLANNING COMMISSION	On January 29, 2014, the Planning Commission recommended that the City Council: (1) Adopt the Negative Declaration, dated October 31, 2013, prepared for the project; (2) Approve Text Amendment No. TA-13-006 with the addition that smoking be prohibited within patios on private and public property
STAFF RECOMMENDATION	Approve the proposed text amendment and adopt the related environmental finding

BACKGROUND

Over-the-counter application

No site plan, conditional use permit, or amendment to an existing special permit is required for an Outdoor Dining area. Instead, an over-the-counter application is required to be submitted to the Director of DARM for ministerial approval consistent with the proposed Outdoor Dining Ordinance prior to use of the Outdoor Dining area. The total Outdoor Dining area associated with each establishment is limited to 49 persons or 749 square feet, whichever is less, for an over-the-counter application. Additional Outdoor Dining area up to 3,000 square feet may be approved with a special permit (site plan review or conditional use permit) consistent with the design guidelines of the proposed ordinance.

Outdoor Dining Areas without Alcohol Consumption

An applicant may submit an over-the-counter application for ministerial approval to immediately operate an Outdoor Dining area where alcoholic beverages are not consumed or otherwise used. No updated or additional security plan is required if alcoholic beverages are not consumed or otherwise used in the Outdoor Dining area.

Outdoor Dining Areas with Alcohol Consumption

For any use involving alcoholic beverages in the Outdoor Dining area, a security plan, and any additional information as the Director of DARM may reasonably require to evaluate the application, shall be submitted to the Director for review and approval by the Police Department.

Upon consultation with the Police Department, the Director has discretion to deny any application involving alcoholic beverages in the Outdoor Dining area for either "good cause" as defined in Section 12-326(H)(1) of the FMC (Exhibit A), or for any unlawful nuisance identified by Section 10-708 of the FMC (Exhibit B).

Parking

No additional parking is required when a proposed Outdoor Dining area is less than 749 square feet. Any portion of the Outdoor Dining area 749 square feet or more shall be included as gross floor area for the purposes of calculating off-street parking requirements at the rate set in Section 12-306(I)(2.2)(d) of the FMC.

Noise Requirements

Use of an Outdoor Dining area shall comply with the Noise Ordinance of the FMC. If a qualifying Outdoor Dining area is proposed to be used after 10:00 p.m. and is located within 500 feet of property planned for residential uses, excluding any portion that is planned to allow residential mixed uses, an acoustical analysis with a diagram of the Outdoor Dining area must be conducted to ensure compatibility with the Noise Ordinance.

Barriers Around Outdoor Dining Areas

Barriers around Outdoor Dining areas are not required, including those where alcoholic beverages are consumed, but are allowed subject to the proposed ordinance if not more than four feet in height and maintain at least 50% transparency. Barriers can be permanent or temporary; chain linked fencing is prohibited. All barriers must have at least one direct exit made by either providing a gap in the barrier, or with a door or gate that swings in the direction of egress travel equipped with panic hardware. The Outdoor Dining area must maintain and allow for at least four feet of available and usable travel space for all walkways, sidewalks, entrances and exits. The Outdoor Dining area must not obstruct direct access or egress from any entrance or exit. An Outdoor Dining area, where alcoholic beverages are consumed, shall comply with barrier requirements as may be established by the California Department of Alcoholic Beverage Control (ABC).

Use of City Right-of-Way for Outdoor Dining

Use of City of Fresno street easement or right-of-way (i.e. sidewalks), for Outdoor Dining purposes may be approved at the discretion of the Director of DARM after consultation with the Department of Public Works. An encroachment permit issued by the Department of Public Works is required. An applicant will be required by the encroachment permit (or covenant) to

maintain the encroachment area free of any nuisance, and shall conduct activities in full compliance with all applicable federal, state, and local laws.

Additional Amendments to the Code

To help facilitate the development of an Outdoor Dining area under the proposed text amendment, revisions were needed for Sections of the FMC that are not within Chapter 12 (Land Use Planning and Zoning). Section 9-2503 (d) of the FMC is proposed to be revised to allow an encroachment permit, for alcoholic beverage consumption on a mall or sidewalk, to be issued by the Department of Public Works, rather than the City Council. Additionally, painted lines will not be required around the alcoholic beverage consumption area.

Also, though not needed to develop an Outdoor Dining area under the proposed text amendment, Section 9-2503 (d) of the FMC proposes to allow the Parks and Recreation Director, in consultation with the Police Chief, to authorize the consumption of alcoholic beverages during an event of limited duration held in a mall area as defined in Section 14-1801(f) of the FMC (Exhibit C). In addition, the subject text amendment proposes to add the Police Chief as someone that reviews the project and removes the requirement that the event be conducted by an organization for the benefit of a nonprofit organization, a charitable purpose, or the city.

ENVIRONMENTAL FINDING

An environmental assessment initial study was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA) Guidelines. This process included the distribution of requests for comment from other responsible or affected agencies and interested organizations.

Based on the attached environmental assessment, with the project requirements and parameters imposed, there is no substantial evidence in the record that this project may have direct, indirect, or cumulative effects on the environment that are significant; therefore, this project will not require the preparation of an environmental impact report. As such, the filing of a negative declaration is appropriate in accordance with the provisions of CEQA Section 15070.

A public notice of the attached negative declaration finding for Environmental Assessment Application No. TA-13-006 was published in *The Fresno Bee* on October 31, 2013 with no comments received within the 20 day comment period.

Community Outreach

On October 10, 2013, a select group of restaurant owners affiliated with the California Restaurant Association was consulted with and provided valuable feedback on the proposed ordinance. Additionally, the proposal was presented to the Fresno Chamber Government Affairs Committee on October 16, 2013, and was supportive of the project.

Comments Received

An initial version of the text amendment was prepared and routed for comment to various internal departments and outside agencies having oversight relative to Outdoor Dining, including, the City of Fresno Public Works, Fire and Police Departments, Fresno County Environmental Health (Exhibit D) and ABC. After all the comments were received for the initial version, staff developed the proposed text amendment (see Ordinance Bill).

Planning Commission Public Hearing Notice

In accordance with Fresno Municipal Code Section 12-402-B, a notice of Planning Commission hearing was published in *The Fresno Bee* on October 31, 2013.

Planning Commission Action

The Fresno City Planning Commission considered the text amendment application at their regularly scheduled meeting on January 29, 2014. At the hearing, the Planning Commission discussed the issue of whether smoking should be allowed in patios on private and public property.

After a complete hearing, the Planning Commission recommended approval of the text amendment to the City Council, with the following addition to proposed Section 12-328:

1. 12-328.E.11: Smoking shall be prohibited within patios on private property and on street easements or right-of-way (see Exhibit G).

It is noted, however, that staff has not included the prohibition of smoking in patios on private and public property in the proposed text amendment.

Airport Land Use Commission

The Airport Land Use Commission (ALUC) considered the text amendment application at their regularly scheduled meeting on February 3, 2014. The ALUC discussed the issue of whether approving an over-the-counter application could potentially result in a property exceeding its allowed density.

Staff explained to the ALUC that an over-the-counter application will only allow "small" patios without a special permit, businesses would still have to comply with the conditions of their special permit and zoning and the proposed text amendment expressly requires compliance with state and federal law.

Additionally, staff explained to the ALUC that a density check can be done for those properties that are within an Airport Review Area prior to approving an over-the-counter application. The ALUC voted unanimously to approve the proposed text amendment application with the condition that staff review would include confirming the outdoor dining would not allow a business to exceed the density limitations required in Airport Review Areas.

Council District Advisory Committees

The recommendations of the Council District Plan Implementation Committees are listed in Exhibit F.

LOCAL PREFERENCE

N/A.

FISCAL IMPACT

Affirmative action by the Council will result in timely deliverance of the review and processing of the application as is reasonably expected by the applicant/customer. Prudent financial management is demonstrated by the expeditious completion of this land use application inasmuch as the applicant/customer 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 Development and Resource Management Department.

Attachments: Ordinance Bill for Text Amendment No. TA-13-006 adding Section 12-328, repealing and reserving Subsection (M) of Sections 12-220.5 and 12-231.5, amending Subsection (d) of Section 13-219, and amending Section 9-2503 of the FMC
Exhibit A – Section 12-326(H)(1) of the FMC
Exhibit B – Section 10-708 of the FMC
Exhibit C – Section 14-1801(f) of the FMC
Exhibit D – County of Fresno Department of Public Health letter dated November 8, 2013
Exhibit E – Finding of Negative Declaration for Environmental Assessment No. TA-13-006
Exhibit F – Council District Plan Implementation Committee Recommendations
Exhibit G – Planning Commission Resolution No. 13266

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING SECTION 12-328, REPEALING AND RESERVING SUBSECTION (M) OF SECTIONS 12-220.5 AND 12-231.5, AMENDING SUBSECTION (d) OF SECTION 13-219, AND AMENDING SECTION 9-2503 OF THE FRESNO MUNICIPAL CODE RELATING TO OUTDOOR DINING.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 12-328 of Article 3, Chapter 12 of the Fresno Municipal Code is added to read:

SEC. 12-328. OUTDOOR DINING

A. This Section shall be known as the "Outdoor Dining Ordinance."

B. Purpose. The purpose of this Section is to allow for the expansion and use of certain outdoor dining areas, without requiring a special permit, to promote business, revitalization, and public safety.

C. Definitions. For the purpose of this Section, "Outdoor Dining" shall refer to a delineated area within a parcel, including patios and similar areas, located outside of and adjacent to a building used for consuming food or beverages at a table with chairs, a portion of which must be within 20 feet of said building. "Outdoor Dining" shall not include food preparation areas.

D. Applicability. This Section shall apply to Restaurants, Taverns, Delicatessens, Ice Cream Stores, Cafeterias, Banquet Halls, Bakeries, Micro-breweries and similar uses. This Section shall also apply to Nightclubs with dancing prohibited in the Outdoor Dining area.

E. General Requirements for Outdoor Dining Areas.

1. No site plan, conditional use permit, or amendment to an existing special permit is required for expansion into an Outdoor Dining area if the proposed use is existing and authorized for any portion of the applicant's property, use of the Outdoor Dining area does not obstruct vehicular circulation, and Outdoor Dining use is not

expressly prohibited by a condition of an existing special permit, approved parcel or tract map, or zoning action. Instead, an over-the-counter application shall be submitted to the Director for ministerial approval consistent with this Section prior to use of the Outdoor Dining area. The application shall include a scaled exhibit depicting the location of the Outdoor Dining area (including proposed structures and barriers, locations of tables and chairs, and existing structures on the parcel), be signed by one or more of the record owners of the parcel of property, and contain any other information required by the Director. The Director shall provide a copy of approved applications to the Police Department and Fire Department.

2. Use of the Outdoor Dining area shall be subject to the same hours of operation as the existing authorized use for the property.

3. No updated or additional security plan is required if alcoholic beverages are not consumed or otherwise used in the Outdoor Dining area. For any use involving alcoholic beverages in the Outdoor Dining area the following standards shall apply:

   a. In addition to an application to operate an Outdoor Dining area where alcoholic beverages are proposed to be consumed, an applicant may also submit an over-the-counter application for ministerial approval to immediately operate an Outdoor Dining area where alcoholic beverages are not consumed or otherwise used. The most recently approved application governs to the extent it regulates the same Outdoor Dining area.

   b. For any use involving alcoholic beverages in the Outdoor Dining area, a security plan, and any additional information as the Director may reasonably require to evaluate the application, shall be submitted to the Director for review and approval by the Police Department.

   c. Upon consultation with the Police Department, the Director has discretion to deny any application involving alcoholic beverages in the Outdoor Dining area for either "good cause" as defined in Section 12-326(H)(1), or for any unlawful nuisance identified by Section 10-708. The Director shall send written notice and a summary of the grounds for the denial to an applicant not less than 10 days prior to the denial becoming final. Denials are without prejudice; an applicant may resolve the unlawful nuisance or activity constituting "good cause" and re-apply at any time.

d. Prior to the decision becoming final, an applicant may file with the Director a written appeal of such denial, along with any argument and evidence as to why the use should not be denied. Failure to timely appeal shall be deemed a failure to exhaust administrative remedies. Upon receiving an appeal, the Director shall consider all evidence and argument, and may deny the application if there is credible evidence of a violation. Notice of the Director's final decision shall be in writing and sent to the applicant. If the Director determines there is not sufficient grounds for denial, the application shall be approved if otherwise consistent with this Code and applicable law.

4. Multiple Outdoor Dining areas may be used. The total Outdoor Dining area associated with each establishment is limited to 49 persons or 749 square feet, whichever is less, for an over-the-counter application. Additional Outdoor Dining area up to 3,000 square feet may be approved with a special permit consistent with the design guidelines of this Section.

5. The Outdoor Dining area must maintain and allow for at least four feet of available and usable travel space for all walkways, sidewalks, entrances and exits. The Outdoor Dining area must not obstruct direct access or egress from any entrance or exit. Travel space between the Outdoor Dining area and the building used for consuming food and beverages cannot cross an area where vehicular traffic is allowed, and a 10 foot visibility triangle must be maintained at all driveways and vehicular entrances. An Outdoor Dining area adjacent to a roadway or vehicular travel area must be located at least six feet from the edge of curb. If the Outdoor Dining area would cause the total building occupancy to exceed 49 people, the building must have at least two unobstructed exits consistent with the Building Code.

6. No additional parking is required when the Outdoor Dining area is less than 749 square feet. Any portion of the Outdoor Dining area 749 square feet or more shall be included as gross floor area for the purposes of calculating off-street parking requirements at the rate set in Section 12-306(I)(2.2)(d) of this Code.

7. The acoustical analysis requirements of Section 12-326(F)(7) are not applicable if the total Outdoor Dining area is less than 749 square feet and is limited to 49 persons or less. Instead, use of the Outdoor Dining area shall comply with the Noise Ordinance per Article 1 of Chapter 10. If a qualifying Outdoor Dining area is proposed to be used after 10:00 p.m. and is located within 500 feet of property planned for residential uses, excluding any portion that

is planned to allow residential mixed uses, an acoustical analysis with a diagram of the Outdoor Dining area must be conducted to ensure compatibility with the Noise Ordinance. If an acoustical analysis shows compatibility, the qualifying Outdoor Dining area can be used after 10:00 p.m. for such time as the consumption of food and beverages is otherwise authorized for the property if consistent with the assumptions in the analysis to ensure compatibility. A copy of the acoustical analysis must be submitted to the Director, kept on the premises associated with the Outdoor Dining area, and promptly made available for inspection upon request by any person. Any expansion of the qualifying Outdoor Dining area will require an updated acoustical analysis before it can be used after 10:00 p.m. This Section does not authorize use of the Outdoor Dining area after 10:00 p.m. if the acoustical analysis does not show compatibility with the Noise Ordinance.

8. Barriers around Outdoor Dining areas are not required, but are allowed subject to this Code if not more than four feet in height and maintain at least 50% transparency to the outdoor elements. Barriers cannot block or enclose existing ingress or egress to a structure absent prior authorization from the Building Official or designee. Barriers can be permanent or temporary, and may include moveable stanchions and similar items. All barriers must have at least one direct exit made by either providing a gap in the barrier, or with a door or gate that swings in the direction of egress travel equipped with panic hardware and having an operating force of no more than five pounds, or as otherwise required by accessibility regulations. Door or gate swing shall not intrude into any travel or related area described in Subdivision 5 of Sub-section E of this Section, nor shall it intrude into any parking space. An Outdoor Dining area, where alcoholic beverages are consumed, must comply with barrier requirements as may be established by the California Department of Alcoholic Beverage Control.

9. Allowed furnishings may include tables, chairs, umbrellas, landscape pots, wait stations, planters, benches, waste receptacles, and similar items that help to define pedestrian and other use of the outdoor dining areas. Materials must be of wood, metal, stone, terra cotta, cast stone, hand-sculpted concrete, a solid surfacing material, or recycled plastic. Plastic resin furnishings are prohibited unless made of commercial-grade materials; chain linked fencing is prohibited. No signs shall be affixed to or supported by the furnishings or fixtures except as authorized by the Sign Ordinance. Permanent fencing, barriers, lighting, heating, cooling or other fixtures are allowed with a building permit consistent with Chapter 11 (Building Permits and Regulations). Individual table umbrellas may be used; roof

coverings, canopies, tents or similar items are prohibited except with a building permit and subject to approval by the Fire Department. Furnishings such as tables and chairs, and fixtures such as portable heaters, shall not be stored in such a way as to be visible from the street for more than 72 hours. Furnishings and fixtures ready for use may remain in the outdoor dining area at all times even if visible from the street.

10. Outdoor Dining shall comply with all applicable federal, state or local laws, including Section 12-405(B)(9) (Installation of Outdoor Electric Lighting Fixtures), Article 5 of Chapter 10 (Fire Prevention), and Chapter 11 (Building Permits and Regulations) of this Code. In addition to any other remedies authorized by law, including citation, the City may revoke the approval following the process set forth in Section 12-405(E).

F. Use of City Right of Way. Use of City of Fresno street easement or right-of-way, for Outdoor Dining purposes may be approved at the discretion of the Director after consultation with the Department of Public Works, subject to the following requirements in addition to those found in Subsection E except as noted:

1. No rent shall be charged for use of the encroachment area.

2. No additional parking shall be required for use of the encroachment area for Outdoor Dining; the parking requirements of Subsection E are not applicable to this Subsection F.

3. No updated security plan is required for use of the encroachment area, except an Outdoor Dining area involving alcoholic beverages shall comply with Subsection E(3) of this Section.

4. Semi-permanent structures, facilities, fixtures or buildings are allowed, but are not required. Such semi-permanent items in the Outdoor Dining area shall be subject to this Code and require a street work permit. Permanent structures are not allowed.

5. The total Outdoor Dining area associated with each establishment is limited to 49 persons or 749 square feet, whichever is less.

6. A valid encroachment permit is required by Section 13-219. Consistent with Section 13-219, an applicant shall be required by the permit or covenant to maintain the encroachment area free of any nuisance in fact or in law, and shall conduct activities in full compliance with all applicable federal, state, and local laws. The applicant shall also be solely responsible for operation, maintenance and repair of the encroachment area, and shall

provide bonding, indemnification and maintain insurance acceptable to the City of Fresno. Applicant shall further agree the encroachment on the City of Fresno's property is a non-exclusive, revocable use. The City of Fresno, in its sole discretion, may revoke the encroachment permit upon determination by the Chief Administrative Officer, or designee, the use of any portion of the encroachment area is required for any municipal or public utility purpose, or is detrimental to or not in furtherance of the public health, safety, welfare and interest. The encroachment permit may also be revoked upon determination by the Chief Administrative Officer, or designee, the applicant has failed to comply with one or more of the terms, conditions, or restrictions of the permit and/or covenant. The revocation of an encroachment permit issued under this Section is not subject to Section 12-405(E). These terms, conditions and restrictions in the permit or covenant shall be recorded and run with the land.

7. Use of the encroachment area shall not cause the encroachment area, or adjacent property or right-of-way to become out of compliance with any applicable federal, state or local law including Chapter 11 of this Code.

8. Outdoor Dining in the encroachment area shall leave available and usable travel space as required by Subsection E(5) of this Section.

G. Termination. No vested or any other property right is created by the approval of this Section or by any use, or construction of any structures, facilities, fixtures, or buildings, authorized by this Section. Should the City of Fresno repeal or amend this Section, no claim for loss of property rights or due process of any kind shall be maintained against the City of Fresno.

H. Severability. If any subsection, sentence, clause, or phrase of this Section is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Section. The Council hereby declares that it would have passed this Section, and each subsection, clause or phrase thereof, regardless if any one or more subsections, sentences, clauses and phrases be declared unconstitutional.

SECTION 2. Subsection (d) of Section 13-219 of Article 2, Chapter 13 of the Fresno Municipal Code is amended to read:

(d) The Director shall revoke any encroachment permit upon determining that the applicant has failed to comply with one or more of the terms, conditions, or restrictions incorporated in the permit or the covenant and shall order the removal of all structures from the encroachment area.

[This Subsection shall not apply to Subsection 12-328(F) of the Outdoor Dining Ordinance.]

SECTION 3. Subsection (M) of Section 12-220.5, Article 2, Chapter 12 of the Fresno Municipal Code is repealed and reserved.

SECTION 4. Subsection (M) of Section 12-231.5, Article 2, Chapter 12 of the Fresno Municipal Code is repealed and reserved.

SECTION 5. Section 9-2503, Article 25, Chapter 9 of the Fresno Municipal Code is amended to read:

SEC. 9-2503. DRINKING ON STREET OR PLAYGROUND.

(a) No person shall drink any beer, wine or other intoxicating beverage on any street, sidewalk, pedestrian mall, alley, highway, playground, parking lot open to the general public or other lot open to the general public.

(b) Subsection (a) of this section shall not be deemed to make punishable an act or acts which are prohibited by any statute of the State of California.

(c) Subsection (a) of this section shall not apply to any person in an encroachment area posted pursuant to subsection (d) of this section during business hours of the permittee restaurant.

(d) The operator of any restaurant which serves any beer, wine, or other intoxicating beverage for consumption in an area operated for restaurant purposes on any street, sidewalk, or pedestrian mall pursuant to an encroachment permit ~~issued by the Council~~ shall post and maintain signs in or adjacent to the encroachment area reasonably calculated to give notice of the limits of the area and the exception contained in subsection (c) of this section. The number, content, physical features, and locations of such signs shall be only as approved by the Police Chief. The external boundaries of any encroachment area in which intoxicating beverages may be consumed shall be clearly ~~designated by a painted line~~ [delineated consistent with the limits of the area depicted] in the signs.

(e) Subsection (a) of this section shall only apply to a parking lot or other lot open to the general public if:

(1) Pursuant to the property owner's written request, the Police Chief has determined that the lot is open to the general public, and

(2) The owner or operator has posted in a conspicuous place at each entrance to the lot a notice, approved by the Police Chief, to the effect that the lot is subject to the provisions of this section.

(f) Notwithstanding subsection (a) of this section, the Parks and Recreation Director [, in consultation with the Police Chief,] may authorize the consumption of alcoholic beverages during an event of limited duration held in a mall area as defined in Section 14-1801(f) of this Code ~~and conducted by an organization when the event is for the benefit of a nonprofit organization, a charitable purpose, or the city~~.

SECTION 6. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

****

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2014.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval :_____, 2014
Mayor Approval/No Return:_____, 2014
Mayor Veto:_____, 2014
Council Override _____, 2014

YVONNE SPENCE, CMC
City Clerk

BY:_____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY:_____
SHANNON L. CHAFFIN
Senior Deputy City Attorney

SLC:cg[63779cg/ORD]01.16.14

Exhibit A

Section 12-326(H)(1) of the FMC

For good cause, a special permit authorizing the establishment of a restaurant, tavern or night club, may be revoked pursuant to Section 12-405-E. In addition to the examples of what constitutes "good cause" in Section 12-405-E, examples also include, but are not limited to:

a. Frequent calls for service to the Fresno Police Department regarding on-site issues, defined as occurring more than 1.5 times the average number of such response for property of a similar size and character and as further set forth and defined in the Management of Real Property Ordinance.

b. When police calls for service where Part 1 Violent Crimes, such as aggravated assault, rape, assault with a deadly weapon, attempted murder, murder or an assault on a peace officer occur twice in a rolling twelve month period.

c. Failure to comply with any condition contained in the special permit.

d. Not functioning as the use approved by the special permit; as a restaurant, as a tavern or as a night club.

This page intentionally left blank.

Exhibit B

Section 10-708 of the FMC

It is hereby declared a public nuisance and a violation of this article for the owner, whether through the owner or owners' agent, lessee, sublessor, sublessee, or occupant of any premises in the City to permit, with actual or constructive knowledge, any of the following activities to habitually occur on the real property of the owner:

(a) The illegal sale, use or possession of controlled substances or other illegal drugs and substances.

(b) The gathering, or coming and going, of people who have an intent to purchase or use controlled substances on the premises.

(c) The occurrence of prostitution.

(d) Unlawful activities of a criminal street gang (as defined in Penal Code Section 186.22).

(e) The making or continuing, or causing to be made and continued, of any loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood, or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing on the property or in the area. The standards set forth in Fresno Municipal Code Chapter 10, Article 1 shall be utilized in determining whether a violation of this subsection exists.

(f) The unlawful discharging of a firearm or brandishing of a weapon by any person.

(g) The frequent response by the Fresno Police Department to the real property or the adjacent area (but not the real property of another) as a result of any person or persons causing any combination of the following calls as indicated in the City of Fresno Police Department Incident Code Identifier:

(1) Animal disturbances, including but not limited to competitive fighting between animals.

(2) Violent criminal acts, charged or not, including, but not limited to rapes, assaults, battery, homicides and/or shootings.

(3) Illegal consumption of intoxicants in public view.

(4) Gaming activities.

(5) Juvenile disturbances.

"Frequent" as used in this subsection means such response is occurring more than 1.50 times than the average number of such responses for property of a similar size in character in the same "policing district" established by the police chief.

(h) The presence of graffiti or other defacing words, letters, or drawings, trash and debris on the property for a 48 hour period.

(i) The presence of abandoned vehicles or improperly stored inoperative, wrecked, or dismantled vehicles on the property, except as permitted in Article 6, Chapter 10.

(j) Violations of Article 3, Chapter 11 (Housing Regulations) Article 4, Chapter 11 (Dangerous Building Ordinance), Article 5, Chapter 10 (Fire Prevention Ordinance) or Article 6, Chapter 10 (Public Nuisance Ordinance) of the Fresno Municipal Code, occurring on any one or more properties of the same owner within the City of Fresno. (Added Ord. 98-73, § 1, eff. 10-24-98).

Exhibit C

Section 14-1801(f) of the FMC

The following are mall streets:

Fulton Mall—between the southeast curb line of Tuolumne Street and the northwest curb line of Inyo Street, excepting the vehicular traveled ways of Fresno Street and Tulare Street.

Merced Mall—between the Fulton-Van Ness Alley and the Broadway-Fulton Alley.

Mariposa Mall—between the northeast curb line of Broadway and the Broadway-Fulton Alley and between the Broadway-Fulton Alley and the southwest curb line of Van Ness Avenue.

Mariposa Mall—between the northeast curb line of "O" Street and the southwest curb line of "P" Street.

Kern Mall—between the Fulton-Van Ness Alley and the Broadway-Fulton Alley and between the Broadway-Fulton Alley and 160 feet southwesterly of the Broadway-Fulton Alley.

Broadway Mall—the northeast 20.00 feet of Broadway—between the northwest line of the Kern Mall, and a point 155 feet northwest of the northwest line of the Kern Mall.

Broadway Mall—the northeast 20.00 feet of Broadway—between the southeast line of the Kern Mall, and a point 105 feet southeast of the southeast line of the Kern Mall.

This page intentionally left blank.

Exhibit D

County of Fresno

DEPARTMENT OF PUBLIC HEALTH
DAVID POMAVILLE, M.B.A., R.E.H.S.
INTERIM DIRECTOR

November 8, 2013

LU0017507
2602

Israel Trejo
City of Fresno Development Department
2600 Fresno Street
Fresno, CA 93721

Dear Mr. Trejo:

PROJECT NUMBER: TA-13-006

Text Amendment Application No. TA-13-006 was initiated by the City of Fresno Development and Resource Management Department and proposes to add Section 12-328 and amend Subsection (d) of Section 13-219 of Chapter 12 of the Fresno Municipal Code (Zoning Ordinance) to allow for the expansion and use of certain outdoor dining areas, including street easement and right-of-way, without requiring a special permit. The text amendment will apply to Restaurants, Taverns, Delicatessens, Ice Cream Stores, Cafeterias, Banquet Halls, Bakeries, Micro-breweries, and other similar uses.

Citywide Application

The proposed text amendment should be routed to the California Alcoholic Beverage Control Department for ABC license requirements relating to outdoor serving and consumption areas.

Recommended Conditions of Approval:

- If facilities propose outdoor dining food/beverage preparation stations (including the addition of beverage dispensing equipment and/or remodeling of the facility), the businesses will be required to submit complete food facility plans and specifications to the Fresno County Department of Public Health, Environmental Health Division, for review and approval. Please contact the Consumer Food Protection Program at (559) 600-3357 for more information.

REVIEWED BY:

Kevin Tsuda Digitally signed by Kevin Tsuda
DN: cn=Kevin Tsuda, o, ou=Fresno County EH, email=ktsuda@co.fresno.ca.us, c=US
Date: 2013.11.08 11:38:24 -08'00'

Kevin Tsuda, R.E.H.S.
Environmental Health Specialist II

(559) 600-3271

This page intentionally left blank.

Exhibit E

CITY OF FRESNO NEGATIVE DECLARATION		Notice of Intent was filed with: FRESNO COUNTY CLERK 2221 Kern Street Fresno, California 93721 on October 31, 2013
	ENVIRONMENTAL ASSESSMENT NUMBER: **TA-13-006**	
APPLICANT: City of Fresno Development & Resource Management Dept. 2600 Fresno Street Fresno, CA 93721	PROJECT LOCATION: Citywide within the City of Fresno	

PROJECT DESCRIPTION:

The City of Fresno Development and Resource Management Department has initiated Text Amendment Application No. TA-13-006 (Outdoor Dining Ordinance). Text Amendment Application No. TA-13-006 proposes to allow for the expansion and use of certain outdoor dining areas, including within the street easements and rights-of-way, without requiring a special permit for certain uses. The text amendment will apply to Restaurants, Taverns, Delicatessens, Ice Cream Stores, Cafeterias, Banquet Halls, Bakeries, Micro-breweries and other similar uses.

Negative Declaration

The City of Fresno Development and Resource Management Department has conducted an initial study of the above-described project and proposes to adopt a Negative Declaration. The environmental analysis contained in the attached Initial Study finds that the proposed project could not have a significant effect on the environment.

Additional information on the proposed project, including the environmental finding of a negative declaration, initial study and all documents and technical studies referenced in the initial study, as well as electronic copies of documents, may be obtained from the Development and Resource Management Department, Fresno City Hall, 2600 Fresno Street, Third Floor-North, Room 3076, Fresno, California 93721-3604. Please contact Israel Trejo at (559) 621-8044 for more information.

The initial study has concluded that the proposed project will not result in any adverse effects which fall within the "Mandatory Findings of Significance" contained in Section 15065 of the State CEQA Guidelines.

The finding is, therefore, made that the proposed project will not have a significant adverse effect on the environment.

PREPARED BY: Israel Trejo, Planner	SUBMITTED BY: for Will Tackett, Supervising Planner DEVELOPMENT & RESOURCE MANAGEMENT DEPARTMENT
DATE: October 31, 2013	
Attachments:	-Notice of Intent - Initial Study (Appendix G)

CITY OF FRESNO
NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION

Filed with:

E201310000272

FRESNO COUNTY CLERK
2221 Kern Street, Fresno, California 93721

FILED

OCT 31 2013

FRESNO COUNTY CLERK
By _____ DEPUTY

PROJECT TITLE AND ENVIRONMENTAL ASSESSMENT

TA-13-006

APPLICANT:
City of Fresno – Development & Resource Management Dept.
2600 Fresno Street
Fresno, CA 93721

PROJECT LOCATION:
Citywide within the City of Fresno

PROJECT DESCRIPTION: The City of Fresno Development and Resource Management Department has initiated Text Amendment Application No. TA-13-006 (Outdoor Dining Ordinance). Text Amendment Application No. TA-13-006 proposes to allow for the expansion and use of certain outdoor dining areas, including within the street easements and rights-of-way, without requiring a special permit for certain uses. The text amendment will apply to Restaurants, Taverns, Delicatessens, Ice Cream Stores, Cafeterias, Banquet Halls, Bakeries, Micro-breweries and other similar uses.

The City of Fresno Development and Resource Management Department has conducted an initial study of the above-described project and proposes to adopt a Negative Declaration. With the project requirements and parameters imposed, there is no substantial evidence in the record that this project may have significant, direct, indirect, or cumulative effects on the environment that are significant; therefore, this project will not require the preparation on an environmental impact report.

Additional information on the proposed project, including the proposed environmental finding of a negative declaration, initial study and all documents and technical studies referenced in the initial study, as well as electronic copies of documents, may be obtained from the Development and Resource Management Department, Fresno City Hall, 2600 Fresno Street, Third Floor-North, Room 3076, Fresno, California 93721-3604. Please contact Israel Trejo at (559) 621-8044 for more information.

ANY INTERESTED PERSON may comment on the proposed environmental finding. Comments must be in writing and must state (1) the commentor's name and address; (2) the commentor's interest in, or relationship to, the project; (3) the environmental determination being commented upon; and (4) the specific reason(s) why the proposed environmental determination should or should not be made. Comments may be submitted at any time between the publication date of this notice and close of business on November 20, 2013. Please direct all comments to Israel Trejo, City of Fresno Development and Resource Management Department, City Hall, 2600 Fresno Street, Third Floor-North, Room 3076, Fresno, California, 93721-3604; or by email, Israel.Trejo@fresno.gov; or by facsimile, (559) 498-1026.

The text amendment application and this proposed environmental finding have been tentatively scheduled to be considered by the Fresno City Planning Commission on November 20, 2013, at 6:00 p.m., or thereafter, and has been tentatively scheduled before the Fresno City Council for introduction on December 5, 2013 and for consideration on December 12, 2013, with times yet to be identified. These hearings will be held in the Fresno City Council Chamber located on the second floor at Fresno City Hall, 2600 Fresno Street, Fresno, California, 93721-3604. Your written and oral comments are welcomed at the hearings and will be considered in the final decision.

E201310000272

Notice of Intent to File Negative Declaration
EA No. TA-13-006
October 31, 2013

INITIAL STUDY PREPARED BY:	SUBMITTED BY:
Israel Trejo, Planner	Will Tackett, Supervising Planner CITY OF FRESNO – DEVELOPMENT & RESOURCE MANAGEMENT DEPARTMENT
DATE: October 31, 2013	

APPENDIX G/INITIAL STUDY

Environmental Checklist Form for:

EA No. TA-13-006

1. **Project title:**

   Text Amendment Application No. TA-13-006 (Outdoor Dining Ordinance)

2. **Lead agency name and address:**

   City of Fresno
   Development and Resource Management Department
   2600 Fresno Street
   Fresno, CA 93721

3. **Contact person and phone number:**

   Israel Trejo, Planner
   City of Fresno
   Development & Resource Management Dept.
   (559) 621-8044

4. **Project location:**

   Citywide within the City of Fresno

5. **Project sponsor's name and address:**

   City of Fresno – Development & Resource Management Dept.
   2600 Fresno Street
   Fresno, CA 93721

6. **General plan designation:**

   Not applicable

7. **Zoning:**

   Not applicable

8. **Description of project:**

The application was initiated by the Director of the Development and Resource Management Department and is a request to allow for the expansion and use of certain outdoor dining areas, including within the street easements and rights-of-way, without requiring a special permit for certain uses

9. **Surrounding land uses and setting:**

	Planned Land Use	Existing Zoning	Existing Land Use
North	Not applicable	Not applicable	Not applicable
East	Not applicable	Not applicable	Not applicable
South	Not applicable	Not applicable	Not applicable
West	Not applicable	Not applicable	Not applicable

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement):

City of Fresno (COF) Department of Public Works; COF Building and Safety Services Division; COF Fire and Police Department.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

____	Aesthetics	____	Agriculture and Forestry Resources	____	Air Quality
____	Biological Resources	____	Cultural Resources	____	Geology /Soils
____	Greenhouse Gas Emissions	____	Hazards & Hazardous Materials	____	Hydrology/Water Quality
____	Land Use/Planning	____	Mineral Resources	____	Noise
____	Population /Housing	____	Public Services	____	Recreation
____	Transportation/Traffic	____	Utilities/Service Systems	____	Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

_X_ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

____ I find that the proposed project is a subsequent project identified in the MEIR and Air Quality MND but that it is not fully within the scope of the MEIR and Air Quality MND because the proposed project could have a significant effect on the environment that was not examined in the MEIR or Air Quality MND. However, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. The project specific mitigation measures and all applicable mitigation measures contained in the MEIR Mitigation Monitoring Checklist will be imposed upon the proposed project. A MITIGATED NEGATIVE DECLARATION will be prepared.

____ I find that the proposed project is a subsequent project identified in the MEIR but that it MAY have a significant effect on the environment that was not examined in the MEIR or Air Quality MND, and an ENVIRONMENTAL IMPACT REPORT is required to analyze the potentially significant effects not examined in the MEIR or Air Quality MND pursuant to Public Resources Code Section 21157.1(d) and CEQA Guidelines 15178(a).

X _____
Signature

October 31, 2013
Date

EVALUATION OF ENVIRONMENTAL IMPACTS:

1. A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4. A "Finding of Conformity" is a determination based on an initial study that the proposed project is a subsequent project identified in the MEIR and that it is fully within the scope of the MEIR and Air Quality MND because it would have no additional significant effects that were not examined in the MEIR or the Air Quality MND.

5. "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced).

6. Earlier analyses may be used where, pursuant to the tiering, program EIR or MIER, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should

identify the following:

a. Earlier Analysis Used. Identify and state where they are available for review.

b. Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in the MEIR or another earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

c. Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

7. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

8. Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

9. This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

10. The explanation of each issue should identify:

a. The significance criteria or threshold, if any, used to evaluate each question; and

b. The mitigation measure identified, if any, to reduce the impact to less than significance

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect on a scenic vista?				x
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				x
c) Substantially degrade the existing visual character or quality of the site and its surroundings?			x	
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?			x	

The proposed project will have no impact on a scenic vista because any structure that may be built will of relatively low height. Any proposed project will not be performing any work within a state scenic highway, therefore, the project will not substantially damage scenic resources, including, trees, rock outcroppings, and historic buildings within a state scenic highway. The project will allow for development consistent with the predominant development in the existing area, therefore it will not substantially degrade the existing visual character or quality of the site and its surroundings. Furthermore, development of a potential project will not create a new source of substantial light or glare which would affect day or night time views in a project area, given that the project will only have lights consistent with other locations in the area.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
II. AGRICULTURE AND FORESTRY RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. -- Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				x
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				x
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?				x
d) Result in the loss of forest land or conversion of forest land to non-forest use?				x

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?				x

The proposed project does not apply to farmland and, as such, the potential projects will not conflict with existing zoning or a Williamson Act contract. Potential project sites will be zoned for commercial uses, therefore it will not conflict with existing zoning for, or cause rezoning of, forest land or timberland. Potential project sites will be zoned for commercial uses, therefore a potential project will not result in the loss or conversion of forest land. The project will allow for the development of patios at existing locations, therefore the project will not result in the conversion of farmland to a non-agricultural use.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
III. AIR QUALITY AND GLOBAL CLIMATE CHANGE - (Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations.) - - Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?				x
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?				x

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?				x
d) Expose sensitive receptors to substantial pollutant concentrations?				x
e) Create objectionable odors affecting a substantial number of people?				x

The proposed project will comply with the Resource Conservation Element (regarding Air Quality) of the 2025 Fresno General Plan and the Goals, Policies and Objectives of the Regional Transportation Plan adopted by the Fresno Council of Fresno County Governments, therefore the project will not conflict with or obstruct an applicable air quality plan. The project must comply with the construction and development requirements of the San Joaquin Valley Air Pollution Control District, therefore, no violations of air quality standards will occur. The project will not occur at a scale or scope to have potential to contribute substantially to existing or projected air quality violation. Additionally, the project will not occur at a scale or scope which will result in a cumulatively considerable net increase of a criteria pollutant for which the project region is non-attainment. The proposed project is not proposed at a scale or scope which would be expected to generate substantial pollutant concentrations, therefore there will be no exposure to sensitive receptors. The project is proposing to allow for small patio areas at existing commercial locations, therefore it is not expected to create objectionable odors affecting a substantial number of people.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
IV. BIOLOGICAL RESOURCES -- Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?				X
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				X

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X

The proposed project would allow for patios at existing commercial locations, therefore the proposed project would not directly affect any sensitive, special status, or candidate species, nor would it modify any habitat that supports them. At existing commercial locations, there will be no riparian habitat or any other sensitive natural community identified in the vicinity of the proposed project by the California Department of Fish and Game or the US Fish and Wildlife Service. No federally protected wetlands will be located at existing commercial locations. Therefore, there would be no impacts to species, riparian habitat or other sensitive communities and wetlands. Potential commercial sites will not be located within a native resident or migratory fish area, therefore it will not impede on their movement. Proposed project sites will not contain a native wildlife nursery site. No local policies, habitat conservation plan, regarding biological resources are applicable to potential project sites and there would be no impacts with regard to those plans.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
V. CULTURAL RESOURCES -- Would the project:				

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource as defined in '15064.5?				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to '15064.5?				X
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				X
d) Disturb any human remains, including those interred outside of formal cemeteries?				X

The project proposes a patio use at existing commercial locations, therefore it is not expected to cause a substantial adverse change in the significance of a historical resource. The project is proposing a commercial use at existing locations therefore it will not cause a substantial change in the significance of an archaeological resource. The project is proposing a commercial use at existing locations, therefore it will not destroy a unique paleontological resource or geologic feature. The project does not have the potential to disturb human remains as the use will be at existing commercial locations.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
VI. GEOLOGY AND SOILS -- Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				X

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X
ii) Strong seismic ground shaking?				X
iii) Seismic-related ground failure, including liquefaction?				X
iv) Landslides?				X
b) Result in substantial soil erosion or the loss of topsoil?				X
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?				X
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?				X
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?				X

Fresno has no known active earthquake faults, and is not in any Alquist-Priolo Special Studies Zones. The proposed use will be at existing commercial locations, therefore there are no known geologic hazards or unstable soil conditions known to exist on potential sites. Potential project sites will not be located within an area that has strong seismic ground shaking, liquefaction or landslides. The project is a proposing a patio use at existing commercial locations, therefore there is not expected to be substantial soil erosion or the loss of topsoil. Development of the property requires compliance with grading and drainage standards of the City of Fresno and Fresno Metropolitan Flood Control District (FMFCD) Standards, therefore the project is not expected to be unstable, be located on expansive soil. All new structures are required to conform to current seismic protection standards in the California Building Code. Septic tanks or alternative waste water disposal systems will not be a part of the project.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
VII. GREENHOUSE GAS EMISSIONS -- Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?			x	
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			x	

The project is not proposed at a scale or scope which could either directly or indirectly have a significant impact on the environment. The proposed project will not conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
VIII. HAZARDS AND HAZARDOUS MATERIAL -- Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				X
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?			X	
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				X

The proposed project will not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials, because said project does not involve the use of hazardous materials; additionally, as such, there is no significant hazard to the public or the environment through an accident. The project proposes to allow for patios at existing commercial locations, therefore it is not expected to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school. The use will not be allowed at hazardous materials sites. Potential project areas may be located within an airport land use plan or vicinity of a private airstrip, however, only minor structures may be built, as such, the project would not result in a safety hazard for people residing or working in a project area. The project will also be reviewed by the Airport Land Use Commission (ALUC). Recommendations of the ALUC will be given to the City Council prior to approval of the text amendment. Potential projects must comply with the Building Code requirements for emergency access points, therefore it will not interfere will an emergency evacuation plan. Potential project areas will not located near wildland areas, therefore the project will not expose people or structures to a significant risk of loss, injury or death involving wildland fires.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
IX. HYDROLOGY AND WATER QUALITY -- Would the project:				

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?				X
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				X
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?				X
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?				X
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?				X

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
f) Otherwise substantially degrade water quality?				X
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?				X
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				X
j) Inundation by seiche, tsunami, or mudflow?				X

The project is not proposed at a scale or scope which would violate water quality standards or waste discharge requirements. The project is not proposed at a scale or scope which would substantially deplete groundwater supplies and will not be located in areas of groundwater recharge. The project is not proposed at a scale or scope which would substantially alter the existing drainage of an area; there will be no streams or rivers in proposed project areas. Any paving of property will require compliance with grading and drainage standards of the City of Fresno and FMFCD, therefore it is not expected to create runoff water exceeding capacity. The project is proposing a patio area at existing commercial locations and is therefore, not expected to substantially degrade water quality. The project does not propose housing and will not be located within a flood prone or hazard area. Additionally, proposed project areas will not located in an area subject to inundation by seiche, tsunami or mudflow.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
X. LAND USE AND PLANNING - Would the project:				
a) Physically divide an established community?				X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?				X

The project is not a scale or scope to be able to divide an established community. Any potential projects will be required to comply zoning regulations therefore it will not conflict with any land use plan or policy. The project proposes to allow for the development of patios at existing commercial locations, therefore it will not conflict with any conservation plans.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XI. MINERAL RESOURCES -- Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				X

Proposed project areas will not located in areas designated for mineral resource preservation or recovery.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XII. NOISE -- Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?			X	
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?				X
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			X	

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?			X	
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?			X	

The project will be required to comply with the Noise Ordinance of the Fresno Municipal Code. Therefore, it will not expose persons to or generate noise levels in excess of standards established in the local general plan or noise ordinance. Should an operator propose outdoor dining after 10:00 p.m., and within 500 feet of property planned for residential uses (excluding mixed use), an approved acoustical analysis must be provided. The project proposes to allow for small outdoor dining areas and, therefore, is not expected to expose persons to or generate of excessive groundborne vibration or groundborne noise levels. Patios are of temporary use in nature, and, therefore, not expected to create a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project. Potential projects will be required to comply with the Noise Ordinance of the Fresno Municipal Code and, therefore, are not expected to expose people residing or working in an airport land use plan (or within the vicinity of a private airstrip) to excessive noise levels.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XIII. POPULATION AND HOUSING - - Would the project:				

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?			X	
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X

Although the project will be intensifying the use of the site, development may occur at an intensity and scale that is permitted by the planned land use designation and zone district classification for the site. Potential projects will not displace any housing or people.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XIV. PUBLIC SERVICES --				

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?			X	
Police protection?			X	
Drainage and flood control?			X	
Parks?			X	
Schools?			X	
Other public services?			X	

The project is not proposed at a scale or scope to creaste substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XV. RECREATION --				

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?			X	
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?			X	

The project is proposed at a size and scope which is not expected to result in the substantial physical deterioration of existing parks or recreational facilities. The project does not propose recreational facilities at a scale or scope which might have an adverse physical effect on the environment.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVI. TRANSPORTATION/TRAFFIC -- Would the project:				
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths and mass transit?			X	

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures or other standards established by the county congestion management agency for designated roads or highways?			X	
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that result in substantial safety risks?				X
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?			X	
e) Result in inadequate emergency access?			X	
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?				X

The proposed project will not conflict with a plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths and mass transit, since it is only proposing to allow small patios at existing commercial locations. Additionally, the project will not conflict with any congestion management program, since the project proposes to allow small patios adjacent to existing commercial locations. The project is not at a scale or scope to change air traffic patterns. Any proposed patios must comply with the requirements of the Fresno Municipal Code, therefore it will not increase

hazards due to design features. Any proposes patios must comply with the building and fire code, therefore there will not be inadequate emergency access. The project will not conflict with adopted policies or plans regarding public transit, bicycle or pedestrian facilities because adequate pedestrian facilities must be maintained.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVII. UTILITIES AND SERVICE SYSTEMS -- Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			X	
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				X

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?			X	
g) Comply with federal, state, and local statutes and regulations related to solid waste?				X

The project is not proposed at a scale or scope to exceed wastewater treatment requirements of the Regional Water Quality Control Board; additionally, the project is proposed at a size and scope which will not require new water or wastewater treatment facilities. Potential projects will not require the construction of new storm water drainage facilities. The project is proposed at a scale and scope which will not require new entitlements for water. The project is proposed at a scale and scope which can be served by existing wastewater capacity. No additional landfill capacity will be needed to serve the relatively minor projects. All existing commercial sites and project areas must comply with federal, state, and local statutes and regulations related to solid waste.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVIII. MANDATORY FINDINGS OF SIGNIFICANCE --				

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				X
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?				X
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				X

The proposed project is considered to be proposed at a size and scope which is neither a direct or indirect detriment to the quality of the environment through reductions in habitat, populations, or examples of local history (through either individual or cumulative impacts). The proposed project does not have the potential to degrade the quality of the environment or reduce the habitat of wildlife species and will not threaten plant communities or endanger any floral or faunal species. Furthermore the project has no potential to eliminate important examples of major periods in history. Therefore, as noted in preceding sections of this Initial Study, there is no evidence in the record to indicate that incremental environmental impacts facilitated by this project would be

cumulatively significant. There is also no evidence in the record that the proposed project would have any adverse impacts directly, or indirectly, on human beings.

Exhibit F

Council District 1 Plan Implementation Committee, on November 5, 2013, recommended approval of the proposed text amendment.

Council District 2 Plan Implementation Committee, on January 27, 2014, recommended approval of the proposed text amendment.

Council District 3 Plan Implementation Committee, on November 4, 2013, recommended approval of the proposed text amendment.

Council District 4 Plan Implementation Committee, on January 27, 2014, recommended approval of the proposed text amendment.

Council District 5 Plan Implementation Committee, on January 27, 2014, recommended approval of the proposed text amendment. The Committee recommended that barriers (i.e. fencing) be required for those the patios that serve alcohol.

Staff response: a business operator will have to submit an operational statement approved by the Police Department. The operator will have to provide an exhibit depicting the alcohol consumption areas and must also provide continuous supervision at said area.

Council District 6 Plan Implementation Committee, on February 5, 2014, recommended denial of the proposed text amendment. The reasons for recommending denial were: the Committee wants to review outdoor dining applications but will not be able to with an over-the-counter application and would require significant resources to monitor bad operators.

Council District 7 Plan Implementation Committee, there is no Committee at this time.

Fulton-Lowell Committee, on February 3, 2014, recommended approval of the proposed text amendment. The Committee recommended that smoking be addressed in the text amendment and clarify whether a patio would be allowed to be constructed within a trail.

Staff response: staff did not include in the proposed text amendment the prohibition of smoking within patios on private and public property. Additionally, a patio is not allowed to be constructed within a trail as per the requirements of the text amendment.

Tower District Advisory Committee, on February 7, 2014, reviewed the project and provided recommendations, including, the Committee would like to retain review authority of proposed patios. There was no quorum, therefore, there was no vote on the project.

FRESNO CITY PLANNING COMMISSION
RESOLUTION NO. 13266

The Fresno City Planning Commission at its regular meeting on January 29, 2014, adopted the following resolution pursuant to Section 12-402 of the Municipal Code of the City of Fresno.

WHEREAS, the intent and purpose of Text Amendment Application No. TA-13-006 is to allow for the expansion and use of outdoor dining areas, including within street easements and rights-of-way (i.e. sidewalks), without requiring a special permit for certain uses; and

WHEREAS, on October 22, 2013, the Development and Resource Management Department Director, initiated proceedings to consider amending the text of the Zoning Ordinance, pursuant to the provisions of Section 12-402-A of the Fresno Municipal Code (FMC); and,.

WHEREAS, Text Amendment Application No. TA-13-006 proposes to add Section 12-328, repeal and reserve Subsection (M) of Sections 12-220.5 and 12-231.5, amend Subsection (d) of Section 13-219, and amend Section 9-2503 of the FMC; and,.

WHEREAS, the Planning Commission's scheduled January 29, 2014, hearing on Text Amendment Application No. TA-13-006 was duly noticed by publication in the *Fresno Bee* on October 31, 2013, the newspaper of greatest local circulation; and

WHEREAS, on November 20, 2013, the Fresno Planning Commission continued the hearing to consider Text Amendment Application No. TA-13-006; and,

WHEREAS, on December 18, 2013, the Fresno Planning Commission continued the hearing to consider Text Amendment Application No. TA-13-006; and,

WHEREAS, on January 29, 2014, the Fresno Planning Commission conducted a public hearing to consider Text Amendment Application No. TA-13-006; and,

WHEREAS, on January 29, 2014 the Commission received a staff report and related information, environmental documents and considered testimony regarding the requested text amendment; and,

WHEREAS, the Commission discussed the issue of whether smoking should be allowed within patios on private and public property; and,

WHEREAS, no one spoke in opposition to the proposed text amendment; and,

NOW, THEREFORE, BE IT RESOLVED that the Fresno City Planning Commission finds that there is no substantial evidence in the record to indicate that the proposed text amendment application may have a significant effect on the environment and recommends the City Council approve the Negative Declaration prepared for Environmental Assessment No. TA-13-006, dated October 31, 2013.

BE IT FURTHER RESOLVED that the Fresno City Planning Commission hereby recommends to the City Council that Text Amendment Application No. TA-13-006, proposing to add Section 12-328, repeal and reserve Subsection (M) of Sections 12-220.5 and 12-231.5, amend Subsection (d) of Section 13-219, and amend Section 9-2503 of the FMC be approved, with the following addition to Section 12-328:

1. **12-328.E.11:** Smoking shall be prohibited within patios on private property and on street easements or right-of-way.

The foregoing Resolution was adopted by the Fresno City Planning Commission upon a motion by Commissioner Torrosian, seconded by Commissioner Hansen-Smith.

VOTING:	Ayes -	Torrosian (vice chair), Hansen-Smith, Medina, Reed, Vasquez, Holt (chair)
	Noes -	None
	Not Voting -	None
	Absent -	None

DATED: January 29, 2014

JENNIFER K. CLARK, Secretary
Fresno City Planning Commission

Resolution No. 13266
Text Amendment Application No. TA-13-006
Filed by Development and Resource Management Department
Action: Recommend Approval