

MEETING MINUTES

MILPITAS PLANNING COMMISSION

Milpitas City Hall, Council Chambers

455 E. Calaveras Blvd., Milpitas, CA

Wednesday, June 25, 2014

- I. PLEDGE OF ALLEGIANCE** **Chair Mandal** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II. ROLL CALL/ SEATING OF ALTERNATE** **Commissioners**
Present: Chair Sudhir Mandal, Vice Chair Larry Ciardella, Commissioners Gurdev Sandhu, John Luk, Rajeev Madnawat, Demetress Morris, and Alternate Member Hon Lien
Commissioner Barbadillo was absent at Roll Call and arrived at 7:03 P.M.
Absent:
Staff: Steven McHarris, Johnny Phan, Scott Ruhland
- III. PUBLIC FORUM** **Chair Mandal** invited members of the audience to address the Commission and there were no speakers.
- IV. APPROVAL OF MEETING MINUTES** **Chair Mandal** called for approval of the June 11, 2014 meeting minutes of the Planning Commission.
Motion to approve Planning Commission meeting minutes, as submitted.
Motion/Second: Commissioner Sandhu/Vice Chair Ciardella
AYES: 7
NOES: 0
ABSTAIN: 0
- V. ANNOUNCEMENTS** No announcements
- VI. CONFLICT OF INTEREST** **Assistant City Attorney Johnny Phan** asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.

There were no reported conflicts.
- VII. APPROVAL OF AGENDA** **Chair Mandal** asked if staff or Commissioners had changes to the agenda.
Motion to approve the June 25, 2014 agenda as submitted.
Motion/Second: Commissioner Sandhu/Vice Chair Ciardella
AYES: 7
NOES: 0

**VIII. CONSENT
CALENDAR
VIII-1**

SPRINT PG&E TOWER ANTENNAS – 440 South Hillview Drive - UP14-0009 –
A request for a Conditional Use Permit Amendment to add three new wireless antennas to an existing three antenna array mounted to a PG&E transmission tower. This project is categorically exempt from further CEQA review pursuant to Section 15301 (Existing Facilities) of the CEQA guidelines.

Motion to move this item to Public Hearing

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

Senior Planner Scott Ruhland gave a brief overview of the staff report.

Chair Mandal opened the public hearing and one resident spoke regarding exposure of radio frequency emissions and magnetic waves. Senior Planner Ruhland stated that the applicant provided the city with a radio frequency report prepared by a certified professional consultant. Exposure limits are identified as in compliance with FCC rules and regulations.

Motion to close the public hearing.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

Motion to adopt Resolution No. 14-027 approving Conditional Use Permit Amendment No. UP14-0009 for the installation of three new antennas to an existing three antenna array mounted to a PG&E transmission tower located at 440 South Hillview Drive.

Motion/Second: Commissioner Madnawat/Vice Chair Ciardella

AYES: 7

NOES: 0

IX. PUBLIC HEARING

IX-1

VAPE ONE RETAIL CUP – 794 Barber Lane – UP14-0003 - A request for a Conditional Use Permit (CUP) to allow an electronic smoking device retail establishment in an existing commercial tenant space for retail sale of electronic smoking devices and similar products. This project is categorically exempt from further CEQA review pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines.

Senior Planner Scott Ruhland gave a presentation and description of the project.

Commissioner Morris asked if staff has researched what other cities are doing and Mr. Ruhland answered that Milpitas is treating these the same as tobacco products.

Chair Mandal asked how many of these facilities exist in Milpitas and staff answered that this is the first request under the City's revised ordinance. However, there is currently one other business operating without a permit.

Commissioner Barbadillo asked about sampling of the product and what is being proposed and Mr. Ruhland said staff recommends not allowing product sampling.

Assistant City Attorney Johnny Phan explained that currently under state law and the City municipal code, use of electronic smoking devices is not prohibited on private property and it is within the authority of the Planning Commission to prohibit the smoking, sampling, or use of electronic smoking devices on private property through Conditions of Approval. He also said the health effects to the user and bystanders is unclear. The Police Department is recommending no consumption inside the retail store.

Commissioner Barbadillo was concerned that it may hurt business sales if customers are not allowed to sample the product. Assistant City Attorney Phan said there has been research on the health effects and there are different opinions as the vapors may not always contain nicotine but they do contain various unhealthy chemicals.

Commissioner Madnawat commented that the full extent of the health effects is unknown and his understanding is that the vapor can be more dangerous than cigarettes but he is favorable to allowing the business with a review period.

Commissioner Luk said that he supports staff's recommendation.

Chair Mandal invited the applicant to speak and a Vape One representative said his main concern is Condition #18 which will prohibit customers from sampling products and he would like to have this condition removed. He said the facility is strictly a retail store and it is a benefit for customers to sample the product.

Commissioner Morris asked if it is possible to give customers samples to take off of the property and the applicant said no as the dosage is very low and one can taste the product with just one drop.

Another Vape One representative referenced a study that compared vapor air emissions to traditional cigarettes and the different effects of each, and said there is no apparent risk to bystanders. He also stressed the importance of sampling the product before making a purchase.

Vice Chair Ciardella asked if it would be possible to have a separate room with ventilation and the applicant said they will have fans and air purifiers to keep the environment fresh.

Commissioner Barbadillo asked what percentage of the income is reliant on the vapors and the applicant replied that 70% is from the vapor cartridges and 30% from the hardware.

Chair Mandal opened the public hearing. Karen Kam, the property manager at the Ulferts Center, spoke in favor of the applicant.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Vice Chair Ciardella

AYES: 7

NOES: 0

Chair Mandal said he is concerned about allowing sampling in the store.

Vice Chair Ciardella said he would like to remove Condition #18 because he believes people should have the opportunity to sample the different flavors.

Commissioner Sandhu believes staff has done a good job, agrees with the conditions of approval, and is not in favor of removing the condition.

Commissioner Barbadillo is willing to remove Condition #18 to allow sampling.

Commissioner Morris said that if Condition #18 is removed she would like the review period changed from 12 months to six months.

Commissioner Madnawat believes this is a promising device and people should not rush to judgment. He is willing to take out Condition #18 and have the CUP return after a six month review period.

Vice Chair Ciardella feels there should be a separate room for sampling and there was discussion about whether or not a separate room would be feasible. Ms. Kam thought it may be possible for the tenant to add a room but Mr. McHarris said the retail area where customers enter is limited.

Motion to adopt Resolution No. 14-028 approving Conditional Use Permit No. UP14-0003 to allow an electronic smoking device retail establishment in an existing commercial tenant space for retail sale of electronic smoking devices and similar products located at 794 Barber Lane with deletion of the last two sentences of Condition #18 and an amendment to change the review period to six months instead of 12.

Motion/Second: Commissioner Madnawat/Commissioner Morris

AYES: 6

NOES: 1 Sandhu

ABSTAIN: 0

X. NEW BUSINESS

NO ITEMS

XI. ADJOURNMENT

The meeting was adjourned at 8:15 PM to the next meeting of July 23, 2014.

Motion to adjourn to the next meeting.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7
NOES: 0
ABSENT: 0

*Meeting Minutes submitted by
Planning Secretary Elia Escobar*