



MILPITAS PLANNING COMMISSION STAFF REPORT

June 25, 2014

APPLICATION: **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.

RECOMMENDATION: **Staff recommends that the Planning Commission: 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.**

LOCATION:

Address/APN: 794 Barber Lane (86-01-035)
Area of City: Ulferts Center

PEOPLE:

Project Applicant: Tommy Lu for Vape One Incorporated
Consultant(s): Studio 02 Incorporated, Architect
Property/Business Owner: Karen Kam for Ulferts Center USA Incorporated
Project Planner: Marge Sung, Assistant Planner

LAND USE:

General Plan Designation: General Commercial (GNC)
Zoning District: General Commercial (C2)
Overlay District: Recreation and Entertainment with Site and Architectural Overlay (-RE-S)

ENVIRONMENTAL: Categorically Exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA).

EXECUTIVE SUMMARY

Vape One Incorporated is requesting 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. The retail space is approximately 490 square feet, including the retail area and a storage. The proposal is only for retail business. There will be no food or drink served on the premises. Customers shall not be allowed to sample the products. No consumption of the products will be made onsite. The proposed business hours are Monday through Thursday from 11 am to 7 pm, Friday and Saturday from 11 am to 8 pm, and Sunday from 11 am to 7 pm.

Map 1
Project Location at 794 Barber Land



Map 2
Project Site



Project
Location



BACKGROUND

History

In May 1996, the City approved a General Plan Amendment changing the land use from industrial park to commercial. Subsequently, in February 1997, the City approved an approximate 40,000 square foot retail center (Ulferts Center). Since that time there have been various use permits for restaurants and telecommunication facilities and S-Zone Amendments for various restaurant uses, and external building and site modifications.

On March 18, 2014, the City Council held a public hearing to consider introducing Ordinance No. 38.813 defining electronic smoking device and head/smoke/tobacco shops and other related amendments for inclusion in the Zoning Ordinance and to consider introducing Ordinance No. 277.6 to amend the smoking ordinance to regulate the use of electronic smoking devices.

On April 1, 2014, the City Council waived the second readings, adopted Ordinance No. 38.813 defining electronic smoking device and head/smoke/tobacco shops and adopted Ordinance No. 227.6 to regulate the use of electronic smoking devices. The proposed retail sales of electronic smoking devices and the similar products are within the category defined in the Ordinance No. 38.813 and, therefore, the proposed retail establishment requires a Conditional Use Permit to allow sales of electronic smoking devices and the similar products per Ordinance No. 227.6.

The Application

On March 17, 2014, Tommy (Yung Tai) Lu representing Vape One Incorporated submitted an application pursuant to Section 57 of the Milpitas Zoning Ordinance for a Conditional Use Permit, UP14-0003. The following is a summary of the applicant's request:

- *Conditional Use Permit:* To allow the retail sale of electronic smoking devices and similar products in an existing commercial tenant space. Per Table XI-10-5.02-1 and Ordinance No. 227.6 of the Milpitas Zoning Ordinance, the proposed retail sale of electronic smoking devices and similar products requires Planning Commission's approval through a Conditional Use Permit.

PROJECT DESCRIPTION

Overview

Vape One Incorporated is requesting 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. The proposal is only for retail business, located on the second level of the Ulferts Shopping Center at 794 Barber Lane. The retail space is approximately 490 square feet, including the retail area and a storage. A new partition wall will be built to separate the existing tenant space into two tenant spaces. A new restroom will be constructed. The construction of the new wall and the new restroom will be within the existing building footprint. There will be no additional square footage added to the existing building and no exterior alteration proposed within this application. There will be no food or drink served on the premises. All products will be sold and no consumption of the products will be onsite. Per the City's Zoning Ordinance Table XI-10-5.02-1 and Ordinance No. 227.6, the head/smoke/tobacco shop use requires a Conditional Use Permit approved by the Planning Commission.

Location and Context

The project site is located on the east side of Barber Lane between the Hetch-Hetchy Right-of-Way and former Billings Chevrolet site. Interstate 880 runs along the eastern boundary of the site. The site has a zoning designation of General Commercial with Recreation and Entertainment with Site and Architectural Overlay (C2-RE-S). Neighboring land uses include industrial parks to the west, vacant lot zoned Mixed Use to the north, and a large day care facility to the south.

PROJECT ANALYSIS

General Plan and Zoning Conformance

The General Plan designation of the project site is General Commercial (GNC). The Zoning designation is also General Commercial with Recreation and Entertainment with Site and Architectural Overlay (C2-RE-S). The use of the project site is retail, which is in conformance with City's General Plan and Zoning Ordinance in that the proposed retail use is permitted with a Conditional Use Permit to allow sales of electronic smoking devices and similar products.

Development Standards

The applicant proposes no exterior changes or modifications to the building and therefore maintains compliance with the General Commercial development standards for setbacks, height, floor area ratio, and parking. An interior partition wall and a new restroom will be constructed within the existing building footprint in order to separate the retail tenant space from the adjacent tenant office. The existing building remains in compliance with the development standards.

Parking

The retail space is approximately 490 square feet, including the retail area and a storage. Per the Milpitas Zoning Ordinance Table 53.09-1, the general retail and convenience stores parking is one parking space for every two hundred (200) square feet. The proposed retail business will require two (2) parking spaces. The existing parking provides 236 parking spaces for the 40,000 square foot retail center. There is sufficient on-site parking available for the proposed retail use.

FINDINGS FOR APPROVAL

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

Conditional Use Permit (Section XI-10-57-04(F))

- 1. The proposed use will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The project is consistent with this finding because the project is in the existing commercial building and is permitted under the Zoning Ordinance with a Conditional Use Permit. The proposed retail business selling electronic smoking devices and similar products provides retail options for the patrons. The proposal increases economic opportunity, and as conditioned, will not be detrimental to property or improvements in the vicinity nor to the public health, safety, and general welfare because the building exists and the retail sales will be conducted within the building. No consumption of the products will be made in the premises. As discussed above, the site meets all development standards and parking requirements.

- 2. The project is consistent with the Milpitas General Plan.*

The project is consistent with this finding because the General Plan specifically indicated the following policies:

- Policy 2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance.
- Policy 2.a-I-5 Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints.

The proposed retail sales of electronic smoking devices and the similar products will encourage economic pursuits by operating a sales business in an existing unoccupied commercial tenant space with Conditional Use Permit approval. The proposal will provide economic opportunities to the Milpitas residents and around the region by providing different retail options.

3. *The project is consistent with the Milpitas Zoning Ordinance.*

The project is consistent with this finding because the commercial shopping center was constructed in 1997 in conformance with the Milpitas Zoning Ordinance in terms of land use and development standards with no proposed exterior modifications under this application. The interior improvements will be within the existing building footprint and will not have impact on development standards.

In terms of the land use, the project is consistent with General Commercial Zoning District in that head/smoke/tobacco stores are conditionally permitted uses with a Conditional Use Permit approval by the Planning Commission.

Although state law currently prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors and requires tobacco retailers to check the identification of tobacco purchasers who reasonably appear to be under 18 years of age, the number of youths having access to tobacco products is a concern and potential issue with this type of retail establishment. As such, staff recommends the following conditions of approval:

- Prohibit the sale or transfer of electronic smoking devices products and electronic smoking devices paraphernalia to anyone under the age of 18. The operator shall obtain age detection devices that will confirm the purchaser is the minimum age under state law to purchase and possess electronic smoking devices or paraphernalia.
- Prohibit a person who is younger than the minimum age established by state law for purchase or possession of electronic smoking devices products to be engaged in retailing at the site.
- Prohibit all self-service displays of electronic smoking devices products.
- All products and related paraphernalia shall be stored or kept out public view and shall maintain a minimum distance of 5-feet from any storefront window.
- Prohibit on-site consumption of electronic smoking devices and other similar products.

Additionally, any window advertisement shall be regulated by Milpitas Sign Ordinance. Per Milpitas Municipal Code XI-10-24.04-1 (Window Signs), window displays shall not cover more than 25% of the contiguous window area. As conditioned above, the project will not be detrimental or injurious to property, improvements, or the public health, safety, and general welfare and ensure the propose use will add to the vitality of the shopping center.

ENVIRONMENTAL REVIEW

The Planning Division conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities. A new partition wall will be constructed to separate the project site from the other tenant space. A new restroom will be provided for the proposed retail use. However, the construction will be within the existing building footprint. The building structure is existing and there has no exterior alteration proposed.

PUBLIC COMMENT/OUTREACH

Staff provided public notice for the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on June 13, 2014. In addition, 86 notices were sent to owners and occupants within 1,000 feet of the project site. A public notice was also provided on the project site, on the City's Website, www.ci.milpitas.ca.gov, and posted at City Hall.

CONCLUSION

Vape One Incorporated is requesting 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. The proposal is only for retail business. There will be no food or drink served on the premises. The packaged goods will be sold and no consumption of the products will be onsite. The retail business is encouraged in the General Commercial Zoning District. The proposed electronic smoking device retail business complies with the City's General Plan and Zoning Ordinance only when a Conditional Use Permit approves by the Planning Commission.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Conduct Public Hearing; and
2. Adopt Resolution No. 14-028 approving Conditional Use Permit No. UP14-0003 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 located at 794 Barber Lane.

ATTACHMENTS

- A: Resolution No. 14-028
- B: Site Plan
- C: Floor Plan
- D: Applicant's statement