

EXHIBIT 1**CONDITIONS OF APPROVAL
Vape One Retail Conditional Use Permit No. 14-0003****General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Vape One Retail Conditional Use Permit No. UP14-0003 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.

Comment: Perpetual

2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.

Comment: Perpetual

3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.

Comment: No appeal filed. Permittee has accepted all the terms, obligations, and conditions of this permit.

4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

Comment: The permit has been vested. An occupancy permit was issued on 10/17/14.

5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

Comment: Perpetual

6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.

Comment: Perpetual

7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).

Comment: Perpetual

8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.

Comment: Perpetual

9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.

Comment: Perpetual

10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**

Comment: Perpetual

11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.

Comment: Perpetual

12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

Comment: Perpetual

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.

Comment: Perpetual

14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.

Comment: Perpetual

15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on June 25, 2014, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the

City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

Comment: Perpetual

16. Permittee shall fully pay all applicable fees and charges at the time they are due to City based on the rate schedule in effect at the time the fees or charges are due and payable to City. **(P)**

Comment: Perpetual

Project Specific Conditions

17. The business hours are limited to 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. **(P)**

Comment: Staff observed the business operating past the restricted hours of operation on one Friday evening. The posted store operations also noted that the store could accommodate later hours by appointment only.



18. The business is retail only. There will be no food or drink served on the premises. **(P)**

Comment: Complies. No food or drink service was observed during staff's site inspection.

19. The project shall be subject to a six (6) month permit review by the Planning Commission in a fully noticed public hearing after issuance of Certificate of Occupancy. Permittee shall bear the costs of all materials and fees associated with the hearing. The Planning Commission may add any additional condition(s) to address any impact from the use authorized in this Permit. **(P)**

Comment: Complies. A six-month permit is being held in accordance with the above condition.

20. Prohibit the sale or transfer of any electronic smoking devices products and electronic smoking device paraphernalia to anyone under the age of 18. Permittee shall at all times obtain age detection devices that will confirm the purchaser is the minimum age of 18. (P)

Comment: Perpetual. There have been no reported incidents with the sale of electronic smoking devices to under aged minors.



21. Prohibit a person who is younger than the minimum age of 18 from working at the subject property. (P)

Comment: Perpetual.

22. Prohibit all self-service displays of any electronic smoking device products. (P)

Comment: None observed during site visit on April 9, 2015



23. Any window advertisement shall be regulated by the 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. **(P)**

Comment: Signage is in compliance with Milpitas Sign Ordinance in terms of sign area, window signs, and temporary banner signs.

Building & Safety Department Conditions

24. The applicable existing Building codes shall be 2013 CBC, CMC, CEC, CPC, Green Building Code, California Energy Code and 2014 Milpitas Municipal Code. Building permit applications submitted after January 1, 2014 shall comply with newly adopted 2013 Family of Codes and 2014 Milpitas Municipal Code. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

25. Permittee shall obtain a Business License and Certificate of Occupancy prior to commencement of any business activities or operation. **(B)**

Comment: Complies. A business license was issued on 7/7/14. An occupancy permit was issued on 10/17/14.

26. Engineer or architect licensed in the State of California shall prepare all required plans necessary for building permit. Structural design calculations and plans shall be wet signed and stamped prior to obtaining a building permit. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

27. Access to restroom through storage room shall comply with City Policy BDP-BLG30: "Restrooms located inside stockrooms in retail stores are permitted provided that the path of travel from the stockroom entrance door to the restroom door shall be striped with minimum of 36 inches clear width and the maneuvering clearance in front of the two doors as required in CBC section 11B-404.2.4. The words "KEEP CLEAR" shall be painted on the striped path". **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

28. Accessible parking for the people with disabilities shall be provided as per 2013 CBC, section 11B-208.1. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

29. Accessible parking spaces shall be dispersed and located closest to the accessible entrances as per 2013 CBC sec.11B-208.3.1. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

30. One in every six accessible parking spaces, but not less than one parking space, shall be van accessible as per 2013 CBC sec.11B-208.2.4. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

31. Curb ramps shall have detectable warnings extending 36 inches in the direction of travel as per 2013 CBC sec.11B-406.5.12 and sec.11B-705.1.2.2. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

32. All primary entrances and required exit doors shall be accessible to people with disabilities as per 2013 CBC, sec. 11B-206.4.1. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

33. Tactile exit signs shall be provided where exit signs as per 2013 CBC sec.1011.1 and provided as per 2013 CBC sec.1011.3. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

34. Sanitary facilities shall be fully accessible to people with disabilities as per 2013 CBC, sec. 11B-213.1. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

35. Provide maneuvering clearances at doors as per 2013 CBC, Sec. 11B-404.2.4. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

36. At least one accessible counter for each counter type shall be provided for the public and in general employee area. The minimum length for the counter must be 36 inches long and not more 34 inches high per 2013 CBC, Sec. 11B-904.4. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

37. Provide minimum aisle width per 2013 CBC section 11B-403.5.1 exception 4. Every aisle shall be 36 inches wide if serving one side and minimum of 44 inches wide if serving both sides. **(B)**

Comment: Demonstrated compliance on approved building permit drawings dated 8/25/15.

38. Each tenant shall be provided with separate electrical branch circuits disconnect system as per City Policy BDP-EL02. **(B)**

Fire Department Conditions

39. Premises Identification. New and existing building shall have approved address numbers, building numbers or approved building identification placed in a position that is legible and visible from the street fronting the property. These numbers shall contrast with their

background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardize addressing guidelines. **(F)**

40. Portable fire extinguishers shall be selected, installed, and maintained in accordance with California Fire Code. **(F)**

Comment: Perpetual.

41. Key Box. The Fire Code Official is authorized to require a key box to be installed in an approved location if necessary for life saving or fire-fighting purpose. When required, the Knox box location shall be at 6 feet above finished floor, or fire access walkway or road. **(F)**

Comment: Perpetual.

42. No approval is granted for the use, storage, sales or handling of hazardous materials. **(F)**

Comment: Perpetual.

43. Egress doors shall be readily openable from the egress side without the use of a key or special knowledge or effort. **(F)**

Comment: Perpetual.

44. The Milpitas Fire department shall approve new installation and/or modifications to existing fire protection, alarm, or monitoring system(s). A separate submittal is required to the Milpitas Fire Department for review and approval prior to the commencement of any construction work. **(F)**

Comment: Perpetual.

Engineering Department Land Development Section Conditions

45. This approval is based on the plans submitted by Permittee to the City showing no utility connections will be required within the City's property or right-of-way (right of way/easement). **(E)**

Comment: Perpetual.

46. The improvement is limited to existing building footprint with no improvement in existing landscaping, parking lot, or otherwise. **(E)**

Comment: Perpetual.

47. The property is in Flood Zone X (flood insurance not required). This is for information only. **(E)**

Comment: Perpetual.

Police Department Conditions

48. Lighting should be sufficient to provide adequate illumination and to make clearly visible of the presence of any person during hours of darkness in front of the business and in the parking lot. **(PD)**

Comment: Complies. The shopping center provides sufficient site lighting comprised of wall light sconces, ceiling lights under the roof eave, parking lot and pedestrian light poles.

49. Prior to building permit final, the applicant shall install closed circuit video surveillance cameras within the business and video recordings shall be maintained for no less than one-month or 30 days. The resolution of the surveillance cameras shall be 720p or better. Surveillance recordings shall be made available at any time to the Police Department upon request. Surveillance equipment shall be operable at all times, except for maintenance service by a qualified professional surveillance equipment technician for no more than two (2) days at any given time and no more than six (6) days within any 365 day period. **(PD)**

Comment: Complies. The applicant has installed a video surveillance system and demonstrated its operation to staff during a site inspection on 4/9/15.



50. Install signage clearly displaying the maximum occupancy of the establishment. **(PD)**

Comment: Non-compliance. No signage was provided for the maximum occupancy. Deficiency corrected on 5/7/15.

51. Install signage clearly displaying that California Law prohibits the sale of electronic cigarettes to persons under age of 18 years old. **(PD)**

Comment: Non-compliance. No signage was provided for California Law that prohibits the sale of electronic cigarettes to minors. Deficiency corrected on 5/7/15.

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney

(PD) = Police Department