



MILPITAS PLANNING COMMISSION STAFF REPORT

May 13, 2015

APPLICATION: **VAPE ONE PERMIT REVIEW- 794 Barber Lane- PR15-0001-** Six-month review of Conditional Use Permit No. UP14-0003 of a 490 square foot electronic smoking device retail establishment.

RECOMMENDATION: **Staff recommends that the Planning Commission: Conduct the public hearing and accept the staff report on permit review.**

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

PEOPLE:
Project Applicant: Tommy Lu for Vape One Incorporated
Property/Business Owner: Karen Kam for Ulferts Center USA Incorporated
Project Planner: Cindy Hom, Assistant Planner

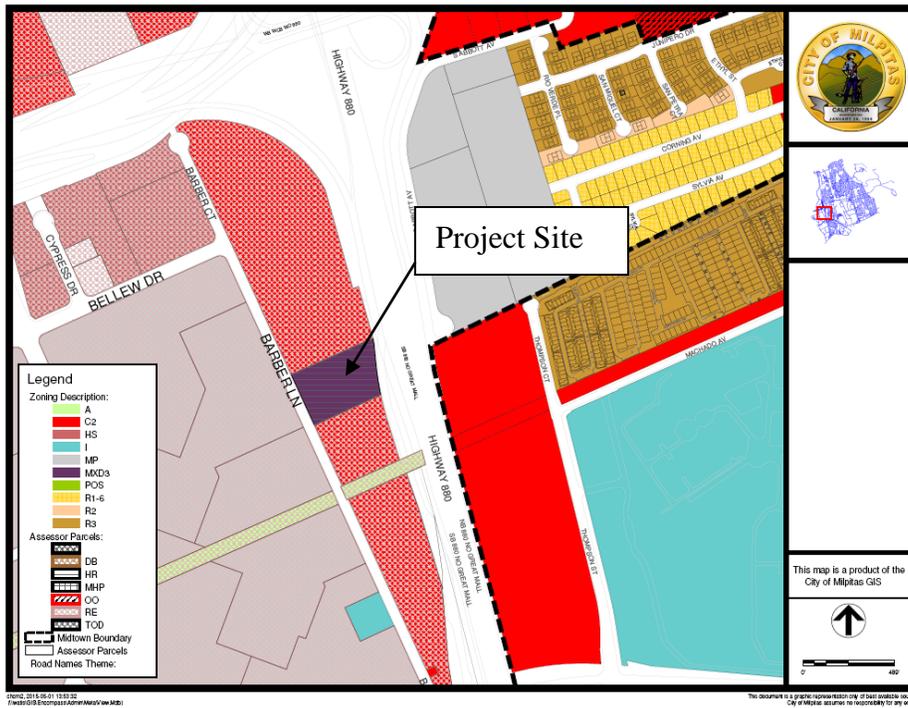
LAND USE:
General Plan Designation: General Commercial (GNC)
Zoning District: General Commercial (C2)
Overlay District: Recreation and Entertainment with Site and Architectural Overlay (-RE-S)

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

EXECUTIVE SUMMARY

The Planning Commission approved Conditional Use Permit No. UP14-0003 on June 25, 2014 for the sale of electronic smoking devices inside a 490 square foot tenant space located at 794 Barber Lane. The Conditional Use Permit required a six-month permit review to ensure compliance with conditions of approval and conformance with approved plans. The conditions of approval prohibit the service of food and drinks on the premises. The permitted business operating hours are Sunday through Thursday from 11:00 AM to 7 PM and 11:00 AM to 8:00 PM on Saturdays. Staff has inspected the retail site on several occasions and believes the Permittee is in substantial compliance with Conditional Use Permit No. UP14-0003, provided the Permittee does not routinely adhere to the operating hours specified in the conditions of approval.

Map 1 Project Location at 794 Barber Lane



Map 2 Project Site



Project Location



PROJECT DESCRIPTION

Overview

Vape One is located on the second level of the Ulferts Shopping Center at 794 Barber Lane. The business occupies approximately 490 square feet of retail area and storage room. The establishment prohibits food or drink service on the premises. The business operating hours are listed in Table 1 below:

Table 1: Hours of Operation

Days	Times
Sunday through Thursday	11:00 AM to 7:00 PM
Friday and Saturday	11:00 AM to 8:00PM

Location and Context

The project site is 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 is zoned General Commercial with Recreation and Entertainment with Site and Architectural

Overlay (C2-RE-S). Neighboring land uses include industrial parks to the west, Milpitas Square shopping center and a vacant lot to the north, and a large day care facility and other industrial buildings and uses to the south.

PROJECT ANALYSIS

General Plan and Zoning Conformance

Vape One establishment is located within a shopping center designated and zoned General Commercial, with the Site and Architectural Overlay and Recreation and Entertainment Overlay. The retail sales of electronic smoking devices and similar products are conditionally permitted uses in the General Commercial Zoning District.

Development Standards

The project maintains compliance with the General Commercial development standards for setbacks, height, floor area ratio, and parking. The project is a permit review for compliance with conditions of approval and does not propose any changes or modifications.

Compliance with Conditions

The project is in compliance with the conditions of approval with the exception of the operating hours. Staff observed the store operating past 8:00 PM one Friday evening during the permit review period between April 16, 2015 to May 7, 2015. Staff also noted the Permittee did not display the required signage for the maximum occupancy and California Law prohibiting sale of electronic cigarettes. A verbal directive for corrections was given to the Permittee. The site was re-inspected on May 7, 2015. To date no other violations have been observed or reported. Compliance with all other conditions is summarized in Attachment A. Staff also consulted with the Milpitas Police Department and Code Enforcement Section for any police incidents, calls for service, or code enforcement action. There were no reported issues or violations.

Staff is not recommending any changes to the conditions of approval. However, the Planning Commission has the discretion to add conditions to address any impacts from the use authorized in this permit pursuant to Condition No. 19. The Permittee indicated to staff they may pursue an amendment to modify the condition restricting the hours of operation. The conditional use permit would be processed as separate application for the Planning Commission review and consideration.

Section 63 (Enforcement and Penalty) of the Zoning Ordinance would continue to apply to the conditional use permit for Vape One. If the use is found to be in non-compliance, staff can impose administrative citations. Furthermore, the zoning ordinance also establishes provisions for modifications, suspension and/or revocations of the permit which requires a public hearing.

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. The

project is a six-month permit review of an existing 490 square foot retail establishment for electronic smoking devices.

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 May, 1 2015. In addition, 187 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

Based on the six-month permit review of the Vape One store operations, the use is in substantial conformance with the approved floor plan and conditions of approval.

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Conduct a Public Hearing; and
2. Accept the staff report on the permit review.

ATTACHMENTS

A: Compliance Assessment