



City of El Cajon

Planning Commission Agenda Tuesday, July 1, 2014, Meeting 7:00 PM. Council Chambers

PAUL CIRCO, Chairman
DARRIN J. MROZ, Vice Chairman
ADEL DANKHA
LUIS HERNANDEZ
ANTHONY SOTTILE

Meeting Location: City Council Chambers, 200 Civic Center Way, El Cajon, CA
<http://www.ci.el-cajon.ca.us/dept/comm/planning.html>

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CHAIRPERSON'S WELCOME

PUBLIC COMMENT

This is the opportunity the public to address the Commission on any item of business within the jurisdiction of the Commission that is not on the agenda. Under state law no action can be taken on items brought forward under Public Comment except to refer the item to staff for administrative action or to place it on a future agenda.

CONSENT

Agenda Item:	1
	Planning Commission minutes of May 6, 2014

PUBLIC HEARINGS

Agenda Item:	2
Project Name:	El Cajon Courtyard Hotel
Request:	Hotel with Reduced Parking, On-Sale Alcohol Service, and Outdoor Eating and Drinking Areas
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	APPROVE
Project Number(s):	Conditional Use Permit No. 2207
Location:	Northeast corner of North Magnolia and Rea Avenues
Applicant:	Excel Hotel Group (Neil Patel); 858.621.4908; npatel@excelhotelgroup.com
Project Planner:	Anthony Shute; 619.441.1742; tonys@cityofelcajon.us
City Council Hearing Required?	Yes July 8, 2014
Recommended Actions:	1. Conduct the public hearing; and 2. MOVE to adopt the next resolutions in order recommending City Council approval of proposed CEQA exemption; and Conditional Use Permit No. 2207, subject to conditions

Decisions and Appeals - A decision of the Planning Commission is not final until the appeal period expires 10 days from the date of transmittal of the Commission's resolution to the City Clerk. The appeal period for the items on this Agenda will end on Friday July 11, 2014 at 5:00 p.m., except that Agenda items which are forwarded to City Council for final action need not be appealed.

Agenda Item:	3
Project Name:	Grossmont Terrace Electronic Message Center
Request:	Amend Zoning Code Sections 17.190.180 and 17.190.270; and an off-site digital billboard in the O-S zone
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	DENY
Project Number(s):	Zoning Code Amendment No. 419 and Conditional Use Permit No. 2162
Location:	Vacant properties between I-8 and Murray Drive
Applicant:	Grossmont Terrace Associates, L.P. (David Wick); 858.623.9000 ext. 700
Project Planner:	Anthony Shute; 619.441.1742; tonys@cityofelcajon.us
City Council Hearing Required?	No Only upon appeal
Recommended Actions:	<ol style="list-style-type: none"> 1. Conduct the public hearing; and 2. MOVE to adopt the next resolutions in order DENYING Zoning Code Amendment No. 419 and Conditional Use Permit No. 2162

Agenda Item:	4
Project Name:	Amendment of Specific Plan No. 337
Request:	Delete a specific plan for joint-use parking
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	CONTINUE TO A DATE UNCERTAIN
Project Number(s):	Specific Plan No. 337
Location:	West side of Front Street at the western terminus of Palm Avenue
Applicant:	American Ice Inc. (Hani Toma); 619.466.0000; ice966@yahoo.com
Project Planner:	Eric Craig; 619.441.1742; ecraig@cityofelcajon.us
City Council Hearing Required?	Yes Noticed for July 22, 2014
Recommended Actions:	<ol style="list-style-type: none"> 1. Conduct the public hearing; and 2. Receive public testimony; and 3. Continue the public hearing to a date uncertain

Agenda Item:	5
Project Name:	Camp-Run-A-Mutt
Request:	Establish a kennel at a developed site
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	APPROVE
Project Number(s):	Conditional Use Permit No. 2204
Location:	412 Front Street
Applicant:	Molly Krumweide; 858.361.6294
Project Planner:	Eric Craig; 619.441.1742; ecraig@cityofelcajon.us
City Council Hearing Required?	No
Recommended Actions:	<ol style="list-style-type: none"> 1. Conduct the public hearing; and 2. MOVE to adopt the next resolution in order approving Conditional Use Permit No. 2204, subject to conditions

Decisions and Appeals - A decision of the Planning Commission is not final until the appeal period expires 10 days from the date of transmittal of the Commission's resolution to the City Clerk. The appeal period for the items on this Agenda will end on Friday, July 11, 2014 at 5:00 p.m., except that Agenda items which are forwarded to City Council for final action need not be appealed.

STAFF COMMUNICATIONS

Agenda Item:	6
	Secondhand Merchandise & Alternative Lending

Agenda Item:	7
	Electronic Vapor Devices, Vapor Inhalation Substances, and Hookah

ADJOURNMENT

This Planning Commission meeting is adjourned to July 15, 2014 at 7 p.m.

Decisions and Appeals - A decision of the Planning Commission is not final until the appeal period expires 10 days from the date of transmittal of the Commission's resolution to the City Clerk. The appeal period for the items on this Agenda will end on Friday, July 11, 2014 at 5:00 p.m., except that Agenda items which are forwarded to City Council for final action need not be appealed.



MINUTES

PLANNING COMMISSION MEETING

May 6, 2014

The meeting of the El Cajon Planning Commission was called to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE

COMMISSIONERS PRESENT: Paul CIRCO, Chairman
 Adel DANKHA
 Luis HERNANDEZ
 Anthony SOTTILE

COMMISSIONERS ABSENT: Darrin J. MROZ, Vice Chairman

STAFF PRESENT: Anthony Shute, Planning Manager / Planning Commission Secretary
 Dennis DAVIES, Deputy Director – Public Works
 Barbara LUCK, Assistant City Attorney
 Eric CRAIG, Assistant Planner
 Patricia HAMILTON, Secretary

CIRCO explained the mission of the Planning Commission.

NON-AGENDA PUBLIC COMMENT

Jason AUGUST spoke regarding his health and other issues.

CONSENT CALENDAR

Motion was made by SOTTILE, seconded by HERNANDEZ, to adopt the minutes of the Planning Commission meeting of April 1, 2014; carried 4-0 (Mroz absent).

PUBLIC HEARING ITEMS

Agenda Item:	2
Project Name:	Ace Self Storage
Request:	Expand an existing personal storage facility, including new freeway-oriented signs
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	APPROVE

Project Number(s):	Conditional Use Permit No. 2196
Location:	573 Raleigh Avenue
Applicant:	BSB Company (Brad Bailey); 619.449.8451; brad@bsbco.net
Project Planner:	Eric Craig; 619.441.1782; ecraig@cityofelcagon.us
City Council Hearing Required?	No
Recommended Actions:	1. Conduct the public hearing; and 2. MOVE to adopt the next resolutions in order approving Conditional Use Permit No. 2196, subject to conditions

CRAIG summarized the agenda report in a PowerPoint presentation.

CIRCO opened the public hearing and invited any speakers to the podium.

Brad BAILEY, the applicant, spoke in favor of the project and was in agreement with all conditions of approval.

HERNANDEZ asked the applicant if he was proposing one or four signs.

BAILEY responded he was proposing four signs as pop-outs at the end of the buildings.

HERNANDEZ suggested consideration of a tower sign versus four individual signs to reduce the amount of freeway-oriented wall signage.

BAILEY said he may be able to accommodate the suggestion.

HERNANDEZ also noted the walls separating three parking spaces restrict loading/unloading space and suggested architectural enhancements consistent with the proposed buildings be incorporated on the front elevation of Building B.

BAILEY was also receptive to this idea and said he could propose these changes under a separate permit.

SHUTE suggested that if the Commissioners felt the resolution should be modified, a condition could be added to ensure interior parking space partitions are removed and architectural enhancements are made to the Building B front elevation. This process would negate the need to obtain a separate building permit.

Motion was made by HERNANDEZ, seconded by SOTTILE, to close the public hearing; carried 4-0.

Motion was made by CIRCO, seconded by DANKHA, to adopt the revised resolution in order granting Conditional Use Permit No. 2196, subject to conditions; carried 4-0.

Agenda Item:	3
Project Name:	Garcia's Firewood
Request:	Firewood sales
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	APPROVE
Project Number(s):	Conditional Use Permit No. 2191
Location:	451 South Marshall Avenue
Applicant:	Garcia's Firewood (Elsa Garcia); 619.593.8377

Project Planner:	Eric Craig; 619.441.1782; ecraig@cityofelcajon.us	
City Council Hearing Required?	No	
Recommended Actions:	1. Conduct the public hearing; and 2. MOVE to adopt the next resolution in order approving Conditional Use Permit No. 2191, subject to conditions	

CRAIG summarized the agenda report in a PowerPoint presentation.

CIRCO opened the public hearing and invited any speakers to the podium.

Fernando LIZARRAGA, representing the applicant, answered questions of the Commissioners.

Motion was made by SOTTILE, seconded by CIRCO, to close the public hearing; carried 4-0.

HERNANDEZ voiced concerns of insufficient landscaping and screening of unsightly areas. He suggested allowing the use to operate for one year only, and then relocate to a more suitable site. Overall, the use is not compatible with the surrounding residential area, and he was not in support of the project.

SOTTILE added that given the condition of the site, the proposed improvements would make a significant change for the better. The applicant is making the effort to improve the site, this is the only type of business in El Cajon, and they should support the applicant's effort.

HERNANDEZ asked for detail on the past code enforcement case identified in the agenda report.

CRAIG advised the case involved firewood stored without the proper permit.

CIRCO added that since the case did not involve any complaints from the neighbors, and he views the project as improved lot selling firewood, he agreed the project overall was an improvement to the area. He then received confirmation from the applicant's representative that he was in agreement with all the conditions of approval.

DANKHA also praised the project overall as an improvement in the area.

Motion was made by SOTTILE, seconded by CIRCO, to adopt the next resolution in order granting Conditional Use Permit No. 2191, subject to conditions; carried 3-1 (HERNANDEZ opposed).

Agenda Item:	4	
Project Name:	Sunbelt Towing	
Request:	Towing storage yard	
CEQA Recommendation:	Exempt	
STAFF RECOMMENDATION:	APPROVAL	
Project Number(s):	Conditional Use Permit No. 2201	
Location:	529-537 Front Street	
Applicant:	Steven Hendrickson; 619.708.9751	
Project Planner:	Noah Alvey; 619.441.1773; nalvey@cityofelcajon.us	
City Council Hearing Required?	No	

Recommended Actions:	<ol style="list-style-type: none"> 1. Conduct the public hearing; and 2. MOVE to adopt the next resolution in order approving Conditional Use Permit No. 2201, subject to conditions
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SHUTE summarized the agenda report in a PowerPoint presentation.

CIRCO opened the public hearing and invited any speakers to the podium.

Alan AUSTIN, spoke on behalf of the owner, and was willing to answer any questions of the Commissioners.

Michael BENBROOK, owner of the facility across the street from the subject site, spoke next. He noted that there are currently eight towing yards in El Cajon and none in La Mesa and Santee, and that the Rancho Del Oro Towing yard directly to the north is extremely active. They bring in large semi-trucks and park in the right-of-way to load and unload new vehicles, which doesn't leave much parking for the public and employees in the surrounding area. In addition, the yard is not attractive, therefore not conducive to what the City is trying to achieve in the area. His other main concern was in regard to the proposed landscaping, which tends to become a home for the homeless in the area, and is currently a huge problem.

HERNANDEZ stated this was a much better revitalization of the site and much cleaner project. He suggested that the possibility of increased landscaping, especially along the trolley tracks, be considered.

Motion was made by HERNANDEZ, seconded by DANKHA, to close the public hearing; carried 4-0.

CIRCO was also not aware El Cajon had eight tow yards.

SHUTE agreed El Cajon does have many tow yards, but we do have a large industrial area with major thoroughfares connecting to this area.

CIRCO asked staff to have someone look into the tow yard to the north to verify they were in compliance with their conditions of approval.

SHUTE answered they would address the issue through code compliance.

HERNANDEZ added that he would like to see increased landscaping included along the trolley tracks and along the front of the property, and that the buildings did look presentable.

CIRCO agreed increased landscaping would be a great addition to the site; however, he was not comfortable with expanding the landscaping, especially in an area with a large transit population.

SHUTE advised that the proposed resolution already included landscaping requirements to be to the satisfaction of staff and they would keep the concerns of the Commission in mind.

DANKHA and SOTTILE both added that the project was good for the City and they were in favor of approval.

Motion was made by HERNANDEZ, seconded by DANKHA, to adopt the next resolution in order granting Conditional Use Permit No. 2201, subject to conditions; carried 4-0.

Agenda Item:	5
Project Name:	Finest Thai on-sale beer and wine sales
Request:	On-sale beer and wine sales with an existing restaurant
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	APPROVE
Project Number(s):	Conditional Use Permit No. 2203
Location:	354 Broadway
Applicant:	Finest Thai (Gayle Sayyadeth); 619.218.5854; gayle.cayyadeth@gmail.com
Project Planner:	Tony Shute; 619.441.1705; tonys@cityofelcajon.us
City Council Hearing Required?	No
Recommended Actions:	1. Conduct the public hearing; and 2. MOVE to adopt the next resolution in order approving Conditional Use Permit No. 2203, subject to conditions

SHUTE summarized the agenda report in a PowerPoint presentation.

CIRCO opened the public hearing and invited any speakers to the podium.

Gayle SAYYADETH, applicant, approached the podium to answer any questions.

Motion was made by CIRCO, seconded by DANKHA, to close the public hearing; carried 4-0.

Motion was made by SOTTILE, seconded by DANKHA, to adopt the next resolution in order granting Conditional Use Permit No. 2203, subject to conditions; carried 4-0.

OTHER ITEMS FOR CONSIDERATION

In a PowerPoint presentation, Commissioner Hernandez shared the high points of the 2014 Academy League of Cities Conference.

ADJOURNMENT

Motion was made by SOTTILE, seconded by CIRCO, to adjourn the meeting of the El Cajon Planning Commission at 8:38 p.m. this 6th day of May until May 20, 2014, at 7:00 p.m.; carried 4-0.

Paul CIRCO, Chairman

ATTEST:

Anthony SHUTE, AICP, Secretary

Agenda Item:	2
Project Name:	El Cajon Courtyard Hotel
Request:	Hotel with Reduced Parking, On-Sale Alcohol Service , and Outdoor Eating and Drinking Areas
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	APPROVE
Project Number(s):	Conditional Use Permit No. 2207
Location:	Northeast corner of North Magnolia and Rea Avenues
Applicant:	Excel Hotel Group - Neil Patel; 858-621-4908; npatel@excelhotelgroup.com
Project Planner:	Anthony Shute, AICP; 619-441-1742; tonys@cityofelcajon.us
City Council Hearing Required?	Yes July 8, 2014
Recommended Actions:	<ol style="list-style-type: none"> 1. Conduct the public hearing; and 2. MOVE to adopt the next resolutions in order recommending City Council approval of proposed CEQA exemption; and Conditional Use Permit No. 2207, subject to conditions

PROJECT DESCRIPTION

This project includes the redevelopment of properties generally located at the northeast corner of North Magnolia and Rea Avenues. Specifically, the applicant proposes to demolish all existing on-site improvements, grade the site, then construct a new 88,000-square foot four-story hotel with two commercial lease spaces, parking areas, landscaping, and lighting. Furthermore, the project includes a request for a reduction in required parking, on-sale alcohol service, and outdoor eating and drinking areas.

BACKGROUND

General Plan:	Special Development Area No. 9 (SDA No. 9)/Regional Commercial (RC)
Zone:	Regional Commercial (C-R)
Other City Plan(s):	Redevelopment Plan
Regional and State Plan(s):	Gillespie Field Airport Land Use Compatibility Plan
Notable State Law(s):	California Redevelopment Law

Project Site & Constraints

The 1.71-acre project site is currently comprised of three parcels owned by the El Cajon Successor Agency (former Redevelopment Agency) and improved with two vacant buildings, parking areas, and the City's visitor parking lot on Rea Avenue. A 30 foot wide drainage easement traverses the northerly project area, and the El Cajon Police Station parking lot and Civic Center Way border the project site on the north. The Applicant has an exclusive right to negotiate the purchase of the project site after the City acquires the property from the Successor Agency.

Surrounding Context

Properties surrounding the site are developed and zoned as follows:

Direction	Zones	Land Uses
North	C-R	Police Station & City employee parking lots
South	C-G	St. Madeleine Sophie's Center, Nail Salon & Weighorst Museum
East	C-R	City Hall & Centennial Plaza
West	C-R	24-HR Fitness, Ross, Panda Express, & Samoon Restaurant

General Plan

The project site is designated as Special Development Area No. 9 (SDA No. 9) and RC (Regional Commercial) on the General Plan Land Use Map. As described in the Land Use Element of the General Plan, SDA No. 9 is intended to include "a mixture of retail office, residential, governmental and cultural uses and activities."

Specific Plan No. 182

SP No. 182 (SP No. 182) is the implementing mechanism for SDA 9 and it is intended to create a mixed-use urban village in downtown El Cajon. It includes special development standards and design requirements for new developments and external building renovations while emphasizing a pedestrian friendly environment. Furthermore, SP No. 182 provides for the reduction in standard parking requirements for mixed-use projects composed of retail, office, and/or residential development by conditional use permit. Moreover, a further reduction in required parking may be permitted if it can be shown that the proposed use will not result in a parking inadequacy in the downtown area.

Municipal Code

El Cajon Municipal Code (ECMC) Section 17.145.150 indicates hotels may be approved by a conditional use permit (CUP) in the C-R zone, and ECMC Section 17.210.130

requires a CUP for on-sale alcohol service. The CUP is intended to ensure compliance with applicable development standards, use restrictions, and compatibility with surrounding properties and land uses. A detailed discussion of applicable Municipal Code requirements is included below in the section of this report titled "Discussion."

Redevelopment Plan

The goals of the Redevelopment Project Area and Redevelopment Plan are to remove physical and economic blighting conditions and to ensure the continued economic viability of the commercial, industrial, and retail uses within the Project Area. The Plan allows for the financing of improvements within the Project Area in order to remove physical and economic blight and to provide affordable housing. This plan was last amended in 1987. However, the Redevelopment Agency of the City was dissolved on February 1, 2012, by Assembly Bill 1X 26 (AB 26). The City of El Cajon, serving as the successor agency, has assumed the former Agency's assets, rights, and obligations under California Community Redevelopment Law, subject to some limitations, and is winding down the former Agency's affairs. Although a plan and project area exists, there are currently no funding mechanisms in place to facilitate and expedite implementation of the Plan goals other than through the sale of the property by the City, to the Applicant, on terms that will assist in the redevelopment of the site.

Gillespie Field ALUCP

The Gillespie Field Airport Land Use Compatibility Plan (ALUCP) is a regional plan that governs the project site and the surrounding area. The ALUCP is a policy document designed to implement the primary objectives of the State Aeronautics Act and the California Airport Land Use Planning Handbook by promoting compatibility between Gillespie Field and the land uses that surround it. This plan provides compatibility policies and criteria applicable to the City of El Cajon and other affected local agencies in the design of new development.

The subject site is located within the Airport Influence Area (AIA) of Gillespie Field, and is therefore subject to the ALUCP. The applicant must obtain a notification from the FAA that the proposed project is not a hazard to flight safety. Furthermore, the City, on behalf of the applicant, will submit an application to the San Diego Regional Airport Authority requesting a Determination of Consistency finding. Limits on the heights of structures are the only restrictions on land uses within the AIA. Since the proposed project is 51-feet high, Airport Land Use Commission Determination of Consistency is required.

DISCUSSION

This project is based on a proposed agreement for the development of the hotel currently under negotiation between Excel Hotel Group and the City of El Cajon. On October 22, 2013, the City Council adopted Resolution No. 105-13 approving an

Exclusive Negotiation Agreement with the applicant to locate and build a hotel in El Cajon's downtown. The details of the proposed project are discussed below.

Architectural Design

Chapter 17.180 of the Zoning Code requires design creativity and visual interest through variations in exterior forms, materials, and colors. Additionally, Specific Plan No. 182 (SP No. 182) contains specific design standards for new and renovated projects on Main Street. However, new buildings may be designed to represent any era, as long as they fit seamlessly within the unity of the Downtown District. SP No. 182 regulations and guidelines specifically do not prescribe or require a particular architectural style or theme for the existing built environment. All building styles are allowed when the integrity and the character of the proposed architecture is compatible with the existing or historical perspective of El Cajon.

The hotel is part of an integrated mixed-use project in downtown El Cajon that incorporates a four-story 120 room hotel, two commercial lease spaces, and a 107-car parking lot. It is designed to enhance the existing downtown fabric by anchoring the Civic Center's western edge and framing North Magnolia Avenue. The project's design incorporates various building scales, colors, materials and themes. The hotel includes a bar, cafe, meeting room(s), outdoor swimming pool and courtyard, and two commercial suites.

The proposed architectural design features are recognizably Marriott, however the project's theme includes a one-story stand-alone commercial building at the corner of North Magnolia and Rea Avenues, and a second commercial space that is part of the hotel building at the corner of Civic Center Way and North Magnolia Avenue. These two commercial spaces have access from the adjacent public sidewalks.

The hotel's main entrance is on the east elevation facing Centennial Plaza and City Hall, and includes a porte cochere, and a decorative driveway surface. Vehicle access is by way of a two-way driveway from Rea Avenue that connects the hotel parking lot and from Civic Center Way through the adjacent City public parking lot on the north.

The proposed hotel's orientation strategically places the majority of the building mass toward Civic Center Way and City Hall where sufficient horizontal space exists for an appropriate building scale relationship to adjacent properties. This approach positions a small amount of building mass on North Magnolia and Rea Avenues, thereby creating a friendly pedestrian-scaled project.

The proposed parapet will screen all rooftop equipment from the surrounding public views. The color palette of reds, browns, tans, and aluminum finishes complement the modern appearance of the building. The proposed colored elevations have been included in the Planning Commissioner's binders and a building material color board will be displayed at the Planning Commission hearing.

Transportation/ Parking

The project site's location and surrounding properties are served by the adjacent public transportation system, including the El Cajon Transit Station approximately ½ mile to the west. Public streets include North Magnolia Avenue which is a secondary roadway improved with four lanes and 10-foot wide sidewalks in the downtown area; Rea Avenue and Civic Center Way, which are improved with two lanes and five-foot wide sidewalks. Furthermore, there are public parking lots and on-street parking immediately surrounding the project site. There are approximately 40 parking spaces available for public use on Rea Avenue; 120 parking spaces in the former City employee parking lot at Civic Center Way and North Magnolia Avenue; 83 spaces in the City Hall public parking lot to the north; 18 spaces in the alley between North Magnolia Avenue and Sulzfeld; 10 spaces on Sulzfeld; and, 405 in the Regional Courts public parking lot. The proposed hotel will provide 107 on-site parking spaces.

The proposed project's parking lot design includes the closure of multiple driveways on Rea Avenue which will allow for additional on-street parking. Moreover, the proposed circulation design connects the City Hall parking lot with the hotel parking lot via a two-way driveway, thereby enhancing connectivity and access to parking.

Available Public Parking

Location	Number of Spaces
City Hall/Police	83
Former Employee Lot	120
Rea Avenue	40
Sulzfeld & Alley	28
Regional Courts	405
Total	676

Sections VI.A.1 & VI.A.2 of SP No. 182 provide for the reduction of on-site parking requirements if it will not result in a parking inadequacy that is detrimental to adjacent uses. Furthermore, parking requirements for mixed-use developments may be reduced to 70 percent of the total number required by the Zoning Code. The proposed hotel would normally require 168 parking spaces based on standard parking requirements; 1 per room and 1 per 300 square feet for all other uses. A 70 percent reduction equals 118 parking spaces.

Hotel parking demands are based on an 80% occupancy factor, which for the proposed project will require a minimum of 96 spaces. Therefore, when the hotel is operating at occupancy, the hotel's parking lot would provide sufficient guest parking. However, the project includes commercial lease space, and there is a need for employee parking. Moreover, there is an existing commercial and civic daytime parking demand that uses the surrounding public parking spaces. This demand lessens in the late afternoon and evening hours. On most days, the City Hall public parking lot and on-street parking is

near capacity, except for the former City employee parking lot (120 spaces), which is virtually vacant. Therefore, based on the number of available public parking spaces and existing parking demands, the proposed project's reduction in required parking will not result in a parking inadequacy in the downtown area.

Lighting

The project site plan includes freestanding light poles and building façade mounted lights. Section 17.130.150 of the Zoning Code requires that adequate lighting be provided to ensure pedestrian and vehicular safety, but not create a nuisance on adjacent properties. Lights must be of an appropriate size and intensity and must be directed downward and hooded to prevent casting glare upon adjacent properties. Additionally, lighting element details will need to be provided for all proposed exterior lights that are in concert with the overall theme of the project. The proposed resolution recommends that a lighting plan be submitted to the Planning Division that clearly indicates the location of all on-site lighting and includes details that indicate how the lights are shielded, so as not to create a nuisance on any adjacent properties.

Development Standards

Typically, a proposed project would adhere to the development standards in the underlying zone, however, SP No. 182 allows for the modification of the underlying zone's development standards by conditional use permit in order to achieve a downtown urban environment. See table below.

Development Standard	C-R Zone/ Specific Plan No. 182	Proposed
Setbacks from exterior, interior and rear property lines	Modified by CUP	None
Building Height	None; unless within 100 feet of residential	51 feet
Parking	1 per room 1 per 300 square feet for offices, restaurants, etc., or modified by CUP	On-site: 107
Landscaping	None	Deferred to Landscape Documentation Package Submittal

On-Sale Alcohol Service

The proposed hotel includes a café/restaurant and bar area with on-sale alcohol service. ECMC Chapter 17.210 *Alcohol Sales and Deemed Approved Alcohol Sales Regulations* include the requirements for on-sale service. ECMC Section 17.210.140 exempts hotels with on-sale alcohol sales as a secondary and incidental use in the downtown area from the sensitive land use spatial requirements. The project site and surrounding area is

located in a police reporting district with a very high crime rate. However, ECMC Section 17.210.160 requires findings to be made for on-sale alcohol. In high crime rate districts, findings can be supported with appropriate safeguards in place as conditions of approval.

FINDINGS

- A. The proposed project is consistent with applicable goals, policies, and programs of the General Plan and applicable Specific Plans.*

The proposed project will redevelop existing underutilized properties located in the City's downtown commercial district by furthering Redevelopment Plan goals with opportunities for local job creation and synergistic compatibility with surrounding urban uses. Furthermore, it will produce a modern hotel, meeting rooms, eating and drinking places, and commercial space that will add economic and visual quality to the existing built environment. Moreover, the project is consistent with SP No. 182 by creating a mixed-use urban development and it contributes to a pedestrian friendly environment.

- B. The proposed project is consistent with all applicable use and development standards.*

The downtown specific plan enables new urban developments by conditional use permit to ensure compatibility with the existing and planned downtown environment. The proposed project's urban style, street frontage design, available on-site parking, commercial uses and proposal to link with existing circulation patterns is consistent with downtown developments and fits within the regulatory framework of Specific Plan No. 182 and applicable Zoning Code development standards, if the site plan is amended to show bicycle parking at a ratio of 10% of the required parking, and all applicable requirements from other City Departments and Divisions, and the Helix Water District are noted on the amended site plan.

- C. The proposed project will be operated in a manner that is compatible with existing and planned land uses in the vicinity of the proposed use.*

The proposed project includes multiple uses that will contribute to the downtown environment and will be operated in a manner that is compatible with existing and planned land uses in the vicinity, if all activities are conducted within the thresholds of the Performance Standards listed in Zoning Code Section 17.115.130 and Section 17.210.150; and, sufficient customer and employee parking is provided; and, if on-site lighting does not create a nuisance on adjacent properties. Moreover, for on-sale alcohol service, that the applicant adheres to operating characteristics required by local, state and federal laws, including but not limited to those of Alcohol Beverage Control and applicable sections of the Business and Profession Code.

- D. The proposed project will not be detrimental to the public health, safety, and general welfare, including but not limited to matters of noise, smoke, dust, fumes, vibration, odors, and hazards or excessive concentrations of traffic.*

Such impacts are not anticipated with the normal conduct of the proposed project in the Regional Commercial Zone. Moreover, the City has performance standards for those impacts, which are addressed through Code Compliance actions if complaints are received. Furthermore, there are no identified existing problems in the downtown area that may be exacerbated by on-sale alcohol service such as loitering, public drunkenness, and noise and littering. Moreover, alcohol related operational standards will be in place as conditions of approval to prevent any increase in the crime rate of the surrounding area.

- E. The proposed project is in the best interest of public convenience and necessity.*

The proposed project will redevelop existing underutilized properties in accordance with the City's regulatory framework and create a new development that will provide visitors to East County a convenient place to stay. Furthermore, it will provide new commercial space for complementary uses to the hotel and surrounding businesses.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) according to Section 15332, Class 32 (In-fill Development) of the CEQA Guidelines and meets the required criteria based on the following facts:

- A. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.*

The project and the adjacent properties are designated Special Development Area No. 9 (SDA No. 9) and RC (Regional Commercial) on the General Plan Land Use Map. The site's zone, C-R (Regional Commercial), is consistent with the General Plan designation, and the project implements General Plan policies that require sound design standards. Moreover, the project satisfies Zoning Code regulations in concert with other standards established by Specific Plan No. 182.

- B. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.*

The project site is located within the city limits, is 1.71 acres, and is surrounded by urban uses, including City Hall, the Police Station, and commercial developments.

- C. The project site has no value as habitat for endangered, rare or threatened species.*

The project site and the surrounding area have historically been used for various commercial and civic uses, and are void of natural vegetation. Furthermore, there is

no record of endangered, rare, or threatened species in the general vicinity. Moreover, staff observed no protected or mitigable wildlife habitat on the subject site or in the general vicinity.

- D. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.*

The public circulation system has sufficient capacity to accommodate multiple modes of transportation, including bicycles, pedestrians and vehicles. The proposed project does not substantially add additional vehicle trips beyond the designed capacities of the surrounding existing streets, nor compromise the safety of other modal users. The adjacent roadways and intersections will operate at acceptable levels of service. Moreover, the project's parking demands are greatest in the off-peak hours. Furthermore, the project will be designed to satisfy all applicable storm water regulations because it meets the threshold established by the El Cajon Municipal Code Chapter 16.60 to be a priority project and is therefore subject to the Standard Urban Runoff Mitigation Plan requirements.

- E. The site can be adequately served by all required utilities and public services.*

All required utilities and public services are currently serving the project site as well as the surrounding area, and can adequately serve the project. Furthermore, none of the conditions in Section 15300.2, which provide exceptions for categorical exemptions, exist.

PUBLIC NOTICE & INPUT

Notice of this public hearing was mailed on June 19, 2014, to all property owners within 300 feet of the project site and to anyone who requested such notice in writing, in compliance with Government Code Sections 65090, 65091, and 65092, as applicable. Additionally, as a public service, the notice was posted in the kiosk at City Hall and on the City's website under "Public Hearings/Public Notices." The notice was also mailed to the two public libraries in the City of El Cajon, located at 201 East Douglas Avenue and 576 Garfield Avenue.

ATTACHMENTS

1. Proposed Resolution Recommending APPROVAL of CEQA Exemption
2. Proposed Resolution Recommending APPROVAL of CUP No. 2207
 - Exhibit A: Standard Conditions of Development
 - Exhibit B: Public Works Dept. comments dated 05-28-14
 - Exhibit C: Building & Fire Safety Division, Building and Fire comments dated 06-04-14
 - Exhibit D: Helix Water District comments dated 06-05-14
 - Exhibit E: Cox Communications comments dated 05-20-14
3. Specific Plan No. 182 Section VI excerpt
4. Aerial Photograph of Subject Site
5. Public Hearing Notice
6. Application & Disclosure statement
7. Reduced site plan
8. Full-sized site plan & color photographs (*Commissioner's Binders*)

PROPOSED PLANNING COMMISSION RESOLUTION

A RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL OF CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) CATEGORICAL EXEMPTION 15332 (IN-FILL DEVELOPMENT) FOR THE EL CAJON COURTYARD HOTEL PROJECT.

WHEREAS, the El Cajon Planning Commission held a duly advertised public hearing on July 1, 2014, to consider Conditional Use Permit No. 2207 for the development of a four-story hotel, commercial suites, a reduction in required parking, on-sale alcohol service, and outdoor eating and drinking in the C-R zone, on properties located on the east side of North Magnolia Avenue between Rea Avenue and Civic Center Way; and

WHEREAS, in accordance with CEQA Guidelines Section 15061(b)(2), and prior to making a recommendation to the City Council, the Planning Commission reviewed and considered the information contained in the project staff report; and

WHEREAS, the proposed project is exempt from CEQA under Sections 15332 (*In-fill Development*) of CEQA Guidelines, which allows for in-fill development in urbanized areas because the following conditions are satisfied; 1) the project and the adjacent properties are designated Special Development Area No. 9 (SDA No. 9) and RC (Regional Commercial) on the General Plan Land Use Map. Furthermore, the site's zone, C-R (Regional Commercial), is consistent with the General Plan designation and the project implements General Plan policies that require sound design standards. Moreover, the project satisfies Zoning Code regulations in concert with standards established by Specific Plan No. 182; 2) the project site is located within the city limits, is 1.71 acres, and is surrounded by urban uses, including City Hall, the Police Station, and commercial developments; 3) the project site and the surrounding area have historically been used for various commercial and civic uses, and void of natural vegetation; there is no record of endangered, rare, or threatened species in the general vicinity; and staff observed no protected or mitigable wildlife habitat on the subject site or in the general vicinity; 4) the public circulation system has sufficient capacity to accommodate multiple modes of transportation, including bicycles, pedestrians and vehicles; the proposed project does not substantially add additional vehicle trips beyond the designed capacities of the surrounding existing streets, nor compromise the safety of other modal users; the adjacent roadways and intersections will operate at acceptable levels of service; the project's parking demands are greatest in the off-peak hours; and the project will be designed to satisfy all applicable storm water regulations because it meets the threshold established by the El Cajon Municipal Code Chapter 16.60 to be a priority project and is therefore subject to the Standard Urban Runoff Mitigation Plan requirements; and 5) all required utilities and public services are currently serving the project site as well as the surrounding area, and can adequately serve the project.

Furthermore, none of the conditions in Section 15300.2, which provide exceptions for categorical exemptions, exist; and

WHEREAS, after considering evidence and facts, the Planning Commission did consider the proposed Categorical Exemption, Section 15332 as presented at its meeting.

NOW, THEREFORE, BE IT RESOLVED by the El Cajon Planning Commission as follows:

Section 1. That the foregoing recitals are true and correct, and are findings of fact of the El Cajon Planning Commission in regard to the proposed Categorical Exemption Section 15332 for the El Cajon Courtyard Project.

Section 2. That based upon said findings of fact, the El Cajon Planning Commission hereby RECOMMENDS City Council APPROVAL of the proposed Categorical Exemption Section 15332 for the proposed project under Conditional Use Permit No. 2207.

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PASSED AND ADOPTED by the El Cajon Planning Commission at a regular meeting held July 1, 2014, by the following vote:

AYES:
NOES:
ABSENT:

Paul Circo, Chairperson

ATTEST:

Anthony SHUTE, AICP, Secretary

PROPOSED PLANNING COMMISSION RESOLUTION

A RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL OF CONDITIONAL USE PERMIT NO. 2207 FOR A FOUR-STORY HOTEL WITH TWO COMMERCIAL LEASE SPACES, A REDUCTION IN REQUIRED PARKING, ON-SALE ALCOHOL SERVICE, AND OUTDOOR EATING AND DRINKING AREAS IN THE C-R (REGIONAL COMMERCIAL) ZONE; APNS: 488-072-40-00, 488-082-12-00 & 488-082-18-00; GENERAL PLAN DESIGNATION: SPECIAL DEVELOPMENT AREA NO. 9 (SDA 9)/REGIONAL COMMERCIAL (RC).

WHEREAS, the El Cajon Planning Commission duly advertised and held a public hearing on July 1, 2014, to consider Conditional Use Permit (CUP) No. 2207, as submitted by Excel Hotel Group, requesting approval of a four-story hotel, commercial suites, a reduction in required parking, on-sale alcohol service, and outdoor eating and drinking in the C-R zone, on properties located on the east side of North Magnolia Avenue between Rea Avenue and Civic Center Way; and

WHEREAS, the El Cajon Planning Commission adopted the next resolution in order recommending to the El Cajon City Council the approval of the proposed CEQA Categorical Exemption Section 15332; and

WHEREAS, the following findings of fact have been made in regard to said conditional use permit:

- A. The proposed project will redevelop existing underutilized properties located in the City's downtown commercial district by furthering Redevelopment Plan goals with opportunities for local job creation and synergistic compatibility with surrounding urban uses. Furthermore, it will produce a modern hotel, meeting rooms, eating and drinking places, and commercial space that will add economic and visual quality to the existing built environment. Moreover, the project is consistent with SP No. 182 by creating a mixed-use urban development and it contributes to a pedestrian friendly environment.
- B. The downtown specific plan enables new urban developments by a conditional use permit to ensure compatibility with the existing and planned downtown environment. The proposed project's urban style, street frontage design, available on-site parking, commercial uses and proposal to link with existing circulation patterns is consistent with downtown developments and fits within the regulatory framework of Specific Plan No. 182 and applicable Zoning Code development standards, if the site plan is amended to show bicycle parking at a ratio of 10% of the required parking, and all applicable requirements from other City Departments and Divisions, and the Helix Water District are noted on the amended site plan.

- C. The proposed project includes multiple uses that will contribute to the downtown environment and will be operated in a manner that is compatible with existing and planned land uses in the vicinity, if all activities are conducted within the thresholds of the Performance Standards listed in Zoning Code Section 17.115.130 and Section 17.210.150; and, sufficient customer and employee parking is provided; and, if on-site lighting does not create a nuisance on adjacent properties. Moreover, for on-sale alcohol service, the use will be compatible provided that the Applicant adheres to operating characteristics required by local, state and federal laws, including but not limited to those of Alcohol Beverage Control and applicable sections of the Business and Profession Code.
- D. Such impacts are not anticipated with the normal conduct of the proposed project in the Regional Commercial Zone. Moreover, the City has performance standards for those impacts, which are addressed through Code Compliance actions if complaints are received. Furthermore, there are no identified existing problems in the downtown area that may be exacerbated by on-sale alcohol service such as loitering, public drunkenness, and noise and littering. Moreover, alcohol related operational standards will be in place as conditions of approval to prevent any increase in the crime rate of the surrounding area.
- E. The proposed project will redevelop existing underutilized properties in accordance with the City's regulatory framework and create a new development that will provide visitors to East County a convenient place to stay. Furthermore, it will provide new commercial space for complementary uses to the hotel and surrounding businesses.

NOW, THEREFORE, BE IT RESOLVED that based upon said findings of fact stated above, the El Cajon Planning Commission hereby RECOMMENDS City Council approval of Conditional Use Permit No. 2207 for the development of a new four-story hotel, commercial suites, a reduction in required parking, on-sale alcohol service, and outdoor eating and drinking in the C-R (Regional Commercial) zone, on the above described property, subject to the following conditions:

- 1. Prior to the issuance of building permits, or as otherwise determined by the Planning Manager, the applicant shall submit and obtain approval of a revised, one-page, 24" by 36" mylar site plan that reflects the following specific notes and changes:
 - a. Indicate a bicycle parking facility to accommodate bicycle parking at a ratio of 10% of the required parking.
 - b. Note that all uses will operate according to the performance standards in ECMC Section 17.115.130 and Section 17.210.150.
 - c. Adjust the property lines to coincide with the hotel improved areas, including the interconnecting driveway from the City public parking lot and parking spaces.

- d. Under the heading "Planning Division Notes" add the ongoing conditions of approval listed in condition 4.
 - e. Include the following note: "This project shall comply with the Standard Conditions of Development from Planning Commission Resolution No. 10649, as applicable, which are incorporated herein by reference."
 - f. The revised site plan shall reflect the applicable comments and include all of the required notes from the Public Works Dept. attached to this resolution as "Exhibit B" and dated 05-28-14.
 - g. The revised site plan shall reflect the applicable comments listed in the Building and Fire comments from the Building and Fire Safety Division attached to this resolution as "Exhibit C" and dated 06-04-14.
 - h. The revised site plan shall reflect the applicable comments from Helix Water District attached to this resolution as "Exhibit D" and dated 06-05-14.
 - i. The revised site plan shall reflect the applicable comments from Cox Communications attached to this resolution as "Exhibit E" and dated 05-20-14.
2. Prior to the issuance of building permits, or as otherwise determined by the Planning Manager, the applicant shall complete the following:
- a. The revised CUP site plan required in condition 1 shall be approved by the Planning Division.
 - b. The applicant shall comply with all the conditions listed in the "Standard Conditions of Development" adopted by the Planning Commission by Planning Commission Resolution No. 10649 and labeled "Exhibit A" as applicable.
 - c. Complete and record a parcel map for the consolidation of multiple parcels, the vacation and abandonment of easements no longer pertinent, and the creation of one new parcel. The map shall be in conformance with the approved CUP No. 2207 Site Plan.
 - d. Submit a lighting plan in accordance with El Cajon Municipal Code Section 17.130.150. The plan shall include the location of all external lighting elements and their respective design. Planning Division approval of the plan is required before building permit issuance.
 - e. The approved building material types and colors of all exterior elevations shall be shown on the construction drawings submitted for building permits and shall be in substantial conformance with the materials approved by the City Council.
 - f. Comply with the Public Works Department comments attached to this resolution as "Exhibit B" and dated 05-28-14, to the satisfaction of the Deputy Director of Public Works and the Planning Manager.
 - g. Comply with the building and fire comments from the Building and Fire Safety Division attached to this resolution as "Exhibit C" and dated 06-04-13.
 - h. Comply with the comments from the Helix Water District attached to this

- resolution as "Exhibit D" and dated 06-05-14.
- i. Comply with the comments from Cox Communications attached to the resolution as "Exhibit E" and dated 05-20-14
 - j. Obtain approval of a Landscape Documentation Package (LDP) in conformance with the requirements of Chapter 17.195 of the Zoning Code, and consistent with the guidelines provided in the City of El Cajon Landscape Design Manual.
3. Prior to the granting of occupancy or as otherwise determined by the Planning Manager, all on-site improvements shall be completed or guaranteed in accordance with the approved CUP No. 2207 site plan. In addition, the following items shall be completed and/or inspected:
- a. Complete the installation of the approved landscaping and irrigation system and obtain approval of a Certificate of Completion.
 - b. Satisfy all requirements of the Public Works Department, Building and Fire Safety Division, Helix Water District and Cox Communications as indicated in the attached comments dated and labeled 05-28-14 (Exhibit B), 06-14-12 (Exhibit C), 06-05-14 (Exhibit D), & 05-20-14 (Exhibit E), respectively.
4. The following are ongoing conditions of approval for this conditional use permit and shall be noted on the CUP site plan.
- a. Any change in use(s) or expansion of uses(s) may require prior city approval, including an amendment to this conditional use permit.
 - b. The minimum number of striped parking spaces shall be maintained as indicated on the approved CUP No. 2207 site plan.
 - c. The uses shall be operated in a manner that complies at all times with the performance standards listed in Section 17.115.130 and Section 17.210.150 of the Zoning Code.
 - d. All landscaped areas shall be sufficiently watered and periodically fertilized to establish and maintain healthy growth, and shall be maintained in a neat, litter and weed free condition. All plants shall be pruned and trimmed as necessary, and upon notification by the Planning Division, all plant materials that have died or have failed to show healthy growth shall be replaced by plants of the same or similar species. Replacement by more drought resistant plants may also be approved. Landscape maintenance shall include regular inspection, adjustment, and repair of the irrigation system, including making seasonal changes to the irrigation controller.
 - e. On-sale alcohol service shall not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area.
 - f. On-sale alcohol service shall not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area.
 - g. On-sale alcohol service shall not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited

to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests.

- h. On-sale alcohol service will comply with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code §§ 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual city business license fees.
 - i. The service of on-sale alcohol in concert with the hotel and other uses will remain compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
- 5. The existence of this conditional use permit shall be recorded with the County Recorder.
- 6. The Planning Commission may at any time during the life of this use permit, after holding a properly noticed public hearing, at which time the applicant may appear and object under applicable law to any potential revocation or modification of the conditions of approval, and after considering testimony as to the operation of the approved uses, revoke the permit, or modify the permit with any additional conditions as it deems necessary, to ensure that the approved uses continue to be compatible with surrounding properties and continue to be operated in a manner that is in the best interest of public convenience and necessity and will not be contrary to the public health, safety or welfare.
- 7. The proposed use shall be operated in substantial conformance as presented in the Planning Commission staff report titled Conditional Use Permit No. 2207, dated July 1, 2014, except as modified by this resolution. Operation of the uses in violation of the conditions of approval is grounds for revocation.
- 8. If this permit is not legally exercised within two years of project approval, and a written request for an extension of time has not been received by the Planning Commission Secretary within the same time period, and subsequently approved by the Planning Commission, this conditional use permit shall be considered null and void per El Cajon Zoning Code Section 17.35.010.

PASSED AND ADOPTED by the El Cajon Planning Commission at a regular meeting held July 1, 2014, by the following vote:

AYES:
NOES:
ABSENT:

Paul Circo, Chairperson

ATTEST:

Anthony SHUTE, AICP, Secretary

STANDARD CONDITIONS OF DEVELOPMENT

(Planning Commission Resolution No. 10649)

All projects approved by the Planning Commission shall comply with the following standard conditions, unless specifically exempted by the Commission or Council.

A. GENERAL

1. The applicant shall comply with the school impact fee requirements of the Grossmont Union High School Districts, Cajon Valley, and La Mesa-Spring Valley School Districts when applicable.
2. For projects that require a grading permit and excavate more than three feet into native soils, and prior to the issuance of a Building Permit, the applicant shall submit a letter to the Planning Manager agreeing to suspend construction in the vicinity of a cultural resource encountered during development of the site, and leave the resource in place until a qualified archaeologist can examine them and determine appropriate mitigation measures. All fees and expenses for the retaining of a qualified archaeologist shall be paid by the applicant and shall not be at City expense. The applicant shall agree to comply with mitigation measures recommended by the archaeologist and approved by the Planning Manager.

B. PROJECT SITE

1. The applicant shall comply with all regulations and code requirements of the Building and Fire Safety Division, Public Works Department, the Police Department and any other agencies requiring review of the project. If required, these agencies shall be supplied copies of the final building and site plans.
2. All landscape areas that adjoin parking spaces, driveways, vehicular circulation areas, or the public right-of-way shall be protected from encroachment by vehicles in a manner that also complies with state storm water regulations, which require storm water to be discharged to landscaped areas in order to reduce or eliminate the discharge of pollutants. The method of protection shall be determined by the Deputy Director of Public Works. The approved method may include six-inch high curb segments, wheel stops, decorative rock bands, or other methods determined to be acceptable by the Deputy Director of Public Works.
3. Environmental and engineering studies, as directed by the Planning Manager, must be complete and on file prior to commencement to plan checking. Developer shall install off-street improvements determined necessary by the City Engineer to provide safe traffic conditions.
4. Developer shall underground existing and required on and off-site utilities as specified in Chapter 15 of the Municipal Code, or as deemed necessary by the City Engineer.

5. All development projects shall comply with Title 12 (Streets and Sidewalks), and Title 13 (Water, Sewers, Grading, Erosion and Storm Water) of the El Cajon Municipal Code as determined by the City Engineer.
6. All retaining walls visible from public right-of-ways shall include decorative elements, subject to approval by the Planning Division.
7. The design of any masonry sound wall shall be approved by the Planning Division. Such walls shall match or be architecturally compatible with existing sound walls of neighboring projects along that street. All masonry walls shall have a trim cap.

C. ARCHITECTURE

1. All exterior materials and colors used in this project shall be in conformance with the materials and color samples approved as a part of this application.
2. All mechanical, and/or roof mounted equipment shall be architecturally screened from public view.
3. All trash/recycling enclosures shall be constructed of masonry material with view-obscuring doors. The enclosure shall include materials and colors consistent with the primary building and meet appropriate Storm Water Division requirements. Required roofs shall match elements of the primary building and shall include a fascia trim.
4. All vents, gutters, downspouts, flashing, electrical conduits, etc., shall be painted or finished to match the color of the adjacent surface, unless otherwise directed by the Planning Commission.
5. Soffits and other architectural elements visible from view but not detailed on the plans shall be finished in a manner that is architecturally compatible with the exterior of the building.
6. Finish quality of approved exterior design elements shall be subject to approval of the Planning Division prior to issuance of Certificate of Occupancy.
7. Any decorative elements around the base of a building (stone veneer or tile, etc.) shall be finished with a decorative cap or trim piece.

D. LANDSCAPING

1. Specific landscaping for screening shall have an appearance of mature growth subject to a field check and approval by the Planning Division prior to the issuance of a Certificate of Occupancy.
2. All existing trees to remain shall be shown on the grading plan.

3. The area under the drip line of all existing trees that are to remain shall be protected during construction by a fence or other acceptable means. Grading shall be restricted under the trees to prevent soil compaction and to prevent root damage.
4. All sloped banks greater than three (3) feet in vertical height and 2:1 or greater slope shall be landscaped and irrigated for erosion control and to soften their appearance as follows: deep-rooting grasses, ground cover and shrubs. Shrubbery shall be a minimum one-gallon size and shall have a minimum separation of one (1) times the mature width and on slopes of 10 feet or more in vertical height shall include, a minimum of one (1) tree for every 600 square feet of the total slope area. Trees shall be a minimum five-gallon size and shall be spaced a minimum of 30 feet apart. Trees and shrubs shall be planted in staggered clusters to soften and vary the slope plane. Slope planting required by this condition shall include a permanent irrigation system to be installed by the developer prior to occupancy.
5. All landscaping shall be maintained in good growing condition. Such maintenance shall include, where appropriate, pruning, mowing, weeding, cleaning of debris and trash, fertilizing and regular watering. Whenever necessary, dead or dying plants shall be replaced with other plant materials to ensure continued compliance with applicable landscaping requirements. Required irrigation systems shall be fully maintained in sound operating condition with heads periodically cleaned and replaced when missing to ensure continued regular watering of landscape areas, and health and vitality of landscape materials.

E. MISCELLANEOUS

1. Final occupancy shall not be granted until all construction and landscaping is complete in accordance with all approved plans. Under certain circumstances, a temporary occupancy may be granted prior to final inspection.
2. It is the responsibility of the applicant or developer to check with each agency for requirements that may pertain to their project.
3. All signs shall be submitted to the Planning Division for review and approval per Section 17.190.060 of the El Cajon Municipal Code.
4. The site shall be maintained in a neat and clean manner free of trash and debris.
5. Certain outdoor equipment, such as satellite dishes and back-flow prevention devices shall be visually screened or painted to match surroundings upon installation subject to the approval of the Planning Division. Screening devices shall be shown on construction and/or landscape plans.
6. Water backflow protection for new residential and modified residential projects shall include a protection device at the fire service point of connection, or an internal passive purge system. Annual testing is required for protection devices. Contact Helix Water District at 619.466.0585 for additional information.

7. All exterior light fixtures shall be shown on a lighting plan and made part of construction drawings subject to staff review and approval. All lights attached to buildings shall provide a soft "wash" of light against the wall. All building, parking, and yard lights shall conform to the City General Development Standards 17.130.150 and Performance Standards 17.115.130 (G) and shall complement the site and building architecture.
8. The removal of trees shall not take place during the bird-nesting (breeding) season (February 1 through August 15), unless written authorization from a qualified biologist to proceed with tree removal is submitted to the Planning Division. If clearing is proposed to take place during the breeding season, a survey shall be conducted by the qualified biologist to determine if nests are present, or nest building or other breeding/nesting behavior is occurring. If nesting is not occurring (which includes nest building or other breeding/nesting behavior) within this area, clearing shall be allowed to proceed. If nesting is occurring (or breeding/nesting behavior is occurring), tree removal shall be postponed until a qualified biologist determines that all nesting (or breeding/nesting behavior) has ceased or until after August 15.
9. The placement of bollards within parking areas and driveways shall only be permitted when no other alternative design (curbs or landscaping) is feasible and accepted by the Building Official.



City of El Cajon

Community Development Department
Engineering
MEMO

To: Planning

From: Engineering

Date: May 28, 2014

Re: CUP 2207, El Cajon Courtyard Marriott

A. STORM WATER REQUIREMENTS AND COMMENTS WITH THIS ACTION

- A-1. Add the following notes to the Conditional Use Permit (2207) Site Plan and implement the Best Management Practices as a condition of the CUP:

"All operations shall comply with the City's Jurisdictional Urban Runoff Management Program (JURMP) and the City's Storm Water Ordinance (Municipal Code 13.10 and 16.60) to minimize or eliminate discharges of pollutants to the storm drain system. Operations shall include implementation of Best Management Practices (BMPs) as follows:

- a. Only rain is permitted to enter the storm drain system. Discharges (direct or by conveyance) of trash, debris, vehicle fluids, or wastewater (including washing fluids) to the storm drain system are strictly prohibited.*
- b. A grease interceptor shall be installed for cooking areas.*
- c. Food grinders (disposals) shall not be used at the food service areas in compliance with Municipal Code 13.38.040.*
- d. Sweep or vacuum to clean outdoor areas (trash enclosures, sidewalks and parking lots). Power washing in outdoor areas is strictly prohibited.*
- e. Capture, contain, and collect any power wash water and dispose of in the sanitary sewer.*
- f. Maintain parking area to be free from trash and petroleum leaks.*
- g. Provide sufficient trash receptacles.*
- h. Dispose of wastes properly.*
- i. All dumpsters used by this project shall have lockable lids. All lids on all dumpsters shall remain closed while dumpster is not directly in use and locked after business hours.*
- j. All trash enclosures must be secured, covered with an impervious roof, and constructed*

with a berm or grade-break across the entire entrance in accordance with the requirements of Public Works Storm Water Attachment No. 2 (available to the public through Public Works on the 4th floor of City Hall).

- k. All storm water runoff treatment control mechanisms, such as bio-retention areas and storm water filters employed as part of the project shall be maintained to be in good working order and replaced as necessary. See manufacturer's recommendations for maintenance and replacement.*
- l. All "No Dumping" signage shall be maintained to be legible and replaced as necessary. A template for painting the concrete or asphalt around inlets and catch basins can be provided by the City upon request.*

For Public Works requirements on this Planning Action please refer to the Conditions of Approval. This Site Plan may not clearly show existing or proposed improvements in the public right-of-way and should not be used for public improvement construction purposes."

A-2 Comply with the following Storm Water requirements:

- a. In accordance with the City of El Cajon Municipal Code Section 16.60, this project falls into a priority project category and is subject to the Standard Urban Storm Water Mitigation Plan (SUSMP) requirements. To fulfill SUSMP requirements, a Storm Water Mitigation Plan (SWMitP) needs to be prepared by a Civil Engineer registered in the State of California. The SWMitP shall include, amongst other things, the following:
 - i. Incorporation of New Development Best Management Practices (BMPs).
 - ii. A Drainage Study that includes:
 - (1) Runoff calculations for water quality. A specific volume or flow of storm water runoff must be captured and treated with an approved (series of) storm water treatment control device(s); the BMP design size is calculated using either: a) the 85th percentile hourly precipitation (County Hydrology Manual iso-pluvial map) for volume based BMPs, or b) using a rain fall intensity of 0.2 inches per hour (Storm Water Attachment No. 4) for flow-based BMPs.
 - (2) Runoff calculations for water quantity in compliance with the approved Hydro-modification Management Plan (HMP) requirements. Calculate pre- and post-construction peak flow runoff rates (calculated to the nearest 0.1 CFS using percent imperviousness) or show that the project meets an exception by demonstrating that the project will maintain or reduce the amount of impervious area onsite as compared to the existing condition. The post-construction flows must not exceed the pre-construction flows. An electronic copy of the County of San Diego HMP can be found online at:

http://www.projectcleanwater.org/pdf/susmp/hmp_final_san_diego_hmp_mar2011_wappendices.pdf

- iii. Incorporation of Low Impact Development (LID) BMPs for compliance with the California Regional Water Quality Control Board (San Diego Region) Order No. R9-2007-0001. See Section D.1.d(4) of Order No. R9-2007-0001, located at:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/storm_water/docs/sd_permit/r9_2007_0001/2007_0001final.pdf

LID BMPs must be included as a separate section of the SWMitP. The Report must include a comprehensive review and consideration of LID BMPs and a determination of feasibility and practicality for all mandatory LID BMPs. The LID section must include implementation of Source Control BMPs, Treatment Control BMPs and other LID BMPs where practical and feasible. An electronic copy of the County of San Diego LID Handbook can be found online at:

<http://www.co.san-diego.ca.us/dplu/docs/LID-Handbook.pdf>

- iv. A Maintenance Plan to insure perpetual maintenance of proposed BMPs (Storm Water Attachment No. 3).
- v. Landscaping Plans that comply with SUSMP requirements (must be submitted to the Planning Department).
- vi. Details of all trash enclosures must be designed to be secured, constructed with a grade-break or berm across the entire enclosure entrance, and covered with an impervious, fire-resistant roof in accordance with the requirements of Public Works Storm Water Attachment No. 2 (available to the public on the City of El Cajon website or through the Project Assistance Center on the 3rd floor of City Hall).

Note: Contact the City of El Cajon Public Works Department to request a sample of the SWMitP document.

- b. Prepare and submit a Storm Water Maintenance and Operations Plan to insure compliance with City of El Cajon's storm water regulations.
- c. Submit a signed and executed Storm Water Facilities Maintenance Agreement (FMA).
- d. The SWMitP, Drainage Study, Storm Water Maintenance and Operations Plan, and FMA shall be submitted to the Public Works Department, Storm Water Division, on the 4th floor of City Hall, and shall include:
 - i. Two (2) sets of each of the following documents:

- SWMitP;
 - Drainage Study;
 - Landscaping Plan (submitted to the Planning Department);
 - Storm Water Maintenance and Operations Plan; and
 - Storm Water FMA.
- ii. Review fees for each of the following documents:
- SWMitP;
 - Drainage Study;
 - Storm Water Maintenance and Operations Plan; and
 - Storm Water FMA.
- iii. Deposit for the Storm Water FMA.

The engineer shall obtain applicable checklists, unit costs, notes and instructions from Public Works prior to submittal of plans.

B. STORM WATER REQUIREMENTS AND COMMENTS PRIOR TO THE ISSUANCE OF ANY BUILDING PERMIT:

- B-1. All building permit plans and landscaping plans shall comply with the approved SWMitP.
- a. The landscaping plans shall include a detailed cross-section for required amended loamy sand soils in the engineered treatment basins, bio-retention areas, flow-through planters, swales, etc. The engineered soil section must be at least 18" in depth and span the width of the bio-retention basins, flow-through planters, swales, etc. Planting in this soil is allowed and encouraged, but no mulch is allowed in flow lines and areas used to detain runoff. A note referencing mulch restrictions must be included on the plans around treatment areas.
- b. Details and notes must be included to show that all final grades in all landscaped areas must be at least two inches (2") below tributary hardscape and drainage structures. Final landscape grades in areas designated for the treatment of runoff must be at least four inches (4") below all tributary drainage structures. All transitions between pervious and impervious surfaces must be adequately protected by an energy dissipation measure such as riprap or rock diaphragm.

C. PRIVATE DEVELOPMENT REQUIREMENTS AND COMMENTS PRIOR TO THE ISSUANCE OF ANY BUILDING PERMIT:

- C-1. In accordance with the City's lot grading ordinance, no grading or soil disturbance, including clearing of vegetative matter, shall be done until all necessary environmental clearances are secured and a Drainage Study, Grading and Drainage Plan, and Erosion Control Plan have been approved by Public Works. No demolition activities can take

place until an Erosion Control Plan has been reviewed and approved by Public Works. The Erosion Control Plan shall control sediment and pollution and be in compliance with the City's JURMP. The Plan should show measures to ensure that pollutants and runoff from the development are reduced to the maximum extent practicable. The approved Erosion Control Plan shall be included with all final building permit plan sets.

NOTE: Copies of the JURMP requirements are available in Public Works. The Grading and Drainage Plan and Erosion Control Plans shall be prepared by a Civil Engineer, registered in the State of California. These Plans shall be based on a preliminary soils report and must comply with the City's Standard Urban Storm Water Mitigation Plan Ordinance, which requires the applicant to provide additional erosion control measures and perform future ongoing maintenance even after completion of the project to prevent, treat, or limit the amount of storm water runoff and pollution from the property. The Grading and Drainage Plan is required, unless the following exceptions to the City's Lot Grading Ordinance are met:

- 1) An excavation which is less than two feet (2') in depth and does not create a slope steeper than two horizontal to one vertical and does not exceed 50 cubic yards on any one lot and does not obstruct or alter a drainage course.
- 2) A fill less than 12 inches (12") in depth and placed with a slope not steeper than two horizontal to one vertical and does not exceed 50 cubic yards on any one lot and does not obstruct or alter a drainage course.

The Drainage Study shall include all related tributary areas and adequately address the impacts to the surrounding properties and to the City drainage system. The developer shall provide any needed public and private drainage facilities, including off site drainage facilities (as determined by the study). If public drainage facilities are required, the required improvements need to be included in improvement plans, prepared by a registered civil engineer, and submitted to the City for approval. Note: If the Drainage Study indicates the existing downstream drainage system is inadequate for the proposed density of the project, a reduction in density and/or hard surface coverage of the project may be required.

The engineer shall obtain applicable checklists, notes and instructions from the Public Assistance Center prior to submittal of plans.

- C-2. A demolition plan will be required.
- C-3. Any demolition activities shall be covered under a separate Erosion Control Plan to include measures for eliminating runoff during the demolition phase.
- C-4. All Plans shall be adjusted to a NAVD 88 elevation from a documented City Benchmark.
- C-5. A Parcel Map will be required to consolidate the lot lines and create the additional lot at the northeast corner of North Magnolia Avenue and Rea Avenue.
- C-6. Dedicate additional public right-of-way (approximately 10' radius) at the northeast corner of Rea Avenue and North Magnolia Avenue.

- C-7. Install separate gravity sewer services, water services (including meters) and other utilities to each parcel with a building unit in accordance with the Municipal Code. Wet-tap fees are required. Connections to the City sewer system and payment of connection fees are required with Building Permits.
- C-8. Construct the two driveways on Rea Avenue per San Diego Area Regional Standard Drawings (SDRSD) G- 14E with 2:1 sidewalk transitions per G-14A or construct a G-17 with two G-31 curb ramps for ADA compliance. The driveways shall be a minimum 24' /36' curb cut.
- C-9. Install two curb ramps on Driveway "B", per SDRSD G-31 with 4' x 3' truncated domes per G-30.
- C-10. Construct full-width, 5-foot (5') minimum sidewalk on Rea Avenue and full-width 10-foot (10') sidewalk on North Magnolia Avenue per SDRSD G-7, G-9, G-10 and G-11. All sidewalks on North Magnolia Avenue and Rea Avenue shall have the Decorative Concrete Sidewalk, detail provided.
- C-11. Provide a street lighting plan that includes the use of City of El Cajon standard Double Acorn lights on Rea Avenue, North Magnolia Avenue, and Civic Center Drive.
- C-12. Close all unused driveways along Rea Avenue and North Magnolia Avenue. Relocate any existing facilities away from the transition areas as needed. Construct curb and gutter along all closed driveways per SDRSD G-2.

Prior to issuance of a Building Permit and an Encroachment Permit (Encroachment Permit is a separate permit that must be obtained for any required improvements in the right-of-way), the applicant or contractor shall prepare an Engineer's scaled detailed drawing with dimensions of the required driveway and sidewalk installations showing the location of the public street right-of-way, property lines, face of curb, all physical obstructions, including but not limited to, all block walls, utility poles, telephone and cable TV equipment, fencing, etc. along with any required offsets in accordance with SDRSD G-15 and G-16.

These details may be shown on the Site Plan, but MUST be shown on a separate Driveway Detail Plan rather than with the Building Permit Site Plan. An Engineer's scale shall be used for all drawings submitted to the Public Works department for review.

REQUIREMENTS FOR THE ENCROACHMENT PERMIT:

Submittal of a detailed drawing described above, a traffic control plan, an insurance certificate and (non-blanket) endorsement per policy D-3, and the review fees. Contact the Public Works Department for additional information.

C-13. SANITARY SEWER AND PRIVATE LATERAL REQUIREMENTS

Conduct a DVD video inspection of the existing sewer laterals to be used on this site per El Cajon Municipal Code Chapter 13.37.040, and submit the inspection reports to the City for review. Use the existing sewer laterals.

The plumbing contractor MUST submit the DVD and 3-page inspection report available on-line at:

<http://www.ci.el-cajon.ca.us/dept/works/PrivateBuildingSewerInspections.html>

or through the Public Works Department, Sewer Lateral Coordinator at 619-441-1664.

Copies of the pertinent chapters of the Municipal Code, a summary of the 2009 Private Building Sewer Regulations, a list of pre-qualified plumbing contractors and a copy of the Double Cleanout Detail are available through the Public Works Department.

D. GENERAL:

D-1. An Encroachment Permit is required for any work within the public right-of-way and the storm drain easement at the back of the property.

D-2. Repair all damaged curb and gutter and sidewalk.

E. ADDITIONAL CONSIDERATIONS TO ENHANCE THE PROJECT:

E-1. Widen the sidewalk along Rea Avenue an additional 4-feet (4') on to the street side.

E-2. Create two pop-outs at the intersection of Rea Avenue and North Magnolia Avenue

E-3. Create two pop-outs at the entrance driveway on Rea Avenue to allow for a safe mid-block crossing.



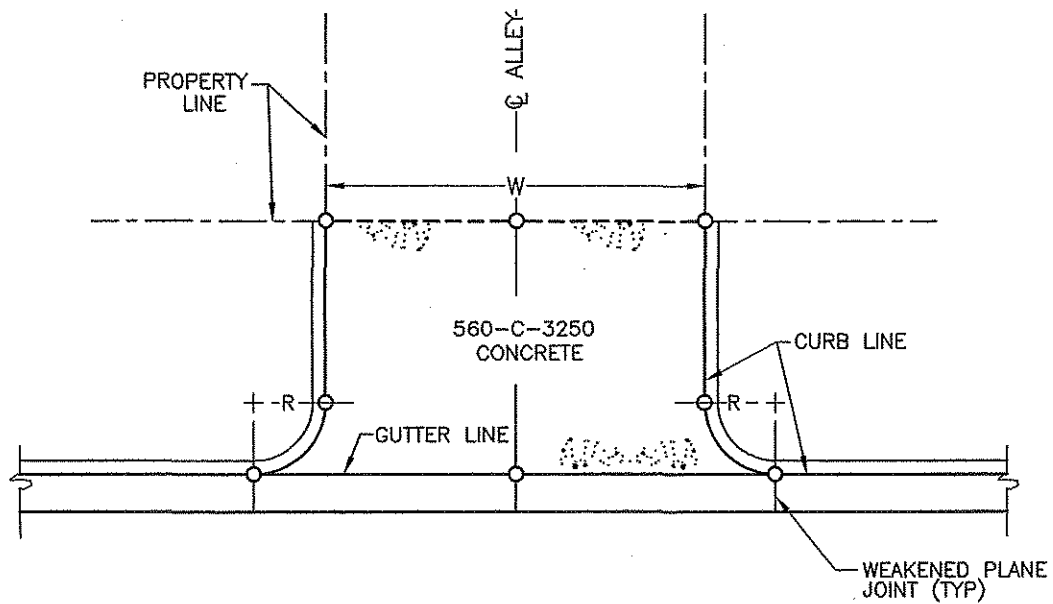
DENNIS DAVIES
Deputy Director of Public Works

5/30/14

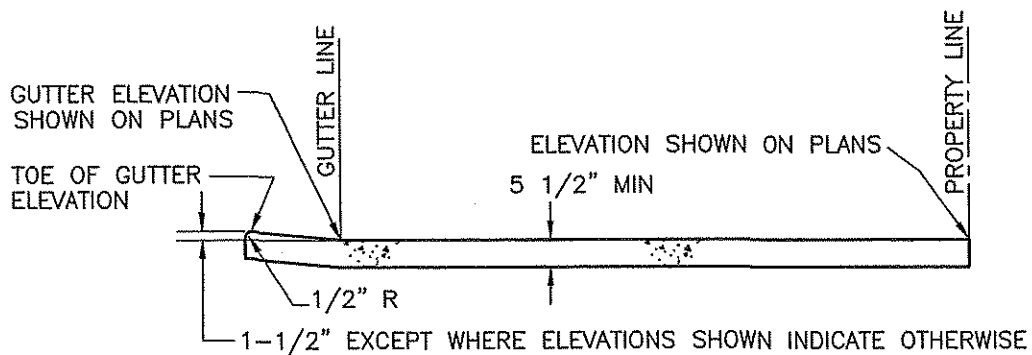
Date

Attachments:

1. SDRSD Concrete Driveway G-14E
2. SDRSD Alley Apron G-17
3. SDRSD Curb Ramp - Type D G-31
4. City of El Cajon Standard Double Acorn Street Light
5. City of El Cajon Standard Decorative Concrete Sidewalk Detail



PLAN



SECTION

NOTES:

1. SIDEWALK RAMPS SHALL BE INSTALLED AS REQUIRED BY AGENCY.
2. W = WIDTH SHOWN ON PLANS.
3. R = RADIUS SHOWN ON PLANS (3' MINIMUM).
4. O = ELEVATION SHOWN ON PLANS (TOP OF CURB AND GUTTER ELEV.)
5. --- = 1/2" EXPANSION JOINTS.

LEGEND ON PLANS



REVISION	BY	APPROVED	DATE
ORIGINAL		KERCHEVAL	12/75
ADD METRIC		T. STANTON	03/03
REVIEWED		T. STANTON	04/06
UPDATED	MR	MR/CV	03/12

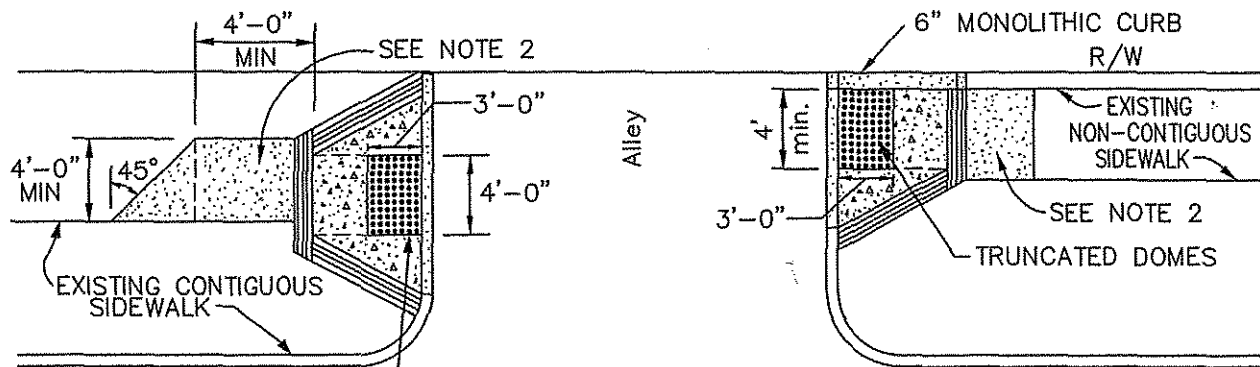
SAN DIEGO REGIONAL STANDARD DRAWING

ALLEY APRON

RECOMMENDED BY THE SAN DIEGO REGIONAL STANDARDS COMMITTEE

T. Stanton 7/26/2012
CHAIRPERSON R.C.E. 19246 DATE

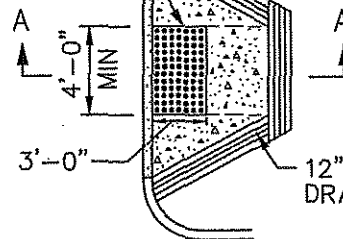
DRAWING NUMBER **G-17**



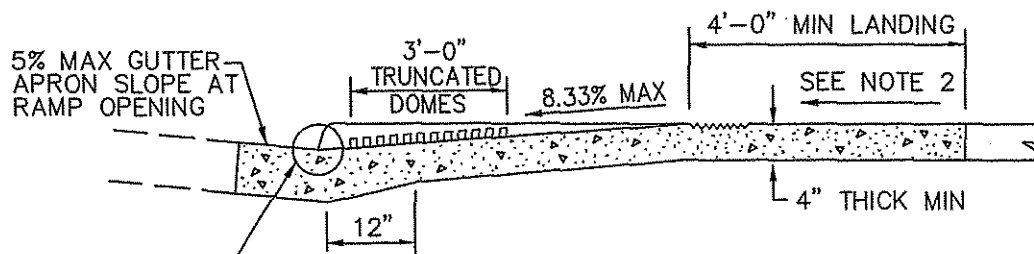
STREET
TYPICAL PLAN

TRUNCATED DOMES

THE RAMP SIDE FLARES AND GROOVES
MAY BE ELIMINATED BY THE ENGINEER
AND REPLACED WITH A MONOLITHIC
CURB FLUSH WITH THE EXISTING
GROUND AND SIDEWALK.



PLAN VIEW



SECTION A - A

SEE STANDARD DRAWING
G-32A, DETAIL B

NOTES

1. SEE STANDARD DRAWING G-32A FOR GENERAL NOTES.
2. LANDING CROSS SLOPE SHALL BE 2.0% MAX IN BOTH DIRECTIONS.
3. FOR TRUNCATED DOMES DETAILS, SEE STANDARD DRAWING G-30.

REVISION	BY	APPROVED	DATE
ORIGINAL		PARKINSON	02/95
ADD METRIC		T. STANTON	03/03
UPDATE		D. DAVIES	12/04
REVISED		T. STANTON	04/06
UPDATED	MR	MR/CV	03/12

SAN DIEGO REGIONAL STANDARD DRAWING

CURB RAMP - TYPE D

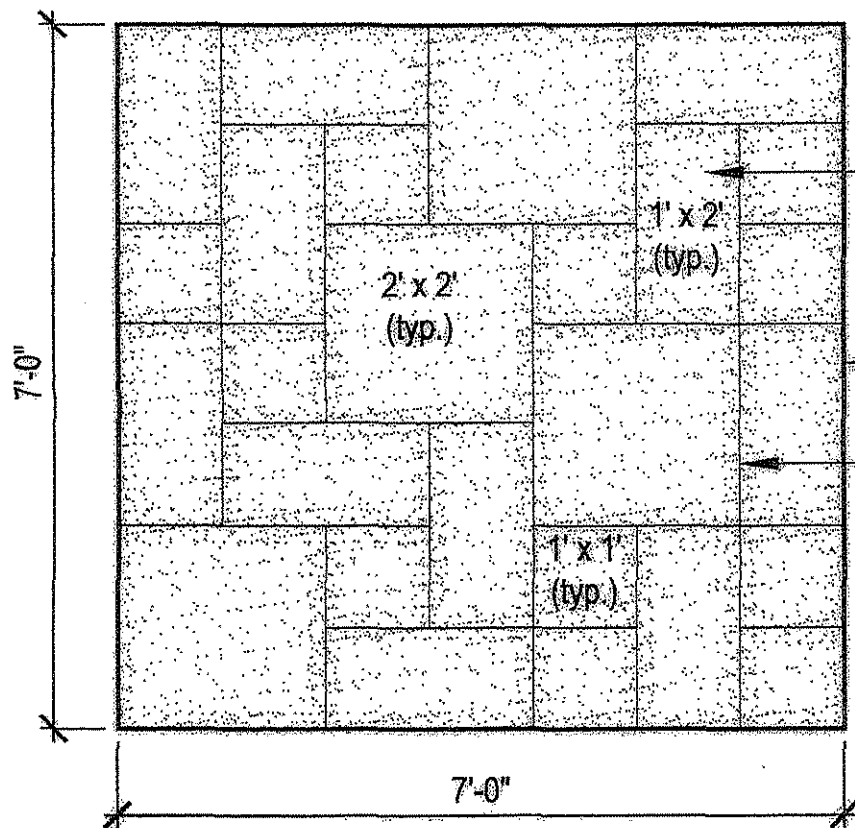
RECOMMENDED BY THE SAN DIEGO
REGIONAL STANDARDS COMMITTEE

T. Stanton 7/26/2012

CHAIRPERSON R.C.E. 19246 DATE

DRAWING
NUMBER **G-31**

DECORATIVE CONCRETE SIDEWALK



ALL RECTANGLES ARE EITHER
1'X1', 1'X2', OR 2'X2'. LAYOUT
SCORE JOINTS AS SHOWN.

WEAKENED
PANEL JOINT

TOOLED SCORE JOINT
PER SDRSD

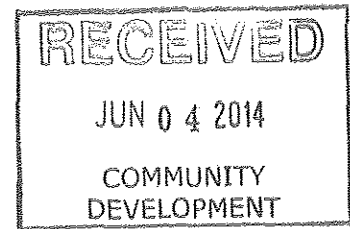
NOTE:
ADJACENT PANELS ARE TO BE ARRANGED IN
RANDOM ROTATION SUCH THAT NO TWO
SHAPES ALONG MODULE EDGE ARE
MIRRORED.

FINISH: ACID ETCH, USE PRODUCT SIMILAR TO TOP-
CAST CONCRETE SURFACE RETARDER, NO. CODE 3,
VIOLET PACKAGE COLOR

TYPICAL 7' X 7' PAVING MODULE

*CITY WILL LOAN STAMP FOR DECORATIVE CONCRETE. A \$200 REFUNDABLE BOND IS
REQUIRED.*

CITY OF EL CAJON



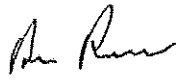
MEMORANDUM

Wednesday, June 04, 2014

To: Planning Division
From: Building and Fire Safety Div., Dan Pavao
Subject: Building Comments for CUP 2207
Civic Center Way

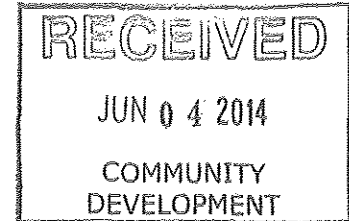
Building Comments for this planning application are as follows:

1. Comply with Currently adopted edition of the CBC, CMC, CPC, and CEC.
2. A Building permit is required for this project.
3. Project must comply with Title 24 disabled access regulations.
4. Title 24 energy efficiency compliance and documentation is required.
5. Project must comply with the State Green Building Standards Code.
6. Soils report will be required for this project.
7. A licensed design professional is required for this project.
8. An automatic sprinkler system is required by CBC or local ordinance.
9. Wet standpipes will be required in stairwells.
10. An approved fire alarm system is required.
11. Undergrounding of all on-site utilities is required.

A handwritten signature in black ink, appearing to read "Dan Pavao". The signature is fluid and cursive, with the first name "Dan" and last name "Pavao" clearly distinguishable.

Dan Pavao

CITY OF EL CAJON



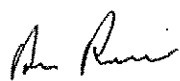
MEMORANDUM

Wednesday, June 04, 2014

To: Planning Division
From: Building and Fire Safety Div., Dan Pavao
Subject: Fire Comments for CUP 2207
Civic Center Way

Fire Comments for this planning application are as follows:

1. This project must comply with currently adopted edition of the CFC.
2. An approved automatic fire sprinkler system is required for this project.
3. An approved automatic fire alarm system is required.
4. Commercial address numbers shall be visible from the street, contrasting in color from wall surface, and minimum 8 inches in size (individual suite numbers may be 3").
5. Fire extinguisher is required. One for every 3000 s.f with max. 75 ft. travel distance. Minimum size 2A10BC with signage.
6. Dedicate and maintain fire apparatus access lanes by red curb or signage. Fire access lane to be min. 20 feet wide and 13'-6" in height. See CUP plan for location.
7. Locate FDC and onsite hydrants in accordance with the location shown on the CUP plan.

A handwritten signature in black ink, appearing to read "Dan Pavao". The signature is fluid and cursive, with the first name "Dan" and last name "Pavao" clearly distinguishable.

Dan Pavao



Helix Water District

Setting standards of excellence in public service

El Cajon Courtyard Hotel
Exhibit D to Attachment 2 Reso.
Helix Water District comments

7811 University Avenue
La Mesa, CA 91942-0427

(619) 466-0585
FAX (619) 466-1823
www.hwd.com

June 5, 2014

Anthony Shute
Project Manager
City of El Cajon
200 Civic Center Way
El Cajon, CA 92020

Subject: Conditional Use Permit No. 2207
APN: 488-072-40, 488-082-12, 18, NE Corner of N Magnolia Ave. & Rea Ave.

Dear Mr. Shute:

Thank you for the opportunity to comment on the subject project. Helix Water District (HWD) currently does not serve subject parcels with active water services. Fire protection is provided by a 6-inch water service to parcel with APN: 488-082-18 with no backflow protection. Fire hydrants are located on the north and east side of the same parcel one with one 2.5-inch and one 4-inch outlets and the other with two 2.5-inch and one 4-inch outlets respectively. Water pressure in the area is approximately 90 psi.

Backflow devices will be required for the existing and proposed water services and shall be installed per current Water Agencies' Standards. The new backflow devices shall be tested by a certified backflow tester with a copy of the passing test results forwarded to Helix Water District attention Darrin Teisher by e-mail: crossconnection@helixwater.org. All water laterals designated for the subject parcels that will not be used will need to be abandoned by HWD.

We request a review of any improvement plans and/or grading plans and signature of Helix Water District if such plans are required by the City of El Cajon. We may require the location of the existing water service be brought up to current District standards which is behind the existing/proposed sidewalk. Required fees, facility relocations, and installations will be decided upon after review of the improvement plans.

If landscaping of the parcels exceeds 5,000 square feet, a dedicated irrigation meter will be required and the property entered into our Water Conservation Program. Please contact them by e-mail: conserve@helixwater.org

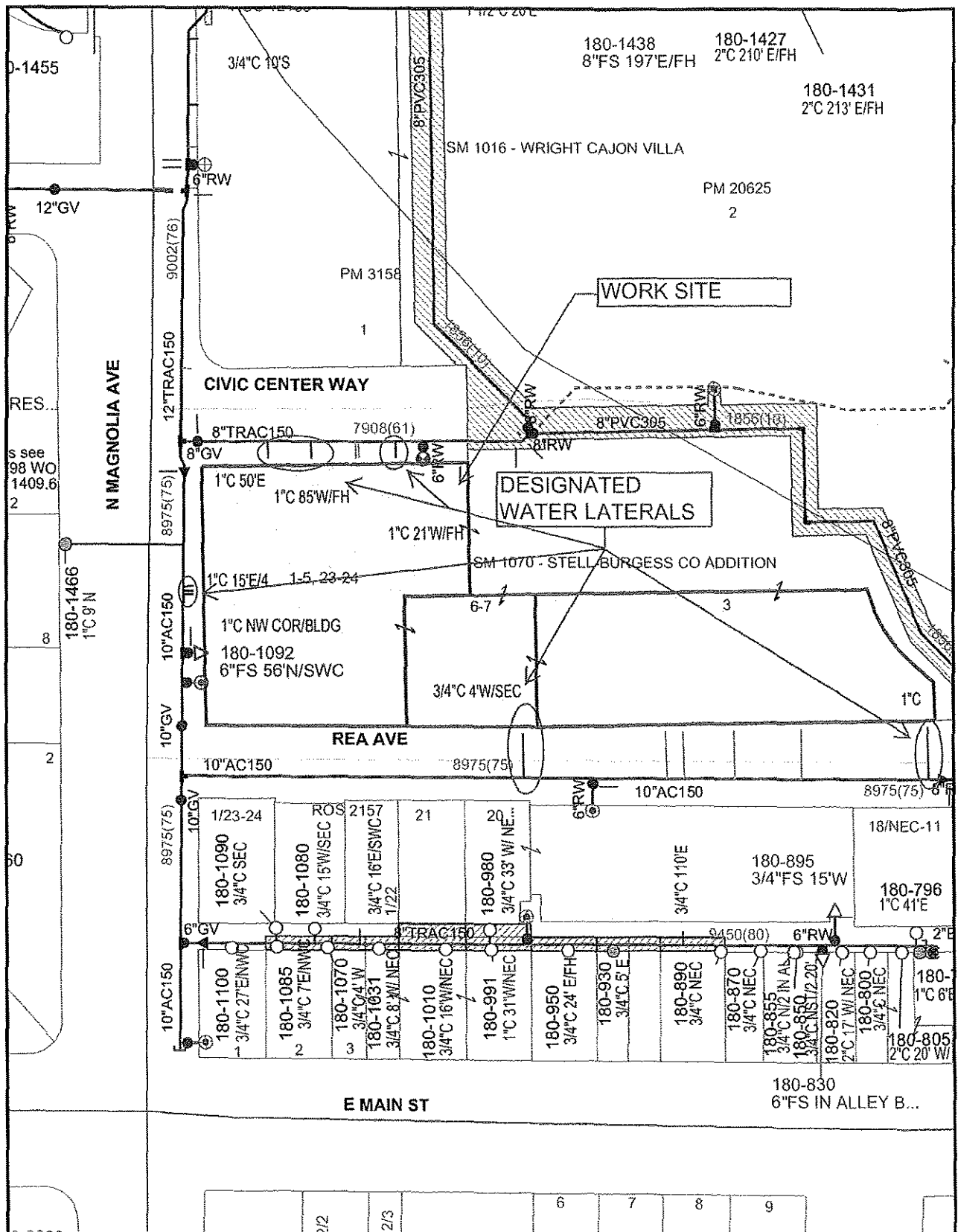
The El Cajon Fire Department may require additional or upgraded fire protection facilities for this project. All costs for new fire protection facilities shall be paid by the Owner/Developer. Easements will be required if new or existing facilities cannot be installed and maintained within existing easements or public right of way. All costs for new easements shall be paid by the Owner/Developer.

If you have any questions, please call me at (619) 667-6273.

Sincerely,

Anhel Anub
Associate Engineer

cc: Tim Ross
Carlos Perdomo
Darren Teisher
ecraig@cityofelcajon.us



CUP NO. 2207, APN: 488-072-40, 488-082-12, 18

Scale: 1"=100'

Printed: 6/5/2014



NE CORNER OF N MAGNOLIA AVE AND REA AVE

Tony Shute - FW: MARRIOTT HOTEL DOWNTOWN EL CAJON

From: "Greenwood, John (CCI-California)" <John.Greenwood@cox.com>
To: "tonys@cityofelcajon.us" <tonys@cityofelcajon.us>
Date: 5/20/2014 7:50 AM
Subject: FW: MARRIOTT HOTEL DOWNTOWN EL CAJON

Subject: MARRIOTT HOTEL DOWNTOWN EL CAJON

Anthony,

Per your request for project review:

Cox can provide service to The Marriott Hotel and Commercial units within the project.

I will need the SDG& E design to determine the feed into the buildings. Also the construction schedule once its created. Please note we have existing feeds into the building at 141 N. Magnolia Ave (both Fiber and Coax) that will need to be removed prior to demolition of the buildings. Are existing system runs on the east side of N. Magnolia and terminates before Rea Ave.

Please keep me up to date on the progress for this project so I can react in a timely manner as to the construction and/or wreck-out of our existing plant.

If you have any questions please contact me anytime.

Sincerely

John Greenwood

Project Planner II

5159 Federal Blvd

San Diego, CA 92105

619-266-5595

john.greenwood@cox.com

consisting of both uses permitted by right and by conditional use permit in the underlying zone; or which involve a modified parking requirement; or which involve a density bonus for residential development; or which involve a modified building height, a modified lot coverage, or modified building setbacks.

Such a conditional use permit shall be processed in all respects like any other conditional use permit, except it shall be approved by the City Council after a public hearing to be effective.

C. Specific Plan

A specific plan may be required or utilized for certain uses or to modify certain development standards.

D. Planned Residential Development

A planned residential development is required for any common interest development in a planned residential development zone.

E. Planned Unit Development

A planned unit development is required for any common interest development including residential condominiums, townhouses, office condominiums and similar separate ownership opportunities.

F. Sign Permit

A sign permit is required to install any new commercial sign, except allowable window signing, within Specific Plan 182. The City Manager may delegate sign design review approval within Specific Plan 182 to a downtown PBID management entity, however signs must still comply with the other provisions of this Plan and the Municipal Code, including obtaining encroachment permits and building permits, when applicable.

G. Administrative Zoning Permit

An administrative zoning permit is required to remodel the façade of a commercial storefront/building governed by Specific Plan 182, install an ancillary outdoor dining area, or establish other uses listed as requiring an administrative zoning permit in Chapter 17.40 of the Zoning Ordinance.

VI. DEVELOPMENT STANDARDS

Except as expressly provided as follows, all developments shall be subject to the development standards set forth in the underlying zone.

A. Parking

Except as provided below, all original new uses in newly constructed buildings shall comply with the applicable parking requirements of the underlying zone.

1. Permitted Uses

All subsequent new permitted uses in existing or enlarged buildings shall comply with the applicable following provisions:

- a) If the existing development does not have the required on-site parking that complies with the current parking requirements of the underlying zone and there is no enlargement of the building, any new use must be one that has a parking requirement that is equal to or less than the prior use as determined by the parking standards of this title; or
- b) If the existing development does not have the required on-site parking, and there is a proposed new use which has a parking requirement that is greater than the prior use as determined by the parking standards of this title or if there is a new use which proposes an enlargement of the existing building or use without providing the current number of parking spaces required by this title, or if there is both a new use and a new building which cannot satisfy the current parking requirements of this title, a conditional use permit must be obtained to allow a reduced number or no on-site parking spaces, subject to findings, including a determination that the proposed new use and/or new building will not result in a parking inadequacy that is detrimental to adjacent uses or properties and the downtown area as a whole. This conditional use permit shall be processed in all respects like any other conditional use permit, except that it shall also be approved by the City Council after a public hearing to be effective.

2. Special Uses

- a) If a building is intended to be used for a proposed mixed-use development as described in section IV.A. above, the parking requirement may be reduced to 70 percent of the total number of parking spaces required for each individual use; or
- b) If a mixed-use development is proposed for an existing building and the parking provided is less than 70 percent of the total number of parking spaces required for each individual use, or if a mixed-use development is proposed for an existing building that must be enlarged or if a mixed-use development is proposed for a new building and the number of parking spaces is less than

required by this title, a conditional use permit must be obtained to allow a reduced number or no parking spaces for the mixed-use development subject to findings, including a determination that the proposed mixed-use development will not result in a parking inadequacy that is detrimental to adjacent uses or properties and the downtown area as a whole. This conditional use permit shall be processed in all respects like any other conditional use permit, except that it shall also be approved by the City Council after a public hearing to be effective.

B. Building Height

There shall be no maximum building height for any properties included in Special Development Area No. 9 as shown on Attachment "A" except that the maximum height of any building on any property in Special Development Area No. 9 and which is within 100 feet of any property zoned and/or developed with residential uses shall be 35 feet, unless a greater height is approved by conditional use permit.

C. Lot Coverage

All buildings, including accessory buildings and structures, and all parking areas and driveways shall not exceed the lot coverage of the underlying zone, unless a greater lot coverage is approved by conditional use permit.

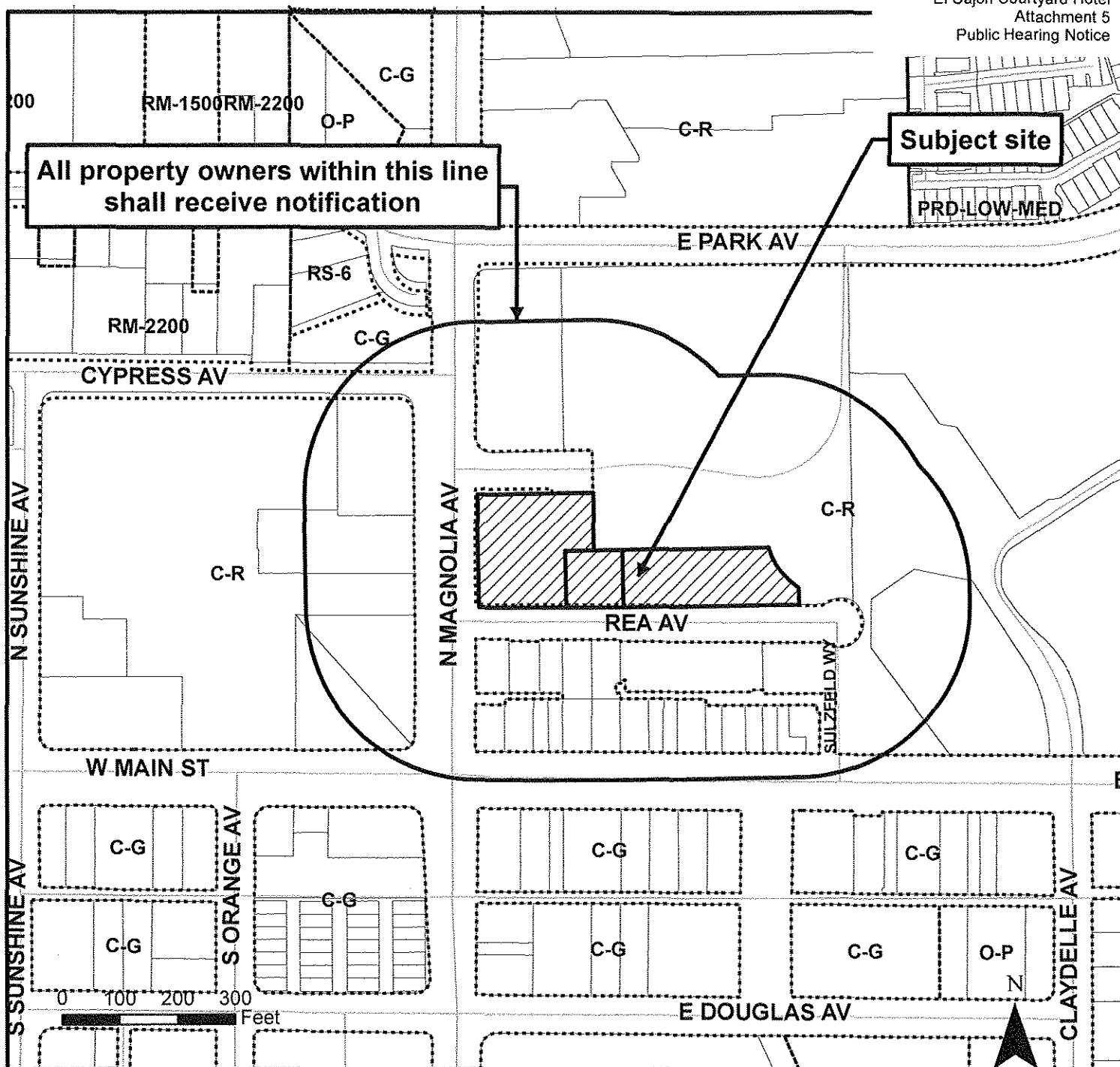
D. Building Setbacks

All buildings, including accessory structures, shall comply with the building setbacks of the underlying zone except as follows:

1. All commercial and/or office buildings or mixed-use developments with residential units shall observe street frontage setbacks as follows:
 - a) One- and two-story buildings: No requirements;
 - b) Three- to six-story buildings: 10 feet;
 - c) Seven- to ten-story buildings: 15 feet.
2. All commercial and/or office buildings are permitted to observe no interior setbacks.
3. All mixed-use developments with residential units shall observe interior setbacks as required by the building and fire codes.
4. All street frontage setbacks, if required, shall be landscaped.
5. Setback requirements may be further reduced, through approval of a conditional use permit.



Aerial Image



**NOTICE OF PROPOSED
CONDITIONAL USE PERMIT FOR
EL CAJON COURTYARD HOTEL**

NOTICE IS HEREBY GIVEN that the El Cajon Planning Commission will hold a public hearing at 7:00 p.m., Tuesday, July 1, 2014, and the El Cajon City Council will hold a public hearing at 7:00 p.m., Tuesday, July 8, 2014, in the City Council Chambers, 200 Civic Center Way, El Cajon, CA, to consider:

EL CAJON COURTYARD HOTEL – CONDITIONAL USE PERMIT NO. 2207, as submitted by Excel Hotel Group (Neil Patel), requesting the construction of a four-story hotel with meeting rooms, restaurant and on-sale alcohol service. The subject property is located on the northeast corner of Magnolia and Rea Avenues. This project is exempt from the California Environmental Quality Act (CEQA).

The public is invited to attend and participate in these public hearings. The agenda reports for this project will be available 72 hours prior to the Planning Commission meeting at www.ci.el-cajon.ca.us/dept/cpmm/planning_agendas.aspx and the City Council at <http://www.ci.el-cajon.ca.us/council/agendas.aspx>. To download a copy, click the *current agenda – full version* link, then the agenda item. In an effort to reduce the City's carbon footprint, paper copies will not be at the public hearings, but will be available at the Planning Division and City Clerk counters upon request.

If you challenge the matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Commission at, or prior to, the public hearing. The City of El Cajon encourages the participation of disabled individuals in the services, activities, and programs provided by the City. Individuals with disabilities who require reasonable accommodation in order to participate in the public hearing should contact the Planning Division at 619.441.1742. More information about planning and zoning in El Cajon is available at www.ci.el-cajon.ca.us/dept/comm/planning.html.

If you have any questions, or wish any additional information, please contact **ANTHONY SHUTE** at 619.4471.1742 or via email at tonys@cityofelcajon.us and reference "CUP 2207" in the subject line.



Community Development Department
Planning Division
DISCRETIONARY PERMIT APPLICATION

Type of Discretionary Permit(s) Requested

- | | | | | |
|--|---|------------------------------|------------------------------|------------------------------|
| <input type="checkbox"/> AZP | <input checked="" type="checkbox"/> CUP | <input type="checkbox"/> LLA | <input type="checkbox"/> PRD | <input type="checkbox"/> PUD |
| <input type="checkbox"/> Specific Plan | <input type="checkbox"/> TPM | <input type="checkbox"/> TSM | <input type="checkbox"/> VAR | <input type="checkbox"/> ZR |
| <input type="checkbox"/> Other: _____ | | | | |

Applicant Information (the individual or entity proposing to carry out the project; not for consultants)

Company Name: Excel Hotel Group

Contact Name: Neil Patel

Address: 10660 Scripps Ranch Blvd, Suite 100, San Diego, CA 92131

Phone: 858 621-4908 Email: npatel@excelhotelgroup.com

Interest in Property: ☒ Own ☐ Lease ☐ Option

Project Representative Information (if different than applicant; consultant information here)

Company Name: Robert F. Tuttle Architect, Inc.

Contact Name: Robert Tuttle License: C 18724

Address: 33533 Pebble Brook Circle, Temecula, CA 92592

Phone: 951 302 5444 Email: robert.tuttle@rftarch,cin

Property Owner Information (if different than applicant)

Company Name: _____

Contact Name: _____

Address: _____

Phone: _____ Email: _____

Project Location

Parcel Number (APN): 488-072-40, 488-082-12, 488-082-18

Address: Civic Center Way, El Cajon, CA

Nearest Intersection: Magnolia and Civic Center Way

Project Description (or attach separate narrative)

A four story Marriott Courtyard hotel, slab on grade, wood frame construction. One
separate commercial building on the south west corner of the property, and one
commercial space within the hotel on the first floor. A large courtyard and pool
area faces onto the street.

Hazardous Waste and Substances Statement

Section 65962.5(f) of the State of California Government Code requires that before the City of El Cajon accepts as complete an application for any discretionary project, the applicant submit a signed statement indicating whether or not the project site is identified on the State of California Hazardous Waste and Substances Sites List. This list identifies known sites that have been subject to releases of hazardous chemicals, and is available at <http://www.calepa.ca.gov/sitecleanup/corteselist/>. Check the appropriate box and if applicable, provide the necessary information:

The development project and any alternatives proposed in this application:

☒ is/are NOT contained on the lists compiled pursuant to Government Code Section 65962.5.

☐ is/are contained on the lists compiled pursuant to Government Code Section 65962.5.

If yes, provide Regulatory Identification Number: _____ Date of List: _____

Authorization

Applicant Signature¹:



Date: May 12, 2014

Property Owner Signature²:



Date: 5/12/14

1. **Applicant's Signature:** I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application. I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the City to enter the subject property for inspection purposes.
2. **Property Owner's Signature:** If not the same as the applicant, property owner must also sign. A signed, expressed letter of consent to this application may be provided separately instead of signing this application form. By signing, property owner acknowledges and consents to all authorizations, requirements, conditions and notices described in this application. Notice of Restriction: property owner further acknowledges and consents to a Notice of Restriction being recorded on the title to their property related to approval of the requested permit. A Notice of Restriction runs with the land and binds any successors in interest.



Community Development Department
Planning Division
DISCLOSURE STATEMENT

Disclosure Statement

This statement is intended to identify and avoid potential conflicts of interest that may exist between the project proponents and the decision makers; including City staff, Planning Commissioners, and City Council members.

The following information must be disclosed:

1. List the names and addresses of all persons having a financial interest in the application.

<u>Neil Patel</u>	<u>10660 Scripps Ranch Blvd Ste 100</u>
<u>Suresh Patel</u>	<u>San Diego CA 92131</u>

List the names and address of all persons having any ownership interest in the property involved.

<u>Neil Patel</u>	<u>10660 Scripps Ranch Blvd Ste 100</u>
<u>Suresh Patel</u>	<u>San Diego CA 92131</u>

2. If any person identified pursuant to (1) above is a corporation or partnership, list the names and addresses of all individuals owning more than 10% of the shares in the corporation or owning any partnership interest in the partnership.

_____	_____
_____	_____


3. If any person identified pursuant to (1) above is a trust, list the name and address of any person serving as trustee or beneficiary or trustor of the trust.

_____	_____
_____	_____

4. Have you or your agents transacted more than \$500.00 worth of business with any member of City staff, Boards, Commissions, Committees and Council within the past 12 months or \$1,000.00 with the spouse of any such person? Yes _____ No X

If yes, please indicate person(s), dates, and amounts of such transactions or gifts.

"Person" is defined as "Any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert." Gov't Code 582047.

 01/12/14 Neil Patel
Signature of applicant / date Print or type name of applicant

NOTE: Attach appropriate names on additional pages as necessary.

Building Data

first floor:	21,076 sf
second floor:	20,821 sf
third floor:	20,821 sf
fourth floor:	20,821 sf
total:	83,539 sf

Site statistics

stories:	4 stories
total units:	120
retail A:	1,576 s.f.
retail B:	2,158 s.f.
meeting room 1:	2,783 s.f.
meeting room 2:	1,632 s.f.

parking required: 120 stalls

parking provided on site: 105 stalls

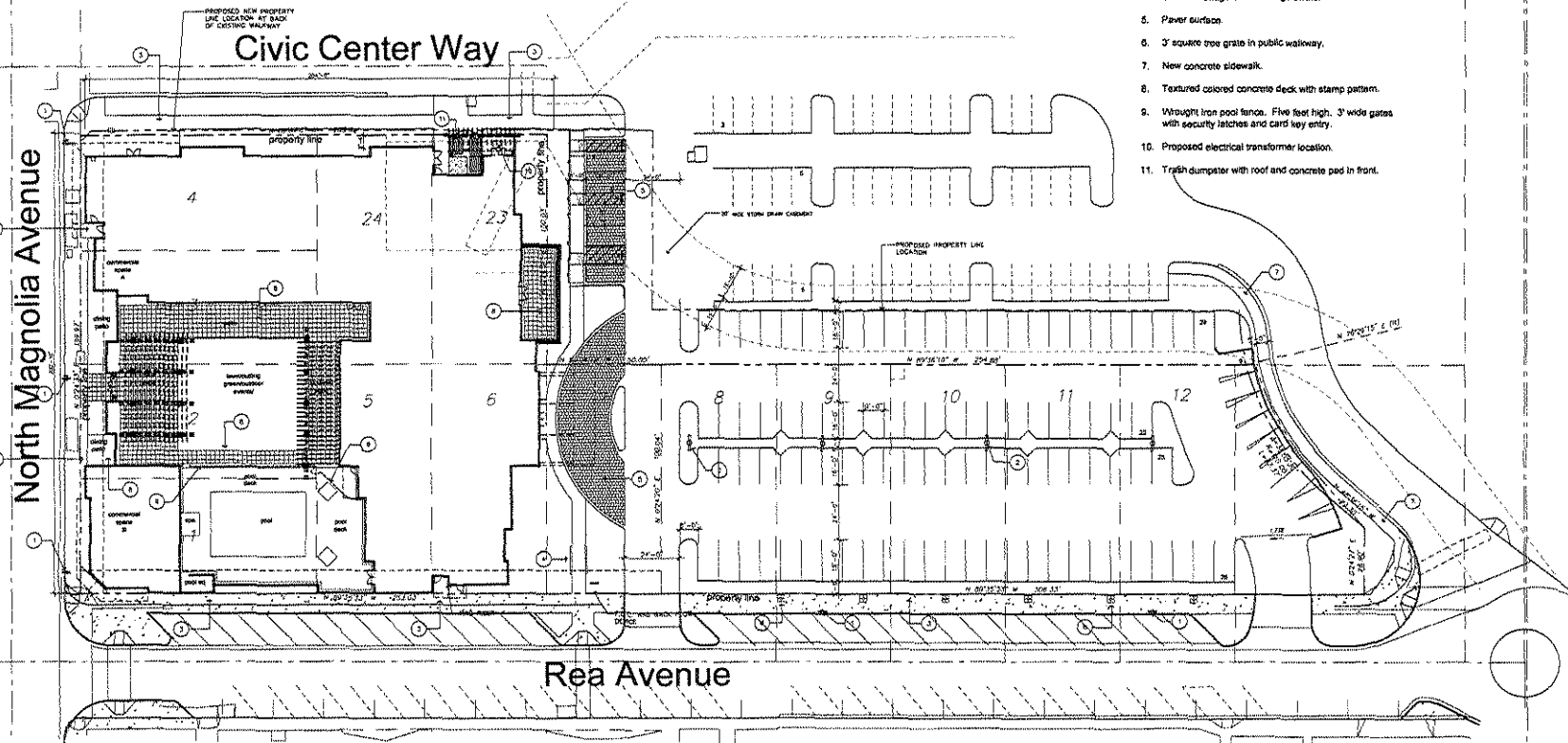
ADA parking on site: 5 stalls

parking off site: 12 stalls

total parking provided: 122 stalls

Notes:

1. Double arm street lights, some existing to be relocated, some new.
2. Light pole 25' high with shoe box shielded lens.
3. New sidewalk paving with color and pattern to match existing city walk.
4. Concrete bridge over drainage swale.
5. Paver surface.
6. 3' square tree grate in public walkway.
7. New concrete sidewalk.
8. Textured colored concrete deck with stamp pattern.
9. Wrought iron pool fence. Five feet high. 3' wide gates with security latches and card key entry.
10. Proposed electrical transformer location.
11. Trash dumpster with roof and concrete pad in front.



SITE PLAN
1"=20'-0"



ROBERT E. TUTTLE ARCHITECTS, INC.
P.O. Box 101010
San Diego, CA 92110
Tel (619) 594-4444
Fax (619) 594-4444
www.rett.com

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RETT.



El Cajon Courtyard
Civic Center Way
Excel Hotel Group
10960 Jolly Road, Suite 100, San Diego, CA 92131

EC COUR
SITE P1

REVISED
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El Cajon Courtyard
Attachment 7
Reduced site plan

Agenda Item:	3
Project Name:	Grossmont Terrace Electronic Message Center
Request:	Amend Zoning Code Sections 17.190.180 and 17.190.270; and an off-site digital billboard in the O-S zone
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	DENY
Project Number(s):	Zoning Code Amendment No. 419 and Conditional Use Permit No. 2162
Location:	Vacant properties between I-8 and Murray Drive
Applicant:	Grossmont Terrace Associate, L.P.; David Wick; 858-623-9000 ext. 700
Project Planner:	Anthony Shute, AICP; 619-441-1742; tonys@cityofelcajon.us
City Council Hearing Required?	No
Recommended Actions:	<ol style="list-style-type: none"> 1. Conduct the public hearing; and 2. MOVE to adopt the next resolutions in order DENYING Zoning Code Amendment No. 419 and Conditional Use Permit No. 2162

PROJECT DESCRIPTION

The applicant is requesting to amend El Cajon Municipal Code (ECMC) Sections 17.190.180 *Electronic Message Displays*, and 17.190.270 *Sign Overlay Zone and Billboard Signs* by adding provisions to allow for off-site digital sign display and to establish a sixth corridor where billboards may be approved. Furthermore, the request includes the approval of a conditional use permit for a 35-foot high off-site digital billboard.

Specifically, the applicant is requesting that a sixth location be added in the City where billboards (off-site signs) can be located. The proposed location is on the west side of Interstate 8 between Blackthorne Avenue and Hillside Way. The applicant is also requesting to allow billboards to be viewed from a freeway at the aforementioned site, which is currently prohibited in the Zoning Code.

The specific changes to the Zoning Code proposed by the applicant are as follows:

1. Amend Section 17.190.270.A to add a section 6 to read:

"6. Northwest side of Interstate 8 between Murray Drive and Hillside Way."

2. Amend Section 17.190.270.B to read:

"Properties in the sign overlay zone may be permitted off-premises signs as either poster panels (not to exceed 300 square feet each) or painted bulletins (not to exceed 720 square feet each, exclusive of embellishments), or Electronic Message Displays within the City of El Cajon Freeway Corridor. The total number of all off-premises signs in the city including poster panels and painted bulletins shall not exceed two and one-half (2.5) for each one (1) square mile of city area. In addition to the above limitations, the total number of all painted bulletins in the city shall not exceed four (4), the total number of poster panels on Broadway shall not exceed four (4), and no painted bulletin structures shall be permitted on Broadway."

3. Amend Section 17.190.270.C.2. to read:

"Height. New outdoor advertising structures shall not exceed a height of 35 feet above grade level of the freeway and/or street from which it is to be viewed."

4. Amend Section 17.190.270.C.3.a. to read:

"a. No new outdoor advertising structure shall be located so as to be viewed primarily by persons traveling on the main-traveled way of a freeway as defined in the Streets and Highways Code, except a single electronic message center billboard monument approved under section 17.190.270.A.6."

5. Amend Section 17.190.180

"Electronic message display signs, as defined in Section 17.190.050 above, may be authorized as part of any permitted sign display, subject to the same height, sign area, and location limitations of the permitted sign, and subject to the granting of a conditional use permit, which shall be decided by the city council. Electronic message display signs may display only noncommercial or on-site commercial messages, unless authorized under Section 17.190.270.A.6. When allowed, such signs may not include any illumination, flashing, or message change that is in motion, or appears to be in motion, or that changes in image or intensity more than once per four (4) seconds."

The second component of the applicant's request includes a proposed electronic billboard to be located at the southerly end of the subject properties.

BACKGROUND

General Plan:	Open Space (OS)
Zone:	Open Space/Hillside Overlay (O-S-H)
Other City Plan(s):	None
Regional and State Plan(s):	Montgomery Field Airport Land Use Compatibility Plan
Notable State Law(s):	Outdoor Advertising Act

Project Site & Constraints

The proposed project site is approximately 20 acres of undeveloped hillside land adjacent to Interstate 8. The subject property currently has engineered benches, fire trails, and foot paths crossing the site. There are a few mature eucalyptus trees at the northerly end of the site. The site also includes City sewer and Helix Water District easements. Furthermore, the site is not illuminated in the evening hours from lights either on-site or from the adjacent freeway or neighborhoods.

Surrounding Context

Properties surrounding the site are developed and zoned as follows:

Direction	Zones	Land Uses
North & West	RS-6-H	Single-family residences
South & East	C-G	Motel & Interstate 8

General Plan

The project site is designated as Open Space (OS) on the General Plan Land Use Map. The OS designation is described as, "Hillside areas of very limited development potential which can be retained as public or private open space or areas of very low density and clustered residential development. Density may not exceed three dwelling units per acre in an area of clustered residential development."

Furthermore, the General Plan Conservation Element indicates that El Cajon has its own set of natural resources which warrant protection. When these resources are seen in their natural state, they may seem unprepossessing; but they are very important within the local setting. The Conservation Element further states that, "The City has already taken two highly significant steps in conservation of hillside areas through the designation of open space areas on the General Plan Land Use Map and the creation of the Hillside Overlay Zone."

The Land Use Element Urban Design section states, "The appearance of the City is a composite of its physical aspects and the attitudes of its residents. It includes not only the architecture of the buildings and the condition of its streets but also the presence or absence of landscaping, of cleanliness and visual pollution such as signs and utility lines and support poles."

The Open Space and Parks Element further describes that the City exhibits a great deal of open space surrounding the community and that it is fortunate to possess hillside areas which are difficult to develop. Although these areas present development problems because of their difficult access, steep slopes, rocky terrain and unstable soil conditions, they provide spectacular views of the El Cajon Valley. Moreover the hillsides are attractive views when seen from the valley floor. Such steep hillside areas remain a large component of the Open Space acreage shown on the General Plan Land Use Map, and help to soften the City's built environment.

General Plan Policy 8-2.2 states, "The flat, valley portions of El Cajon shall receive the most intensive development. Hillside areas shall receive less intensive development. Steep hillside areas (slopes more than 25%) shall be placed in the open space land use category."

General Plan Objective 15-2.2 states, "Property which has the Open Space designation shown on the General Plan Land Use Map shall first be considered for public use prior to approval of development for private use." Not all property zoned Open Space is appropriate for public use. Noise from the freeway and the terrain of the property make the subject property undesirable for any form of active or passive park use. The City has no plans to acquire or develop the subject site for a public use.

Objective 15-2.3 states, "Areas in the Open Space designation which the City has not established for public use shall be developed with very low density or cluster-type residential development, resulting in large areas of open space in and around the development."

Municipal Code

ECMC Section 17.155.010 states, "The intent of the O-S zone is to protect and preserve open space land as a limited and valuable resource, to permit a reasonable use of open space while at the same time preserving and protecting inherent open space characteristics, and to implement the open space provisions of the General Plan."

Furthermore, the purpose of the H (Hillside) overlay zone is to provide for the reasonable use of hillside areas while minimizing the disturbance of the natural terrain and conserving the aesthetic qualities that are afforded by hillsides.

ECMC Sections 17.190.180 and 17.190.270 govern electronic message display signs and off-site signage (billboards) and are attached to this report.

Outdoor Advertising Act

In 1965, the Federal Highway Beautification Act (HBA) was passed and declared that "outdoor advertising displays in areas adjacent to the freeway should be controlled in order to protect the public investment, to promote the safety and recreational value of public travel, and to preserve natural beauty."

The California Department of Transportation (Caltrans) controls outdoor advertising displays (billboards) which are visible from an interstate or primary highway. Permits from Caltrans are required and these billboards must conform to the California Business and Professions Code (Outdoor Advertising Act) Section 5200 et seq. and Section 21466.5 of the Vehicle Code. These codes contain regulations for all billboards and specific regulations pertaining to "changeable electronic messages" (digital signs) regarding allowed location, proximity to other billboards (digital and traditional), frequency of message changes, illumination and prohibition of animation. Caltrans

permit requirements indicate that the location of property where the display is to be placed must be zoned commercial or industrial. The subject site is zoned Open Space.

Montgomery Field ALUCP

The Montgomery Field Airport Land Use Compatibility Plan (ALUCP) is a regional plan that governs the project site and the surrounding area. The ALUCP is a policy document designed to implement the primary objectives of the State Aeronautics Act and the California Airport Land Use Planning Handbook by promoting compatibility between Montgomery Field and the land uses that surround it. This plan provides compatibility policies and criteria applicable to the City of El Cajon and other affected local agencies in the design of new development. The subject site is located within the Airport Influence Area (AIA) of Montgomery Field, and is therefore subject to the ALUCP.

DISCUSSION

Application History

In July, 2010, Mr. David Wick approached the City Council about installing a commercial billboard at Grossmont Terrace and was referred to staff for more information. Staff met with Mr. Wick in August, 2010 and described procedures for changing the Zoning Code. Staff also advised Mr. Wick that the current Sign Code was drafted due to litigation and that it prohibits freeway-oriented billboards in order not to clutter views of the community. Applications were filed and considered by the Planning Commission in October, 2010. The Planning Commission denied the requests due to ongoing litigation pertaining to the Sign Code, the precedent setting nature of allowing a freeway-oriented billboard, and the loss of aesthetic value of the open space area. The decision was appealed and the City Council denied the appeal based on the recommendation from the City Attorney to not alter provisions of the Sign Code while litigation was pending. During the City Council hearing, eight individuals spoke in opposition to the billboard.

The applicant requested again to amend the Zoning Code on November 1, 2011. However, the application was deemed incomplete for the reasons listed in the attached letter dated November 30, 2011. A second incomplete letter was sent to the applicant on March 5, 2012, for the following reasons:

1. Environmental filing fee not remitted
2. Proposed visual simulations were not realistic
3. Light study for the proposed off-site sign
4. Materials/Color board was not submitted

A third incomplete letter was sent to the applicant on March 27, 2014, indicating the proposed off-site sign exceeded the height limit of 35 feet for the O-S zone and that compatibility issues remain unresolved for the proposed code amendments and sign.

Applicable Code History

On March 15, 1985, the City Council approved an amendment to the Zoning Code to add a sign overlay zone in order to permit off-premises signs (billboards) along certain specific corridors in the City and to prohibit commercial billboard signs that can be viewed from a freeway. The sign overlay allows billboards subject to certain development standards in the following five corridors:

1. El Cajon Boulevard between Chase Avenue and Main Street;
2. Main Street between Marshall Avenue and the northeast city limits;
3. Broadway between Ballantyne Street and Interstate 8;
4. Second Street between the north city limits and Interstate 8;
5. Johnson Avenue between El Cajon Boulevard and Arnele Avenue.

The City Council adopted a new zoning code in July, 2010, which maintained the sign chapter virtually as previously adopted, except that provisions for electronic message display signs were added. These provisions allow properties in zones where signs are allowed to request an electronic message display sign by conditional use permit. Furthermore, such signs may display only noncommercial or on-site commercial messages.

Proposed Amendments

The proposed Zoning Code amendments to ECMC Section 17.190.270 are designed to allow one electronic message display sign (billboard) in the proposed sixth corridor. This corridor is approximately 2,000 feet long and parallel to Interstate 8. Furthermore, the proposed amendments do not include development standards, such as design criteria, maximum sign area, mass, etc. The proposed height is 35 feet above the finished grade of the freeway.

The proposed amendment to ECMC 17.190.180 includes the sixth corridor as a location where an electronic message display sign could be located. However, electronic message display signs may display only noncommercial or on-site commercial messages. Since the proposed location is in the O-S zone only on-site commercial activity could be displayed or only noncommercial messages. Noncommercial messages are typically defined as sign copy or graphics that do not relate primarily to the economic interests of the speaker or audience. Moreover, they do not propose an economic transaction or the providing of professional services, and may consist of visual expression of opinion on topics of public concern and debate, including but not limited to, politics and religion.

Analysis

The intent of the O-S designation is to protect and preserve open space land as a limited and valuable resource while ensuring inherent open space characteristics are preserved. Furthermore, the Land Use Element main goal is to continually improve the appearance of the City with high quality developments and the continuous reduction in visual pollution.

The proposed amendments to the Zoning Code and the proposed digital billboard are contrary to the intent and purpose of the Open Space designation, because: 1) they severely contrast with the land on which it is proposed; 2) it is not consistent with the surrounding neighborhood character; and 3) it would change the overall character of the area.

Moreover, a digital billboard in the Open Space zone would create a disorganized appearance and would substantially conflict with the development standards of the underlying zone and result in extensive signs beyond the City's sign ordinance allowances, because only building face and monument signs are allowed for uses that require a conditional use permit, such as a playground or park.

Permitted uses in the open space zone include residential. The Zoning Code requires billboards to be at least 300 feet from any residentially zoned property. The purpose of the distance requirement is to ensure reasonable spacing between billboards and land uses which may be sensitive to billboard locations. Locating a billboard in a zone that permits residential uses is contrary to the intent of the billboard spacing requirements from residential zones.

As indicated previously, there is limited, to no, light on the project site, adjacent residential neighborhoods and the freeway. Furthermore, absent a lighting study that analyzes the effects of a digital billboard, it is unknown whether the project would shed substantial light on surrounding lands and emit a substantial amount of ambient light into the nighttime sky, as well as cast glare in the direction of drivers on Interstate 8.

Additionally, Caltrans controls outdoor advertising displays (billboards) which are visible from an interstate or primary highway. Caltrans' outdoor advertising permit requirements indicated that the display location must be in a zone that primarily permits industrial or commercial activities. The project area is zoned open space where limited agricultural, residential and outdoor activity uses may be permitted.

FINDINGS

- A. *The proposed zoning amendment, including any changes proposed in the various land uses to be authorized, is compatible with the objectives, policies, general land uses, and programs specified in the general plan.*

The proposed amendments to the Zoning Code are contrary to the intent and purpose of the Open Space designation, which is to allow reasonable use of open

space land while preserving inherent open space characteristics, and the Conservation Element identifies the project area as a natural area which warrants protection. Therefore the addition of digital billboards would severely contrast with the land on which it is proposed and change the overall character of the area. Furthermore, a digital billboard in the Open Space designation is not an indication of balance between development and preservation of natural resources, and it would produce visual pollution that would materially diminish the overall appearance of the area that is designated as a natural resource in the General Plan.

- B. The proposed zoning amendment is consistent with any applicable specific plan governing development of the subject property.*

The proposed amendments to the Zoning Code are not affected by any specific plan. Furthermore, there are no specific plans governing the adjacent properties and residential neighborhoods.

- C. It is in the public necessity and convenience and/or general welfare that the zoning regulations governing the property be changed.*

There is no identified public need and convenience to support the proposed amendments for a digital billboard in the Open Space zone. Furthermore, the proposed Zoning Code amendments have not shown they will contribute to the conservation of open space or protect the inherent characteristics associated with the views in the immediate area. Moreover, the public's general welfare is not best served with the addition of a digital billboard in an open space designated area.

Based on the findings above to deny the proposed Zoning Code amendments, the subsequent request for a digital billboard by conditional use permit is therefore not supported because it is not consistent with the governing sign regulations. Furthermore, the typical conditional use permit findings to deny this request are not required.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The denial of the project is exempt from the provisions of the California Environmental Quality Act (CEQA) according to Section 15061(b) (4) of the CEQA Guidelines. Section 15061(b) (4) states that projects which are disapproved by a public agency are exempt from CEQA.

PUBLIC NOTICE & INPUT

Notice of this public hearing was published in the *East County Gazette* on June 19, 2014, and mailed on June 21, 2014, to all property owners within 300 feet of the project site and to anyone who requested such notice in writing, in compliance with Government Code Sections 65090, 65091, and 65092, as applicable. A previous notice inadvertently included a City Council date of July 8, 2014. A retraction was published on January 19, 2014. However, this project may still be heard by the City Council if appealed, or if

recommended for approval by the Planning Commission. Additionally, as a public service, the notice was posted in the kiosk at City Hall and on the City's website under "Public Hearings/Public Notices." The notice was also mailed to the two public libraries in the City of El Cajon, located at 201 East Douglas Avenue and 576 Garfield Avenue.

ATTACHMENTS

1. Proposed Resolution Recommending DENIAL of Zoning Code Amendment No. 419
2. Proposed Resolution Recommending DENIAL of CUP No. 2162
3. Applicant's project description - excerpt
4. Incomplete letters to applicant dated 03-27-14, 03-05-12, and 11-30-11
5. Applicant letter to Noah Alvey dated 04-08-14
6. Zoning Code Sections 17.190.180 and 17.190.270
7. Photo Images of Project Site
8. Caltrans Outdoor Advertising Permit Requirements
9. Business & Professions Code Section 5205 – Business Area Definition
10. Public Hearing Notice
11. Application & Disclosure statement
12. Applicant's project description, color photographs & full-sized plans (*Commissioner's Binders*)

PROPOSED PLANNING COMMISSION RESOLUTION

A RESOLUTION DENYING ZONING CODE AMENDMENT NO. 419 REQUESTING TO AMEND TITLE 17 OF THE EL CAJON MUNICIPAL CODE TO ALLOW A DEFINED LOCATION FOR THE PLACEMENT OF AN OFF-SITE ELECTRONIC MESSAGE DISPLAY SIGN (DIGITAL BILLBOARD) IN THE OPEN SPACE ZONE AND TO BE VIEWED BY FREEWAY TRAVELERS.

WHEREAS, the El Cajon Planning Commission duly advertised and held a public hearing on July 1, 2014, to consider Zoning Code Amendment No. 419, as submitted by Grossmont Terrace Associate L.P. (David Wick), requesting approval of proposed amendments to El Cajon Municipal Code (ECMC) Sections 17.190.180 *Electronic Message Displays*, and 17.190.270 *Sign Overlay Zone and Billboard Signs* by adding provisions to allow for an off-site digital sign display and to establish a sixth corridor where billboards may be approved in the O-P (Open Space) zone; and

WHEREAS, the following findings of fact have been made in regard to said conditional use permit:

- A. The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) according to Section 15061(b) (4) of the CEQA Guidelines. Section 15061(b) (4) states that projects which are disapproved by a public agency are exempt from CEQA;
- B. The proposed amendments to the Zoning Code are contrary to the intent and purpose of the Open Space designation, which is to allow reasonable use of open space land while preserving inherent open space characteristics, and the Conservation Element identifies the project area as a natural area which warrants protection. Therefore, the addition of digital billboards would severely contrast with the land on which it is proposed and change the overall character of the area. Furthermore, a digital billboard in the Open Space designation is not an indication of balance between development and preservation of natural resources, and it would produce visual pollution that would materially diminish the overall appearance of the area that is designated as a natural resource in the General Plan;
- C. The proposed amendments to the Zoning Code are not affected by any specific plan. Furthermore, there are no specific plans governing the adjacent properties and residential neighborhoods; and
- D. There is no identified public need and convenience to support the proposed amendments for a digital billboard in the Open Space zone. Furthermore, the proposed Zoning Code amendments have not shown they will contribute to the conservation of open space or protect the inherent characteristics associated with the

Proposed Planning Commission Resolution

views in the immediate area. Moreover, the public's general welfare is not best served with the addition of a digital billboard in an open space designated area

NOW, THEREFORE, BE IT RESOLVED that based upon said findings of fact, the El Cajon Planning Commission hereby DENIES proposed amendments to El Cajon Municipal Code (ECMC) Sections 17.190.180 *Electronic Message Displays*, and 17.190.270 *Sign Overlay Zone and Billboard Signs* to allow for an off-site digital sign display and to establish a sixth corridor where billboards may be approved in the O-P (Open Space) zone.

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Proposed Planning Commission Resolution

PASSED AND ADOPTED by the El Cajon Planning Commission at a regular meeting held July 1, 2014, by the following vote:

AYES:
NOES:
ABSENT:

Paul CIRCO, Chairperson

ATTEST:

Anthony SHUTE, AICP, Secretary

PROPOSED PLANNING COMMISSION RESOLUTION

A RESOLUTION DENYING CONDITIONAL USE PERMIT NO. 2162 TO ALLOW A FREEWAY-ORIENTED ELECTRONIC MESSAGE DISPLAY SIGN (DIGITAL BILLBOARD) ON THE WEST SIDE OF INTERSTATE 8, BETWEEN MURRAY DRIVE AND HILLSIDE WAY IN THE O-S (OPEN SPACE) ZONE.

WHEREAS, at its regular meeting held on July 1, 2014, the El Cajon City Planning Commission considered Conditional Use Permit No. 2062 to allow a freeway-oriented electronic message display sign (digital billboard) on the west side of Interstate 8, between Murray Drive and Hillside Way in the O-S (Open Space) zone, APN: 492-650-01; and

WHEREAS, the proposed freeway-oriented electronic message display sign (digital billboard) is not allowed on the subject property pursuant to Chapter 17.270 (signs) of the El Cajon Municipal Code; and

WHEREAS, Zoning Code Amendment No. 419 was submitted as a companion application requesting that the sign chapter of the Zoning Code be amended to allow the proposed freeway-oriented electronic message display sign (digital billboard) in the O-S (Open Space) zone; and

WHEREAS, the Planning Commission adopted the next resolution in order denying Zoning Code Amendment No. 419; and

WHEREAS, the request to construct a freeway-oriented electronic message display sign (digital billboard) at the project site does not conform with El Cajon Municipal Code Sections 17.190.180 and 17.190.270 and General Plan policies.

NOW, THEREFORE, BE IT RESOLVED that based upon said findings of fact, the El Cajon City Planning Commission hereby DENIES Conditional Use Permit No. 2162 for a freeway-oriented electronic message display sign (digital billboard) on the west side of Interstate 8, between Murray Drive and Hillside Way in the O-S (Open Space) zone.

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Proposed Planning Commission Resolution

PASSED AND ADOPTED by the El Cajon Planning Commission at a regular meeting held July 1, 2014, by the following vote:

AYES:
NOES:
ABSENT:

Paul CIRCO, Chairperson

ATTEST:

Anthony SHUTE, AICP, Secretary

1.0 INTRODUCTION

The Grossmont Terrace Electronic Message Center Monument Project ("Project") is located northwest of Interstate 8 in the City of El Cajon, California (**Figure 1**). The Project consists of an electronic message display monument, improvements to an existing access road, a conditional use permit and a zoning ordinance amendment. The Project would be a benefit to the City of El Cajon ("City") and act as a 'Gateway Monument' for travelers along Interstate 8.

1.1 Project Area

The project site is on the USGS 7.5' El Cajon Quadrangle, Township 18 South, Ranch 1 East and accessible via Murray Drive (**Figure 2**). The site is an approximately 8.1 acre parcel (APN 487-780-35) and is currently undeveloped, though it has been disturbed in the past and is maintained for fire clearing. The site is bound by single family residences to the west and Interstate 8 to the east. The site slopes down from Murray Drive towards Interstate 8. The elevation ranges from approximately 660-feet above mean sea level ("AMSL") in the northern portion of the property to approximately 570-feet AMSL in the southern portion of the site.

2.0 PROJECT DESCRIPTION

The Project includes an electronic message display monument, improvements to an existing access road, a conditional use permit and a zoning ordinance amendment. The Project is on an approximate 8.1 acre parcel and the impact area of the electronic message center monument represents approximately 0.004 acres or 175 sq ft. The access road is existing, but will be enhanced for Fire District access. The monument will be placed at the lowest and flattest portion of the site, at an elevation of 579-feet AMSL, including 12-inches of fill, which is approximately seven feet below Interstate 8 and will not disturb the surrounding topography.

The electronic message center is 35'-0" in height and will face northeast and southeast. Elevations and measurements for the electronic message center monument are provided in **Figure 3**. The electronic message center will advertise local City businesses, civic events, and community notices. This new communications venue will have the ability to promote industries that provide significant revenue to the City. The monument will also include a static display welcoming travelers to the "City of El Cajon". The design and materials board proposed are neutral and will not conflict with the surrounding area. See **Figure 4** for details.

2.1 Visual Simulation Analysis

The Project has been analyzed through visual simulations (**Figures 5 through 6**), which detail the visibility of the electronic message center monument from Interstate 8. The digital display will be visible from Interstate 8 and select areas east and south of the freeway. **Figure 7** details the view of the back of the electronic message display from its most visible location on Murray Drive. The Project will not be visible from Murray Drive north of Dennstedt Place, or adjacent streets west and north of the freeway. The back of the monument is proposed in earth-tones and will have no lighting.

The Project will include industry standard good design practices, including limiting light trespass¹ and illumination levels, as set forth by the Illuminating Engineering Society of North America, to minimize and shield the light and/or glare from the digital display. Additionally, the electronic message display pixels will be designed whereby light in the upward direction is reduced in comparison to light sent below the horizontal in the direction of the viewers. We believe there will be no additional impact to light sensitive properties, above what is permitted by the City ordinance, due to the utilization of

standard good design practices, as well as existing lighting sources in the surrounding area (i.e. freeway lighting, car headlights, floodlighted buildings, parking lots and streets, etc.).

2.2 General Plan Conformance

Although the General Plan designation for the project site is Open Space (OS), the Open Space Element ("Element") of the General Plan acknowledges that some development does occur in areas considered "open space". In fact, the Open Space zone itself allows limited development for not only residential uses, but also considers commercial areas "... *median strips* ..." and "... *space between buildings* ...", as open space, agreeing in fact, that quality open space can co-exist with commercial uses. The Element also acknowledges that while some Open Space areas cannot be mapped, they can be developed by following the adopted policy statements elsewhere in the General Plan.

The Electronic Message Center Monument is consistent with the General Plan in the following key areas:

- The Element acknowledges "*steep hillside areas ... soften the urban character of the community*". The electronic message display monument is proposed to be built on one of the lowest and flattest portion of the site, at an elevation of 579-feet AMSL, including 12-inches of fill, approximately seven feet below Interstate 8 (elevation of 621-feet AMSL) and will not disturb the surrounding topography.
- The Element acknowledges that open spaces "... *even though they are developed...*" can contribute to the appearance of open space within the larger community. The electronic message display monument will occupy less than 1% of the project site (approximately 8.1 acre parcel), and when considered as part of the "... *larger community* ..." will preserve the quality of the surrounding open space zoned land.
- The Element acknowledges that non-residential uses can occur within, or adjacent to, what the General Plan considers Open Space. This is evidenced by the Element considering "median strips", "space between buildings", etc. as open space.

The General Plan has many basic goals, objectives and policies, which serve to provide broad guidance when considering compliance. These goals, objectives and policies must be considered in the aggregate when making a consistency determination. The Project meets the intent of the General Plan's goals, objectives and policies in the following manner:

- **Goal 1** – The Project conforms with the City's goal of "... *improving its appearance* ..." by providing a memorable entry point to travelers, announcing a welcome to the City of El Cajon, as well as City businesses and community notices.
- **Goal 9** – The General Plan encourages the creation of a competitive commercial base. The purpose of the electronic message center monument is to promote businesses and events in the City. Furthermore, Goal 9 sets out an objective to create "... *a strong competitive, region-wide commercial base.*" The monument is being proposed to promote local family owned and operated businesses as well as other businesses and events within the City and will therefore not only retain, but will increase tax revenue.
- **Objective 1-3** – The Project conforms to this objective by proposing an attractive state-of-the-art electronic message center monument that will not only comply with the sign ordinance, but will promote local businesses, civic activities, and the entire City.
- **Policy 1-5.1** – This policy seeks to establish a "... *noteworthy entrance point* ..." to the City and the redevelopment district. Our proposal includes a visually appealing focal point, with



Community Development

March 27, 2014

David Wick
Grossmont Terrace Associate, L.P.
5440 Morehouse Drive, Suite 4000
San Diego, CA 92121

Re: Application Deemed Incomplete – Third Review
Zoning Code Amendment (ZC) No. 419 and Conditional Use Permit (CUP) No. 2162

David Wick:

The above referenced applications were originally deemed incomplete pursuant to Government Code §65943 on November 30, 2011. Development review since the initial incomplete letter is summarized as follows:

February 16, 2012	Revised plans and elevations submitted by applicant
March 5, 2012	Incomplete/Second review by staff
April 30, 2013	Revised plans and elevations submitted by applicant
June 3, 2013	Applications placed on hold by Planning Manager while opportunities for off-site signage were evaluated by staff
March 3, 2014	Request to continue processing applications submitted by applicant

Based on this review, staff has determined that your application remains incomplete due to the following:

- The proposed 41 ft. 6 in. sign exceeds the 35 ft. height limit for the Open Space (O-S) zone (ECMC 17.155.120)

Furthermore, staff conducted a third assessment of your revised application and determined that the request is not supported by the General Plan, presents compatibility issues with adjacent residential uses, and is not aligned with the intent and purpose of the City's off-site signage ordinance. Moreover, the City Manager's Office has confirmed that the subject request will not receive staff support. A partial refund of your application fee will be available, if you choose to withdraw your request.

David Wick
Incomplete and Cycle Review Letter
March 27, 2014

Please contact me if you have any questions or concerns at nalvey@cityofelcajon.us or 619.441.1773.

Sincerely,



Noah Alvey, AICP
Associate Planner

Attachments: Review #2 letter dated 3.5.2012

cc: City Manager, Douglas Williford (electronic only)
Assistant City Manager, Majed Al-Ghafry (electronic only)
Planning Manager, Anthony Shute (electronic only)



CITY OF EL CAJON

COMMUNITY DEVELOPMENT

☐ Planning / Director's Office: 619.441.1741
☐ Building and Fire Safety: 619.441.1726
Fax: 619.441.1743

☐ Redevelopment and Housing: 619.441.1710
Fax: 619.441.1595

March 5, 2012

David Wick
Grossmont Terrace Associate, L.P.
5440 Morehouse Drive, Suite 4000
San Diego, CA 92121

Re: Application Deemed Incomplete - Second Review
Amendment of Zoning Code (ZC) No. 419 and Conditional Use Permit (CUP)
No. 2162

David Wick:

The Planning Division deemed your application incomplete in accordance with the attached letter dated November 30, 2011. The following deficiencies were identified in the previous letter and remain incomplete.

- Item No. 2 - The updated site plan indicates the location of an access road that will be used for sign maintenance, but does not designate the location of an easement or other form of formal legal access.
- Item No. 3 - The Initial Study filing fee of \$4,300.00 has not been received. Please note that additional fees will be required if it is determined that a technical study or an Environmental Impact Report is necessary.
- Item No. 5 - The visual simulations do not have a realistic appearance that will assist staff and decision-makers when they evaluate the project.
- Item No. 6 - A materials/color board identifying the color, material and texture of all exterior surfaces has not been received.

This second courtesy cycle review has been completed for your above referenced project. The key issues identified are:

- Comments received from CALTRANS indicate that an Outdoor Advertising Display permit is required in order to advertise a business that is not "on premise". Outdoor Advertising Display Permit requirements are listed on the CALTRANS website (http://www.dot.ca.gov/oda/permit_requirements.htm) and indicate that the location of the property where the display is to be placed must be zoned industrial or commercial. This may mean that the subject site will need to be reclassified to an industrial or commercial zoning designation in order to be eligible for a permit. A building permit for the proposed electronic billboard will not be issued unless an Outdoor Advertising Display Permit is

obtained from CALTRANS and a copy of the permit is submitted to the Planning Division.

- The project may shed substantial light onto adjacent, light sensitive properties. Uses considered sensitive to nighttime light include, but are not limited to, residential and natural open space areas. Currently, the segment of Interstate 8 adjacent to the subject site is unlit. A lighting study that analyzes the effects of the proposed electronic billboard, as well as the conversion of existing billboards to electronic billboards elsewhere in the City, will be required as part of the City's initial environmental review to determine what type of CEQA document applies. You may also want to consider modifying the language in the Zoning Code amendment so that the request will not be applicable to other billboards within the City in order to narrow the scope of the environmental review.

The following are detailed review comments on your project. Referral agency comments are included as attachments to this letter.

General Plan:

1. The Open Space Element of the General Plan states, "Visually, El Cajon exhibits a great deal of open space surrounding the community. In this sense, the City is fortunate to possess hillside areas which are difficult to develop. These areas present problems such as difficult access, steep slopes, rocky terrain and even unstable soil conditions which hinder development. Located in the surrounding hillsides, some of these open space areas provide spectacular views of the El Cajon Valley. The hillsides themselves become attractive views when seen from the valley floor. Such steep hillside areas remain a large component of the Open Space acreage shown on the General Plan map, and help very much to soften the urban character of the community." The proposed electronic billboard may be inconsistent with the General Plan because it is located in an open space area that creates attractive views from the valley floor. Please prepare a written response to this issue to describe how this project is consistent with the General Plan.
2. General Plan Policy 15-2.3 states, "Areas in the Open Space designation which the City has not established for public use shall be developed with very low density or cluster-type residential development, resulting in large areas of open space in and around the development." General Plan Policy 15-2.5 states, "The City should encourage the private development of open space areas with recreational uses which are compatible with the surrounding area." The proposed electronic billboard is a commercial advertising structure that may not be consistent with the General Plan, which encourages residential development or recreational uses at the subject site. Please prepare a written response to this issue to describe how this project is consistent with the General Plan.

Zoning:

3. The intent of the O-S zone is to protect and preserve open space as a limited and valuable resource, to permit a reasonable use of open space while at the same time preserving and protecting inherent open space characteristics, and to implement the open space provisions of the General Plan. The proposed project may be inconsistent with the intent of the O-S zone because it will potentially permit an electronic billboard without preserving or protecting surrounding open space areas. Please prepare a written response to this issue to describe how this project is consistent with the intent of the O-S zone.
4. The electronic billboard elevations received by staff on October 12, 2011 indicated that overall structure height would be 28 ft. and would not exceed a height of 35 ft. above the freeway. The revised electronic billboard elevations received by staff on February 16, 2012, indicate that the overall structure will be 39 ft. 10 in. and will exceed a height of 35 ft. above the freeway. Section 17.190.270.C.2 of the Zoning Code states, "Height. New outdoor advertising structures shall not exceed a height of 35 feet above grade level of the street from which it is to be viewed." Please consider reducing the height of the electronic billboard to 35 ft. above the freeway to be consistent with the Zoning Code, or modifying the Zoning Code amendment request.
5. The text of the proposed Zoning Code amendment will potentially apply to all billboards. In order to narrow the scope of the environmental review, you may want to revise the request so that it will not be applicable to other billboards within the City.

Please note that if a complete response to this letter is not provided, the project will be deemed dormant. A project stale for one year will be deemed to not be diligently processed and will be closed out following a 30-day notice.

Please contact me at nalvey@cityofelcajon.us or 619.441.1773 to schedule a meeting to discuss this letter. It is recommended that we meet and discuss the issues contained in this letter before new plans and visual simulations are prepared. Also, please provide a written response to this letter.

Sincerely,



Noah Alvey, AICP
Associate Planner

Attachments: Staff correspondence dated 11-30-2011
Caltrans comments dated 11-8-2011

cc: Robert Furey, REC Consultants
Planning Manager (electronic only)



CITY OF EL CAJON

COMMUNITY DEVELOPMENT

☐ Planning / Director's Office: 619.441.1741
☐ Building and Fire Safety: 619.441.1726
Fax: 619.441.1743

☐ Redevelopment and Housing: 619.441.1710
Fax: 619.441.1595

November 30, 2011

David Wick
Grossmont Terrace Associates, L.P.
5440 Morehouse Drive, Suite 4000
San Diego, CA 92121

Subject: Application Deemed Incomplete and Courtesy Assessment Letter
Amendment of Zoning Code (ZC) No. 419 and Site Development Plan (SDP) No. 1485
Location – West side of Interstate 8, between Blackthorne Avenue and Hillside Way

Dear Mr. Wick,

The purpose of this letter is to inform you that the request to amend the Zoning Code and construct a billboard with electronic message display, submitted on November 1, 2011, has been deemed incomplete in accordance with Government Code Section 65943 because the application did not include the following:

1. Section 17.65.020 of the Zoning Code indicates that site development plan permits shall not be required when a conditional use permit authorizes a development project and includes a site plan depicting the location and design of all proposed structures and facilities. Section 17.190.180 of the Zoning Code indicates that electronic message display signs, may be authorized as part of any permitted sign display, subject to the same height, sign area, and location limitations of the permitted sign, and subject to the approval of a conditional use permit. Because the billboard includes an electronic message display, the correct application for an electronic billboard is a conditional use permit application. The filing fee for a conditional use permit is \$5,000. The site development plan permit filing fee can be applied to the conditional use permit filing fee. Please submit additional fees in the amount of \$1,400.
2. The written narrative indicates that electricity will be delivered to the sign through an adjacent parcel owned by the applicant. Since there is not direct access to the billboard site from the public right of way, the site plan will need to be updated to reflect a private access easement through the adjacent property for access and maintenance purposes, as well as the delivery of electricity. Please provide 11 copies of the updated site plan.
3. An Environmental Information Form (attached; Appendix H of the CEQA Guidelines) and associated filing fee must be submitted in order to determine if the proposed project will have a potentially significant effect on the environment. (Note: The electronic sign will potentially shed light onto adjacent residential properties and Interstate 8. It is requested

that the Environmental Information Form include a precise calculation of the amount of light that will be shed onto adjacent residential properties and Interstate 8.) Since the application has been deemed incomplete, a CEQA determination cannot yet be made.


4. A scaled, colored drawing of all exterior elevations identifying exterior materials and treatment. The proposed elevations indicate that the billboard will include an electronic message display, but they do not indicate which portions of the display will be electronic and which portions will be static. Please submit 11 copies of the revised scaled elevations.
5. Visual simulations would assist staff and decision-makers in evaluating the project. Please discuss with me the locations from which the simulations would be made. Then submit 11 copies of visual simulations.
6. A materials/color board identifying the color, material and texture of all exterior surfaces.

The Planning Division has also completed a courtesy assessment of the proposed project and the following issue has been identified that may affect your request. Comments received from CALTRANS (attached) indicate that an Outdoor Advertising Display Permit is required in order to advertise a business that is not "on premise". Outdoor Advertising Display Permit requirements are listed on the CALTRANS website (http://www.dot.ca.gov/oda/permit_requirements.htm) and indicate that the location of the property where the display is to be placed must be zoned industrial or commercial. This may mean that the subject site will need to be reclassified to an industrial or commercial zoning designation in order to be eligible for a permit. Staff is discussing further with Caltrans staff for clarification. Attached is the referral transmittal, which lists all the agencies were given an opportunity to respond to your project. Only Caltrans has responded with comments as of the date on this letter.

Please resubmit within 30 days of the date on this letter. If a complete response to this letter is not provided within 90 days, the project will be deemed dormant and will lose its current processing position. A project stale for one year will be deemed to not be diligently processed and will be closed out following a 30-day notice.

When you are prepared to submit the requested materials, please contact me to schedule an appointment. Once all material is received, the Planning Division will continue to process your request. If you should have any questions, please contact me at 619.441.1773 or at nalvey@cityofelcajon.us

Sincerely,


Noah Alvey, AICP
Associate Planner

Attachments: CALTRANS comments dated 11-8-2011
CEQA Guidelines Appendix H Environmental Information Form
Referral transmittal

DEPARTMENT OF TRANSPORTATION

DISTRICT 11

PLANNING DIVISION

4050 TAYLOR STREET, MS 240

SAN DIEGO, CA 92110

PHONE (619) 688-6960

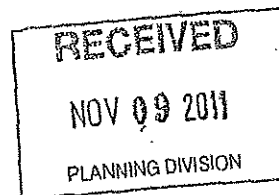
FAX (619) 688-4299

TTY 711

www.dot.ca.gov

*Flex your power!
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November 8, 2011

11-SD-08
PM 14.59

Mr. Manjeet Ranu, Planning Manager
Planning Division
City of El Cajon
200 Civic Center Way
El Cajon, CA 92020

RE: Amendment of Zoning Ordinance #419 and Site Development Plan #1485

Dear Mr. Ranu:

The California Department of Transportation (Caltrans) appreciates the opportunity to have reviewed the Amendment of Zoning Ordinance #419 and Site Development Plan #1485 for the City of El Cajon.

All lighting (including reflected sunlight) within this project should be placed and/or shielded so as not to be hazardous to vehicles traveling on Interstate 8.

Any sign advertising a business not "on premise" will require an Outdoor Advertising Display Permit. Information on outdoor advertising may be obtained by contacting Jerone Edwards of Caltrans at 213-897-4208 or jerone_edwards@dot.ca.gov.

Sincerely,

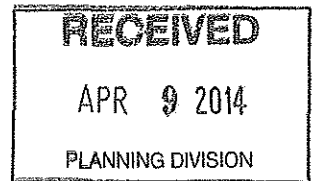
JACOB M. ARMSTRONG, Chief
Development Review Branch

City Staff Use Only

Review Level:	<input type="checkbox"/> Level 2	<input type="checkbox"/> Level 3	<input type="checkbox"/> Level 4	<input checked="" type="checkbox"/> Level 5	<input type="checkbox"/> Level CIP
Legacy Project No.:			Consolidated Project No.:		
Short Project Name:	Amendment of Zoning Code No. 419				
Related Project No.:					
Existing Entitlement Project No.:					
General Plan Designation:	O-S				
Zoning District:	O-S-H				
Existing Land Use:	Vacant				
Project Site Area:	West side of Interstate 8 between Blackthorne Avenue and Hillside Way				
Map Page No.	322/323				
Subject to a Specific Plan?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
Subject to ALUCP?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
Redevelopment Project Area?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
Existing CEQA Document?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
Active Code Compliance Case?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
Pre-application Meeting Held?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes				
Public Works Submittal Materials Provided?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
Preliminary CEQA Determination:	<input type="checkbox"/> Exempt <input type="checkbox"/> Initial Study <input type="checkbox"/> EIR <input type="checkbox"/> Other				
Date Received:	November 1, 2011				
Received By:	Noah Alvey				
City Fee Paid:	\$1,800.00				
County Filing Fee Paid:	\$50.00				
Resource Agency Fee Required:	No				

Referral Checklist

City Referrals	Agency Referrals	<input checked="" type="checkbox"/> AT&T
<input checked="" type="checkbox"/> Building & Fire Safety	<input type="checkbox"/> Airport Land Use Commission	<input checked="" type="checkbox"/> Cox Communications
<input checked="" type="checkbox"/> City Attorney	<input type="checkbox"/> FAA	<input checked="" type="checkbox"/> SDG&E
<input checked="" type="checkbox"/> Community Development Director	<input type="checkbox"/> Gillespie Field	<input type="checkbox"/> Waste Management
<input checked="" type="checkbox"/> Fire Department	<input checked="" type="checkbox"/> Caltrans District 11	<input checked="" type="checkbox"/> Helix Water District
<input checked="" type="checkbox"/> Police	<input type="checkbox"/> SANDAG	<input type="checkbox"/> Padre Dam Water District
<input checked="" type="checkbox"/> Public Works (3 copies)	<input type="checkbox"/> MTS	<input type="checkbox"/> Metropolitan Wastewater
<input type="checkbox"/> Recreation	<input type="checkbox"/> City of La Mesa	<input type="checkbox"/> Cajon Valley School District
<input type="checkbox"/> Redevelopment & Housing	<input type="checkbox"/> City of San Diego	<input checked="" type="checkbox"/> Grossmont School District
Community Referrals	<input type="checkbox"/> City of Santee	<input type="checkbox"/> Santee School District
<input type="checkbox"/>	<input type="checkbox"/> County of San Diego	<input type="checkbox"/> La Mesa - Spring Valley School District
<input type="checkbox"/>	<input type="checkbox"/> APCD	<input type="checkbox"/> Grossmont College
<input type="checkbox"/>	<input type="checkbox"/> County Environmental Health	<input checked="" type="checkbox"/> US Fish & Wildlife
<input type="checkbox"/>	<input type="checkbox"/> LAFCO	<input checked="" type="checkbox"/> Department of Fish & Game
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



April 8, 2014

Mr. Noah Alvey, AICP
City of El Cajon
200 Civic Center Way
El Cajon, CA 92020

RE: Zoning Ordinance Amendment No. 419 and Conditional Use Permit No. 2162
Grossmont Terrace Associates LP

Dear Noah:

We are in receipt of your letter dated March 27, 2014, regarding the above-referenced applications.

As you know, we have been working diligently with City of El Cajon ("City") Staff and the City Manager's office since February 2010, in order to obtain the necessary approvals to site a sign on our property. Since that time, we have attended multiple meetings with the City where we received recommendations for the best way to process our proposed project in a manner that could be acceptable to the City.

We have followed all direction provided by the City, which is why we are surprised by the contents of your latest correspondence. We thought that the City was interested in increasing sales tax revenues and bringing commerce to El Cajon businesses. Is this not the case?

In order to address your latest set of comments, please find below our specific responses, following the order presented in your aforementioned letter:

- **Height:** We were previously proposing the height of the sign to be "35 feet above grade level of the street from which it is to be viewed", per El Cajon Municipal Code ("ECMC")

NATIONAL ENTERPRISES INCORPORATED

5440 Morehouse Drive • Suite 4000 • San Diego, California 92121 • 858/623-9000 • 858/623-9009

Chapter 17.190.270 Sign Overlay Zone and Billboard Signs, which resulted in a total signage height of 41 ½ feet. Per your request, we will now reduce the total height to 35 feet to comply with ECMC Chapter 17.155.120 Building Height.

- **General Plan:** Among many conformance factors discussed in the Project Description within our April 2013 submittal documentation ("2013 Submittal"), the General Plan recognizes that some development can occur within the Open Space Zone ("O-S"). This is exemplified by the fact that the O-S states a "maximum building height of 35 feet", which is the genesis of the City's first comment above.
- **Residential:** As we have shared with City Staff, we relocated the sign in our 2013 Submittal in order to ensure compatibility with the nearby residences. Additionally, our Project Description discussed the limited visibility of the non-illuminated back portion of the sign under Section 2.1 Visual Simulation Analysis and included a profile within Appendix C depicting the top of the sign, which will be well-below any existing structures.
- **Off-Site Signage Ordinance:** As stated in our 2013 Submittal under Section 2.3 Zoning Ordinance Conformance and Amendments, our application proposes to amend the Signage Ordinance to allow "limited application of certain off-premises signs" within the corridor where the sign is proposed, which will be "reasonably spaced" from other signs, as well as "provide certain minimum distances from land uses" near this freeway location.

As you will recall, we have reserved the 35th and final sign allowed within the City and we are pleased to propose that this sign act as a 'Gateway Monument' welcoming visitors to the City, as well as displaying City events, community notices and advertising local businesses.

We will be submitting revised Electronic Message Center Elevations depicting the requested 35-foot height, along with the other associated figures by April 11, 2014. Upon receipt, we respectfully request that our project be docketed for hearing at the City's Planning Commission and we hope that with our revisions, Staff will support us.

Mr. Noah Alvey
Page 3 of 3
April 8, 2014

Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Wick', with a stylized, cursive script.

David Wick
President
National Enterprises, Inc.
(858) 623-9000, ext. 700
dwick@natent.com

cc: Mayor Bill Wells
City Manager, Douglas Williford
Assistant City Manager, Majed Al-Ghafry
Planning Manager, Anthony Shute

17.190.180 Electronic message display signs.

Electronic message display signs, as defined in Section 17.190.050 above, may be authorized as part of any permitted sign display, subject to the same height, sign area, and location limitations of the permitted sign, and subject to the granting of a conditional use permit, which shall be decided by the city council. Electronic message display signs may display only noncommercial or on-site commercial messages. When allowed, such signs may not include any illumination, flashing, or message change that is in motion, or appears to be in motion, or that changes in image or intensity more than once per four (4) seconds. (Ord. 4950 § 3, 2010)

View the [mobile version](#).

17.190.270 Sign overlay zone and billboard signs.

A. Notwithstanding other provisions of the El Cajon Zoning Code, the sign overlay zone is established to provide for the limited application of certain off-premises signs (billboards) in the city; to provide for their reasonable spacing one to another, and to provide certain minimum distances from land uses which might be sensitive to billboard locations. It is the purpose and intent of this Section to set certain criteria to be used in the construction and appearance of such off-premises signs.

The sign overlay zone is to be applied in the city along the following five corridors:

1. El Cajon Boulevard between Chase Avenue and Main Street;
2. Main Street between Marshall Avenue and the northeast city limits;
3. Broadway between Ballantyne Street and Interstate 8;
4. Second Street between the north city limits and Interstate 8;
5. Johnson Avenue between El Cajon Boulevard and Arnele Avenue.

B. Properties in the sign overlay zone may be permitted off-premises signs as either poster panels (not to exceed 300 square feet each) or painted bulletins (not to exceed 720 square feet each, exclusive of embellishments.) The total number of all off-premises signs in the city including poster panels and painted bulletins shall not exceed two and one-half (2.5) for each one (1) square mile of city area. In addition to the above limitations, the total number of all painted bulletins in the city shall not exceed four (4), the total number of poster panels on Broadway shall not exceed four (4), and no painted bulletin structures shall be permitted on Broadway.

C. All new signs constructed under the authority of this chapter shall meet the following standards:

1. Standards of Spacing.
 - a. No new outdoor advertising structure shall be less than 500 feet from any other outdoor advertising structure.
 - b. No new outdoor advertising structure shall be less than 300 feet from any existing "R" zoned property, any existing church, existing park, or existing school.
 - c. All measurements shall be made on the same side of the street upon which such new outdoor advertising structure is located and from which it is permanently to be erected, measured from the nearest edge of the right-of-way.
 - d. No new outdoor advertising structure shall be located within the city of El Cajon central business district redevelopment project as it was created in 1971.
2. Height. New outdoor advertising structures shall not exceed a height of 35 feet above grade level of the street from which it is to be viewed.
3. Standards of Location.
 - a. No new outdoor advertising structure shall be located so as to be viewed primarily by persons traveling on the main-traveled way of a freeway as defined in the Streets and Highways Code.
 - b. No new outdoor advertising structure may be located on the walls or roof of another structure.
4. Standards of Design.

- a. All new outdoor advertising structures shall contain no more than two (2) steel support posts.
 - b. All new outdoor advertising structures shall include covered backs or facings.
 - c. All new outdoor advertising structures shall be designed and built according to the requirements of Chapter 7, Ground Signs, of the Uniform Sign Code as it is in effect on the date of construction approval.
 - d. All new outdoor advertising structures shall be so limited that no part of any sign facing not pertinent to the advertising face shall project outward more than 15 inches from the surface of the facing, e.g., “popout” or “three-dimensional” signs are not allowed.
5. Notwithstanding any other provision of the Zoning Code, the retention of any existing off-premises sign (billboard) shall be permitted despite the space requirements of Section 17.190.270(C)(1), the height requirements of Section 17.190.270(C)(2), and any setback requirement within the underlying zone. However, setback requirements created by specific plan for the purpose of interconnecting access between properties shall be respected.

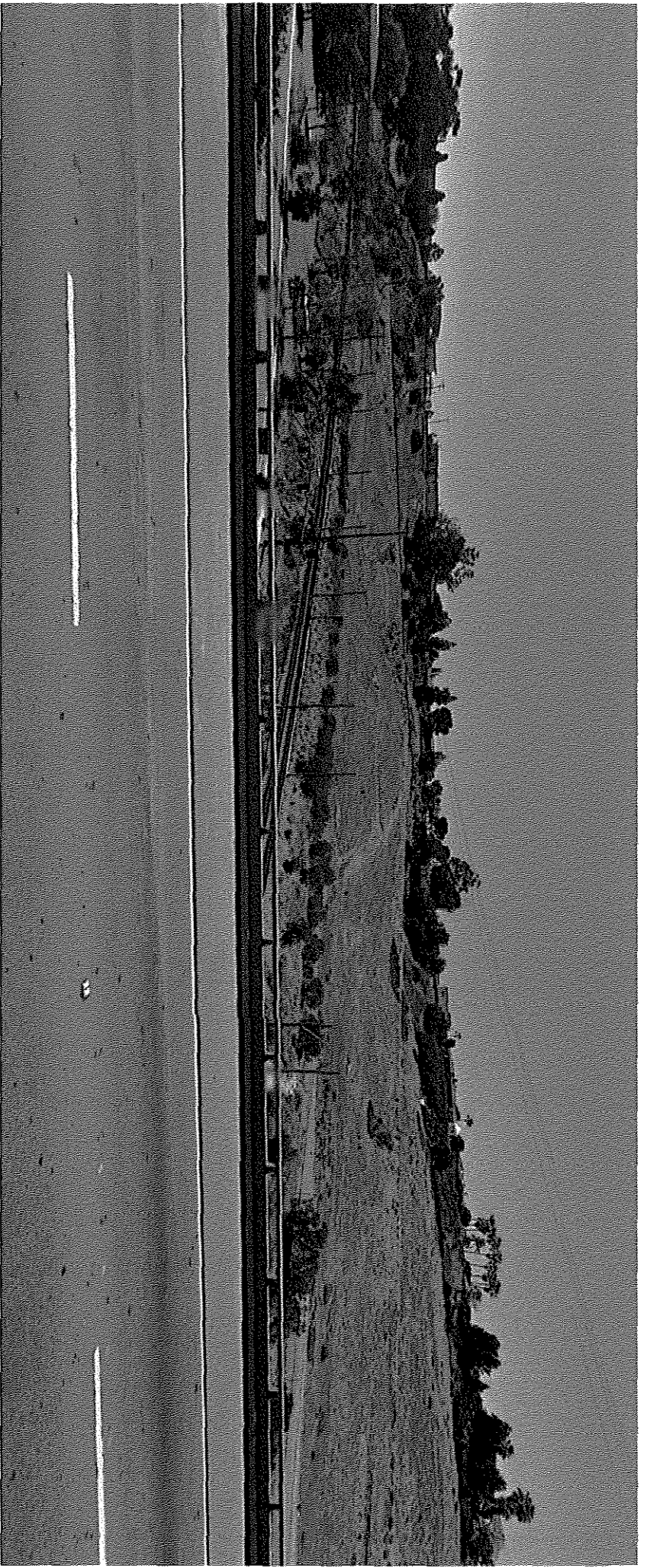
(Ord. 4984 § 4, 2013; Ord. 4950 § 3, 2010)

View the [mobile version](#).

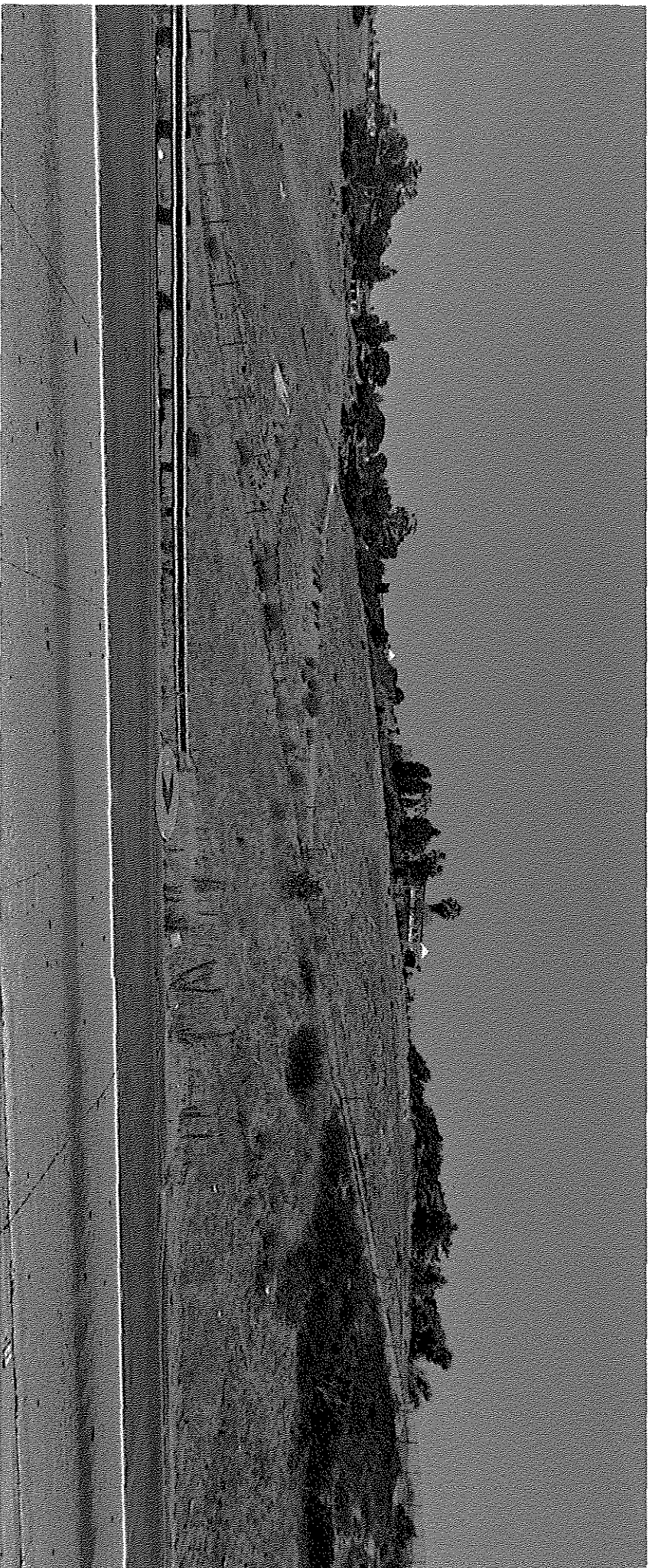


Aerial Image

Proposed Sixth Corridor between Murray Drive and Hillside Way



Freeway View Image
Southerly Section



Freeway View Image

Southerly Mid-Section



Freeway View Image
Northerly Section



Freeway View Image

Proposed Digital Billboard Location

CALIFORNIA DEPARTMENT OF TRANSPORTATION

[Caltrans](#) > [Business](#) > [Traffic Operations](#) > [Outdoor Advertising](#) > **Permit Requirements**

Outdoor Advertising Permit Requirements

The below information is to be used as general guidelines and does not guarantee approval.

STATE OF CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF TRANSPORTATION
Outdoor Advertising Branch

1120 "N" Street, MS-36
P. O. Box 942874
Sacramento, CA 94274-0001

OUTDOOR ADVERTISING PERMIT REQUIREMENTS

Edmund G. Brown Jr. , Governor

In order for an outdoor advertising display application to be considered for a permit adjacent to an Interstate or primary highway the following criterion must be met:

Display Location

Must be outside the right of way of any highway.

Must be outside of any stream, or drainage channel.

There must be an existing business activity within 1000 feet of proposed display location on either side of the highway.

Location of property where display is to be placed must be zoned industrial or commercial.

Must have current property owner consent, in writing, to place the display at desired location.

Must have written permission (building permit) from the local government having jurisdiction where the display is to be located.

Location may not be adjacent to a landscaped section of a freeway. *

Location may not be adjacent to a scenic highway. **

If adjacent to a Bonus*** segment of an Interstate freeway, copy, size, and spacing is more restrictive.

Display

Display must be 500 feet from any other permitted display on same side of any highway that is a freeway.

Display must be 300 feet from any other permitted display on same side of any primary highway that is not a freeway in an unincorporated area.

Display must be 100 feet from any other permitted display on same side of any primary highway that is not a freeway and is within the limits of an incorporated city.

Display must be 500 feet from an interchange; intersection at grade or safety roadside rest if the highway is a freeway and the location is outside the limits of an incorporated city and outside the limits of an urban area.

An electronic changeable message center display must meet the above spacing requirements and be 1000 feet from any other off-premise electronic message center display.

Maximum height for the advertising display area is, 25 feet in height and 60 feet in length, not to exceed an overall maximum of 1200 square feet.

The above information is to be used as general guidelines and does not guarantee approval.

For a permit application contact the Department of Transportation.

*


Landscaped freeway is a section of a freeway which is now, or hereafter may be, improved by the planting at least on one side of the freeway right-of-way of lawns, trees, shrubs, flowers or other ornamental vegetation which shall require reasonable maintenance.


**

Scenic highway is a section of a highway that has been officially designated and maintained scenic pursuant Section 260, 261, 262, and 262.5 of the Streets and Highways Code or as referred to in Section 131(s) of Title 23 of United States Code.

Bonus segment is any portion of an Interstate freeway which is constructed upon any part of right of way, the entire width of which was acquired for right of way subsequent to July 1, 1956, except those segments of the Interstate system that traverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, or other areas where the land use, as of September 21, 1959 was clearly established by State law as industrial or commercial.


Laws and Regulations:

[ODA Act and Regulations](#) 

[Assembly Bill Number 762](#) 

[Assembly Bill Number 1449](#) 

[Senate Bill Number 315](#) 

[Senate Bill Number 1480](#) 

[Obtaining Permit](#)

[Obtaining License](#)


[Permit Requirements](#)

[Political Signs](#)

[The 1958 Bonus Act](#)


Federal State Agreement:

[Bonus Agreement](#) 


[Beautification \(Penalty\) Agreement](#) 

Forms:


[ODA Display Permit Application \(ODA-0002\)](#) 

[Permit Transfer](#) 

[License Application](#) 

[Permit & License Cancellation](#) 

[Business Name & Contact Name Change](#) 

[Certification by Display Owner of Display within Redevelopment Project](#) 

[Certification by Display Owner of Message Center within Redevelopment Project](#) 

[Political Sign Application](#) 

[Payment Schedule For Poster Panel Removal \(EXHIBIT 7-14\)](#) 

Highway Designations:

Classified "Landscaped Freeways" Landscaped Freeway Classification issues are handled by the Landscape Architecture Program, only. See their website at:
<http://www.dot.ca.gov/hq/LandArch/lswy/index.htm>

[Scenic Highways](#)

[Bonus Segments](#)

[Urban Boundaries Maps](#)

Related Links:

[ODA Inventory as of January 1, 2011](#)

[California Public Records Request](#)

[Adopt-A-Highway Program](#)


[California Code of Regulations](#) (Refer to: Title 4-Business Regulations, Division 6-Outdoor Advertising)

[Tourist Oriented Directional Signs \(TODS\)](#)

[Office of Administrative Law Home](#)

[Office of Administrative Hearings](#)

[Right-of-Way Manual - Chapter 7](#) 

[Right-of-Way Manual Change 124](#) 

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BUSINESS AND PROFESSIONS CODE

SECTION 5200-5231

5200. This chapter of the Business and Professions Code constitutes the chapter on advertisers. It may be cited as the Outdoor Advertising Act.

5201. Unless the context otherwise requires, the general provisions set forth in this article govern the construction of this chapter.

5202. "Advertising display" refers to advertising structures and to signs.

5203. "Advertising structure" means a structure of any kind or character erected, used, or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting or other advertisement of any kind whatsoever may be placed, including statuary, for advertising purposes.

"Advertising structure" does not include:

(a) Official notices issued by any court or public body or officer;

(b) Notices posted by any public officer in performance of a public duty or by any person in giving legal notice;

(c) Directional, warning or information structures required by or authorized by law or by federal, state or county authority.

(d) A structure erected near a city or county boundary, which contains the name of such city or county and the names of, or any other information regarding, civic, fraternal or religious organizations located therein.

5204. "Bonus segment" means any segment of an interstate highway which was covered by the Federal Aid Highway Act of 1958 and the Collier-Z'berg Act, namely, any such segment which is constructed upon right-of-way, the entire width of which was acquired subsequent to July 1, 1956.

5205. "Business area" means an area within 1,000 feet, measured in each direction, from the nearest edge of a commercial or industrial building or activity and which is zoned under authority of state law primarily to permit industrial or commercial activities or an unzoned commercial or industrial area.

5206. "Centerline of the highway" means a line equidistant from the

Subject site

Text

A horizontal scale bar with markings at 0, 300, and 600 feet. The bar is divided into three equal segments, each representing 300 feet. The word "Feet" is written at the right end of the bar.

If you challenge the matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Commission at, or prior to, the public hearing. The City of El Cajon encourages the participation of disabled individuals in the services, activities, and programs provided by the City. Individuals with disabilities who require reasonable accommodation in order to participate in the public hearing should contact the Planning Division at 619.441.1742. More information about planning and zoning in El Cajon is available at www.ci-el-cajon.ca.us/dept/comm/planning.html. If you have any questions, or wish any additional information, please contact **ANTHONY SHUTE** at 619.441.1742 or via email at tonvs@cityofelcajon.us and reference "ZC 419" in the subject line.



CITY OF EL CAJON • PLANNING DIVISION • (619) 441-1741

ZONING ORDINANCE AMENDMENT 419

APPLICANT'S NAME: GROSSMONT TERRACE ASSOCIATES LP

ADDRESS: 5440 Morehouse DR STE 4000 SAN DIEGO CA 92121
(Street) (City) (State) (Zip)

TELEPHONE: (650) 623-9000

REQUESTED AMENDMENT (DESCRIBE):

AMEND SECTION 17.190.270.A to include Section 6 as follows:
6. West side of Interstate 8, between Blackthorne Ave AND
HILLSIDE Way

Amend Section 17.190.270.C.3.a to read as follows:
a. No new outdoor advertising structure shall be located so as to
be viewed primarily by persons traveling on the main-traveled way
of a freeway (as defined in the Streets and Highway Code), except
a single billboard approved under Section 17.190.270.A.6

[Signature]
Applicant's Signature

10/20/11
Date

ADDITIONAL REQUIREMENTS ON BACK

City Use Only:

Date Filed: 11-1-2011

Received by: NALVEY

Fee Paid: \$ 1800.00

DISCLOSURE STATEMENT



APPLICANT'S STATEMENT OF DISCLOSURE OF CERTAIN OWNERSHIP INTERESTS ON ALL APPLICATIONS WHICH WILL REQUIRE DISCRETIONARY ACTION ON THE PART OF THE CITY COUNCIL, PLANNING COMMISSION AND ALL OFFICIAL BODIES.

The following information must be disclosed:

1. List the names and addresses of all persons having a financial interest in the application.
Grossmont Terrace Associates, L.P., A California Limited Partnership
D & D Landholdings, General Partner of Grossmont Terraces, L.P.
American International Racing, Inc., General Partner of D & D Landholdings
5440 Morehouse Drive, #4000 San Diego, CA 92121

List the names and addresses of all persons having any ownership interest in the property involved.

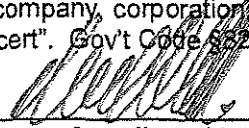
Katayoun Yazdani De La Fuente	5440 Morehouse Dr., #4000 San Diego, CA 92121
Kassandra De La Fuente	(same)
Kamila De La Fuente	(same)
Roque De La Fuente II	(same)

2. If any person identified pursuant to (1) above is a corporation or partnership, list the names and addresses of all individuals owning more than 10% of the shares in the corporation or owning any partnership interest in the partnership.
- | | |
|--------------------------------|---|
| Katayoun Yazadani De La Fuente | 5440 Morehouse Dr., #4000 San Diego, CA 92121 |
| Kassandra De La Fuente | (same) |
| Kamila De La Fuente | (same) |
| Roque De La Fuente II | (same) |

3. If any person identified pursuant to (1) above is a trust, list the name and address of any person serving as trustee or beneficiary or trustor of the trust.
- David Wick, Katayoun Yazdani De La Fuente, & Katayoun De La Fuente Yazadani,
trustees of the Kassandra De La Fuente Yazdani 2007 Irrevocable Trust
David Wick, Katayoun Yazadani De La Fuente, & Katayoun De La Fuente Yazdani,
trustees of the Kamila De La Fuente Yazadani 2007 Irrevocable Trust

4. Have you or your agents transacted more than \$250 worth of business with any member of City staff, Boards, Commissions, Committees and Council within the past twelve months or \$500 with the spouse of any such person? Yes _____ No X
- If yes, please indicate person(s), dates, and amounts of such transactions or gifts.

"Person" is defined as "any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert". Gov't Code § 2047.


Signature of applicant/date

David Wick, Agent
Print or type name of applicant

NOTE: Attach appropriate names on additional pages as necessary.

CITY OF EL CAJON
PLANNING DIVISION
(619) 441-1741

CONDITIONAL USE PERMIT

APPLICATION NO. 2162

Applicant's Name: Grossmont Terrace Associates, L.P.

Address: 5440 Morehouse Drive, Suite 4000 San Diego Ca. 92121
Street No. City State Zip
Phone: (858) 623-9000 x 700

Property Owner's Name: Grossmont Terrace Associates, L.P.

Address: 5440 Morehouse Drive, Suite 4000 San Diego Ca. 92121
Street No. City State Zip
Phone: (858) 623-9000 x 700

PROPERTY OWNER'S SIGNATURE: [Signature], Agent

Subject property is located on the Westerly side of Interstate 8 Freeway
between Blackthorn Avenue and Hillside Way, and
addressed as Vacant and

Assessor's Parcel No.: 492-650-01

Existing Zoning: Open Space (O-S-H)

General Plan Designation: Open Space (O-S-H)

REQUEST: To construct a 12' x 24' Billboard Sign, Metal Pole mounted 35' maximum height, with an electronic display.

Contact Person (if other than applicant): ROBERT FUREY, REC CONSULTANTS

Address: 2442 2ND AVENUE SAN DIEGO CA 92101
Street No. City State Zip

Phone: (619) 232-9200 License No.:
rob@recenv.com

NOTE: ADDITIONAL REQUIREMENTS ON BACK

City Use Only:

Date Filed: 10-12-2011
Within SP 182? ☐ Yes ☒ No

Received by: NALVEY
If yes, Agenda Date: _____

Fee Paid: \$ 3600.00
+ 1400.00
TOTAL: 5000.00

DISCLOSURE STATEMENT



APPLICANT'S STATEMENT OF DISCLOSURE OF CERTAIN OWNERSHIP INTERESTS ON ALL APPLICATIONS WHICH WILL REQUIRE DISCRETIONARY ACTION ON THE PART OF THE CITY COUNCIL, PLANNING COMMISSION AND ALL OFFICIAL BODIES.

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1. List the names and addresses of all persons having a financial interest in the application.
Grossmont Terrace Associates, L.P., A California Limited Partnership
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American International Racing, Inc., General Partner of D & D Landholdings
5440 Morehouse Drive, #4000 San Diego, CA 92121

List the names and addresses of all persons having any ownership interest in the property involved.

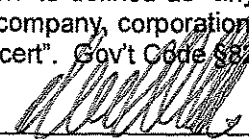
Katayoun Yazdani De La Fuente	5440 Morehouse Dr., #4000 San Diego, CA 92121
Kassandra De La Fuente	(same)
Kamila De La Fuente	(same)
Roque De La Fuente II	(same)

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Katayoun Yazadani De La Fuente 5440 Morehouse Dr., #4000 San Diego, CA 92121
Kassandra De La Fuente (same)
Kamila De La Fuente (same)
Roque De La Fuente II (same)

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David Wick, Katayoun Yazdani De La Fuente, & Katayoun De La Fuente Yazadani,
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David Wick, Katayoun Yazadani De La Fuente, & Katayoun De La Fuente Yazdani,
trustees of the Kamila De La Fuente Yazadani 2007 Irrevocable Trust

4. Have you or your agents transacted more than \$250 worth of business with any member of City staff, Boards, Commissions, Committees and Council within the past twelve months or \$500 with the spouse of any such person? Yes ☐ No ☒
If yes, please indicate person(s), dates, and amounts of such transactions or gifts.

"Person" is defined as "any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert". Gov't Code §82047.



Signature of applicant/date

David Wick, Agent

Print or type name of applicant

NOTE: Attach appropriate names on additional pages as necessary.



Community Development Department
Planning Division
PLANNING COMMISSION AGENDA REPORT

Agenda Item:	4
Project Name:	Amendment of Specific Plan No. 337
Request:	Delete a specific plan for joint-use parking
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	CONTINUE TO A DATE UNCERTAIN
Project Number(s):	Specific Plan No. 337
Location:	West side of Front Street at the western terminus of Palm Avenue
Applicant:	American Ice Inc., (Hani Toma); 619.466.0000; ice966@yahoo.com
Project Planner:	Eric Craig; 619.441.1782; ecraig@cityofelcajon.us
City Council Hearing Required?	Yes Noticed for July 22, 2014
Recommended Actions:	<ol style="list-style-type: none"> 1. Conduct the public hearing; and 2. Receive public testimony; and 3. Continue the public hearing to a date uncertain

STAFF RECOMMENDATION

Staff requests that the Planning Commission continue the public hearing for this project. The existing Specific Plan No. 337 establishes joint use parking between two adjacent industrial properties. The applicant is currently processing a site development plan and a lot line adjustment for a new manufacturing building. However, recent plan changes have delayed administrative approval. Once approved, those projects would redevelop and consolidate both properties, thus making Specific Plan No. 337 obsolete. However, until the site development plan and lot line adjustment have been approved and finalized, Specific Plan No. 337 remains a valid instrument for providing shared parking between the two properties.

Agenda Item:	5
Project Name:	Camp Run-A-Mutt
Request:	Establish a kennel at a developed site
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	APPROVE
Project Number(s):	Conditional Use Permit No. 2204
Location:	412 Front Street
Applicant:	Molly Krumweide; 858.361.6294
Project Planner:	Eric Craig; 619.441.1782; ecraig@cityofelcajon.us
City Council Hearing Required?	No
Recommended Actions:	<ol style="list-style-type: none"> 1. Conduct the public hearing; and 2. MOVE to adopt the next resolution in order approving CUP No. 2204, subject to conditions

PROJECT DESCRIPTION

The project proposes the establishment of a kennel (dog day care) in an existing building. The kennel would also include a fenced outdoor play area, grooming services, obedience training, and the accessory sale of pet supplies. The facility would operate 24 hours per day, but would only be open to clients during normal business hours. No more than three staff members would be working at the site simultaneously.

BACKGROUND

General Plan:	Light Industrial (LI)
Specific Plan:	None
Zone:	Manufacturing (M)
Other City Plan(s):	Redevelopment Plan
Regional and State Plan(s):	Gillespie Field Airport Land Use Compatibility Plan (ALUCP)

Project Site & Constraints

The .87-acre subject property is located on the west side of Front Street at the western terminus of Palm Avenue. It is bounded on the west by Interstate 8. The subject property is currently developed with a 15,188 square foot metal building, which is partitioned to form two separate suites. The larger of the two suites (approximately 8,668 square feet) would be used for the proposed kennel, and the smaller suite (approximately 6,500 square feet) is occupied by a powder coating business.

Surrounding Context

Properties surrounding the subject property are developed and zoned as follows:

Direction	Zones	Land Uses
North	M	Vacant building
South	M	Cabinet contractor
East	M	Towing and vehicle impound located on the east side of Front Street
West	Not Applicable	Interstate 8

General Plan

The subject property is in the LI designation of the General Plan, which is intended to accommodate warehousing, light manufacturing, storage, and associated uses. Goal 4 of the General Plan states that "Quality industrial areas shall be established and maintained." Objective 4-3 states that "The Main-Marshall-Johnson Industrial Area will be maintained as the City's secondary industrial area." Moreover, one of the subordinate policies (Policy 4-3.3) states that "New directions in land use will be accepted provided they remain basically compatible with industrial uses."

Municipal Code

El Cajon Municipal Code (ECMC) Section 17.150.170 indicates that kennels are allowed subject to approval of a CUP in the M zone. The purpose of a CUP is to ensure compatibility among existing and planned land uses, to protect and promote public health, and to ensure that the project serves public convenience and necessity. A detailed discussion of applicable ECMC requirements is included below in the section of this report titled "Discussion."

Redevelopment Plan

The goals of the Redevelopment Project Area and Redevelopment Plan are to remove physical and economic blighting conditions and to ensure the continued economic viability of the commercial, industrial, and retail uses within the Project Area. The Plan allows for the financing of improvements within the Project Area in order to remove physical and economic blight and to provide affordable housing. This plan was last amended in 1987. However, the Redevelopment Agency of the City was dissolved on February 1, 2012, per Assembly Bill 1X 26 (AB 26). The City of El Cajon, serving as the successor agency, has assumed the former Agency's assets, rights, and obligations under California Community Redevelopment Law, subject to some limitations, and is winding down the former Agency's affairs. Although a plan and project area exists, there are currently no funding mechanisms in place to facilitate and expedite implementation of the Plan goals.

Gillespie Field ALUCP

The Gillespie Field ALUCP is a regional plan that governs the subject site and the surrounding area. The ALUCP is a policy document designed to implement the primary objectives of the State Aeronautics Act and the California Airport Land Use Planning Handbook by promoting compatibility between Gillespie Field and the land uses surrounding it. This plan provides compatibility policies and criteria applicable to the City of El Cajon and other affected local agencies in the design of new development.

Although the project site is located within the Airport Influence Area of the ALUCP, it is not located within Review Area 1 of the plan. Rather, it is located in Review Area 2. The only applicable requirements of the ALUCP for non-residential development in Review Area 2 involve potential airspace encroachments. Since, the subject proposal does not involve new construction, or anything else that would constitute an airspace encroachment, the project conforms with the policies of the ALUCP.

DISCUSSION

The subject proposal would establish a kennel inside an existing industrial building, with a fenced outdoor play area located behind the building. The outdoor play area would include a synthetic turf lawn and wading pool for the enjoyment of the dogs. In addition to boarding and interacting with the dogs, the facility would offer grooming services, dog training, and the incidental sale of pet supplies.

The proposed facility would be open to clients from 6:30 AM to 7:00 PM on Monday through Friday. On Saturday, the facility would be open from 8:00 AM to 5:00 PM. Sundays, the facility would be open to clients by appointment only. An employee would be present at night to watch and care for the dogs. During normal daytime operations, there would be two to three employees present at the site.

Parking Requirements

The project site plan indicates ten parking spaces for the 15,188 square foot industrial building. Three parking spaces are available for the powder coating business on the south side of the building, and seven spaces would be available on the north side of the building for the proposed kennel. There is no specific parking requirement for a kennel. Therefore, the Planning Commission may determine an appropriate parking requirement based upon the nature of the proposed use and the parking requirements for similar uses. The ECMC requires 1 space per each 1,000 square feet for warehouses, 1 space per each 600 square feet for manufacturing uses, and 1 space per each 300 square feet for service uses.

The other tenant in the subject building is a powder coating business. Powder coating is a form of industrial coating applied to metal to form a durable, rust-proof finish. The North American Industry Classification System (NAICS) classifies powder coating as a service use. A strict interpretation of the Municipal Code would result in a parking

requirement of 22 spaces for the powder coating business. However, staff visited the site and spoke to the owner of the powder coating business. The business has three employees and the primary clients are manufacturers. Therefore, there is very little public contact, and the use is a business to business service. As such, the demand for parking at the powder coating business is minimal.

The applicant proposes to occupy 8,686 square feet of the existing building, with the majority (approximately 5,975 sq. ft.) dedicated to boarding, training, and entertaining dogs, as well as incidental storage. The remainder of the space would be used as a reception area, accessory retail sales area, business office, restroom, and dog grooming area. The applicant has informed staff that the maximum number of employees present at any one time would be three. That would leave four spaces available on-site for customers to drop off and pick up their dogs. Finally, although it can't be counted toward satisfying the on-site parking requirements of the Zoning Code, the Commission may wish to consider that there is ample curbside parking available along Front Street.

Finally, the Zoning Code requires the provision of a bicycle rack to accommodate cyclists. No bicycle rack is depicted on the proposed site plan, but there is sufficient space to provide one. Therefore, staff has included a condition of approval in the attached resolution requiring a bicycle rack.

Access and Circulation

Vehicular access to the parking area for the proposed kennel is provided on the north side of the lot via a 30 foot wide driveway leading from Front Street. However, only half of the driveway is located on the subject property, with the northern 15 feet being located on the adjacent property. The driveway is a vacated section of Palm Avenue, which used to continue to the west prior to the construction of Interstate 8. Historically, both properties have used the driveway without any formal agreement. However, the Zoning Code requires a width of 24 feet for a two-way driveway. Therefore, the subject property and the property to the north must continue to share the driveway, and that arrangement must be formalized. For this reason, staff has included a condition of approval in the attached resolution requiring the recordation of a joint use driveway agreement between the two properties.

Waste Containment

The applicant proposes to keep the trash and recycling containers inside the existing metal industrial building. The Zoning Code permits the indoor storage of trash and recycling containers, as long as the containers are accessible to the refuse collector. Considering the open floor plan, the presence of roll-up doors in the building, and round-the clock nature of the proposed business, the indoor trash and recycling containers would be accessible to the waste collector.

Outdoor Play Area

The proposal includes an outdoor play area and splash pool for dogs. The Zoning Code permits the conduct of outdoor uses in the M zone, subject to screening requirements where appropriate. The proposed outdoor play area is located behind the building and would not be visible from the public right-of-way; therefore, no additional screening measures are needed. The Storm Water Division has included requirements for the implementation of best management practices (BMPs) in the comments attached to the draft resolution.

Landscaping

There is currently no landscaping at the site. However, the applicant has proposed to install approximately 4,850 square feet of new landscaping, which will require approval of a landscape documentation package, pursuant to the requirements of Zoning Code Chapter 17.195 (Water Efficient Landscaping). The landscaping requirements of Chapter 17.195 call for a combination of drought-tolerant trees, shrubs, and ground cover. The landscape documentation package is included as a required condition of approval in the attached resolution. It will establish a water budget for the landscape project, and must be prepared by a licensed landscape architect, or licensed landscape contractor.

FINDINGS

A. The proposed project is consistent with applicable goals, policies, and programs of the General Plan.

The LI designation is intended to accommodate warehousing, light manufacturing, storage, and associated uses. Policy 4-3.3 states that in the Main-Marshall-Johnson industrial area "New directions in land use will be accepted provided they remain basically compatible with industrial uses." The proposed kennel would be compatible with surrounding industrial uses because the facility would not generate significant demand for parking or significant levels of additional traffic impacting surrounding uses. Moreover, dogs are not considered to be sensitive receptors that would be adversely affected by manufacturing activities, and manufacturing activities would not be adversely affected by barking dogs.

B. The proposed project is consistent with all applicable use and development standards.

The metal industrial building has roll-up doors and staff would be present round the clock to provide access for the solid waste collector to the indoor trash and recycling area. There is sufficient parking because the other use at the site is primarily a business to business service and the proposed kennel would have a small staff present during normal business hours. Conditions of approval are included to ensure the provision of a bicycle rack, and the recordation of a joint-use driveway agreement.

- C. *The proposed project will be operated in a manner that is compatible with existing and planned land uses in the vicinity of the proposed use.*

The project site is located in an industrial area and is adjacent to a freeway. There are no sensitive land uses in the vicinity of the project that would be adversely affected by barking dogs. Additionally, the ongoing conditions of approval will require that the facility is operated in conformance with the operational and maintenance standards contained in the El Cajon Municipal Code.

- D. *The proposed project will not be detrimental to the public health, safety, and general welfare, including but not limited to matters of noise, smoke, dust, fumes, vibration, odors, and hazards or excessive concentrations of traffic.*

Such impacts are not anticipated with the normal conduct of a kennel in an industrial zone. A limited amount of noise and odor is to be expected in association with the kennel but there are no sensitive land uses in the project vicinity. Additionally, the City has performance standards for such impacts, which are addressed through Code Compliance actions, if necessary.

- E. *The proposed project is in the best interest of public convenience and necessity.*

The project will redevelop the existing site with new landscaping and will establish a viable use in a large building suite that is currently vacant. The proposed facility will provide a convenient and necessary dog care service to the general public, and is therefore, in the best interest of public convenience and necessity.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) according to Section 15303, Class 03 (Conversion of Small Structures) of the CEQA Guidelines. Section 15303 provides an exemption for the conversion of structures not involving significant amounts of hazardous substances from one use to another, in urban environments where all necessary public services are provided, and where the surrounding area is not environmentally sensitive. None of the exceptions listed under CEQA Guidelines Section 15300.2 exist.

PUBLIC NOTICE & INPUT

Notice of this public hearing was mailed on June 19, 2014, to all property owners within 300 feet of the project site and to anyone who requested such notice in writing, in compliance with Government Code Sections 65090, 65091, and 65092, as applicable. Additionally, as a public service, the notice was posted in the kiosk at City Hall and on the City's website under "Public Hearings/Public Notices." The notice was also mailed to the two public libraries in the City of El Cajon, located at 201 East Douglas Avenue and 576 Garfield Avenue.

ATTACHMENTS

1. Proposed Resolution approving CUP No. 2204
 - Exhibit A: Standard Conditions of Development
 - Exhibit B: Public Works Dept. comments dated 04-03-14
 - Exhibit C: Building & Fire Safety Division, Building comments dated 03-27-14
 - Exhibit D: Building & Fire Safety Division, Fire comments dated 03-27-13
 - Exhibit E: Helix Water District Comments dated 04-03-14
2. Aerial Photograph of Subject Site
3. Public Hearing Notice
4. Application & Disclosure statement
5. Project Description
6. Reduced plans
7. Full-sized plans (*Commissioner's Binders*)

PROPOSED PLANNING COMMISSION RESOLUTION

A RESOLUTION APPROVING CONDITIONAL USE PERMIT NO. 2204 TO ESTABLISH A KENNEL WITH AN OUTDOOR PLAY AREA IN AN EXISTING BUILDING IN THE MANUFACTURING (M) ZONE, APN: 487-640-18, GENERAL PLAN DESIGNATION: LIGHT INDUSTRIAL (LI)

WHEREAS, the El Cajon Planning Commission duly advertised and held a public hearing on July 1, 2014, to consider Conditional Use Permit (CUP) No. 2204, as submitted by Molly Krumweide, requesting to conduct a kennel with an outdoor play area in an existing building in the M zone, on property located on the west side of Front Street at the western terminus of Palm Avenue, and addressed 412 Front Street; and

WHEREAS, the following findings of fact have been made in regard to said conditional use permit:

- A. The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) according to Section 15303, Class 3 (Conversion of Small Structures) of the CEQA Guidelines. Section 15303 provides an exemption for the conversion of structures not involving significant amounts of hazardous substances from one use to another, in urban environments where all necessary public services are provided, and where the surrounding area is not environmentally sensitive. None of the exceptions listed under CEQA Guidelines Section 15300.2 exist;
- B. The proposed project is consistent with applicable goals, policies, and programs of the General Plan, because the LI designation is intended to accommodate warehousing, light manufacturing, storage, and associated uses. Policy 4-3.3 states that in the Main-Marshall-Johnson industrial area "New directions in land use will be accepted provided they remain basically compatible with industrial uses." The proposed kennel would be compatible with surrounding industrial uses because the facility would not generate significant demand for parking or significant levels of additional traffic impacting surrounding uses. Moreover, dogs are not considered to be sensitive receptors that would be adversely affected by manufacturing activities, and manufacturing activities would not be adversely affected by barking dogs;
- C. The proposed project is consistent with all applicable use and development standards because the metal industrial building has roll-up doors and staff would be present round the clock to provide access for the solid waste collector to the indoor trash and recycling area. There is sufficient parking because the other use at the site is primarily a business to business service and the proposed kennel would have a small staff present during normal business hours. Conditions of approval are

included to ensure the provision of a bicycle rack, and the recordation of a joint-use driveway agreement;

- D. The proposed project will be operated in a manner that is compatible with existing and planned land uses in the vicinity of the proposed use because the project site is located in an industrial area and is adjacent to a freeway. There are no sensitive land uses in the vicinity of the project that would be adversely affected by barking dogs. Additionally, the ongoing conditions of approval will require that the facility is operated in conformance with the operational and maintenance standards contained in the El Cajon Municipal Code;
- E. The proposed project will not be detrimental to the public health, safety, and general welfare, including but not limited to matters of noise, smoke, dust, fumes, vibration, odors, and hazards or excessive concentrations of traffic because such impacts are not anticipated with the normal conduct of a kennel in an industrial zone. A limited amount of noise and odor is to be expected in association with the kennel but there are no sensitive land uses in the project vicinity. Additionally, the City has performance standards for such impacts, which are addressed through Code Compliance actions, if necessary;
- F. The project is in the best interest of public convenience and necessity because it will redevelop the existing site with new landscaping and will establish a viable use in a large building suite that is currently vacant. The proposed facility will provide a convenient and necessary dog care service to the general public, and is therefore, in the best interest of public convenience and necessity.

NOW, THEREFORE, BE IT RESOLVED that based upon said findings of fact, the El Cajon Planning Commission hereby APPROVES Conditional Use Permit No. 2204 for the conduct of a kennel with an outdoor play area in an existing building in the M zone, on the above described property subject to the following conditions:

- 1. Prior to conducting a kennel at the site, the applicant shall submit a revised, one-page mylar site plan to the Planning Division that includes the applicable notes from the Public Works Department as indicated in the attached memo labeled "Exhibit B" and dated 04-03-14. Also, correct the zone designation on the site plan to indicate the M zone, and depict a bicycle rack. Finally, add the following notes, under the heading "Ongoing Conditions of Approval:"
 - a. No more than three employee vehicles shall park at the site during the hours the facility is open to the public. The remaining parking stalls shall be reserved for the use of customers.
 - b. Trash and recycling containers shall be kept inside the building. They shall not be left outdoors unless a covered trash enclosure is constructed at the site pursuant to the requirements of the El Cajon Municipal Code.
 - c. The landscaping shall be maintained in accordance with City policies.

Proposed Planning Commission Resolution

2. The applicant shall comply with the applicable Standard Conditions of Development as noted on the attached memo labeled "Exhibit A."
3. The applicant shall comply with the requirements of the Public Works Department as noted in the attached memo labeled "Exhibit B" and dated 04-03-14.
4. The applicant shall comply with the requirements of the Building and Fire Safety Division as noted in the attached memos labeled "Exhibit C" and "Exhibit D" both of which are dated 03-27-14.
5. The applicant shall comply with the requirements of the Helix Water District as noted in the attached memo labeled "Exhibit E" and dated 04-03-14.
6. Prior to the conduct of a kennel at the site, the applicant shall obtain approval of a Landscape Documentation Package and Certificate of Completion, as described in Chapter 17.195 of the El Cajon Municipal Code. This condition requires the landscaping and irrigation to be installed prior to the conduct of the kennel.
7. Prior to the conduct of a kennel at the site, a joint use driveway agreement shall be recorded between the subject property and the property to the north.
8. The Planning Commission may at any time during the life of this use permit, after holding a properly noticed public hearing, at which time the applicant may appear and object under applicable law to any potential revocation or modification of the conditions of approval, and after considering testimony as to the operation of the approved use, revoke the permit, or modify the permit with any additional conditions as it deems necessary, to ensure that the approved use continues to be compatible with surrounding properties and continues to be operated in a manner that is in the best interest of public convenience and necessity and will not be contrary to the public health, safety or welfare.
9. The existence of this conditional use permit shall be recorded with the County Recorder.
10. The proposed use shall be developed and operated in substantial conformance as presented in the Planning Commission staff report titled Conditional Use Permit No. 2204, dated July 1, 2014, except as modified by this resolution. Operation of the use in violation of the conditions of approval is grounds for revocation.
11. If this permit is not legally exercised within two years of project approval, and a written request for an extension of time has not been received by the Planning Secretary within the same time period, and subsequently approved, this conditional use permit shall be considered null and void per El Cajon Zoning Code Section 17.35.010.

Proposed Planning Commission Resolution

PASSED AND ADOPTED by the El Cajon Planning Commission at a regular meeting held July 1, 2014, by the following vote:

AYES:

NOES:

ABSENT:

Paul CIRCO, Chairperson

ATTEST:

Anthony Shute, AICP, Secretary

STANDARD CONDITIONS OF DEVELOPMENT

(Planning Commission Resolution No. 10649)

All projects approved by the Planning Commission shall comply with the following standard conditions, unless specifically exempted by the Commission or Council.

A. GENERAL

1. The applicant shall comply with the school impact fee requirements of the Grossmont Union High School Districts, Cajon Valley, and La Mesa-Spring Valley School Districts when applicable.
2. For projects that require a grading permit and excavate more than three feet into native soils, and prior to the issuance of a Building Permit, the applicant shall submit a letter to the Planning Manager agreeing to suspend construction in the vicinity of a cultural resource encountered during development of the site, and leave the resource in place until a qualified archaeologist can examine them and determine appropriate mitigation measures. All fees and expenses for the retaining of a qualified archaeologist shall be paid by the applicant and shall not be at City expense. The applicant shall agree to comply with mitigation measures recommended by the archaeologist and approved by the Planning Manager.

B. PROJECT SITE

1. The applicant shall comply with all regulations and code requirements of the Building and Fire Safety Division, Public Works Department, the Police Department and any other agencies requiring review of the project. If required, these agencies shall be supplied copies of the final building and site plans.
2. All landscape areas that adjoin parking spaces, driveways, vehicular circulation areas, or the public right-of-way shall be protected from encroachment by vehicles in a manner that also complies with state storm water regulations, which require storm water to be discharged to landscaped areas in order to reduce or eliminate the discharge of pollutants. The method of protection shall be determined by the Deputy Director of Public Works. The approved method may include six-inch high curb segments, wheel stops, decorative rock bands, or other methods determined to be acceptable by the Deputy Director of Public Works.
3. Environmental and engineering studies, as directed by the Planning Manager, must be complete and on file prior to commencement to plan checking. Developer shall install off-street improvements determined necessary by the City Engineer to provide safe traffic conditions.
4. Developer shall underground existing and required on and off-site utilities as specified in Chapter 15 of the Municipal Code, or as deemed necessary by the City Engineer.

5. All development projects shall comply with Title 12 (Streets and Sidewalks), and Title 13 (Water, Sewers, Grading, Erosion and Storm Water) of the El Cajon Municipal Code as determined by the City Engineer.
6. All retaining walls visible from public right-of-ways shall include decorative elements, subject to approval by the Planning Division.
7. The design of any masonry sound wall shall be approved by the Planning Division. Such walls shall match or be architecturally compatible with existing sound walls of neighboring projects along that street. All masonry walls shall have a trim cap.

C. ARCHITECTURE

1. All exterior materials and colors used in this project shall be in conformance with the materials and color samples approved as a part of this application.
2. All mechanical, and/or roof mounted equipment shall be architecturally screened from public view.
3. All trash/recycling enclosures shall be constructed of masonry material with view-obscuring doors. The enclosure shall include materials and colors consistent with the primary building and meet appropriate Storm Water Division requirements. Required roofs shall match elements of the primary building and shall include a fascia trim.
4. All vents, gutters, downspouts, flashing, electrical conduits, etc., shall be painted or finished to match the color of the adjacent surface, unless otherwise directed by the Planning Commission.
5. Soffits and other architectural elements visible from view but not detailed on the plans shall be finished in a manner that is architecturally compatible with the exterior of the building.
6. Finish quality of approved exterior design elements shall be subject to approval of the Planning Division prior to issuance of Certificate of Occupancy.
7. Any decorative elements around the base of a building (stone veneer or tile, etc.) shall be finished with a decorative cap or trim piece.

D. LANDSCAPING

1. Specific landscaping for screening shall have an appearance of mature growth subject to a field check and approval by the Planning Division prior to the issuance of a Certificate of Occupancy.
2. All existing trees to remain shall be shown on the grading plan.

3. The area under the drip line of all existing trees that are to remain shall be protected during construction by a fence or other acceptable means. Grading shall be restricted under the trees to prevent soil compaction and to prevent root damage.
4. All sloped banks greater than three (3) feet in vertical height and 2:1 or greater slope shall be landscaped and irrigated for erosion control and to soften their appearance as follows: deep-rooting grasses, ground cover and shrubs. Shrubbery shall be a minimum one-gallon size and shall have a minimum separation of one (1) times the mature width and on slopes of 10 feet or more in vertical height shall include, a minimum of one (1) tree for every 600 square feet of the total slope area. Trees shall be a minimum five-gallon size and shall be spaced a minimum of 30 feet apart. Trees and shrubs shall be planted in staggered clusters to soften and vary the slope plane. Slope planting required by this condition shall include a permanent irrigation system to be installed by the developer prior to occupancy.
5. All landscaping shall be maintained in good growing condition. Such maintenance shall include, where appropriate, pruning, mowing, weeding, cleaning of debris and trash, fertilizing and regular watering. Whenever necessary, dead or dying plants shall be replaced with other plant materials to ensure continued compliance with applicable landscaping requirements. Required irrigation systems shall be fully maintained in sound operating condition with heads periodically cleaned and replaced when missing to ensure continued regular watering of landscape areas, and health and vitality of landscape materials.

E. MISCELLANEOUS

1. Final occupancy shall not be granted until all construction and landscaping is complete in accordance with all approved plans. Under certain circumstances, a temporary occupancy may be granted prior to final inspection.
2. It is the responsibility of the applicant or developer to check with each agency for requirements that may pertain to their project.
3. All signs shall be submitted to the Planning Division for review and approval per Section 17.190.060 of the El Cajon Municipal Code.
4. The site shall be maintained in a neat and clean manner free of trash and debris.
5. Certain outdoor equipment, such as satellite dishes and back-flow prevention devices shall be visually screened or painted to match surroundings upon installation subject to the approval of the Planning Division. Screening devices shall be shown on construction and/or landscape plans.
6. Water backflow protection for new residential and modified residential projects shall include a protection device at the fire service point of connection, or an internal passive purge system. Annual testing is required for protection devices. Contact Helix Water District at 619.466.0585 for additional information.

7. All exterior light fixtures shall be shown on a lighting plan and made part of construction drawings subject to staff review and approval. All lights attached to buildings shall provide a soft "wash" of light against the wall. All building, parking, and yard lights shall conform to the City General Development Standards 17.130.150 and Performance Standards 17.115.130 (G) and shall complement the site and building architecture.
8. The removal of trees shall not take place during the bird-nesting (breeding) season (February 1 through August 15), unless written authorization from a qualified biologist to proceed with tree removal is submitted to the Planning Division. If clearing is proposed to take place during the breeding season, a survey shall be conducted by the qualified biologist to determine if nests are present, or nest building or other breeding/nesting behavior is occurring. If nesting is not occurring (which includes nest building or other breeding/nesting behavior) within this area, clearing shall be allowed to proceed. If nesting is occurring (or breeding/nesting behavior is occurring), tree removal shall be postponed until a qualified biologist determines that all nesting (or breeding/nesting behavior) has ceased or until after August 15.
9. The placement of bollards within parking areas and driveways shall only be permitted when no other alternative design (curbs or landscaping) is feasible and accepted by the Building Official.

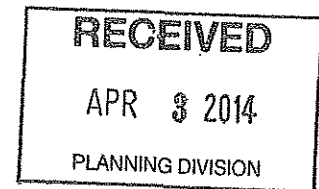
Street Name	Right-of-Way		Curb		Street Class	General Plan Class
	Exist	Prop	Exist	Prop		
FRONT STREET	60'	60'	40'	40'	INDUSTRIAL CUL-DE-SAC	LIGHT INDUSTRIAL / SDA 11

TO: PLANNING DIVISION

DATE: APRIL 3, 2014

FROM: DEPARTMENT OF PUBLIC WORKS

RE: CONDITIONAL USE PERMIT 2204



LOCATION: 412 FRONT STREET

PUBLIC WORKS REQUIREMENTS AND COMMENTS WITH THIS ACTION:

A. STORM WATER REQUIREMENTS AND COMMENTS WITH THIS ACTION

A-1. Add the following notes to the Conditional Use Permit (CUP) Site Plan and implement the Best Management Practices as a condition of the CUP:

"All operations shall comply with the City's Jurisdictional Urban Runoff Management Program (JURMP) and the City's Storm Water Ordinance (Municipal Code 13.10 and 16.60) to minimize or eliminate discharges of pollutants to the storm drain system. Operations shall include implementation of Best Management Practices (BMPs) as follows:

- a. *Only rain is permitted to enter the storm drain system. Discharges (direct or by conveyance) of trash, debris, vehicle fluids, or wastewater (including washing fluids) to the storm drain system are strictly prohibited.*
- b. *Sweep or vacuum to clean outdoor areas (dog-run, trash enclosures, sidewalks and parking lots). Power washing in outdoor areas is strictly prohibited.*
- c. *Capture, contain, and collect any power wash water and dispose of in the sanitary sewer.*
- d. *Maintain parking area to be free from trash and petroleum leaks.*
- e. *Provide sufficient trash receptacles.*
- f. *Dispose of wastes properly.*
- g. *All dumpsters used by this project shall have lockable lids. All lids on all dumpsters shall*

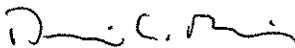
remain closed while dumpster is not directly in use and locked after business hours.

- h. All trash enclosures must be secured, covered with an impervious roof, and constructed with a berm or grade-break across the entire entrance in accordance with the requirements of Public Works Storm Water Attachment No. 2 (available to the public through Public Works on the 4th floor of City Hall).*
- i. All activities related to pet grooming such as bathing, nails and sanitary services have to be conducted indoors and not in areas that may be exposed to rainwater.*
- j. Pet waste needs to be picked up promptly and not left to decay on outdoor surface areas. Dispose of the pet waste properly by putting in the trash or disposing in the sanitary sewer.*
- k. All designated outdoor dog spaces ((i.e. synthetic lawn, splash pond/water fall, dog-runs, etc.) need to implement structural treatment control BMPs to treat runoff from rain water or other sources.*
- l. All "No Dumping" signage shall be maintained to be legible and replaced as necessary. A template for painting the concrete or asphalt around inlets and catch basins can be provided by the City upon request.*

For Public Works requirements on this Planning Action please refer to the Conditions of Approval. This Site Plan may not clearly show existing or proposed improvements in the public right-of-way and should not be used for public improvement construction purposes."

- A-2. Show details of any proposed and existing trash enclosures. All enclosures must be designed to be secured, constructed with a grade-break or berm across the entire enclosure entrance, and covered with an impervious, fire-resistant roof in accordance with the requirements of Public Works Storm Water Attachment No. 2 (Available to the public through Public Works on the 4th floor of City Hall).
- A-3. Structural treatment Control BMPs must be implemented to treat water runoff, from rain or other potential sources, originating from designated outdoor dog spaces (i.e. synthetic lawn, splash pond/water fall, dog-runs, etc.).
- A-4. Proper "No Dumping" signage shall be implemented at any storm drain inlets and catch basins in the parking lot(s) surrounding the property prior to the use of the site. A template for painting the concrete or asphalt around inlets and catch basins can be provided by the City upon request.

NOTE: FAILURE TO COMPLY WITH OR IMPLEMENT CUP CONDITIONS IS CONSIDERED A VIOLATION OF THE CITY'S JURMP AND MAY RESULT IN A CITATION WITH MONETARY FINES, CRIMINAL CHARGES, AND/OR REVOCATION OF PERMIT.

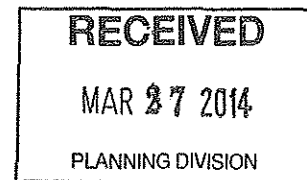


DENNIS C. DAVIES
Deputy Director of Public Works

4/3/14

DATE

CITY OF EL CAJON



MEMORANDUM

Thursday, March 27, 2014

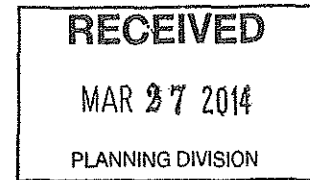
To: Planning Division
From: Building and Fire Safety Div., Dan Pavao
Subject: Building Comments for CUP 2204
412 Front Street

Building Comments for this planning application are as follows:

1. Comply with Currently adopted edition of the CBC, CMC, CPC, and CEC.
2. A Building permit is required for this project.
3. Project must comply with Title 24 disabled access regulations.
4. Title 24 energy efficiency compliance and documentation is required.
5. A licensed design professional is required for this project.
6. Undergrounding of all on-site utilities may be required.

Dan Pavao

CITY OF EL CAJON



MEMORANDUM

Thursday, March 27, 2014

To: Planning Division
From: Building and Fire Safety Div., Dan Pavao
Subject: Fire Comments for CUP 2204
412 Front Street

Fire Comments for this planning application are as follows:

1. This project must comply with currently adopted edition of the CFC.
2. Alterations to the fire sprinkler system will require a permit for this project.
3. Commercial address numbers shall be visible from the street, contrasting in color from wall surface, and minimum 8 inches in size (individual suite numbers may be 3").
4. Fire extinguisher is required. One for every 3000 s.f with max. 75 ft. travel distance. Minimum size 2A10BC with signage.

Dan Pavao



Helix Water District

Setting standards of excellence in public service

Camp Run-A-Mutt
Exhibit E – Proposed Resolution
Helix Water District comments

7811 University Avenue
La Mesa, CA 91942-0427

(619) 466-0585
FAX (619) 466-1823
www.hwd.com

April 3, 2014

Eric Craig
Project Manager
City of El Cajon
200 Civic Center Way
El Cajon, CA 92020

Subject: Conditional use Permit No. 2204
APN: 487-640-18, 412 Front Street

Dear Mr. Craig:

Thank you for the opportunity to comment on the subject project. Helix Water District serves parcel with APN 487-640-18 with one 1-inch water service with a ¾-inch water meter. Fire protection is offered by a 6-inch fire service located on the West side of the property and a fire hydrant with two 2.5-inch outlets and one 4-in outlet located across Front St on the West side of the property. Water pressure in the area is approximately 65 psi. Helix Water District has a 20-foot dedicated easement on the Northerly portion of the property please refer to the attached Plat map.

Backflow devices will be required for the existing water and fire services and shall be installed per current Water Agencies' Standards. The new backflow devices shall be tested by a certified backflow tester with a copy of the passing test results forwarded to Helix Water District attention Darrin Teisher by e-mail: crossconnection@helixwater.org)

We request a review of any improvement plans and/or grading plans and signature of Helix Water District if such plans are required by the City of El Cajon. We may require the location of the existing water service be brought up to current District standards which is behind the existing/proposed sidewalk. Relocation of any existing meters will be decided upon after review of the street improvement plans.

If landscaping of the parcels exceeds 5,000 sq. ft., a dedicated irrigation meter will be required and the property entered into our Water Conservation Program. Please contact them by e-mail: conserve@helixwater.org

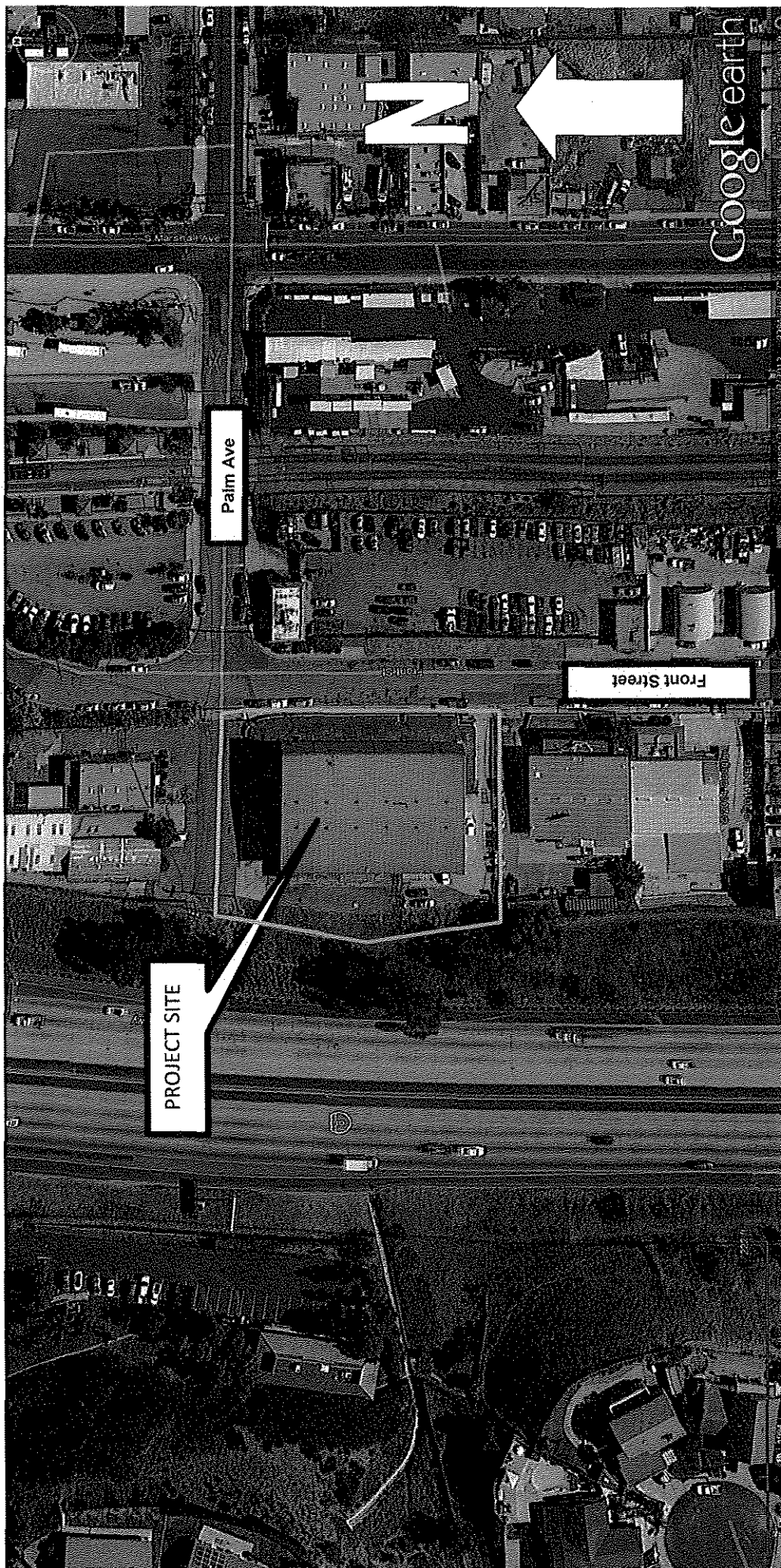
The El Cajon Fire Department may require additional or upgraded fire protection facilities for this project. All costs for new fire protection facilities shall be paid by the Owner/Developer. Easements will be required if new or existing facilities cannot be installed and maintained within existing easements or public right of way. All costs for new easements shall be paid by the Owner/Developer.

If you have any questions, please call me at (619) 667-6239.

Sincerely,

Carlos Perdomo
Senior Engineering Technician

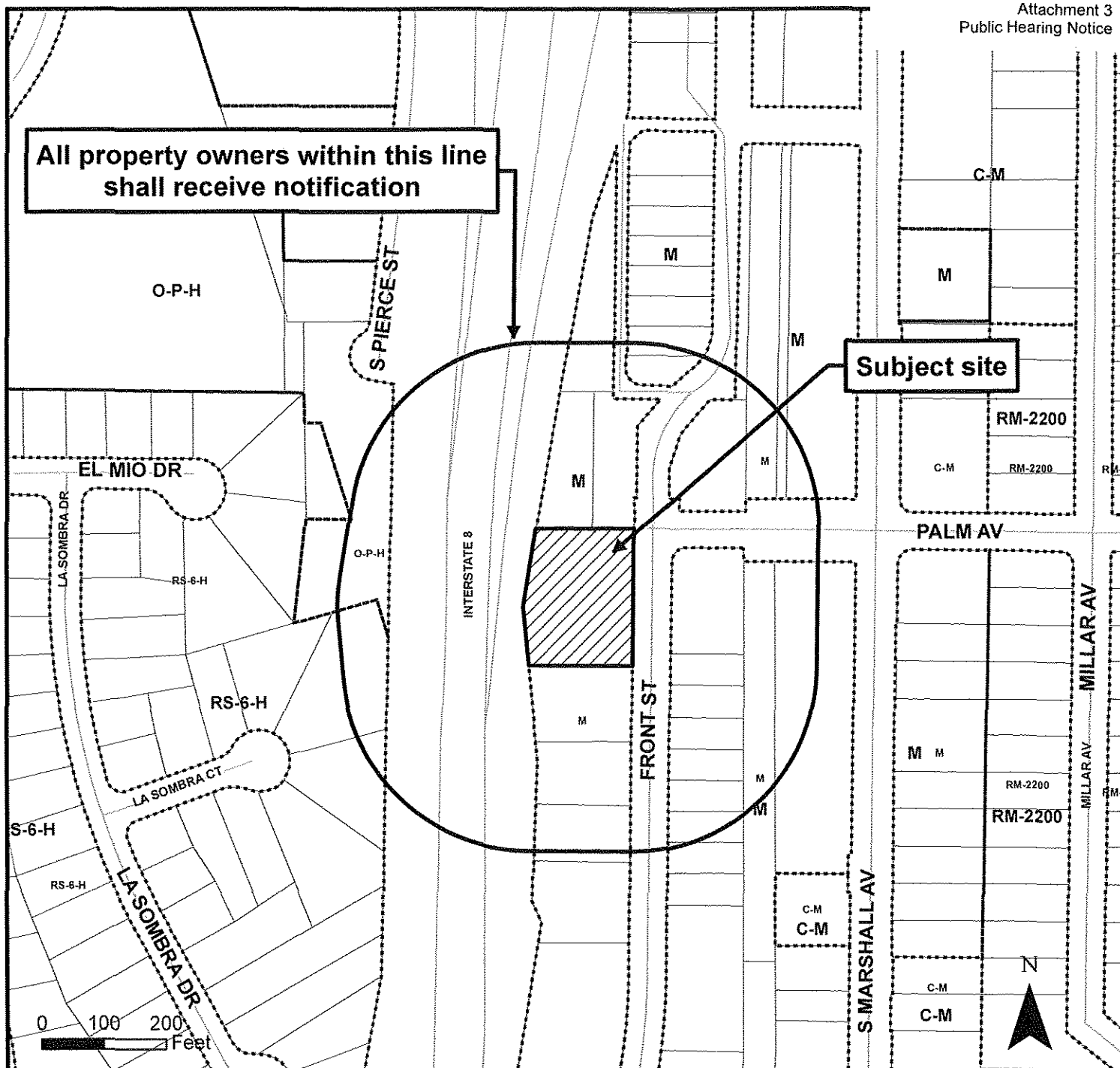
cc: Tim Ross
Aneld Anub
Darren Teisher
ecraig@cityofelcajon.us



CAMP RUN-A-MUTT - CUP No. 2204

412 Front Street

June 17, 2014



**NOTICE OF PROPOSED
CONDITIONAL USE PERMIT FOR
CAMP-RUN-A-MUTT**

NOTICE IS HEREBY GIVEN that the El Cajon Planning Commission will hold a public hearing at **7:00 p.m., Tuesday, July 1, 2014**, in the City Council Chambers, 200 Civic Center Way, El Cajon, CA, to consider: **CAMP-RUN-A-MUTT - CONDITIONAL USE PERMIT NO. 2204**, as submitted by Molly Krumweide, requesting to establish a kennel (dog day care facility). The subject property is addressed as 412 Front Street. This project is exempt from the California Environmental Quality Act (CEQA).

The public is invited to attend and participate in this public hearing. The agenda report for this project will be available 72 hours prior to the meeting at www.ci.el-cajon.ca.us/dept/cpmm/planning_agendas.aspx. To download a copy, click the *current agenda* link, then the agenda item. In an effort to reduce the City's carbon footprint, paper copies will not be at the public hearing, but will be available at the Planning Division counter upon request.

If you challenge the matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Commission at, or prior to, the public hearing. The City of El Cajon encourages the participation of disabled individuals in the services, activities, and programs provided by the City. Individuals with disabilities who require reasonable accommodation in order to participate in the public hearing should contact the Planning Division at 619.441.1742. More information about planning and zoning in El Cajon is available at www.ci.el-cajon.ca.us/dept/comm/planning.html.

If you have any questions, or wish any additional information, please contact **ERIC CRAIG** at 619.441.1742 or via email at ecraig@cityofelcajon.us and reference "CUP 2204" in the subject line.



CITY OF EL CAJON • PLANNING DIVISION • (619) 441-1741

CONDITIONAL USE PERMIT (MINOR)

APPLICATION NO. CUP 2204

*Applicant's Name: MOLLY KRUMWEIDE

Address: 4935 REGLA CT. SAN DIEGO CA. 92122

Street # City State Zip

Phone: (858) 361-6294 Fax No. ()

*Property Owner's Name: D.A. WHITACRE FAMILY TRUST

Address: 1108 GREENFIELD DRIVE EL CAJON CA. 92021

Street # City State Zip

Phone: (619) 444-4350 Fax No. ()

Property Owner's Signature: [Signature]

*Architect, Engineer or other applicant representative:

KENNETH D. SMITH, ARCHITECT License No. C25315

Address: 500 FESLER ST., STE. 102 EL CAJON CA. 92021

Street # City State Zip

Phone: (619) 444-2182 Fax No. (619) 442-2699

Subject property is located on the EAST side of INTERSTATE 8

between PALM AVE. and EL CAJON BLVD., and addressed as

412 FRONT ST. EL CAJON CALIFORNIA 92021

Assessor's Parcel No. 487-640-18

Existing Zoning: M General Plan Designation: LIGHT INDUSTRIAL

REQUEST: TO ALLOW DOG DAY CARE FACILITY IN ZONE M

NOTE: ADDITIONAL REQUIREMENTS ON BACK

**These individuals will receive a copy of the staff report if their complete address is given.*

City Use Only:

Date Filed: _____ Agenda Date: _____ Fee Paid: \$ _____

Received by: _____ Within SP 182? ☐ Yes ☐ No

DISCLOSURE STATEMENT



APPLICANT'S STATEMENT OF DISCLOSURE OF CERTAIN OWNERSHIP INTERESTS ON ALL APPLICATIONS WHICH WILL REQUIRE DISCRETIONARY ACTION ON THE PART OF THE CITY COUNCIL, PLANNING COMMISSION AND ALL OFFICIAL BODIES

The following information must be disclosed:

1. List the names and addresses of all persons having a financial interest in the application.

List the names and address of all persons having any ownership interest in the property involved.

DONALD WHITACRE 1108 GREENFIELD DR. EL CAJON CA 92021

JAMES BOWEN 8065 WILSON ST SANTEE CA 92071

2. If any person identified pursuant to (1) above is a corporation or partnership, list the names and addresses of all individuals owning more than 10% of the shares in the corporation or owning any partnership interest in the partnership.

3. If any person identified pursuant to (1) above is a trust, list the name and address of any person serving as trustee or beneficiary or trustor of the trust.

4. Have you or your agents transacted more than \$250.00 worth of business with any member of City staff, Boards, Commissions, Committees and Council within the past 12 months or \$500.00 with the spouse of any such person? Yes _____ No X

If yes, please indicate person(s), dates, and amounts of such transactions or gifts.

"Person" is defined as "Any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert." Gov't Code §82047.

[Signature] 3/6/14
Signature of applicant / date

Molly Krumweide
Print or type name of applicant

NOTE: Attach appropriate names on additional pages as necessary.

NARRATIVE

Camp Run A Mutt

Camp Run-A-Mutt is an innovative and unique dog daycare and boarding facility serving San Diego since 2008. Dogs enjoy outside space with other dogs and humans in a cage free environment on premium synthetic lawn and even a splash pond/waterfall while parents watch on the many Mutt-cams stationed in the yard from their computer or smart phone. Camp Run-A-Mutt's services are designed for socialized dogs and their working parents with quick and easy drop off/pick up.

The overnight visitors enjoy a cage free "pack boarding" setting where dogs sleep with their friends and camp counselor who always stay with the pack.

All dogs who enter the camp must pass a temperament test, be spayed or neutered and current with Distemper, Bordatella and Rabies vaccinations.

A friendly, courteous staff member who usually knows the dogs name greets our customers and their dog. Lobbies are bright, clean smelling and stocked with the basic needs like dog food, collars, leashes and toys.

Grooming services are provided for daycare and boarding customers or on a walk in basis. Grooming services include, bath, groom, nails and sanitary services.

Joel Beckman, who teaches one on one classes for basic manners, provides dog training locally. Joel also provides Board and Train services in conjunction with Camp Run-A-Mutt for dogs that need more guidance.

Camp Run-A-Mutt gives back by supporting local dog adoption agencies, food drives and charities. Camp Run-A-Mutt/El Cajon will employ up to 12 full time and part time employees at a starting rate well above minimum wage.

Camp Run-A-Mutt was awarded the 2009 Chamber of Commerce Best Emerging Small Business of the Year, won the Channel 10 "A" list award every year since 2008, has an A rating with the Better Business Bureau and has over 4,000 Face Book followers.

Camp Run-A-Mutt currently has three locations in San Diego, one in La Quinta and one in Los Angeles. In 2014 Camp Run-A-Mutt is expanding to four additional locations in San Diego County, one in San Francisco with a goal to be nationwide by the end of the year.

DOA. WINTAGNE FAMILY TRUST
100 GREENHILL DRIVE
J. CARKIN, CA. 92021
Ph. (819) 444-4350

VALIAN WINTAGNE FAMILY TRUST
100 GREENHILL DRIVE
J. CARKIN, CA. 92021
Ph. (819) 444-4350

JAMES KONNER FAMILY TRUST
9605 ADELPHI STREET
DORF, CA. 92021
Ph. (819) 318-3444

THAT PORTION OF LOT 30 IN BLOCK 23 OF EL CAJON HEIGHTS,
IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF
CALIFORNIA, ACCORDING TO MAP NO. 20 FILED IN THE OFFICE OF
THE COUNTY RECORDER OF SAN DIEGO COUNTY ON 10-28-1953.

DECESSION'S PARCEL NUMBER: 467-640-18

ACCORDING: 412 PHONY CORSET

BY: C. J. GALT, Notary Public

127 AREA:	57,809 S.F.
PAVING CONCRETE:	15,218 S.F.
1ST AND 2ND FLOOR OFFICE:	438 S.F.
3RD FLOOR OFFICE:	12,806 S.F.
EXISTING TRUNK:	6,500 S.F.
PROPOSED TENANT:	8,158 S.F.

1 - MARCH 20 1968



SITE PLAN

Scale: 1" = 25' (100')

SHEET 1 CITY OF EL CAJON

CONDITIONAL USE PERMIT (MINOR) No. _____

APPLICANT: MOLLY KRAMER/DE

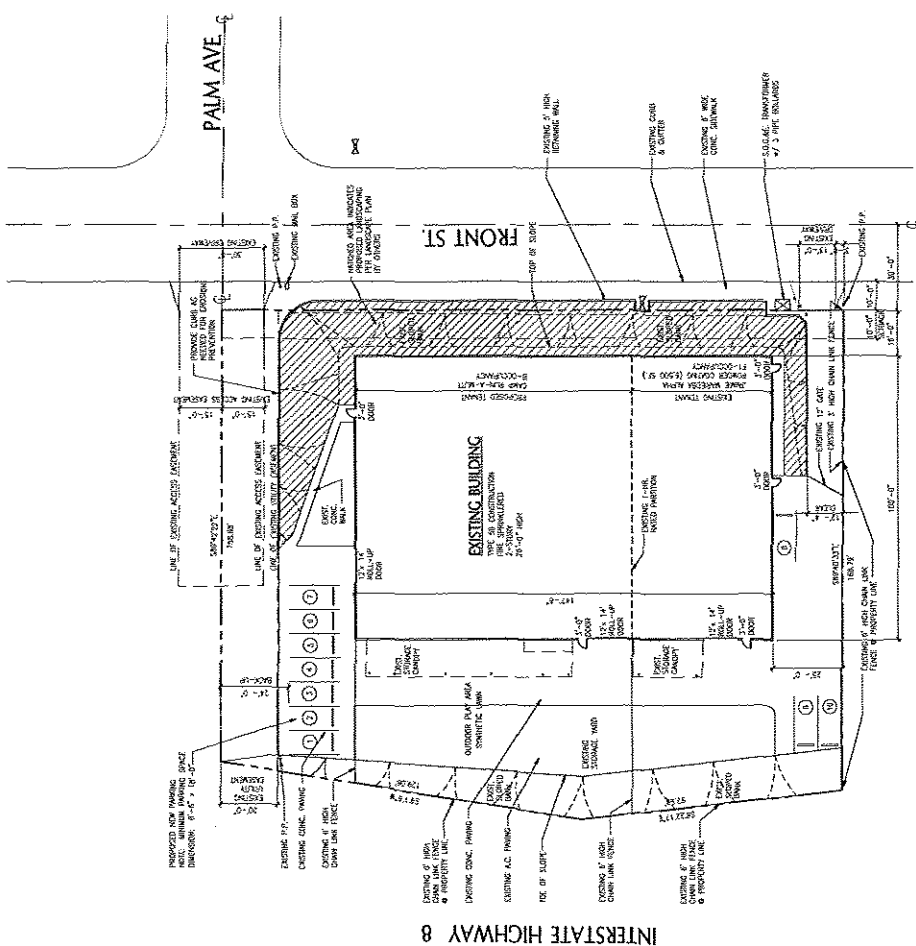
ASSESSOR PARCEL No. (s): 487-440-18

REQUEST: TO ALLOW SOC DAY CARE FACILITY IN 1-1 ZONE

DRAWN BY: KENNETH E. SMITH ARCHITECT & ASSOCIATES, INC.
ADDRESS: 500 FIELDS STREET, SUITE 102
EL CAJON, CALIFORNIA 92020
PHONE: (619) 444-2782

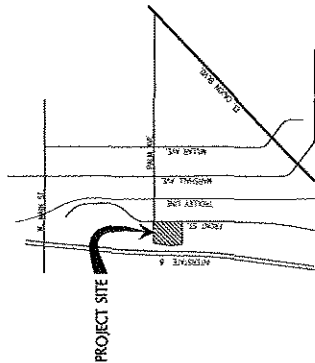
APPROVED BY: _____

DATE: _____



NOTE

THE HAZARDOUS MATERIALS SMALL BUSINESS SET-ASIDE PROGRAM IN THIS SECTION IS AVAILABLE TO ALL BUSINESSES REGISTERED IN THE STATE OF CALIFORNIA. BUSINESSES REGISTERED IN OTHER STATES MAY BE ELIGIBLE TO PARTICIPATE IN THE SET-ASIDE PROGRAM IF THEY ARE REGISTERED IN THE STATE OF CALIFORNIA.





Community Development Department
Planning Division
PLANNING COMMISSION AGENDA REPORT

Agenda Item:	6
Project Name:	Secondhand Merchandise & Alternative Lending
Request:	Consider new regulations addressing certain secondhand businesses and alternative lending services
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	Informational Only
Project Number(s):	Zoning Code Amendment No. 425
Location:	City Wide
Applicant:	City of El Cajon
Project Planner:	Anthony Shute, AICP
City Council Hearing Required?	No Ordinance hearings will be scheduled for a later date
Recommended Actions:	1. Receive staff presentation; and 2. Take public comment; and 3. Provide staff with feedback

PROJECT DESCRIPTION

On October 22, 2013, the City Council adopted a 45-day interim urgency ordinance establishing a moratorium on secondhand merchandise stores, and then on November 12, 2013, extended the ordinance to September 27, 2014. The City Council was concerned that the proliferation of businesses purchasing merchandise for resale might be creating adverse impacts on retail businesses.

On May 13, 2014, the City Council was presented with detailed information regarding these outlets, including alternative lending services. After discussing the information and hearing public testimony, the City Council adopted Resolution No. 048-14 directing the Planning Commission to:

1. Develop land use regulations for existing and future pawnshops, businesses engaged in secondhand dealing and/or the purchase and selling of (1) gold and other precious metals businesses; (2) electronic device buyback only kiosks; and (3) businesses providing alternative lending services, all throughout the City of El Cajon; and
2. Disregard any other types of uses dealing in secondhand merchandise, not otherwise described above, from any amendments to Title 17 of the Municipal Code; and

3. Conduct stakeholder outreach and consider input given in preparing amendments to Title 17 applicable to secondhand dealers and alternative lending services.

The purpose of this staff communication is to inform the Planning Commission of the Council's direction, provide the associated background information, present the project schedule, explain the proposed ordinance framework and opportunities for community input. The Planning Commission is encouraged to ask questions and provide feedback. Staff will return to the Commission with a proposed draft ordinance at the August 5, 2014 regular meeting.

BACKGROUND

Secondhand Merchandise

Merchandise that has been previously sold or owned is classified as secondhand merchandise, which includes items sold from pawn shops. In El Cajon, businesses that buy and sell secondhand merchandise are required to obtain a Special Operation License, which the City Council has the authority to approve, approve with conditions, or deny. Secondhand businesses purchasing merchandise for resale include, but are not limited to, guns, rifles, firearms, jewelry, gold, silver, and other precious metals and gems, electronic equipment and wireless communication devices.

California Statutes

Secondhand merchandise businesses are regulated by the California Business and Professions Code (B&P) 21641 and Financial Code 21300. These codes indicate that city/county licensing agencies have the responsibility to incorporate the State mandated licensing process into their local programs, including background checks through the California Department of Justice (DOJ), and procedures for tracking/tracing secondhand merchandise. After a license is processed by the City, the DOJ Secondhand Dealer and Pawnbroker Unit will notify the respective local licensing agency upon receipt of any subsequent arrest and disposition information regarding a licensed secondhand dealer or pawnbroker. The City's Police Department is tasked with the local licensing process of background investigation and tracking secondhand merchandise reporting.

The B&P Code defines a secondhand dealer as an entity that deals (buys, sells, trades, etc.) "secondhand tangible personal property", which is further defined as property bearing a serial number or personalized initials or an inscription, property taken as security for a loan by a pawnbroker, and secondhand property commonly sold by secondhand dealers and found by crime reports to the Attorney General's office to constitute a significant class of stolen goods. This definition excludes thrift stores, used clothing stores, etc., unless these businesses also sell items within the definition.

El Cajon Municipal Code

Titles 5 and 17 of the El Cajon Municipal Code (ECMC) address businesses that sell secondhand merchandise. Title 5 outlines the requirements for tracking merchandise and indicates that businesses must obtain a Special Operation License. Title 17 permits the sale of secondhand merchandise in the C-N, C-G and C-R zones as a permitted use, but not within the boundaries of Specific Plan No. 182. Currently, the Zoning Code excludes antique shops from the regulations that apply to secondhand merchandise.

Secondhand Business Volume

Over the past 10 years, the City has seen an increase in the number of secondhand businesses due to surging gold prices between 2008 and 2012 and buyback incentives for electronic devices. In addition to electronic specialty stores, unmanned kiosks have increased, particularly at Parkway Plaza, where consumers sell mobile phones for cash. Currently, there are a total of 51 secondhand businesses legally operating in the City. This does not include "EcoATMs" or other self-serve buyback kiosks.

Crime

Police Department records regarding secondhand businesses indicate that many new business owners are not familiar with mandated California DOJ procedures and only learn about these procedures after being informed by the Police Department. This lack of knowledge combined with poor business practices, have generated an increase in possession of stolen gold and/or property by these under-educated dealers.

During 2013, a total of 30 crimes were reported city-wide for secondhand businesses. The businesses associated with these crimes are summarized as follows:

Table 1

Secondhand Businesses	Crimes	% of Criminal Activity
Gold Buying	15	50%
Electronics, Phones	8	26.6%
Pawn Shops	5	16.6%
Other	2	6.6%
TOTAL	30	100%

These statistics do not summarize all secondhand criminal activity because stolen items brought into El Cajon from a neighboring jurisdiction and subsequently discovered at an El Cajon business are only reported as criminal activity in the originating jurisdiction.

Secondhand businesses and pawnshops tend to locate in high crime areas and are often suspected of being outlets for stolen property. Furthermore, the activities associated with these businesses may stimulate criminal activity.

Secondhand Business Concentrations

The highest concentrations of secondhand businesses are located along Fletcher Parkway, East Main Street, North Second Street and Broadway. During 2013, these areas of concentration were located in Police Districts with "High" to "Very High" crime rates. Maps depicting crime rates and business locations are attached to this report (Exhibits A & B).

Alternative Lending Services

Pawn shop loans, refund anticipation loans, pay day loans and rent-to-own agreements comprise a segment of the non-traditional banking industry referred to as alternative lending services. The current secondhand merchandise moratorium does not include this service or business.

In California, regulation of payday lending and check cashing businesses is primarily done at the State level. The California Deferred Deposit Transaction Law (California Financial Code §23000 et seq.) imposes a number of operational requirements on payday lending lenders and limits on the payday loan products, including a maximum on the amount of a check for a deferred deposit transaction, a maximum loan fee of the face value of the check, a requirement that the fee schedule be posted, and a requirement that all payday lenders be licensed by the Department of Corporations.

A payday loan is a small, short-term, unsecured, single-payment, consumer loan. The borrower writes a personal check to the lender, with the amount of the check equal to the loan amount plus the finance charge. The lender agrees to hold the check for a specified period of time (usually until the customer's next payday) before depositing it. (Exhibit C).

The term of the loan is typically between seven and thirty days. The borrower can repay the loan at, or prior to, its maturity by (i) paying the lender in cash the face value of the check and retrieving the check from the lender, or (ii) allowing the lender to deposit the check. If the borrower does not wish to repay the loan at maturity, the loan can be extended by paying the finance charge and having the lender agree to hold the check for another specified period of time. However, the payday lender is not legally required to extend the loan.

Payday loan borrowers often cannot afford, or do not have sufficient resources to take out a line of credit or receive a bank loan, therefore, they are forced to rely on short term loans. Payday loans encourage chronic, repeat borrowing because borrowers often lack sufficient income to both repay the loan and meet living expenses.

Nationally, payday loans vary in size from \$50 to \$1000, with the average loan size being between \$300 and \$400. Finance charges, which are subject to legal limits in many states, typically range from about \$10 to \$20 per \$100 borrowed. For a two-week loan, these fees translate into annual percentage rates (APR) ranging from 260 to 520 percent. In California, the maximum loan amount is \$300 and the maximum finance charge is 15

percent (up to \$45). A 15% fee is equivalent to an APR of 460% for a two-week loan. By comparison, a loan for a new car generally has an APR of between four and seven percent.

Given the scope of State law regulating payday lenders and prior case law regarding local regulation of the financial industry, the City may be preempted from regulating the payday loan products themselves [e.g., imposing a cap on the annual percentage rate (APR)] or imposing other similar consumer protection measures that impact payday lenders' business practices.

In June, 2013, the Federal Deposit Insurance Corporation (FDIC) indicated that nationwide 65% of households without access to banking services have used an alternative lending services product (Exhibit D). Households without access to banking services typically have lower credit scores and are generally located within lower income census tracts.

Currently, alternative lending services are allowed in most commercial zones. In order to open a new alternative lending store, the owner must apply for only a business license. Under the Zoning Code (ECMC 17.145.150), these stores are permitted under the "Financial Services" use category. According to the City's Finance Department, there are currently 13 stores in El Cajon. One of which is an auto loan service where individuals use their vehicle title as collateral for a loan.

Alternative lending stores have significant negative impacts on distressed communities by providing lending that includes excessive fees and creating a cycle of repeat borrowing for low-income residents who borrow to have enough money to cover basic living expenses and pay high check cashing fees. As indicated in Exhibit E, staff determined that there is a correlation in El Cajon between the location of these payday lending facilities and the location of census tracts with lower incomes (per the Census Bureau's 2012 American Community Survey 5-year estimates). According to the data, over 90% of lenders are located in a low-income census tract.

Local jurisdictions may regulate payday lending establishments through land use regulations and zoning, as has been done by an increasing number of cities in the state and nationwide. A number of local jurisdictions throughout California, including the City of Oceanside, have imposed regulations on payday lending businesses. Specific measures instituted by other California communities have included one or more of the following land use related requirements:

1. Distance or separation requirements (e.g., 300 feet or half mile) between payday lending/check cashing businesses to prevent overconcentration in specific areas;
2. Distance requirements separating the businesses from residential areas and/or other sensitive or specified uses (e.g., schools or liquor stores);
3. A numerical cap on the total number of such businesses within the jurisdiction;
4. Limitation to certain zoning districts;

5. Requirement to obtain a conditional use or special use permit;
6. Lighting and/or security requirements; and
7. Graffiti clean-up requirements.

Other avenues for the City to address issues associated with payday lending include:

1. Advocacy for increased regulation at the State or Federal level.
2. Efforts to support greater access to banking and other financial services, particularly within low-income communities.

A map of existing alternative lenders with income levels is attached to this report (Exhibit E).

Economic Vitality

Pawn shops and other alternative lending services have historically served a roll providing lending services to households without access to traditional banks. Whether warranted or not, these businesses suffer from negative public perceptions because they are often associated with illegal conduct or stolen merchandise. Additional pawn shops and alternative lending stores may affect the City's emerging revitalization efforts and economic vitality, and may not be compatible with surrounding land uses due to negative public perceptions. Moreover, heavy concentrations of these uses within individual commercial centers may inhibit vital investments.

Staff Resources

The overall increase in secondhand stores has required the Police Department to allocate additional staff time to process requests, conduct background investigations, and track inventories. Moreover, staff time allocated to reviewing requests has made it difficult for the Police Department to conduct proper compliance checks in a timely manner. At this time, secondhand dealers are demanding a disproportionate amount of limited police resources.

PROPOSED ORDINANCE FRAMEWORK

Potential new regulations would address existing and future businesses. The City's municipal code could be amended to cap the number of pawn shops, secondhand dealers and alternative lending institutions and reduce the overall number through attrition by establishing spatial standards. This would also help eliminate overconcentration. Certain secondhand businesses would be exempt from the regulations, such as antiques, thrift stores, furniture, clothing, household goods, and retail stores that purchase used goods as an incidental aspect of the business. A conditional use permit would be required to ensure compatibility, add certain operational standards, and place additional conditions when necessary.

To summarize, the following code language could be modified/added:

1. Define 'secondhand dealer' and "tangible personal property" in the Code consistent with the Business and Professions Code.
2. Develop a new definition for "check cashing stores/payday lenders", and establish a new use category.
3. Place a numerical limit on the number of secondhand stores, including pawnshops and alternative lending allowed in the City.
4. Require a minor conditional use permit for secondhand dealers.
5. Require that all pawnbrokers and secondhand dealers abide by state-mandated reporting requirements for secondhand tangible personal property as required in the Business and Professions Code.
6. Allow legitimate licensed businesses to offer trade-in programs for items that they sell as their primary function, (e.g. jewelry stores accepting old jewelry for credit toward new items, or electronic retailers offering credit for old video games toward the cost of a new game or console) as an accessory use.
7. Limit the number of payday loan stores and other similar short-term loan services by regulating their proximity to one another to prevent overconcentration in low-income communities, and from other uses (e.g. schools, parks, playgrounds, churches, liquor stores, etc.), establish locational requirements (e.g. in shopping centers of minimum size), and require a minor conditional use permit.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The staff communication item is exempt from CEQA because no discretionary action is being taken at this public hearing.

ATTACHMENTS

1. City Council Resolution No. 048-14
2. City Council Excerpt Minutes dated 05-13-14
3. Community Notice Letter dated 06-19-14
4. ECMC Section 17.145.150 Commercial Land Use Table – Excerpt
5. Exhibit A: Map of special operation licensed stores with crime rates
6. Exhibit B: Map of special operation licensed stores and alternative lending outlets with crime rates
7. Exhibit C: Finance and Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs Federal Reserve Board, Washington, D.C. dated June 2009 without attachments
8. Exhibit D: FDIC Report dated June 2013 – Excerpt
9. Exhibit E: Map of special operation licensed stores and alternative lending outlets with household income levels
10. 2013 Industry Survey, Summary Report, California Department of Business Oversight
11. California Consumer Finance Association Materials dated 06-24-14

RESOLUTION NO. 048-14

A RESOLUTION OF INTENTION TO INITIATE AN AMENDMENT
TO TITLE 17 OF THE EL CAJON MUNICIPAL CODE
FOR THE PURPOSE OF ADOPTING REGULATIONS
PERTAINING TO THE ESTABLISHMENT AND OPERATION OF
PAWNSHOPS, BUSINESSES ENGAGED IN SECONDHAND
DEALING AND/OR THE PURCHASE AND SELLING OF GOLD
AND OTHER PRECIOUS METALS BUSINESSES,
ELECTRONIC DEVICE BUYBACK ONLY KIOSKS AND
ALTERNATIVE LENDING SERVICES

WHEREAS, on October, 22, 2013, the City Council adopted a 45-day interim urgency ordinance establishing a moratorium on secondhand merchandise stores, and on November 12, 2013, the interim ordinance was extended for 10 months and 15 days, through September 27, 2014, with direction to staff to return with a discussion of the issue so that the City Council could give more specific direction as to possible ordinance amendments in the El Cajon Municipal Code (the "Municipal Code"); and

WHEREAS, the proliferation of business establishments purchasing merchandise for resale to the public including, but not limited to, guns, rifles and firearms; jewelry, gold, silver, and other precious metals and gems; dishes, flatware, platters, bowls, utensils, trophies and figurines containing precious metals; furniture, equipment, appliances, clothing, kitchenware, records, compact discs, videotapes, digital video discs, televisions, and other sundry consumer goods; and wireless communication devices, personal digital readers, computers, laptops, and other handheld devices (collectively, "Secondhand Merchandise") creates adverse impacts on retail businesses operating in the City; and

WHEREAS, the City recognizes the increase in the number and concentration of secondhand businesses affects community character; and

WHEREAS, pawn shop loans, refund anticipation loans, pay day loans and rent-to-own agreements comprise a segment of the non-traditional banking industry referred to as alternative lending services that contribute to negative public perceptions often associated with illegal conduct or stolen merchandise; and

WHEREAS, the City Council has an interest in modifying the City's land use regulations to adopt a legally enforceable method to regulate secondhand merchandise stores and alternative lending services in the Municipal Code; and

WHEREAS, amendments are needed in Title 17 (Zoning Code) of the Municipal Code to accommodate this change, and pursuant to Municipal Code Section 17.20.020 amendments to Title 17 can be initiated by adoption of a resolution of intention by the City Council or the Planning Commission.

(Continued on Page 2)

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. That the El Cajon City Council hereby directs the Planning Commission to hold a public hearing to consider amendments to Title 17 of the Municipal Code adding new regulations for existing and future pawnshops, businesses engaged in secondhand dealing and/or the purchase and selling of (1) gold and other precious metals businesses; (2) electronic device buyback, only, kiosks; and (3) business providing alternative lending services, all throughout the City of El Cajon.

2. The El Cajon City Council hereby expressly directs the Planning Commission to disregard any other types of uses dealing in Secondhand Merchandise not otherwise described in section 1, above, from any amendments to Title 17 of the Municipal Code.

3. That the scope of work for this amendment is to be generally consistent with Alternative #1 as described in that certain Agenda Report identified as Item No. 4.3 and presented to the City Council at the May 13, 2014 regular meeting, as modified herein.

4. That staff concurrently conduct stakeholder outreach and consider the input given in preparing amendments to Title 17 applicable to secondhand dealers and alternative lending services as described herein.

PASSED AND ADOPTED by the City Council of the City of El Cajon, California at a Regular Joint City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meeting held this 13th day of May 2014, by the following vote to wit:

AYES	:	Ambrose, Bales, Kendrick, McClellan
NOES	:	None
ABSENT	:	None
DISQUALIFY:	:	Wells

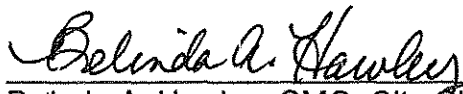
BILL WELLS
Mayor of the City of El Cajon

ATTEST:

BELINDA A. HAWLEY,CMC
City Clerk

(Continued on Page 3)

I hereby certify that the above and foregoing is a full and true copy of Resolution No. 048-14 of the Resolutions of the City of El Cajon, California, as adopted by the City Council at the Regular Joint Meeting of the City Council/Housing Authority/Successor Agency to the Redevelopment Agency on the 13th day of May 2014.


Belinda A. Hawley, CMC, City Clerk

ITEM 4.2 (Continued)

Councilmember McClellan announced he will be absent for the September meetings.

No further comments made.

MOTION BY WELLS, SECOND BY McCLELLAN, to CANCEL the August 26, 2014 meeting for a summer recess.

MOTION CARRIES BY UNANIMOUS VOTE.

4.3 REGULATING SECONDHAND MERCHANDISE (Report: Planning Manager)

RECOMMENDATION: That the City Council:

- Receive comments from the public;
- Discuss the subject matter in this report;

THEN

- Direct the City Manager to prepare amendments to Titles 5 and 17 of the El Cajon Municipal Code to regulate secondhand businesses and address the secondary effects associated with new regulations.

OR

- Provide alternative policy direction to staff.

DISCUSSION

Mayor Wells disqualified himself from item 4.3 citing a conflict of interest, and left the Chambers at 5:49 p.m.

City Manager Williford stated that in October of 2013, the City Council directed Staff to examine the issue of secondhand merchandise businesses in the City of El Cajon, and subsequently, the Council placed a temporary moratorium on these types of businesses. The objective of the report is for Council to give policy direction to Staff.

Planning Manager Shute gave a slide presentation with background on the item.

Item 4.3 (Continued)

Councilmembers discussed the statistics for crimes relating to secondhand businesses, gold buying, pawnshops and electronic buy back kiosks.

Detective Stacy Orchulli clarified that most of the problems with secondhand business crimes are not with the big, organized stores, but rather the kiosk type of establishments that are available in the City. Discussion ensued between **Detective Orchulli, Police Chief Redman** and **Council** on procedures to determine whether items being re-sold are stolen items.

David Chong expressed concern about the potential impact of the proposed moratorium on his upcoming business as a firearms dealer.

Mayor Pro Tem Kendrick suggested that Staff exclude firearms dealers from the proposed Ordinance and **Councilmembers**, when polled, concurred with the suggestion.

John Gibson supported the proposed Ordinance and the suggestion to exempt firearms.

Upon hearing the discussion about possible exclusions, **City Attorney Foley** indicated the option to bring back an amendment to the moratorium at the next meeting on this Item, extending the moratorium for the rest of the year, if necessary, and to consider the exclusions as requested by **Council**.

No one else came up to speak.

MOTION BY McCLELLAN, SECOND BY AMBROSE, to DIRECT the City Manager to prepare amendments to Titles 5 and 17 of the El Cajon Municipal Code to regulate secondhand businesses and address the secondary effects associated with new regulations, and incorporate the exclusions as suggested by Council

MOTION CARRIES. (WELLS – Disqualified)

Mayor Wells returned to the Chambers at 6:15 p.m.

5. COMMISSION REPORTS: None



Community Development

COMMUNITY NOTICE

June 19, 2014

Community Stakeholder,

The Planning Division apologizes for the inconveniences caused by the cancellation of the June 17, 2014 Planning Commission meeting. We sincerely appreciate your understanding and cooperation.

This community notice is to inform interested stakeholders that the El Cajon Planning Commission will be presented with the City Council's direction, background information and opportunities for community input. This will be presented as a staff communication. **This is an information item only. Public testimony may be given, but the Planning Commission will not take action at this meeting.** The meeting is scheduled for July 1, 2014 at 7:00 PM in the City Council Chambers at 200 Civic Center Way, El Cajon, CA 92020. Subsequent Planning Commission and City Council meetings will be scheduled for public participation, input and comment.

On November 12, 2013, the El Cajon City Council identified their interest in addressing the proliferation and performance of secondhand merchandise stores. On May 13, 2014, at a duly advertised public hearing, the City Council was presented with information regarding secondhand stores and alternative lending services (e.g. check cashing, payday loans, etc.). After discussing the information and hearing public testimony, the City Council directed City staff to:

1. Cap the existing number of pawn shops, secondhand dealers and alternative lending institutions, reduce the overall number through attrition, and develop land use regulations, such as spatial standards to eliminate overconcentration.
2. Require new stores to obtain a minor conditional use permit to ensure compatibility.
3. Revise the special operation licenses procedures.
4. Exempt antiques, thrift stores, furniture, clothing, household goods, and retail stores that purchase used goods as an incidental aspect of the business.

Specifically, the City Council adopted Resolution No. 048-14 directing the Planning Commission to hold a public hearing to consider amendments to Title 17 of the Municipal Code adding new regulations for existing and future pawn shops, businesses engaged in secondhand dealing and/or the purchase and selling of (1) gold and other precious metals businesses; (2) electronic device buyback, only, kiosks; and (3) businesses providing alternative lending services, all throughout the City of El Cajon.

El Cajon Municipal Code

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[Title 17 ZONING](#)

[Chapter 17.145 COMMERCIAL ZONES](#)

17.145.150 Commercial land use table.

The following table lists uses that may be established in commercial zones. The abbreviations used in the land use table shall have the following meanings:

- A "A" means "adult entertainment permit"
- C "C" means "conditional use permit"
- D "D" means "director's determination"
- M "M" means "minor conditional use permit"
- P "P" means "permitted use"
- S "S" means "site development plan permit"
- T "T" means "temporary use permit"
- Z "Z" means "administrative zoning permit"
- X "X" means "not permitted"

In addition to the abbreviated terms listed above, the land use table incorporates endnotes, which are indicated by numerical designators in the final column of the table. The numerical designators correspond with written notes listed at the bottom of the table. The notes provide additional information and direct readers to other applicable sections of the El Cajon Municipal Code.

**Table 17.145.150
Commercial Land Use Table**

	O-P	C-N	C-G	C-R	C-M	Notes
Commercial Uses						
Adult book store, adult theater, and other adult entertainment activities	X	X	A	A	X	1, 2
Amusement parks including miniature golf, go-cart tracks, mechanized rides, etc.			C	C	C	
Animal grooming services	X	P	P	P	X	
Antique sales	X	P	P	P	X	
Appliance repair; large gas and electric appliances including heating and air conditioning systems, parts and supplies	X	X	C	C	P	1
Appliance sales; large gas and electric appliances including heating and air conditioning systems, parts and supplies	X	P	P	P	P	
Appliance sales and repair of small	X	P	P	P	P	1

Clothing and apparel store, new	X	P	P	P	X	
Clothing and costume rentals	X	P	P	P	X	
Clubs: youth clubs, professional organizations, union halls, fraternal organizations, and similar uses	C	C	C	C	X	
Cocktail lounge	X	C	C	C	X	8, 9
Community gardens	P	P	P	P	P	30
Contract construction services	X	X	X	X	P	
Convalescent home	C	C	C	C	C	1
Convenience market	X	P	P	P	X	8
Custodial and cleaning services including property management and building maintenance with associated vehicle, equipment, and supply storage	X	X	X	X	P	
Dance studio	X	P	P	P	X	
Day care facility	C	C	C	C	C	
Department store with general retail sales	X	P	P	P	X	
Drive through service accessory to an authorized land use	C	C	C	C	C	1
Electronics sales with ancillary service and installation	X	X	P	P	X	
Employment services	P	P	P	P	P	
Equipment rental with outdoor storage or display	X	X	C	X	X	1
Equipment rental without outdoor storage or display	X	P	P	P	X	1
Escort service	X	X	P	X	X	3
Fabric store	X	P	P	P	X	
Farmers market	X	C	C	C	X	
Financial services and institutions including check cashing services, and traders of precious metals	P	P	P	P	X	10
Firearm and ammunition sales	X	P	P	P	X	
Firing ranges, indoor ranges for fire arms or archery	X	X	C	C	C	1
Florist	P	P	P	P	X	
Fortune tellers including palm readers, phrenologists, spiritual mediums, and mystics	X	X	C	C	X	3
Funeral parlor and mortuary	C	P	P	P	X	1
Furniture and home furnishing sales	X	P	P	P	P	

Transition service center	X	X	C	C	P	1, 24
United States Postal Service facilities	C	C	C	C	C	25
WIC center	P	P	P	P	X	1
Zoo	C	C	C	C	X	
Other similar uses	D	D	D	D	D	21
Residential Uses						
Caretaker's unit	P	P	P	P	P	26
Residential care facility	C	C	C	C	X	1

1. Prohibited in SP 182. However, automotive service and repair uses are permitted with approval of a CUP in the portion of SP 182 that is also a part of Special Development Area No.10 and zoned C-M.
 2. Subject to the provisions of Chapter 17.45 (adult entertainment establishments).
 3. Requires a Special Operations License as described in ECMC Chapter 5.16. For towing services, only police towing services require a Special Operations License.
 4. Offsite outdoor automobile sales are subject to the provisions of Section 17.225.190.
 5. Subject to the provisions of Chapter 17.215 (automotive fueling stations).
 6. Subject to the provisions of Chapter 5.40 of the El Cajon Municipal Code.
 7. Subject to the provisions of Section 17.190.270 (billboard signs).
 8. Subject to the provisions of Chapter 17.210 (alcohol sales).
 9. Subject to parking requirements listed in Section 17.185.190.
 10. "Check cashing only" services are prohibited in SP 182.
 11. Subject to the provisions of Section 17.130.250 (kiosks).
 12. Subject to the provisions of Section 17.225.070 (massage parlors).
 13. Subject to the provisions of Chapter 17.230 (motion picture theaters).
 14. Subject to the provisions of Section 17.225.090 (outdoor dining areas).
 15. Subject to the provisions of Chapter 17.235 (personal storage facilities).
 16. The retail display area shall not exceed 15% of the gross floor area in the O-P zone.
 17. Subject to the provisions of Section 17.225.100 (resource recovery centers).
 18. Restaurants limited to 2,000 square feet gross floor area in the C-M zone.
 19. Subject to the provisions of Section 17.225.130 (take-out only restaurants).
 20. Subject to the provisions of Chapter 17.240 (tobacco and smoke shops).
 21. As determined by the director of community development.
 22. Excludes wireless communications facilities as defined in Chapter 17.110.
 23. Subject to the provisions of Chapter 17.245 (wireless communications facilities).
 24. Subject to the provisions of Section 17.225.170 (transition service centers).
 25. Excludes public contact in the C-M zone (mail processing only).
 26. Only one caretaker's unit permitted per lot in association with an authorized primary use occupying the same property. Must be attached to the primary structure on the lot, if such a structure exists.
 27. May only be operated as an ancillary use to 1) a bona fide non-profit club, society, professional organization, union hall, fraternal organization, and similar (non-profit) use, with a valid conditional use permit for the primary use, and 2) a restaurant, except that card rooms are prohibited at restaurants in SP 182. Subject to additional card room regulations listed in Chapter 5.28 (Card rooms) of Title 5 and Chapter 17.225 (Miscellaneous Special Uses and Regulations) of this Title. Non-profit status must be in place prior to application submittal, as applicable.
 28. Non-profit medical and dental clinics are permitted uses. They do not require a CUP and are not prohibited in SP 182.
 29. Subject to the parking requirements for places of assembly listed in Table 17.185.190.
 30. Subject to the provisions of Chapter 17.205 (agriculture and animals).
- (Ord. 4993 § 5, 2013)

View the [mobile version](#).

Secondhand Stores & Pawnbrokers 2013 Crime Reporting Districts

May 7, 2014

2nd Hand Merchandise & Alternative
Lending Outlets
Attachment 5
Exhibit A - Map

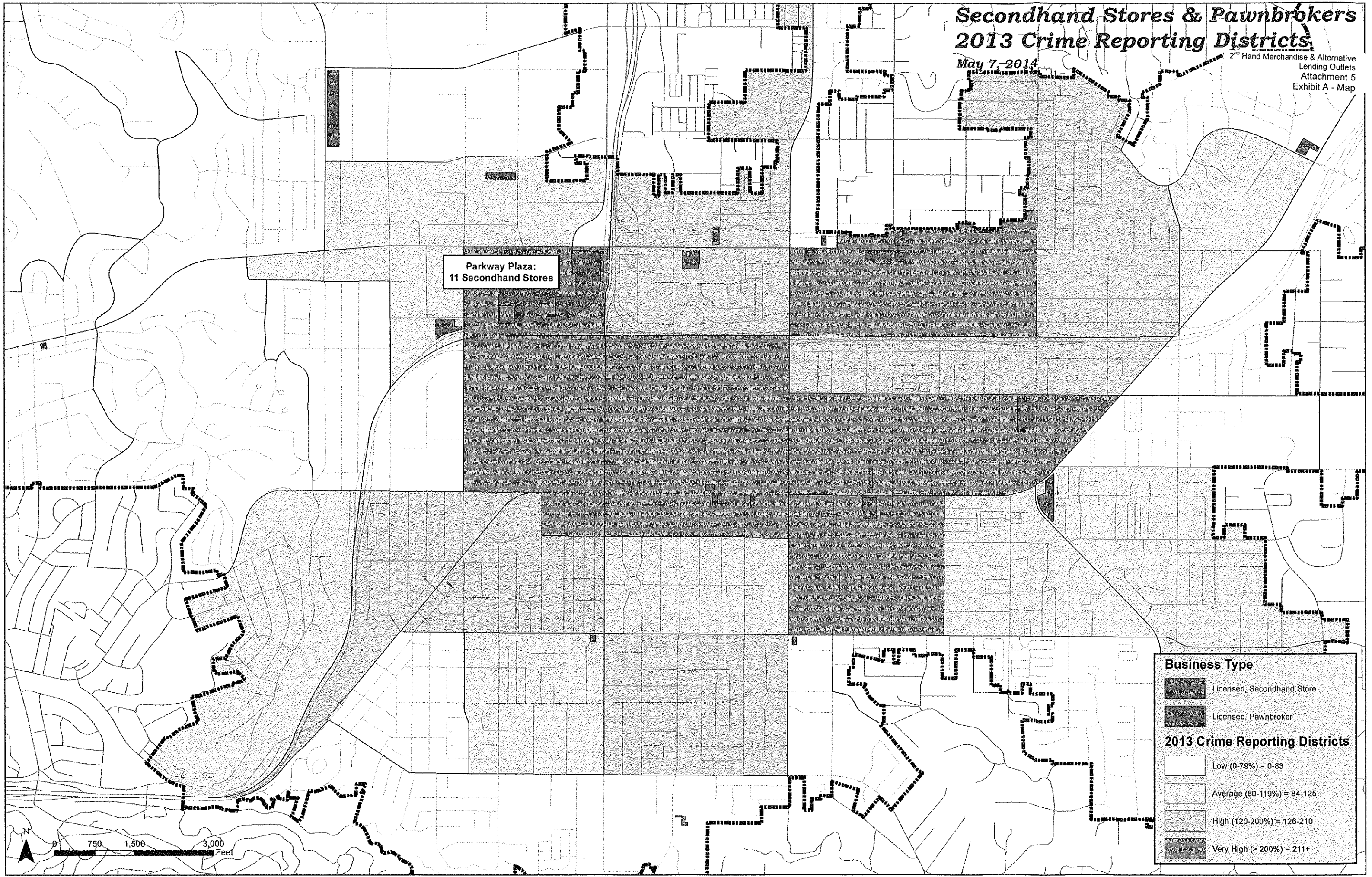
Parkway Plaza:
11 Secondhand Stores

Business Type

- Licensed, Secondhand Store
- Licensed, Pawnbroker

2013 Crime Reporting Districts

- Low (0-79%) = 0-83
- Average (80-119%) = 84-125
- High (120-200%) = 126-210
- Very High (> 200%) = 211+



Secondhand & Alternative Lending Stores

Active Licenses and Payday Loan Businesses
with 2013 Crime Reporting Districts
May 7, 2014

2nd Hand Merchandise & Alternative
Lending Outlets
Attachment 6
Exhibit B - Map

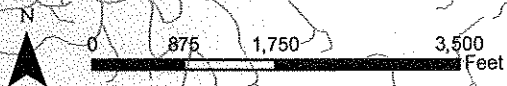
Parkway Plaza:
11 Secondhand Stores

Business Type

- Licensed, Secondhand Store
- Licensed, Pawnbroker
- Licensed, Auto Dismantler/Junkyard
- Payday Loan

2013 Crime Reporting Districts

- Low (0-79%) = 0-83
- Average (80-119%) = 84-125
- High (120-200%) = 126-210
- Very High (> 200%) = 211+



**Finance and Economics Discussion Series
Divisions of Research & Statistics and Monetary Affairs
Federal Reserve Board, Washington, D.C.**

**Determinants of the Locations of Payday Lenders, Pawnshops and
Check-Cashing Outlets**

Robin A. Prager

2009-33

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Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets

Robin A. Prager
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Division of Research and Statistics
Board of Governors of the Federal Reserve System

June 2009

The views expressed in this paper are those of the author and do not necessarily reflect the views of the Board of Governors of the Federal Reserve System or its staff. The author thanks Matt Fellowes and Mia Mabanta for providing data on the number of payday loan stores, pawnshops and check-cashing outlets in each U.S. county, and Stefanie Ramirez for outstanding research assistance.

Abstract

A large and growing number of low-to-moderate income U.S. households rely upon alternative financial service providers (AFSPs) for a variety of credit products and transaction services, including payday loans, pawn loans, automobile title loans, tax refund anticipation loans and check-cashing services. The rapid growth of this segment of the financial services industry over the past decade has been quite controversial. One aspect of the controversy involves the location decisions of AFSPs. This study examines the determinants of the locations of three types of AFSPs – payday lenders, pawnshops, and check-cashing outlets. Using county-level data for the entire country, I find that the number of AFSP outlets per capita is significantly related to demographic characteristics of the county population (e.g., racial/ethnic composition, age, and education level), measures of the population's credit worthiness, and the stringency of state laws and regulations governing AFSPs.

I. Introduction

A large and growing number of low-to-moderate income U.S. households rely upon alternative financial service providers (AFSPs) for a variety of credit products and transaction services, including payday loans, pawn loans, automobile title loans, tax refund anticipation loans and check-cashing services. The rapid growth of this segment of the financial services industry over the past decade has been quite controversial.¹ Supporters argue that AFSPs have flourished because they meet consumers' growing demand for quick, convenient access to cash and short-term credit. At the same time, critics assert that these firms charge unconscionably high prices that are not justified by costs, thereby taking advantage of some of the most economically vulnerable members of society.

The location decisions of AFSPs have also been the subject of considerable debate. Supporters of AFSPs argue that the firms locate in areas that are inadequately served by banks and other mainstream financial service providers, thereby fulfilling otherwise unmet needs of the residents of these neighborhoods. Critics of AFSPs, on the other hand, argue that these firms prey upon disadvantaged segments of the population by strategically locating their stores in low-income, high-minority-population neighborhoods.

A number of researchers have studied the geographic distribution of alternative financial service providers. Most of these studies have focused on a limited geographic area (e.g., a single state or a small number of urban areas) or have used highly aggregated (e.g., state-level) data to examine a larger geographic area, such as the entire country or a large portion thereof. They typically have considered demographic factors such as

¹ Apgar and Herbert (2004), page I-1.

income, race, and education level as determinants of the locations of AFSPs. Some studies have also included state usury ceilings or the proximity of bank branches as explanatory variables. Although the findings of these studies are somewhat mixed, they generally find that AFSPs are more prevalent in areas where a large percentage of the population has low-income, lacks a high school diploma or is black or Hispanic. Those studies that include usury ceilings find higher ceilings associated with a larger number of AFSPs per capita, and those that include the locations of bank branches find a positive relationship between the number of bank branches per capita and the number of AFSP outlets per capita.

This study expands upon the existing research by examining the determinants of AFSP location using county-level data for the entire country, estimating separate models for urban and rural areas for each of three types of AFSP, and introducing some new explanatory variables. Using county-level observations for the entire country allows for an analysis that is at once more granular than that undertaken in previous nationwide studies and more comprehensive than studies that focus on smaller geographic areas. The new explanatory variables reflect two important factors – state laws and regulations directly affecting AFSPs and the creditworthiness of the county population – that have not been considered in previous studies.

The remainder of the paper is organized as follows: Section II provides a brief description of each of the three segments of the alternative financial services industry examined in the paper: pawn lending, check cashing, and payday lending. Section III describes the regulatory requirements and constraints faced by each industry segment. Section IV provides an overview of the existing literature on AFSP location. Sections V

and VI present evidence on the geographic distributions of various types of financial service providers and an analysis of the determinants of AFSP locations, respectively. Section VII concludes the paper.

II. Industry Background

A. Pawn Lending

Pawnshops make small, non-recourse loans collateralized by tangible personal property, such as jewelry, consumer electronics, tools, musical instruments or firearms. Pawnbrokers do not attempt to assess the creditworthiness of their customers; rather, they rely upon the estimated value of the collateral in making their loan decisions. The amount loaned is determined as a percentage of the estimated resale value of the pledged collateral and, according to one large pawnshop operator, is typically between 25 and 65 percent.² Pawnshop operators rely on a number of different sources for determining the resale value of the pledged collateral, including catalogues, “blue books,” newspapers, internet sites, and at least for some of the larger companies, their own proprietary computerized valuation systems. The average size of a pawn loan is quite small – on the order of \$75 to \$100 – and its term is typically one month.

Fees charged for pawn loans are typically stated as a percentage of the loan amount, and can vary from as low as 12 percent to as high as 300 percent annually, depending, to a large degree, on legal limits imposed by the state in which the loan is made. At the time of the pawn transaction, the borrower receives a document, commonly referred to as a pawn ticket, which includes the customer’s name and identifying information (e.g., driver’s license number), the name and address of the pawnshop, a

² Source: EZCORP, Inc. Form 10-K for the fiscal year ended September 30, 2007.

description of the pledged collateral, the amount of the loan, the maturity date of the loan, the amount that must be paid to redeem the collateral at maturity, and the annual percentage rate (APR). If the loan is not repaid at or prior to maturity, the customer is given a grace period (typically 30 to 60 days) within which to redeem the pledged property by paying the loan amount and all accrued charges. If, at the end of the grace period, the customer has neither redeemed his property nor extended the loan, the collateral is forfeited to the pawnshop. The pawnshop then sells the property to recover the principal amount of the loan plus a profit margin.

The pawn lending business has a very long history, with informal pawnbroking dating back to ancient times.³ Pawnbroking in America can be traced back to Colonial times. By the early nineteenth century, pawnbrokers were active in New York City, Philadelphia, and Boston; by the end of the century they were found in most urban areas throughout the country. Pawnbroking went through a period of decline from about 1930 through the mid-1970s, followed by a period of rapid growth that lasted through the mid-1990s.

Over the past decade, the number of pawnshops operating in the U.S. has experienced a modest decline, which may be attributable to the rapid growth of payday lending during this period. As of 2007, the number of pawnshops in the U.S. was estimated to be between 10,000 and 15,000. Most of these shops were owned by small, independent operators, each of whom owned between one and three locations. At the end of 2007, Cash America International, Inc., the largest provider of pawn loans in the U.S., operated 499 pawnshops in 22 states, and the three largest publicly traded firms in the pawn lending business (Cash America, EZPAWN, and First Cash Financial Services)

³ The information in this paragraph is derived from Caskey (1994 and 2003).

together operated a total of approximately 900 stores.⁴ All three of these companies diversified into the payday lending business between 1998 and 2000.

B. Check Cashing

Check-cashing outlets cash checks in exchange for a fee that is typically a percentage of the face value of the check.^{5,6} Most of the checks that they cash are paychecks or government-issued checks. Fees charged for cashing these types of checks are generally between 1.5 and 3.5 percent of the face value of the check. Some check cashers also cash personal checks; however, the fees charged for this service are usually much higher to compensate for the greater risk that the check will bounce.

Check-cashing outlets first came into existence in the 1930s in Chicago and New York City. The industry did not expand beyond the five or six largest urban areas of the U.S. until the early 1970s. The number of check-cashing outlets grew rapidly from the early 1980s through the mid-1990s, and more slowly in recent years. The slowdown in growth over the past decade is at least partially attributable to a decline in demand for check-cashing services, as the share of wage payments and government transfer payments made by direct deposit has increased. As of 2005 there were approximately 13,000 check-cashing outlets in the U.S., most of which were owned by small, independent

⁴ Source: Cash America International, Inc. Form 10-K for the fiscal year ended December 31, 2007.

⁵ Much of the information in this paragraph and the next is derived from Caskey (1994 and 2003).

⁶ Note that throughout this essay the term “check-cashing outlet” is used to refer to establishments whose primary business is providing alternative financial services that include cashing checks for a fee. Other entities, among them banks, grocery stores, and liquor stores, often cash checks for a fee. Those entities are not included in any check cashing data referenced in this paper.

operators. The nine largest check-cashing companies accounted for about one third of these outlets.⁷

C. Payday lending

A payday loan is a small, short-term, unsecured, single-payment, consumer loan. The borrower writes a personal check to the lender, with the amount of the check equal to the loan amount plus the finance charge. The lender agrees to hold the check for a specified period of time (usually until the customer's next payday) before depositing it. The term of the loan is typically between seven and thirty days. The borrower can repay the loan at or prior to its maturity by (i) paying the lender in cash the face value of the check and retrieving the check from the lender, or (ii) allowing the lender to deposit the check. If the borrower does not wish to repay the loan at maturity, the loan can often be renewed or "rolled over" by paying the finance charge and having the lender agree to hold the check for another specified period of time. Payday loans vary in size from \$50 to \$1000, with the average loan size being between \$300 and \$400. Finance charges, which are subject to legal limits in many states, typically range from about \$10 to \$20 per \$100 borrowed. For a two-week loan, these fees translate into APRs ranging from 260 to 520 percent.

Payday loan customers are required to have a bank account and a job (or other regular source of income). The largest payday lender in the U.S., Advance America, reports that it does not undertake any evaluation of a customer's creditworthiness in

⁷ Source: ACE Cash Express, Inc. Form 10-K for the fiscal year ended June 30, 2006. This is the most recent data that I could find on the number of check-cashing outlets. ACE Cash Express is no longer a publicly traded company and has not filed a Form 10-K since 2006.

deciding whether to approve a loan application.⁸ The company does, however, take into consideration the customer's income in determining the size of the loan. Although payday lenders generally do not obtain credit reports on their loan applicants, some lenders subscribe to a service that provides information about a potential customer's prior payday borrowing and repayment behavior.⁹

From its emergence in the early 1990s through about 2006, the payday lending industry enjoyed explosive growth.¹⁰ In 1996, there were an estimated 2,000 payday lending stores operating in the U.S.¹¹ By 2007, the number of payday lending locations had grown to approximately 24,000.¹² The majority of these stores were owned by small, independent operators. The largest provider of payday loans (as measured by number of stores) operated 2,813 stores in 35 states, and the ten largest firms together accounted for less than 40% of all payday lending locations. In recent years, some payday lenders have begun to provide loans over the internet, as well as through their stores. Stephens Inc. estimates that in 2006 internet lending accounted for nearly 12 percent of the industry's \$47.65 billion volume of payday loans.¹³

III. Regulatory Environment

Providers of alternative financial services are subject to numerous legal and regulatory restrictions, at both the state and federal levels. At the federal level, all financial service providers must comply with the Gramm-Leach-Bliley Act, the USA

⁸ Source: Advance America, Cash Advance Centers, Inc. Form 10-K for Fiscal Year ending December 31, 2007.

⁹ See Elliehausen (2006).

¹⁰ Industry growth largely ceased in 2007, following legislative and regulatory reforms in a number of states that adversely affected the profitability of the payday lending business.

¹¹ Source: QC Holdings, Inc. Form 10-K for fiscal year ended December 31 2006.

¹² Source: Stephens, Inc. (2007).

¹³ Stephens, Inc. (2007).

PATRIOT Act, and the Bank Secrecy Act. In addition, all loan providers must comply with the Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Talent-Nelson Amendment to the 2007 Defense Authorization Bill.¹⁴ At the state level, restrictions typically vary across different types of AFSPs.

Pawnshops generally must be licensed by the state in which they do business. State laws and regulations specify licensing requirements (e.g., licensees may be required to be bonded and insured) and often impose restrictions on various aspects of the loans provided by pawnshop operators. Common state restrictions include upper or lower bounds on the term of a pawn loan, ceilings on the interest rates and other fees charged for a pawn loan, and requirements that the pawnshop must hold a pawned item for some specified minimum time period after a borrower defaults on a loan. Some states also specify the information that must be provided on the pawn ticket.

Pawnshops are also subject to local regulation in some cities or towns. They may be required to obtain local licenses or permits, follow specific recordkeeping practices, or provide local law enforcement agencies with information on all transactions. Pawnshops that handle firearms must also comply with the Brady Handgun Violence Prevention Act, which requires them to conduct background checks on purchasers of firearms, and regulations of the U.S. Department of Justice Bureau of Alcohol, Tobacco and Firearms requiring them to keep a permanent written record of all transactions involving firearms.

Some states impose regulatory requirements or restrictions on check-cashers. These may include licensing, bonding, capital, or recordkeeping requirements, or restrictions on fees charged for cashing checks. Although several states impose limits on

¹⁴ The Talent-Nelson Amendment limits annual interest rates on loans to military borrowers to 36 percent.

check-cashing fees, few of them have limits that are low enough to be considered binding constraints.¹⁵

As of year-end 2007, payday lending was explicitly permitted by law in 38 states and explicitly prohibited in one (Georgia). Eleven states had no payday lending laws, but effectively prohibited payday lending through the application of usury ceilings or small loan interest rate ceilings that rendered payday lending unprofitable. Figure 1 shows the legal status of payday lending for each state as of December 31, 2007.¹⁶

In those states where payday lending is explicitly permitted, payday lenders are typically subject to licensing requirements and regulatory restrictions. Restrictions vary from state-to-state, but may include limitations on the maximum size of a payday loan, the maximum number of loans that can be made to a single customer at one time, the fees that can be charged for a loan, the term of a loan, and the number of times a payday loan may be renewed or “rolled over.”

IV. Review of the Literature

A number of studies have examined the factors affecting the locations of AFSPs. Caskey (1991) uses 1987 state-level data to study the relationship between the number of pawnshops per million capita and various regulatory and demographic characteristics. Considering only the 28 states that had usury ceilings on interest rates, he finds that pawnshops per million capita is positively related to both the level of the state’s interest rate ceiling and the share of the state’s population below the poverty level, and negatively related to the share of the state’s adult population with at least four years of high school

¹⁵ Apgar and Herbert (2006) page II-21.

¹⁶ In 2008, Ohio and New Hampshire passed legislation that effectively prohibits payday lending.

education. He finds no evidence that state laws requiring any surplus from the sale of the pawned collateral to be returned to the borrower (return requirement) or population density influence the number of pawnshops per million capita.

Shackman and Tenney (2006) use 2003 data to extend Caskey's work to all 50 states plus the District of Columbia. Like Caskey (1991), they find a positive relationship between pawnshops per million population and both the poverty rate and the interest rate ceiling and no significant relationship between pawnshop density and the return requirement. However, contrary to Caskey (1991), they do not find any significant relationship between pawnshops per million population and the share of the adult population that are high school graduates.

Graves (2003) examines the locations of payday loan stores and bank branches in seven metropolitan parishes in Louisiana, and in Cook County, Illinois. He finds that payday lenders tend to locate in neighborhoods (Census block groups) that are poorer and have higher concentrations of blacks than the county in which they are located as a whole, while banks tend to locate in neighborhoods that are wealthier and have lower concentrations of blacks than countywide averages.

Burkey and Simkins (2004) examine the determinants of the locations of payday lenders and bank branches in North Carolina, using Zip Code Tabulation Area (ZCTA) level data for 2000. They find that ZCTAs with higher concentrations of blacks, younger populations, lower median incomes, and lower education levels are associated with a higher number of payday lenders and a lower number of banks. At the same time, they find a strong positive relationship between the number of payday lenders and the number

of traditional banks in a ZCTA. This likely reflects the fact that ZCTA population is a strong determinant of the locations of both payday lenders and banks.

Damar (2009) uses ZCTA-level data to look at the determinants of the locations of new payday lending offices in Oregon in 2002-2004. He finds that payday lenders are more likely to locate in areas that have more bank branches, larger populations, and higher percentages of Hispanics. Unlike Graves (2003) and Burkey and Simkins (2004), he does not find evidence that payday lenders are more likely to locate in areas with higher concentrations of blacks.

Temkin and Sawyer (2004) use census tract-level data to investigate the locations of payday lenders, check cashers and pawnshops in seven metropolitan counties distributed across the country and in Washington, DC.¹⁷ They find that AFSPs are disproportionately located in minority and low-income neighborhoods, while banks are disproportionately located in non-Hispanic white and higher-income neighborhoods. At the same time, they find that the majority of AFSPs are located in neighborhoods that are also served by banks.

Apgar and Herbert (2004) examine factors that explain the locations of AFSPs and bank branches in Dallas, Texas in 2003. They find that check cashers, pawnshops and payday lenders are most likely to be found in census tracts with median incomes between \$23,000 and \$45,000 and in tracts where a large fraction of the population is Hispanic or of mixed race; however, they find that citizenship is a stronger predictor of AFSP presence than race or ethnicity. They find that banks are least likely to locate in census tracts where a high fraction of the population is black or Hispanic and most likely

¹⁷ The seven metropolitan counties are associated with the following cities: Chicago, IL; Atlanta, GA; Houston, TX; Kansas City, MO; Los Angeles, CA; Miami, FL; and Memphis, TN.

to locate in tracts with median incomes between \$45,000 and \$63,000. They also find a positive relationship between the presence of bank branches and the presence of AFSPs.

Fellowes and Mabanta (2007) analyze data that they collected over the 2006-2007 time period containing the street addresses of approximately 108,000 bank and credit union branches and 48,000 check cashers, payday lenders, and pawnshops throughout the U.S. They find that more than 90 percent of AFSPs are located within one mile of a bank or credit union branch, and that there are more bank and credit union branches per capita in low-income neighborhoods than in high-income neighborhoods. Based on these findings, they suggest that low- and moderate-income households could accumulate considerable wealth by substituting lower-cost bank and credit union products for higher-priced products obtained from AFSPs.

V. The Geographic Distribution of Financial Service Providers in 2006

I begin my analysis by examining the locations of payday lenders, pawn shops, check cashers, and bank and thrift branches throughout the U.S., as of 2006. Fellowes and Mabanta generously provided data on the number of payday lenders, pawnshops and check cashers operating in each county. Data on the locations of bank and thrift branches were obtained from the FDIC's Summary of Deposits and the Office of Thrift Supervision's Branch Office Survey.

As of 2006, almost every county in the U.S. (98.9 percent of rural counties and 99.6 percent of urban counties) had at least one bank or thrift branch, and about two-thirds of rural counties and ninety percent of urban counties had at least one alternative financial service provider (pawnshop, check casher, or payday lender). The average rural

county in the U.S. had a population of about 33,000 and was served by 2.5 payday loan stores, 1.2 pawnshops, 1.7 check-cashing outlets, and 10.7 bank and thrift branches. The average urban county was home to about 220,000 people, 16.6 payday loan stores, 7.4 pawnshops, 21.2 check cashers, and 67.5 bank and thrift branches.

The geographic distributions of the numbers of payday lending stores, pawnshops, and check-cashing outlets per million capita, at the county level, are shown in figures 2 through 4, respectively. The highest concentrations of payday lending stores on a per capita basis are in those southern states that do not explicitly or effectively prohibit payday lending – Alabama, South Carolina, Tennessee, Mississippi and Louisiana. The number of pawnshops per capita is also relatively high in the south, particularly Georgia, Alabama, Mississippi and Tennessee. The number of check-cashing outlets per capita shows a somewhat different pattern, being highest in California, Delaware, Mississippi and North Carolina.

The geographic distribution of the number of bank and thrift branches per million capita, shown in figure 5, exhibits a very different pattern, being highest in the north central part of the country, especially Kansas, Nebraska and North Dakota. Although these maps might suggest a negative correlation between the number of bank branches per capita and the number of each type of alternative financial service provider per capita, the correlations are not significantly different from zero for check cashers and pawnshops, and significantly positive for payday lending stores.¹⁸

¹⁸ The Pearson Correlation Coefficient between the number of bank branches per capita and the number of check-cashers per capita is 0.001, and that between the number of bank branches per capita and the number of pawnshops per capita is 0.008; both of these are statistically insignificant. The remaining correlations among different types of financial service providers per capita are all positive and significant at the 0.0001 level, with the following magnitudes: 0.37 between check-cashers and pawnshops, 0.57 between check-cashers and payday lenders, 0.40 between pawnshops and payday lenders, and 0.12 between banks and payday lenders.

Using credit score data obtained from Equifax, figure 6 shows the share of each county's population with either no credit score or a credit score that would typically place them in the subprime market. The concentration of these credit-challenged individuals is highest in some of the same states that have high concentrations of AFSPs, notably Georgia, South Carolina and Mississippi. This suggests that AFSPs may tend to locate in areas where demand for their services is likely to be high because a significant portion of the population does not have access to more traditional sources of credit.

VI. Determinants of the Locations of AFSPs

In order to better understand the factors influencing the location decisions of AFSPs, I model the number of AFSP outlets per million population in each county as a function of various demographic characteristics of the county's population (racial/ethnic mix, age, education, poverty status, population density), measures of the population's creditworthiness, and variables reflecting the state regulatory environment.¹⁹ The following reduced form equation is estimated separately for each type of alternative financial service provider (payday lenders, pawnshops and check cashers), for both urban and rural counties, using OLS:

Equation 1

$$\begin{aligned} AFSP_i = & \beta_0 + \beta_1 HISPANIC_i + \beta_2 BLACK_i + \beta_3 ASIAN_i + \beta_4 YOUNG_i + \beta_5 HSDIPLOMA_i \\ & + \beta_6 POVERTY_i + \beta_7 NOSCORE_i + \beta_8 LOWSCORE_i + \beta_9 MEDSCORE_i \\ & + \beta_{10} POPDENS_i + \beta_{11} CEILING_i + \beta_{12} NOPAYDAY_i + \varepsilon_i \end{aligned}$$

¹⁹ The demographic data were obtained from the Census Bureau; the creditworthiness measures were constructed from credit score data obtained from Equifax; and the information on state laws and regulations was gathered from various state government websites.

$AFSP_i$ indicates the number of AFSP stores of a particular type per million population in county i . $HISPANIC_i$, $BLACK_i$ and $ASIAN_i$ represent the percentages of the county population that are Hispanic, non-Hispanic black, and Asian, respectively. $YOUNG_i$ indicates the percentage of the county population that is below the age of 40. $HSDIPLOMA_i$ and $POVERTY_i$ represent the percentages of the county population that have a high school diploma and that live below the poverty level, respectively. $NOSCORE_i$, $LOWSCORE_i$ and $MEDSCORE_i$ are measures of the creditworthiness of the county's population. They indicate the share of the population with no credit score, a credit score that would typically place them in the subprime market, and a credit score that would typically place them in the Alt-A market, respectively. $POPDENS_i$ is the population per square mile in county i .

$CEILING_i$ and $NOPAYDAY_i$ are variables reflecting state laws or regulations that directly affect AFSPs. $CEILING_i$ appears only in the equations explaining the locations of payday lenders and pawnshops, and is constructed differently for each of these equations. In the payday lender equation it is based on the interest rate ceiling that would apply to a \$300, two-week payday loan. In the pawnshop equation it is based on the interest rate ceiling that would apply to a \$100, one-month pawn loan. In each case, $CEILING_i$ is set equal to zero if the county is located in a state that does not regulate the interest rates charged on that particular type of loan (payday or pawn) or in a state with an interest rate ceiling for a \$300 two-week payday loan or a \$100 one-month pawn loan that is above 25 percent of the loan value. In all other cases, $CEILING_i$ is set equal to 25% minus the maximum allowed interest rate in the state in which the county is located. Thus a *higher* value of $CEILING_i$ indicates a *more stringent* (lower) limit on the interest

rate that can be charged on the particular type of loan. *NOPAYDAY_i* appears only in the equations explaining the locations of pawnshops and check cashers; it is a dummy variable equal to one if the county is in a state that explicitly or effectively prohibits payday lending, and zero otherwise. Variable definitions are summarized in table 1.

The results of estimating various versions of Equation 1 are presented in table 2. Looking first at the equations explaining the number of payday loan stores per million capita (columns 1 and 2) we see that the results are fairly similar for urban and rural counties. In both cases the number of payday loan stores per million capita is negatively related to the share of the population that is Hispanic, positively related to the share of the population that is non-Hispanic black, and unrelated to the share that is Asian. Payday lenders are more prevalent in both urban and rural counties where a larger share of the population is below the age of 40 and less prevalent in both urban and rural counties where a larger share of the population lives below the poverty level. The number of payday loan stores per million capita is significantly related to the share of the population with a high school diploma (negative sign) and population density (positive sign) in rural, but not urban, counties.

The variables measuring the creditworthiness of the county's population and the state regulatory environment are important in both equations. In urban markets, the estimated coefficients on *NOSCORE* and *LOWSCORE* are positive and highly significant, and the coefficient on *MEDSCORE* is positive but insignificant. In rural markets, the coefficients on all three credit score variables are positive and significant at either the .05 or the .10 level. This suggests that payday loan stores are more prevalent in areas where a substantial share of the population may have difficulty accessing traditional

sources of credit. The estimated coefficient on *CEILING* is negative and highly significant in both urban and rural counties, indicating that in states with more stringent (lower) interest rate ceilings on payday loans there are fewer payday loan stores per capita.

Turning next to the pawnshop equations (columns 3 and 4), we see that the relationships between demographic factors and the number of pawnshops per capita differ substantially between urban and rural counties. In urban counties, the variables reflecting the racial/ethnic mix of the population are all statistically insignificant, whereas in rural counties the estimated coefficients on *HISPANIC* and *BLACK* are both negative and highly significant. The estimated coefficient on *YOUNG* is positive and highly significant in urban counties, but insignificantly different from zero in rural counties. The estimated coefficient on the variable measuring the share of the county population with a high school diploma is negative in both cases; it is marginally significant in urban counties and highly significant in rural counties. The estimated coefficient on *POVERTY* is negative and highly significant in urban counties, but insignificantly different from zero in rural counties. *POPDENS* has a small, negative, marginally significant coefficient in urban counties and a larger, positive, highly significant coefficient in rural counties.

The relationships between the number of pawnshops per capita and both the credit score variables and the state regulation variables are largely similar in urban and rural counties. The estimated coefficients on *NOSCORE* and *LOWSCORE* are positive and highly significant in both urban and rural counties; the estimated coefficients on *MEDSCORE* are negative in both cases, and either marginally significant or insignificant.

The estimated coefficients on *CEILING* are negative and highly significant in both rural and urban counties, indicating that pawnshops are less prevalent in states that have stricter limits on the interest rates that can be charged on pawn loans. The estimated coefficients on *NOPAYDAY* are positive and insignificant in both cases, suggesting that, other things being equal, a prohibition on payday lending does not lead to a significant increase in the number of pawnshops per capita.

Determinants of the number of check-cashing outlets per capita (columns 5 and 6) differ considerably between urban and rural counties. In urban counties, the concentration of check-cashing outlets is positively related to the shares of the population that are Hispanic, non-Hispanic black, Asian, and under the age of 40; in rural counties the number of check cashers per capita is negatively related to the share of the population that is Hispanic, positively related to the share that is non-Hispanic black, and unrelated to the shares that are Asian or young. In both types of county the number of check cashers per capita is negatively related to the share of the population with a high school diploma and the share that is below the poverty level. The density of check-cashing outlets is positively related to population density in rural counties, but not in urban counties. The number of check-cashing outlets per capita is significantly positively related to the share of the population with no credit score in both urban and rural counties. Estimated coefficients on *LOWSCORE* and *MEDSCORE* are either marginally significant or insignificant in the two equations, with the sign on the latter variable differing between urban and rural counties. The estimated coefficient on *NOPAYDAY* is negative in both types of county, but is significantly different from zero only in rural counties.

Although there is variation across the three types of AFSPs examined and between urban and rural counties, a few general patterns emerge. (i) AFSPs are more likely to locate in counties where a large share of the population has no credit rating or (for payday lenders and pawnshops) a low credit rating and in counties where a large share of the population lacks a high school diploma; (ii) AFSPs generally avoid areas with a large fraction of the population living below the poverty level; (iii) there is no evidence that AFSPs (with the exception of check cashers in urban counties) concentrate in areas with large Hispanic populations – in fact, the concentrations of all three types of AFSPs in rural markets and payday lenders in urban markets are significantly negatively related to the share of the population that is Hispanic; (iv) the concentrations of payday lenders and check cashers (but not pawnshops) are higher in areas with large non-Hispanic black populations; (v) population density is a strong predictor of locations per capita in rural counties, but not in urban counties; and (vi) more stringent limits on the rates that can be charged for payday (pawn) loans are associated with reductions in the number of payday lending stores (pawnshops) per capita.

VII. Conclusion

A large segment of the population relies on alternative financial service providers as a source of credit products or transaction services. While some view these firms as filling a niche which traditional financial service providers have chosen to avoid, others view them as targeting and preying upon economically vulnerable members of society. A number of studies have examined the determinants of the locations of AFSPs in an effort to distinguish between these two views. Those studies generally find that AFSPs are

more likely to locate in areas where the population is disproportionately poor, minority, and poorly educated. At the same time, a small number of studies that include a measure of bank presence find a positive relationship between the number of bank branches and the number of AFSP outlets.

The present study expands upon the existing literature by using a new, more comprehensive data set to study AFSP location and by introducing some important new variables to the analysis. The results support some of the findings from previous studies, but contradict others. Consistent with the prior research, I find that AFSPs are more prevalent in areas where a large percentage of the population is black or lacks a high school diploma. However, contrary to previous studies, I find that AFSPs generally avoid the poorest areas and areas with high concentrations of Hispanics. Credit scores are found to be a strong predictor of AFSP concentration: counties where a larger percentage of the population has no credit score have a greater density of all three types of AFSPs examined, while counties where a larger percentage of the population has a credit score that would place them in the subprime category have increased concentrations of both payday lenders and pawnshops. This finding suggests that AFSPs may simply locate where the demand for their services is likely to be greatest because a significant portion of the population does not qualify for more mainstream (and less expensive) forms of credit. However, further research is needed to more fully assess the competing claims made by industry critics and supporters regarding the behavior of AFSPs. Finally, state laws and regulations governing AFSPs appear to have a significant effect on the number of AFSPs per capita. More stringent limits on the interest rates that

can be charged on payday loans (pawn loans) are associated with significantly fewer payday lenders (pawnshops) per capita.

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Addendum to the 2011 FDIC National Survey of Unbanked and Underbanked Households

Use of Alternative Financial Services

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1. Introduction

This addendum to the 2011 FDIC National Survey of Unbanked and Underbanked Households provides national- and state-level information on the use of alternative financial services (AFS). It complements the national data on AFS use presented in the 2011 report and the appendices that were released in September 2012.¹

The FDIC National Survey of Unbanked and Underbanked Households was conducted in June 2011 as a special supplement to the U.S. Census Bureau's Current Population Survey. The FDIC survey was designed to collect data on the banking status of U.S. households and to better understand unbanked and underbanked populations.

The survey was undertaken as part of the FDIC's efforts to comply with a statutory mandate that requires the FDIC to conduct ongoing surveys of bank efforts to serve the unbanked by providing important data about underserved households. Beyond estimating the number of unbanked and underbanked households and their demographic characteristics, the survey estimates the types of bank accounts that banked households own, the use of AFS, and reasons cited by households that are not fully using the mainstream banking system.

While the 2011 report included national-level findings regarding use of AFS, this addendum provides additional national data on the types, timing, and extent of AFS use among all households. The addendum also reports state-level results on the use of credit and transaction AFS products (non-bank money orders, non-bank check cashing, non-bank remittances, payday lending, pawnshops, rent-to-own stores, and refund anticipation loans).

The definition of an underbanked household was revised for the 2011 report. As a result, the estimates of the proportion of households that were underbanked in 2011 are not directly comparable with estimates previously reported for 2009. In the 2011 report, underbanked households are defined as those that used non-bank check cashing, non-bank money orders, non-bank remittances, payday lending, pawnshops, rent-to-own agreements, or refund anticipation loans (RALs) at least once in the previous 12 months. This differs from the underbanked definition used in the 2009 report in several ways. The 2009 definition of underbanked households did not include non-bank remittance use, as this information was not collected. The 2009 survey also considered households that used RALs in the previous five years to be underbanked, while the 2011 definition includes only those households that used RALs in the previous year. Finally, the 2011 report defines underbanked households as

those that used one of the AFS credit products or transaction services "in the last 12 months," while in 2009 households were considered to be underbanked if they used AFS "once or twice a year" or "at least a few times a year."

¹ 2011 FDIC National Survey of Unbanked and Underbanked Households can be found at http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf.

2. Summary of Results

2.1 National Tables

The tables in Section A present national-level estimates of AFS use by household demographic characteristics, further subdivided by banking status. The first series of tables provide an in-depth look at households that have used AFS. These tables include estimates of the number and proportion of households that have used transaction AFS and credit AFS, and estimates of the number and proportion that have used these products in the past year.

The 2011 FDIC Survey of Unbanked and Underbanked Households included analysis of the use of AFS among all U.S. households. To complement the 2011 household survey, a set of tables in Section A of the 2011 addendum provides more detailed information on the demographic characteristics of households that have used transaction or credit AFS. An additional set of tables provides a breakdown of transaction and credit product use within the past year.

National-level Summary:

- One-quarter of households have used at least one AFS product in the past year, including 65 percent of unbanked households. By definition, all underbanked households have used AFS in the past year.
- At least 12 percent of households used AFS products in the last 30 days, including about four in ten unbanked and underbanked households (45.5 percent of unbanked households and 41.2 percent of underbanked households).
- At least 42.9 percent of all U.S. households have used one or more of the following types of AFS ("ever used AFS"): non-bank money orders, non-bank check cashing, non-bank remittances, payday loans, pawnshop loans, rent-to-own agreements, and refund anticipation loans. About 54 percent of all households have never used these services. In 2009, 35.7 percent of all U.S. households had used AFS, and about 60 percent had never used these products (though data on household use of non-bank remittances were not collected in 2009).
- Compared with the national average (42.9 percent), higher proportions of black (63.8 percent) and Hispanic (54.4 percent) households have used AFS. In contrast, only 37.6 percent of white households have used AFS.

Transaction AFS (non-bank money orders, non-bank check cashing, and non-bank remittances) have been used by 39.1

percent of all U.S. households. More than one in five households (23.3 percent) have used a transaction AFS in the past year, including 62.1 percent of unbanked households and almost all underbanked households (90.4 percent).

Use of credit AFS (payday loans, pawnshop loans, rent-to-own agreements, and refund anticipation loans) is less widespread; 14.2 percent of all U.S. households have used these services. Six percent have used a credit AFS product in the past year.

More than 30 percent of unbanked households did not use AFS in the past year, including at least one in five (20.6 percent) that have never used these services. This pattern suggests a heavy reliance on cash transactions or other informal financial relationships.

2.2 State Tables

Sections B and C provide information on AFS use specific to each of the 50 states and the District of Columbia. Tables in Section B provide state-level data on households that have ever used AFS as well as data on the timing of AFS use. For each state, Section B also presents the shares of households that have used each of the AFS products included in the 2011 household survey (i.e., non-bank money orders, non-bank check cashing, non-bank remittances, payday loans, pawnshop loans, rent-to-own agreements, and refund anticipation loans). Tables in Section C provide more detailed estimates of the timing of AFS use by banking status and household characteristics.

State-level Summary:

- Household use of AFS varies considerably across states. The state-level share of households that have ever used AFS ranges from 30.8 percent in New Hampshire to almost 60 percent in Alabama. Colorado, where 42.7 percent of households have ever used AFS, represents the median. In the 2009 survey, AFS usage (excluding non-bank remittances) ranged from a high of 49.2 percent in Alaska to a low of 25.3 percent in Massachusetts.
- Among unbanked households, the proportion that has ever used AFS ranges from about 55 percent in Connecticut to more than 93 percent in Tennessee. About three in four unbanked households in Nebraska (75.4 percent) have used AFS, representing the median across states. In 2009, AFS usage (excluding non-bank remittances) ranged from 88.7 percent of unbanked

households in Montana to 40.9 percent of unbanked households in Hawaii.

- Although the overall proportion of households in Tennessee that have ever used AFS, at 43 percent, is close to the median, Tennessee has the highest proportion of unbanked households that have ever used AFS, at 93.3 percent. About 12 percent of all households in Tennessee have used AFS in the past 30 days, compared with almost 60 percent of unbanked households in the same period. Among black households in Tennessee, 55.5 percent have ever used AFS and about 24 percent have used AFS in the last 30 days, almost double the state average.
- In Connecticut, 30.7 percent of all households and slightly more than half (54.6 percent) of unbanked households have ever used AFS, the latter being the lowest of any state. Almost 7 percent of all households and 23.9 percent of unbanked households in Connecticut have used an AFS product in the last 30 days. Among black households in Connecticut, 61.1 percent have used AFS and almost one in four has used an AFS product in the last 30 days, more than four times the state average.
- In New Mexico, 43.4 percent of unbanked households have never used AFS, the highest proportion of any state. This suggests a reliance on cash transactions or other informal financial relationships. In contrast, only 6.7 percent of unbanked households in Tennessee have never used AFS, the lowest proportion among states.
- At the state level, the share of households that have ever used transaction AFS ranges from 25.2 percent in Minnesota to almost 54 percent in Alabama, while the share of households that have used a transaction AFS in the past year ranges from about 12.6 percent in New Hampshire to almost one in three households (32.7 percent) in Texas.
- Household use of credit AFS products is less common and varies less across states when compared with transaction AFS products. The state-level share of households that have ever used credit AFS products ranges from less than 8 percent in New Hampshire to 21.7 percent in Texas, while credit AFS product use in the last year ranges from 2.5 percent in New Hampshire and New York to more than one in ten households (11.9 percent) in Nevada.

3. Methodological Note

The data for this report were collected through the 2011 FDIC National Survey of Unbanked and Underbanked Households. The Current Population Study (CPS) is a monthly survey of about 53,700 interviewed households conducted by the U.S. Census Bureau for the Bureau of Labor Statistics (BLS). The CPS sample is representative of the U.S. civilian, non-institutionalized population, aged 15 or older.

The CPS is the primary source of information on the labor force characteristics of the U.S. population, including employment, unemployment, and earnings statistics. Additional information about the CPS is provided in the Census Bureau's Technical Paper 66, Design and Methodology of the CPS, available at <http://www.census.gov/prod/2006pubs/tp-66.pdf>.

The Unbanked/Underbanked Supplement was conducted in June 2011. About 44,900 (84 percent) of the 53,700 households participating in the CPS also participated in the Unbanked/Underbanked Supplement.¹ The response rates for the 2011 Unbanked/Underbanked supplement vary by demographic group, ranging from 79 percent to 86 percent.

The 2011 Unbanked/Underbanked Supplement represents the second time this survey has been conducted. The first Unbanked/Underbanked Supplement was conducted in January 2009. The primary purpose of the supplement is to estimate the percentage of U.S. households that are "unbanked" and "underbanked" and to identify the reasons why these households do not participate fully in the mainstream banking system. The supplement survey instrument used in 2011, Appendix G of the 2011 FDIC Survey of Unbanked and Underbanked Households, included about 40 questions designed to gather this information. The 2011 survey instrument contains minor revisions to the 2009 survey instrument. The 2009 survey instrument underwent four rounds of cognitive field pre-testing and was revised to address the feedback gathered from each round². The 2011 survey instrument underwent an expert review process by the US Census Bureau. For a detailed description of the revisions, see Appendix F (Revisions to the 2011 Survey Instrument) in the 2011 FDIC Survey of Unbanked and Underbanked Households. Because of changes in the questionnaire, direct comparisons between 2009 and 2011 estimates are limited and in some instances impossible.

¹ Taking into account the nonresponse to basic CPS questions, the overall response rate for the Unbanked/Underbanked Supplement was 76 percent.

² The goal of each round was to determine respondents' comprehension of each question, test the flow of the questions, find major recall difficulties, ascertain the sensitivity or inappropriateness of any questions, and gauge the operational feasibility of the supplement. No changes to the survey were recommended following the fourth round of testing.

All households that participated in the June 2011 CPS were eligible to participate in the Unbanked/Underbanked Supplement. However, only households whose respondents specified that they had some level of participation in their household finances and also responded "Yes" or "No" to whether someone in their household had a bank account (survey supplement Question 2, or Q2) were considered survey respondents. CPS household respondents who did not answer or answered "Don't Know" to Q2, or who did not participate in their household financial decisions (or refused to answer) were asked no further questions and were classified as nonrespondents for the supplement.

Using supplement survey results, households were classified as "unbanked" if they answered "No" to the question, "Do you or does anyone in your household currently have a checking or savings account?" Households answering "Yes" to this question were classified as "underbanked" if they indicated that they had used at least one of the following alternative financial services (AFS) at least one time in the previous 12 months: non-bank money orders, non-bank check-cashing services, non-bank remittances, payday loans, rent-to-own services, pawn shops, or refund anticipation loans.

The 2011 definition of "underbanked" has been revised from the 2009 definition to include households that used non-bank remittances in the last year. The 2011 underbanked definition was also modified to include only households that used a refund anticipation loan in the last year, as opposed to in the last five years—the basis for the 2009 report. Further, survey respondents to the 2011 survey were asked about their AFS use over definitive time periods (i.e. "in the last 30 days," "in the last 2-12 months" or "not in the last 2-12 months"), while respondents to the 2009 survey could indicate AFS use more generally (i.e. "at least a few times a year," "once or twice a year" or "almost never"). Consequently, 2011 underbanked estimates are not directly comparable to 2009 estimates (see Box 2 on page 19 of 2011 FDIC Household Survey Report).

Demographic characteristics such as race, age, education, and employment, associated with a respondent household for the supplement are those reported for the householder/reference person (i.e., a person who owns or rents the home, as designated by the respondent). These characteristics were used in preparing addendum estimates and tables.

The Census Bureau classifies households into different types. For instance, a family household is a household that includes two or more people related by birth, marriage, or adoption and residing together, along with any unrelated people who may be residing there. Detailed definitions regarding household types can be found in the CPS Glos-

sary available at <http://www.census.gov/cps/about/cpsdef.html>.

Households are categorized into racial-ethnic classifications as follows: If the householder is identified as black, the household is classified as "Black" regardless of whether the householder is identified as Hispanic or any other race. If the householder is not identified as black and is identified as Hispanic, the household is classified as "Hispanic Non-Black." If the householder is identified as white and not any other race and non-Hispanic, then the household is classified as "White." All remaining households are classified as "Other." However, in some national summary tables, the "Other" category is further disaggregated into "Asian" if the householder is identified as Asian, "American Indian/Alaskan" if the householder is identified as American Indian/Alaskan and not Asian, and "Hawaiian/Pacific Islander" if the householder is identified as Hawaiian/Pacific Islander and not Asian or American Indian/Alaskan. In these tables, "Other" consists of the few remaining households in which the householder cannot be classified into any of the preceding groups.

Additional information regarding the unbanked/underbanked supplemental survey methodology can be found in Appendix E "FDIC Technical Notes" of the 2011 FDIC Survey of Unbanked and Underbanked Households (September 2012) available at http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf.

Secondhand Stores, Pawnbrokers & Payday Loan
Median Household Incomes
May 7, 2014

2nd Hand Merchandise & Alternative
Lending Outlets
Attachment 9
Exhibit E - Map

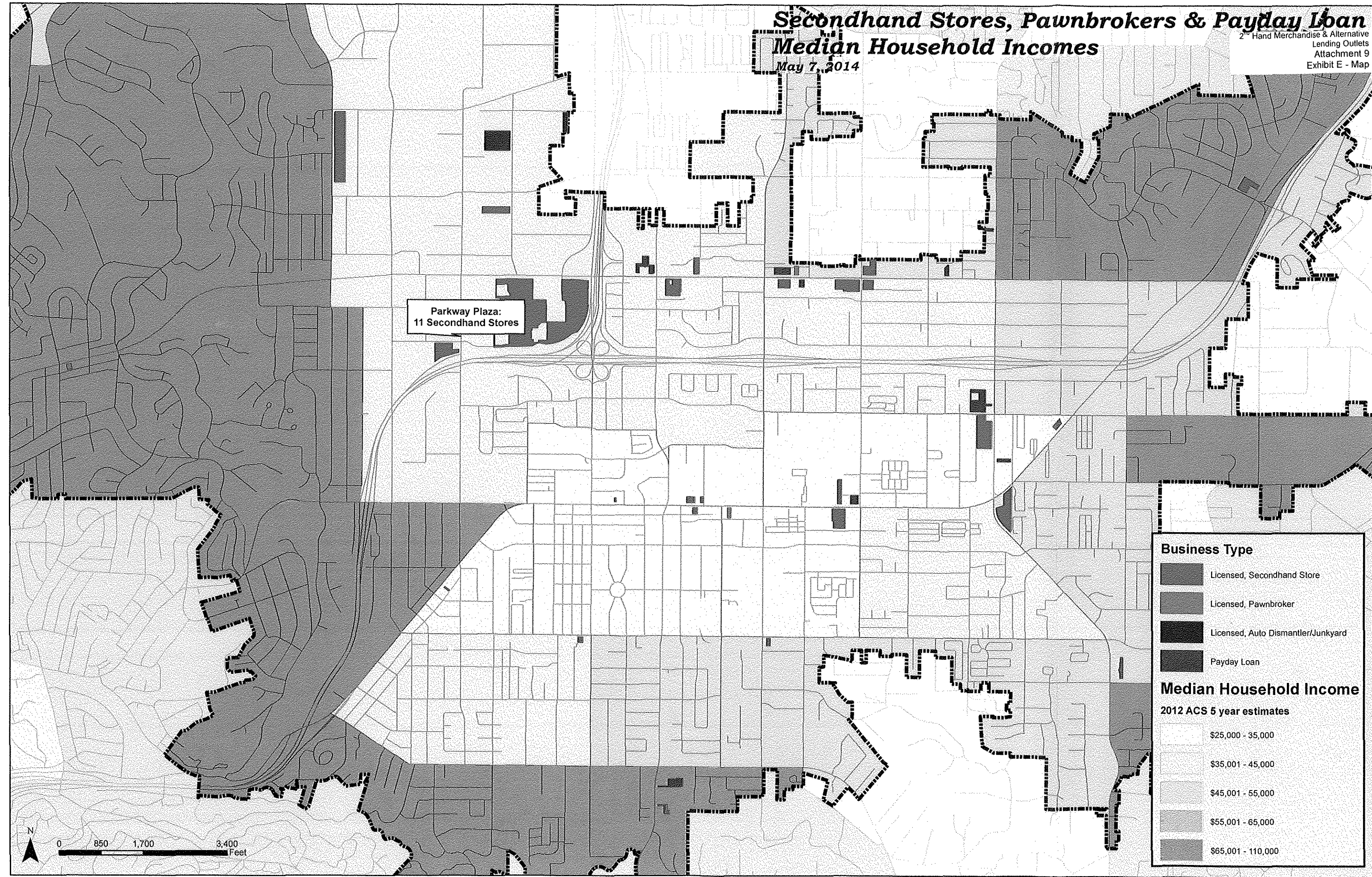
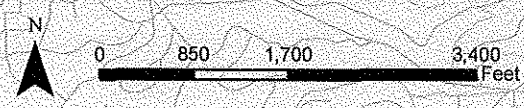
Parkway Plaza:
11 Secondhand Stores

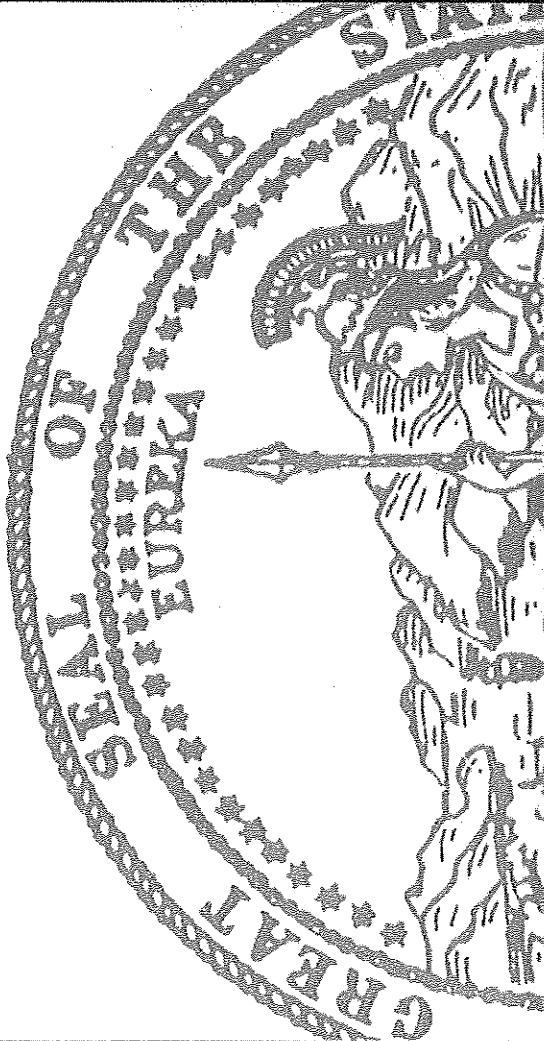
Business Type

- Licensed, Secondhand Store
- Licensed, Pawnbroker
- Licensed, Auto Dismantler/Junkyard
- Payday Loan

Median Household Income
2012 ACS 5 year estimates

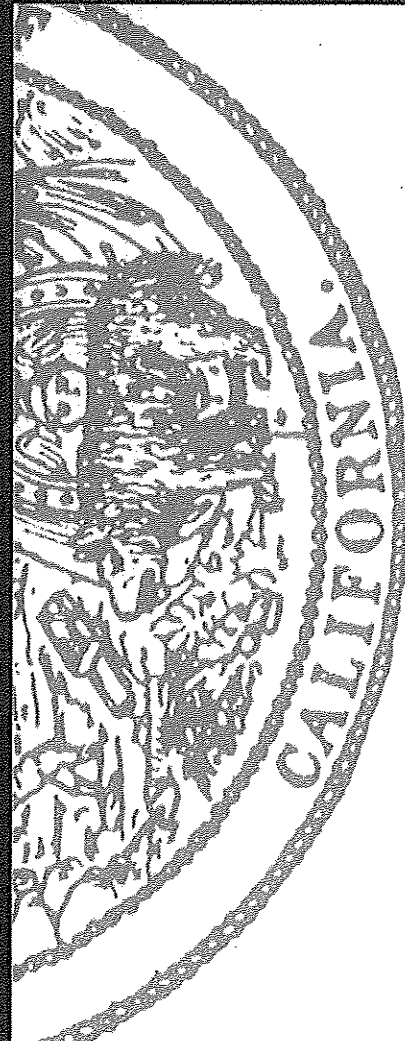
- \$25,000 - 35,000
- \$35,001 - 45,000
- \$45,001 - 55,000
- \$55,001 - 65,000
- \$65,001 - 110,000





2013

Summary Report:
California Deferred Deposit Transaction Law – Industry Survey



California Department of Business Oversight

Summary Report:
California Deferred Deposit Transaction Law – Industry Survey

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF BUSINESS OVERSIGHT

JAN LYNN OWEN
CALIFORNIA COMMISSIONER of BUSINESS OVERSIGHT

Financial Services Division
California Deferred Deposit Transaction Law

Louisa A. Broudy, Deputy Commissioner

Frankie B. Hornick, Special Administrator



Summary Report: California Deferred Deposit Transaction Law – Industry Survey

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Summary Report: California Deferred Deposit Transaction Law – Industry Survey

Introduction¹

The *California Deferred Deposit Transaction Law – 2013 Industry Survey* (Survey) was administered to all California licensed Deferred Deposit Originators (commonly known as Payday lenders) in June and July of 2013. The response rate was 93%, with 292 licensees reporting.

Licensees were asked to provide information for 2012 and for the period of January through May of 2013. The purpose of the Survey was to capture information about licensee activities and was not an attempt to capture consumer behavior. The Survey collected information on payday lender issues/activities related to the following:

- Transactions per Customer
- Customer's Income
- Internet Transactions
- Lead Generators
- Military Customers
- Payments to Customers
- Repayment from Customers
- Collections
- Customer Complaints
- Independent Agents

This Report provides a summary of the aggregated information collected by the Survey and is based on unaudited data provided by licensees. Responses to the survey were received by August 29, 2013.

Due to continuous fluctuations in the deferred deposit licensee population, data included in this Report is not comparable to data included in the *DBO Annual Report: Operations of Deferred Deposit Originator under the California Deferred Deposit Transaction Law*.

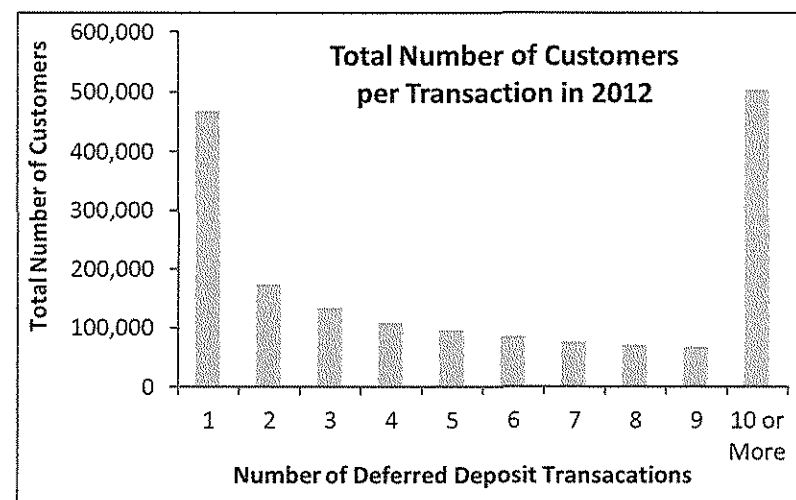
¹ Updated December 2013



Summary Report: California Deferred Deposit Transaction Law – Industry Survey

Deferred Deposit Transaction Volumes per Customer²

- Questions one through ten of the Survey asked deferred deposit transaction originators (payday lenders) to report the number of customers who have obtained a specified number of transactions during specified time periods. The table below and graph to the left provides the aggregated response data for each question.
- Only full year data for 2012 for questions one through ten is included in the graph and table. The partial data available for 2013 is not included in the graph and table because it does not account for potential repeat consumer borrowing seen in a full year, and therefore not comparable to the 2012 data.



Source: Survey questions 1 through 10.

Question #	1	2	3	4	5	6	7	8	9	10
Question text	Number of customers who obtained 1 deferred transaction	Number of customers who obtained 2 deferred transactions	Number of customers who obtained 3 deferred transactions	Number of customers who obtained 4 deferred transactions	Number of customers who obtained 5 deferred transactions	Number of customers who obtained 6 deferred transactions	Number of customers who obtained 7 deferred transaction	Number of customers who obtained 8 deferred transaction	Number of customers who obtained 9 deferred transaction	Number of customers who obtained 10 or more deferred transactions
2012 Totals	470,031	175,356	135,226	110,104	97,463	85,848	76,819	71,636	68,370	505,563

Active Military Customers

- 2% of reporting licensees indicated that they have customers who are in active military service. Of this share of payday lender licensees, the total number of customers was 159 for 2012 and 89 for 2013 (as of 5/31/13), with \$302,300 in transactions for 2012 and \$98,006 in transactions for 2013 (as of 5/31/13). (Source: Survey questions 27 through 29.)

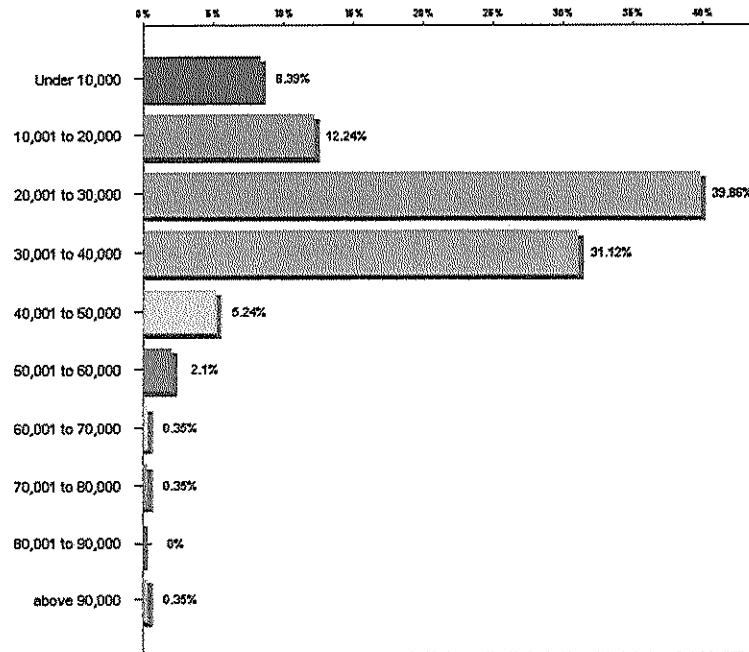
² Updated December 2013



Summary Report: California Deferred Deposit Transaction Law – Industry Survey

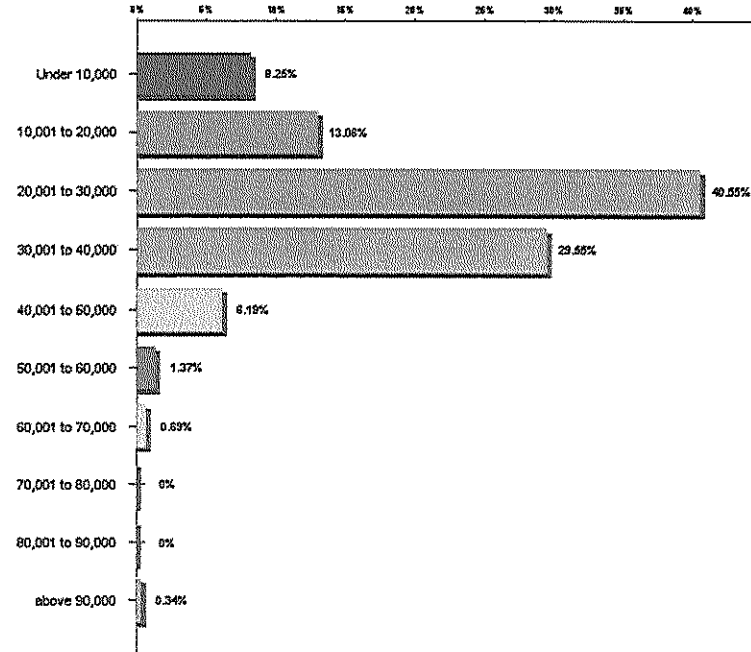
Customer's Income

2012
Average Annual Income



Source: Survey question 11.

As of 5/31/2013
Average Annual Income



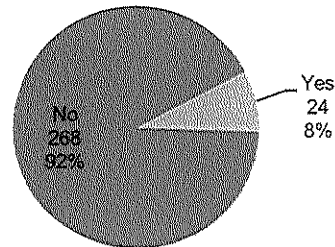
Source: Survey question 11.



Summary Report: California Deferred Deposit Transaction Law – Industry Survey

Internet Transactions

Percentage of Payday Lenders Conducting Transaction on the Internet



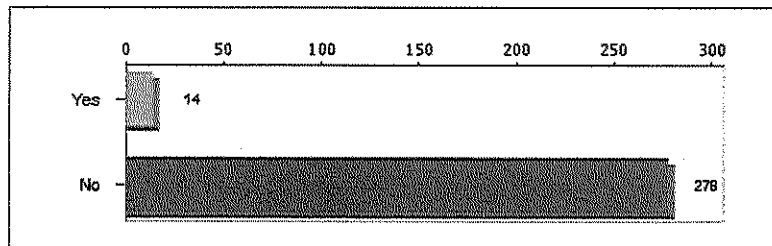
Source: Survey question 12.

Totals	2012	As of 5/31/2013
Number of Transactions	1,094,758	456,009
Number of Customers	230,754	146,852
Transaction Amounts	\$289,017,674	\$120,343,790

Source: Survey question 13 - 15.

Lead Generators

Number of Payday Lenders Using Lead Generators



Source: Survey question 16.

	2012	As of 5/31/2013
Fees Paid to Lead Generators	\$3,748,404	\$1,662,786
Average Maximum Fee Paid per Lead	\$23	\$27
Average Minimum Fee Paid per Lead	\$8	\$9
Average Fee Paid per Lead	\$15	\$17

Source: Survey question 20 – 23.

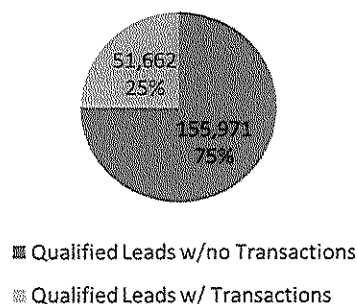
- Of the 14 licensees that indicated they use lead generators, approximately 3,504 lead generators were used in 2012 and 118 were used in 2013 (as of 5/13/31).



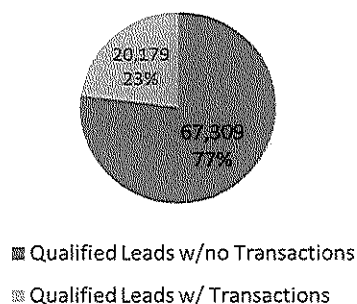
Summary Report: California Deferred Deposit Transaction Law – Industry Survey

Lead Generators (Continued)

2012
Percentage of Qualified Leads
Resulting in Transactions



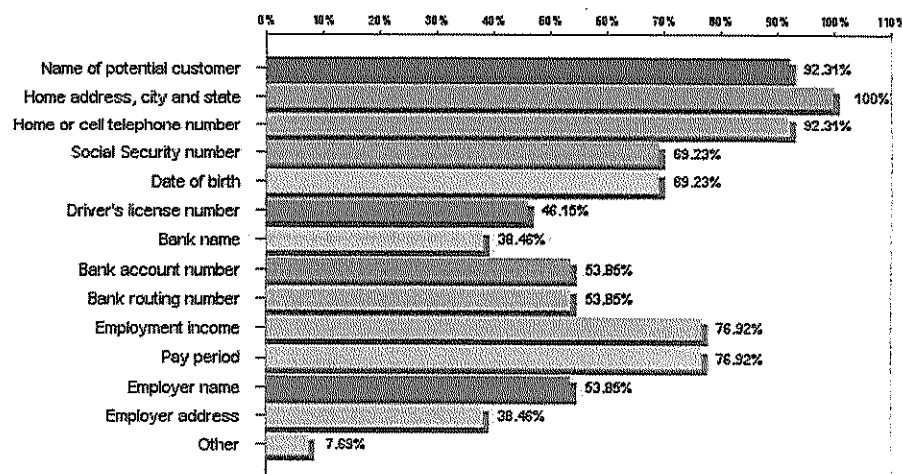
As of 5/31/2013
Percentage of Qualified Leads
Resulting in Transactions



Source: Survey questions 18 and 19.

- 78.5% of responding licensees indicated that they pay lead generators for individual leads, and 21.4% indicating they pay lead generators for individual *and* multiple leads. (Source: Survey question 24.)
- 92.8% of responding licensees indicated that the lead generators they use provide customer's personal information. (Source: Survey question 25.)
- The primary types of customer information provided by lead generators are name, home address, and home/cell telephone number. The "other" type of information respondents indicated receiving is email address. (Source: Survey question 26.)

Types of Customer Information Provided by Lead Generators



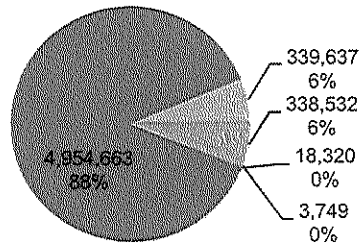
Source: Survey question 26.



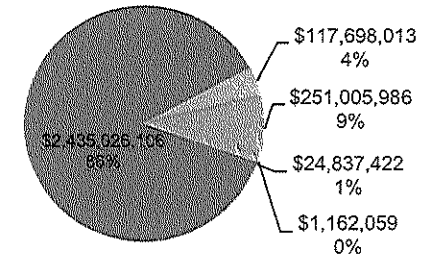
Summary Report: California Deferred Deposit Transaction Law – Industry Survey

Payments to Customers

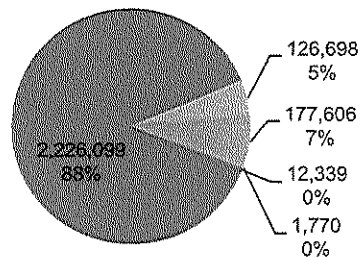
Volume of Payments To Customers - 2012



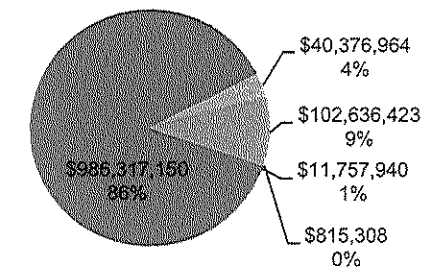
Amount of Payments To Customers - 2012



Volume of Payments To Customers - As of 5/31/13



Amount of Payments To Customers - As of 5/31/13



Source: Survey question 30.

Source: Survey question 31.

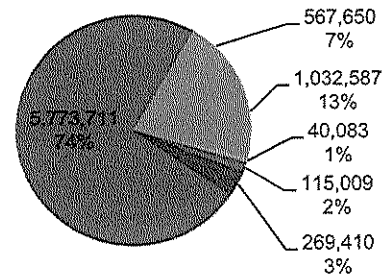
- The percentage of the loan volume and amount for each type of payment method are consistent across 2012 and 2013 (as of 5/31/13). This indicates that licensed payday lenders are consistent in the methods they use to provide payment to customers.
- No licensees reported providing payment to customers through credit cards.
- The "other" category includes the following payment types as described by responding licensees: "wire" and "debit cards."
- Question 30 was a hybrid of two separate categories reported on the *DBO Annual Report: Operations of Deferred Deposit Originator under the California Deferred Deposit Transaction Law*. Therefore, the volumes reported in this Report are not entirely comparable to those reported on the Annual Report.



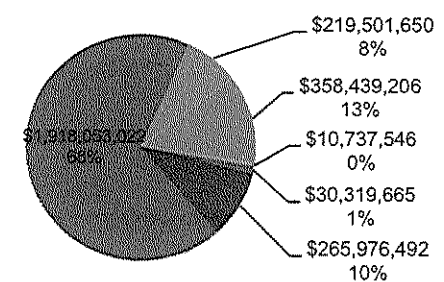
Summary Report: California Deferred Deposit Transaction Law – Industry Survey

Repayment from Customers

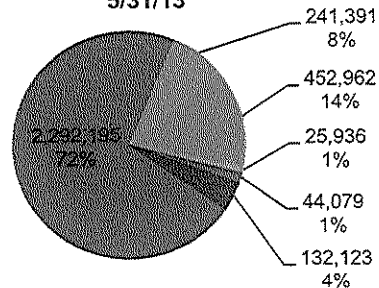
Volume of Payments From Customers - 2012



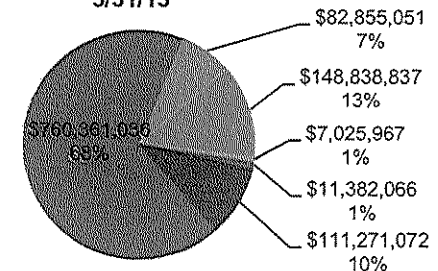
Amount of Payments From Customers - 2012



Volume of Payments From Customers - As of
5/31/13



Amount of Payments From Customers - As of
5/31/13



Source: Survey question 32.

Source: Survey question 33.

- The percentage of the loan volume and amount for each type of payment method are relatively consistent across 2012 and 2013 (as of 5/31/13). This indicates that customers are consistent in the methods they use to repay licensees.
- The "other" category includes the following payment types as described by responding licensees:

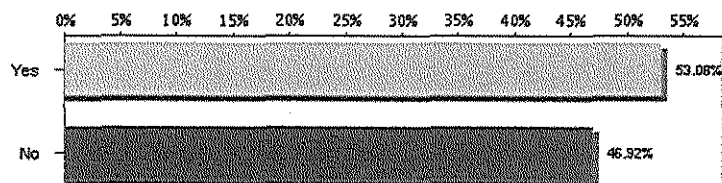
– Card products	– Money orders	– Personal check	– Electronic Check Conversion (ECC)
– Card payments	– Debit card	– Post dated check	– Electronic Check
– Small claims	– Payment plan	– ACH debit	– Prepaid/bank issued cards
– Collections	– Store credit	– Cashier check	



Summary Report: California Deferred Deposit Transaction Law – Industry Survey

Repayments from Customer (Continued)

Percentage of Payday Lenders Offering a Written Payment Plan



Source: Survey question 34.

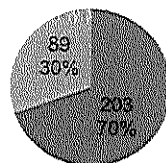
Payment Plan Volumes & Days for Repayment

	2012	As of 5/31/2013
Total Dollar Amount of Outstanding Payment Plans	\$2,882,325	\$2,130,818
Total Number of Outstanding Payment Plans	15,060	11,010
Average Maximum Days for Repayment	149	145
Average Minimum Days for Repayment	36	35

Source: Survey questions 35 through 38.

Collections

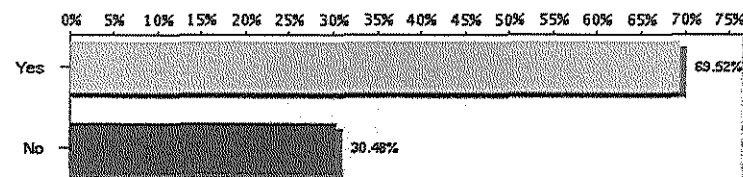
Percentage of Respondents with In-House Collections



■ Has In-House Collections ■ Does Not Have In-House Collections

Source: Survey question 39.

Percent of Payday Lenders that Own or are Affiliated with an outside Collection Agency



Source: Survey question 42.

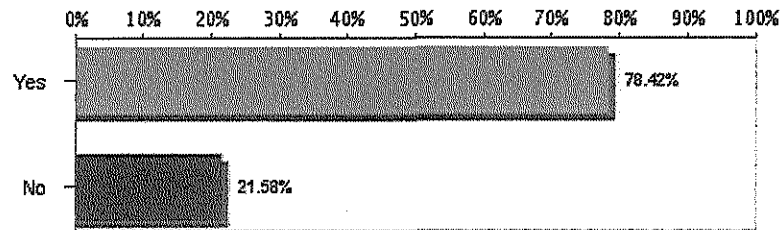
- The total number of customers handled through in-house collections was 624,763 for 2012 and 282,514 for 2013 (as of 5/31/13).
- The total dollar amount of transactions handled through in-house collections that were not associated with payment plans was approximately \$223.5 million for 2012 and approximately \$72.3 million for 2013 (as of 5/31/13).
- Collection agencies are required to have a local business license to operate and are not licensed through the DBO. Several laws regulate debt collection companies in California, including the Fair Debt Collection Practices Act (FDCPA) administered by the Federal Trade Commission (FTC), and California's Rosenthal Fair Debt Collection Practices Act (Civil Code 1788-1788.33), which is enforced by the California Attorney General.



Summary Report: California Deferred Deposit Transaction Law – Industry Survey

Customer Complaints

Percent of Licensees with Procedures for
Resolving Customer Complaints

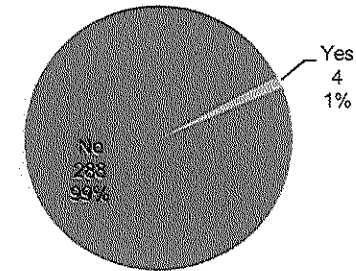


Source: Survey question 44.

- The DBO will continue to follow-up with licensees to ensure that consumer complaints are addressed.

Independent Agents

Percent of Licensees
Contracting with Independent Agent(s)



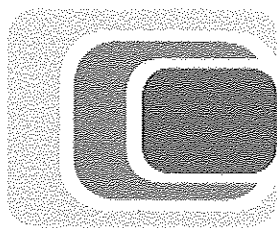
Source: Survey question 47

- Independent agents were defined by the Survey question as an agent whom is not employed by the licensee, but is contracted with to assist in the origination of deferred deposit transactions. (Source: Survey question 48.)

Additional Comments

- Additional comments provided by responding licensees included descriptions of the methodologies they used to prepare the numbers they reported in the Survey.





CALIFORNIA
CONSUMER
FINANCE
ASSOCIATION

June 24, 2014

City of El Cajon Planning Division
ATTN: Anthony Shutte, Planning Manager
200 Civic Center Way
El Cajon, CA 92020

Dear Planning Commissioners and Staff:

This letter is in response to the City of El Cajon Agenda Report dated May 13, 2014 and in anticipation of the upcoming informational Planning Commission meeting on July 1, 2014.

The members of the California Consumer Finance Association (CalCFA) are committed to providing access to a range of affordable, state-regulated, small dollar credit services so consumers and small businesses can choose the product that suits their own individual financial needs. CalCFA member companies have always worked with legislators and local government officials to create laws and regulations that allow regulated credit options that serve the needs of California residents.

On May 13, 2014, City Council directed staff to cap the existing number of pawn shops, secondhand dealers and alternative lending institutions, reduce the overall number through attrition, and develop land use regulations, such as spatial standards to eliminate overconcentration. The City Council then directed staff to broadly regulate secondhand businesses to now, include payday lending establishments. We believe this is not in the best interest of the city as a clear distinction needs to be made between secondhand dealers and payday lenders.

Our association believes there should be a variety of financial options in the community, among them payday loans. Those who obtain payday loans must have an existing bank account. In fact, among other credit options, a payday loan may be the best choice when consumers consider the often higher costs of bouncing a check, paying overdraft protection fees, or incurring late payment penalties. Consumers want and benefit from having more alternatives, not fewer, and this need is better served in a competitive marketplace.

According to the City of El Cajon agenda report, we have the following concerns:

- 1) Cap on the existing number of payday lenders
- 2) Reduce the overall number of payday lenders through attrition
- 3) Develop land use regulations, such as spatial standards

Consumers want and benefit from having more alternatives, not fewer, and this need is better served in a competitive marketplace. Placing a cap on the number of payday lending establishments does nothing to reduce consumers' need for short term credit. Our concern with placing a cap on the number of licensed, regulated storefronts in El Cajon is that consumers will turn to online, unregulated and often offshore payday lenders. By limiting consumer's options to storefront payday lending establishments, consumers are often forced to turn to illegal, unregulated online payday lenders. Please see the attached article, "Illegal online lenders plague payday loan industry", by Claudia Buck published in *The Sacramento Bee* (October 15, 2013). In addition, the California Department of Business Oversight issued a media release warning banks and credit unions of risks of doing business with online, unregulated payday lenders (October 7, 2013). On behalf of all CalCFA members, we fully support the Department's efforts to crack down on these illegal practices.

With regards to Item 2, although it may be true that the City has seen an increase in the number of secondhand businesses, this is not true of payday lending businesses. In fact, according to the 2012 California Department of Business Oversight Annual Report, (the regulatory body which oversees payday lending), the number of payday lending businesses across California has been declining over the past decade. Since December 2006, the number of payday lenders in California has decreased by 16% while the population of El Cajon has continued to increase. As a result, we do not believe there is a need to cap the overall number of payday lenders.

With regards to Item 3, payday lending establishments in El Cajon currently operate in zone districts that provide consumers with access to financial service products in and around the communities which they live, work, and are accessible by public transit.

Restricting consumers' access to certain forms of short-term credit through increased separation requirements stifles competition, removes a large segment of the community's only access to capital, and does nothing to address their continued need for credit. On its own, distance requirements have the potential to place a de facto ban on payday lending establishments. In a city where the unemployment rate according to the State of California Employment Development Department was 8.3% in May 2014 (the third highest in San Diego County) the City of El Cajon should welcome the opportunity for new businesses to locate in El Cajon, instead of precluding payday lenders from establishing due to restrictive zoning and distance requirements.

After reviewing the staff report, we have concerns related to the following sections:

- 1) Crime
- 2) Alternative Lending Sources
- 3) Economic Vitality

Crime

Payday lending establishments do not tend to locate in high crime areas and are not suspected of being outlets for stolen property because payday lenders do not deal (buy, sell, trade, etc.) "secondhand tangible personal property".

Alternative Lending Sources

There are a few serious concerns and clarifications that need to be made to the statements provided in the Alternative Lending Sources section of the staff report, specifically relating to following unsubstantiated comments made about payday lending:

- "If the borrower does not wish to repay the loan at maturity, the loan can often be renewed or "rolled over" by paying the finance charge and having the lender agree to hold the check for another specified period of time".
 - In California, it is illegal for a consumer to repay a loan with another loan from the same company. In California, a payday loan must be paid in full prior to obtaining a new loan.
 - A payday lender cannot make a new loan to pay off an existing loan. A payday lender cannot make a new loan while an existing loan is outstanding, even if the combined balance of the existing loan and the new loan does not exceed \$300 (State of California, Department of Business Oversight).
- "Payday loans vary in size from \$50 to \$1000, with the average loan size being between \$300 and \$400".
 - Under California law, the maximum loan amount a consumer can borrow in a payday loan is \$300.
 - According to the 2012 California Department of Business Oversight Annual Report, the average loan size in 2012 was \$263.
- "In June 2013, the Federal Deposit Insurance Corporation (FDIC) indicated that nationwide, 65% of households without access to banking services have used an alternative lending services product".
 - Contrary to other secondhand businesses referenced within the staff report, 100% of customers that use payday lending services have access to banking services. Those who obtain payday loans must have an existing bank account.

Economic Vitality

We have some serious concerns and clarifications regarding some of the statements referenced under this section of the staff report to include the following:

- “Pawn shops and other alternative lending services have historically served a roll providing lending services to households without access to traditional banks”.
 - Contrary to pawn shops and other alternative lending services referenced within the staff report, 100% of customers that use payday lending services have access to banking services. Those who obtain payday loans must have an existing bank account.
- “Whether warranted or not, these businesses suffer from negative public perceptions because they are often associated with illegal conduct or stolen merchandise”.
 - In California, all payday lenders - whether a storefront or online - must be licensed by the Department of Business Oversight (formerly the Department of Corporations).
 - Payday loans are not associated with illegal conduct or stolen merchandise.
 - Payday lenders do not offer secondhand goods. Instead, payday lenders offer a heavily state and federal regulated, legal product.
- “Additional pawn shops and alternative lending stores may affect the City's emerging revitalization efforts and economic vitality, and may not be compatible with surrounding land uses due to negative public perceptions”.
 - CalCFA members work diligently to counter misperceptions surrounding the payday lending industry.

The bottom line is that payday loans are a much-needed product and without these “non-traditional” financial products, many El Cajon residents would not be able to access cash when they need it most. We recognize and appreciate the serious economic challenges many Californians face today. However further restricting payday lenders and forcing customers to the unregulated, unlicensed Internet is not the answer.

We respectfully urge you to remove payday lending establishments from the proposed ordinance, remove the cap on the number of payday lenders, and remove the distance requirement. These changes will enable individuals and small businesses to have continued access to an important option for regulated, short-term credit.

We appreciate your consideration of our concerns and thank you for the opportunity to submit comments. We look forward to future opportunities to meet with you, and members of the City Council and staff to further educate you about California Consumer Finance Association and who we serve.

Please let us know if you have any questions concerning the matters outlined in this letter.

Sincerely,

A handwritten signature in black ink that reads "Natasha Fooman" followed by a small checkmark-like flourish.

Natasha Fooman
President
California Consumer Finance Association (CalCFA)

CC: City of El Cajon, City Council
City of El Cajon, City Manager
City of El Cajon, Attorney
City of El Cajon, City Clerk

Attachments: Sacramento Bee Article
Wall Street Journal Article
Department of Business Oversight Press Release
Research Highlights - Zoning and Consumer Highlights

html
THE SACRAMENTO BEE sacbee.com

Personal Finance: Illegal online lenders plague payday loan industry

cbuck@sacbee.com

Published Sunday, Sep. 15, 2013

Payday lenders have been around for years, offering quick-but-pricey loans to distressed borrowers. From hundreds of walk-in storefront offices, they loan out small amounts – up to \$300 in California – to be paid back from the borrower's next paycheck.

Today, they're getting elbowed aside by a growing cadre of online competitors who aren't licensed and who increasingly are accused of ripping off consumers. Last month, the state Department of Business Oversight warned Californians to beware of rogue online lenders – often located offshore or overseas – who offer enticing come-ons from splashy websites but who may leave borrowers little recourse if something goes wrong.

"It's like whack-a-mole," said Mark Leyes, spokesman for the state Department of Business Oversight (formerly Department of Corporations). "We're trying to compile a list of unlicensed companies, but they change their company name from one week to the next."

Payday lending is no small-change industry. In 2011, the most recent year for state data, payday lenders in California doled out a total of \$3.28 billion in loans to 1.7 million customers. The average amount of those individual loans: \$263.

And while the number of walk-in payday loan locations has dwindled statewide in recent years, the number of online sites has "mushroomed," along with a "slow but steady" increase in complaints about web-based lenders, Leyes said.

"It's a problem. The risks are high," he said. "If it's a storefront payday lender, you walk in and look someone in the eye. But when you go online, you don't know who you're dealing with, where they're located or what their intentions are."

Since January 2013, the DBO says it has taken action against 11 illegal online lenders operating here and overseas, including in Belize, Costa Rica, Malta and the United Kingdom. The DBO's website also posts consumer alerts against U.S.-based online payday lenders with names like EZ Cash, Cash Express Loan and Mobiloans, which are operating without state-required licensing.

In dealing with online lenders, "We can issue sanctions, but they're very difficult to enforce," Leyes said.

The California Financial Service Providers Association, which represents about 1,470 walk-in payday loan locations statewide, says the unscrupulous online guys are a problem.

"We are very concerned about unlicensed, unregulated Internet lending," said CFSPA spokesperson Greg Larsen. "If you type in 'payday lending' (on a search engine), you instantly get hundreds of

thousands of hits. But who knows how many of those are offshore ... out of the reach of state licensing?"

Taking a loan from an unlicensed payday lender puts consumers at bigger risk of financial trouble, the DBO says. Among them: higher interest rates than allowed under California law; funds siphoned from your bank account without permission; personal financial data sold or pirated by the lender, even if a loan hasn't been formalized; losing the ability to track down, prosecute and recover lost funds.

The FTC notes that filling out a payday loan form online – even if you don't hit "submit" – can put you at risk for bank account fraud. In some cases, consumers who never officially took out a payday loan still had their funds stolen from their accounts.

Enforcement actions against illegal payday lenders have stepped up recently. A week ago, the Federal Trade Commission announced it shut down a Tampa, Fla.-based payday loan broker accused of pilfering \$5 million from U.S. consumers. The company, operating under multiple names such as Loan Tree Advances and Your Loan Funding, said it represented a network of 120 payday lenders and promised to help consumers obtain loans in "as little as one hour." Instead, according to the FTC's complaint, it sucked funds from the bank accounts of tens of thousands of customers. The company's two owners allegedly used the money to support a lavish lifestyle that included a 2012 Maserati, a 2011 Rolls Royce Ghost and a 2006 Ferrari 430.

On other fronts, state officials in New York have cracked down on payday lenders that elude state scrutiny by affiliating with U.S. Indian tribes, which operate outside the jurisdiction of state and local governments. And the Consumer Financial Protection Bureau recently warned against illegal payday lenders.

Given the number of cash-stressed borrowers, demand for payday loans is not going to go away, said industry spokesman Larsen.

A payday loan is "not always the right answer, but at times it may be the least expensive option for people to turn to," he said. "For example, if you have two bills for \$50 and \$75 that are going to be late, those late fees are \$35 each. That's \$70." Instead, a consumer takes out a \$125 payday loan to pay off those bills and the fee is only \$21.25, or 15 percent of the loan amount. "They make an absolute, short-term, dollar-and-cents choice," Larsen said. "That's how people look at it."

The problem, critics say, is that a payday loan's short turnaround – typically two weeks – leaves many low-income borrowers unable to repay the full amount and still cover their other household expenses, such as rent, utilities, food, etc. That traps many on a so-called "debt treadmill" – where they continue to take out new payday loans to cover their bills.

According to new numbers released last week by the Center for Responsible Lending, a consumer group that opposes payday loans, American borrowers pay \$3.4 billion in fees every year on payday loans. Of that, Californians' share of payday loan fees is \$578 million.

According to the Center for Responsible Lending, 82 percent of total annual California payday loan fees – \$474 million – come from borrowers taking out a new loan within two weeks of paying off their last loan.

In April, a payday loan reform bill, SB 515, was defeated in the state Senate Banking and Financial Institutions Committee. Among its provisions, it would have capped the number of payday loans allowed per person to six in one year.

Consumer groups urge financially stressed individuals to consider alternatives to payday loans. And state officials are simply trying to get the word out: Before you take out a payday loan, check to be sure the company is licensed.

"If they're licensed, it doesn't mean it's a good economic decision (to take out a payday loan). But at least there's some recourse," said DBO spokesman Leyes. When dealing with an unlicensed online

lender, "you're at their mercy. ... Be very cautious."

Call The Bee's Claudia Buck at (916) 321-1968.

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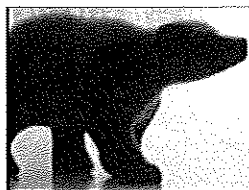
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MARKETS

Overdraft Fees at Banks Hit a High, Despite Curbs

Median Charge for Writing Checks With Insufficient Funds Reaches a Record

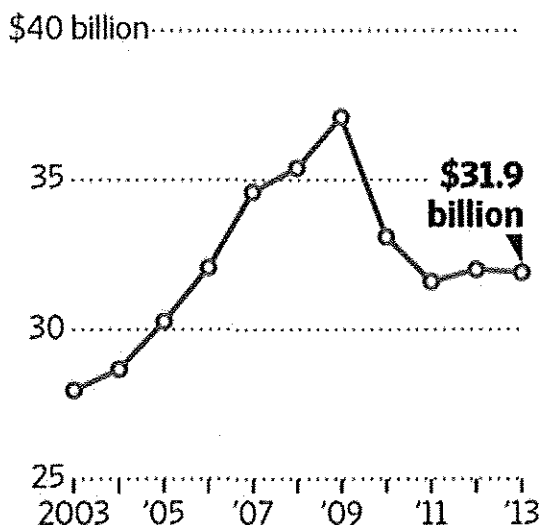
By ANNAMARIA ANDRIOTIS

April 1, 2014 7:28 p.m. ET

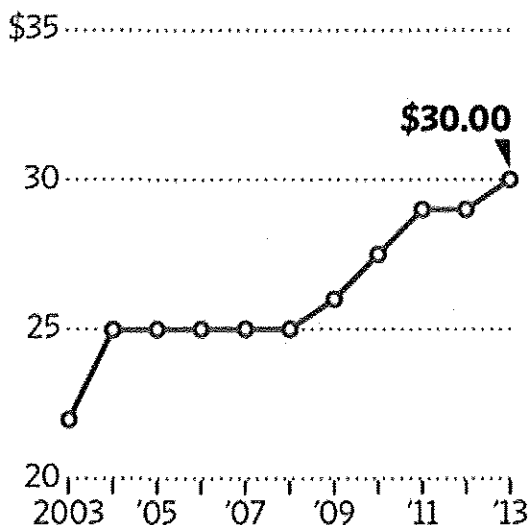
Bank Shot

Checking-account-related overdraft revenue has fallen, but a survey of nearly 3,000 financial institutions shows median fees rising.

Overdraft revenue



Median overdraft fee



Note: Median fees are based on surveys of between 2,200 and 2,890 financial institutions conducted in January or February of each year; margin of error: +/-1.67 percentage points

Source: Moebs Services

The Wall Street Journal

Squeezed by falling revenue on deposit accounts, banks are turning to a familiar source of income: overdraft fees.

Nearly four years after regulators tried to curb the fees, banks are lifting them to new heights. The median fee for withdrawing more from a checking account than a customer has on deposit increased to an estimated \$30 in

Squeezed by falling revenue on deposit accounts, banks are turning to a familiar source of income: overdraft fees. AnnaMaria Andriotis reports on MoneyBeat. Photo: Getty Images.

2013—a record—up from \$29 in 2012 and \$26 in 2009, based on a survey of 2,890 banks and credit unions by Moebs Services Inc., an economic-research firm in Lake Bluff, Ill.

"Banks have a revenue gap that needs to be recouped," said Greg McBride, chief financial analyst at Bankrate.com,

which tracks overdraft fees and other charges.

WSJ Radio

AnnaMaria Andriotis has more about the increasing overdraft fees charged by banks with WSJ Radio's Hank Weisbecker.

00:00 |
05:22

Banks' fee revenue from checking, savings and other deposit accounts has been sliding since several regulations took effect. The Federal Reserve in 2010 stopped banks from automatically charging customers overdraft fees on debit-card and automated-teller-machine transactions. In addition, the Dodd-Frank financial-overhaul law included an amendment that went into effect in 2011 lowering a debit-card fee large financial institutions charge

merchants.

The recent regulations "have forced banks to raise fees where they ordinarily would not have done so," said Richard Hunt, chief executive of the Consumer Bankers Association, which represents retail banks with more than \$1 billion in assets and is based in Washington.

At the same time, years of low rates on mortgages and other loans have eaten into the income banks collect from interest charges, an important driver of bank earnings.

To help make up for lost revenue, experts say banks are raising overdraft fees and pitching related services, hoping to increase the pool of customers who can incur such fees.

"They're doing a better job of getting them to sign up," said Ron Shevlin, senior analyst at Aite Group LLC, a research and advisory firm in Boston.

There were 7.1 overdraft incidents per checking account on average last year, according to Moebs, down from 7.4 in 2012 and 9.8 in 2009. Such incidents include overdrafts caused by debit-card transactions, ATM withdrawals, checks and bill paying linked to a checking account.

Overdraft fees make up the bulk of checking-account fee revenue, said Jefferson Harralson, a banking analyst at Keefe, Bruyette & Woods Inc. in Atlanta. Financial institutions generated \$31.9 billion in overdraft revenue in 2013, compared with \$32 billion in 2012, said Moebs. It had fallen to a recent low of \$31.6 billion in 2011, from a peak of \$37.1 billion in 2009. The fees can reach as much as \$50 per transaction, according to the Moebs survey.

Consumers had an average of \$4,434 in checking accounts last year, up from \$4,036 in 2012 and \$2,010 in 2009, according to data from Moebs and the Federal Reserve.

Steve Smith, an attorney in Little Rock, Ark., said he opted into a standard overdraft program after his local bank informed him by mail about the service. Mr. Smith, 50 years old, said he pays a \$17.50 fee each time he overdraws his checking account, which is roughly 12 to 15 times a year.

He prefers incurring the fee if it means his bills will be paid on time. "I think of this as damage control," Mr. Smith said. "If there are insufficient funds, there are consequences at my bank, but they stop there."

Overdraft fees came under fire during the recent recession. Critics charged that most checking accounts allowed overdrafts even if consumers didn't ask for the service—and that many banks processed debit-card and other transactions in a particular order to maximize the number of overdraft fees consumers would incur.

The 2010 Fed regulation required customers to give banks permission to allow overdrafts for debit-card and ATM transactions. Those who don't opt in aren't able to use their debit cards or make withdrawals if they don't have the available funds. Overdraft fees linked to checks and some online bill paying don't require a customer to give their approval.

The overdraft-fee increases come as the Consumer Financial Protection Bureau, concerned about consumer confusion regarding overdraft services, said it is studying the matter and looking into issuing its own set of rules. The bureau declined to comment further.

"Banks lost significant fee income over the past few years, but in 2013 there was stabilization, [and] going forward revenue will grow slightly," said Keefe, Bruyette's Mr. Harralson. "Banks are continuing to try to recoup the lost revenue by getting customers to use overdraft services and perhaps by nudging fees selectively."

Banks have been pushing overdraft-related services to customers in their branches, on their ATMs and on their websites to encourage customers to sign up.

U.S. Bancorp began charging \$36 in overdraft fees in August, up from \$35, while eliminating the fee for transactions of \$5 or less that trigger an overdraft. Boston Private Bank & Trust Co., a subsidiary of Boston Private Financial Holdings Inc., began charging \$30 in August, up from \$25. U.S. Bancorp said rising fees reflect the rising cost of handling checking accounts. Boston Private Bank said its fee increase was the first in more than 10 years.

Beyond standard overdrafts, many banks, including Wells Fargo & Co. and J.P. Morgan Chase & Co., offer so-called overdraft-protection programs that allow customers to link a checking account to another account they have with the bank. Funds can then be automatically transferred to the checking account should an overdraft occur. In most cases, banks charge a fee for each day that transferred funds are needed to cover an overdraft.

A spokeswoman for Wells Fargo said this service, which costs \$12.50 each day it is used, is a "backup plan" for customers who don't want their transactions to be declined because of insufficient funds and don't want to incur the bank's standard \$35 overdraft penalty, which can be levied up to four times a day.

Chase alerts customers whose previous checking transactions suggest they are likely to overdraw often, said a spokeswoman. Bank representatives suggest the service, which costs \$10 each day it is used, to such customers in branches and online. (Its standard overdraft fee, in contrast, is \$34 with a cap of three times a day.)

Wells Fargo and Chase say customers can add funds to their checking accounts by a designated time each night to avoid overdraft fees.

The banks waive overdraft fees for certain transactions as well.

More banks and credit unions are making similar moves. RBS Citizens Financial Group Inc., a unit of Royal Bank of Scotland Group PLC, and Navy Federal Credit Union—which is based in Vienna, Va., and is the largest credit union in the U.S., with more than \$57 billion in assets—recently began waiving overdraft fees for transactions of \$5 or less that result in an overdrawn checking account.

RBS Citizens said it is responding to consumers' expectations to not have to pay a fee for small purchases.

Michael Christian, assistant vice president of savings and checking accounts at Navy Federal, said the credit union is trying to provide low-cost overdraft options and that more checking-account customers have been signing up.

Write to AnnaMaria Andriotis at AnnaMaria.Andriotis@wsj.com

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DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians***JAN LYNN OWEN****Commissioner of Business Oversight****MEDIA RELEASE****For Immediate Release**

October 7, 2013

Contact:

Mark Leyes (916) 322-7180

**State Banks and Credit Unions Warned
of Illegal Payday Loan Risks**

SACRAMENTO (October 7, 2013) – The California Department of Business Oversight (Department) has alerted banks and credit unions of the Department's ongoing efforts to stop illegal unlicensed online payday lending activity and their obligation to identify and report any suspicious activity.

In a letter dated October 7, 2013, Commissioner Jan Lynn Owen directed banks and credit unions licensed by the Department to monitor transactions with any unlicensed lender and immediately report potential violations.

The Department will examine banks and credit unions to ensure safeguards are in place to prevent unlicensed payday lenders from gaining access to the Automated Clearing House (ACH) network. By accepting debit and credit transactions from unlicensed payday lenders through the ACH network, financial institutions are, knowingly or unknowingly, enabling illegal payday loan transactions to occur in California.

"Protecting consumers from illegal online payday lending is a central focus of the Department's enforcement efforts," said Commissioner Owen. "With the recent consolidation of the state's payday lending regulator with the banking and credit union regulator into the Department of Business Oversight, we are now better equipped to protect both borrowers and financial services businesses. We are reaching out to our licensees and stakeholders to try and combat this growing threat to consumers."

Payday loans are transactions in which a borrower writes a check for the amount they need and the lender defers depositing the check until a specific date, for a fee, pursuant to a written agreement. Online payday lending transactions are based on an electronic equivalent, which is transmitted via the ACH network. Online lenders who fail to obtain a license from the Department typically violate laws designed to protect borrowers, such as charging rates higher than allowed under California statute. Additionally, many are based overseas, meaning there is much less legal recourse for unsatisfied customers.

The Department encourages any Californian contemplating a payday loan to verify with the Department that the lender is licensed and in good standing with the State of California. Any borrower who feels they have been the victim of an unlicensed lender should file a complaint with the Department. Complaints can be filed electronically, or complaint forms obtained, at http://www.dbo.ca.gov/Consumers/consumer_services.

Names of unlicensed lenders that have been the subject of multiple consumer complaints are cited on the Department of Business Oversight website at <http://www.dbo.ca.gov/ENF/Alerts>. The letter from Commissioner Owen to banks and credit unions can be found here:

http://www.dbo.ca.gov/Resources/licensee_resources/Letter_to_Banks_and_CUs_-_Payday.pdf.

On July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to become the Department of Business Oversight. California consumers should contact the Department of Business Oversight to check on the licensing and standing of the companies, investments or other financial services they are considering at www.dbo.ca.gov or at the Department's toll-free Consumer Services Office at 1-866-275-2677.

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ANTI-PAYDAY LENDING ZONING RESTRICTIONS CAN HARM CONSUMER WELFARE

A law review article which is scheduled to appear in the Ohio State Law Journal by Sheila R. Foster, vice dean for Academic Affairs and the Albert A. Walsh Professor of Real Estate, Land Use and Property Law at Fordham University, "*Breaking Up Payday: Anti-Agglomeration Zoning and Consumer Welfare*," casts considerable doubt on whether zoning is the appropriate regulatory tool to achieve the consumer-protection and welfare goals animating these ordinances. The author finds that economic literature on agglomeration economies¹ suggests that there are costs to consumer welfare from limiting or breaking up clusters of retail stores.

The paper suggests that limiting payday stores through zoning can harm consumer welfare by decreasing market competition among rival lenders. Such competition, "can provide consumers—particularly vulnerable consumers with limited access and options to more traditional financial service providers—more product and pricing options than they might have in the absence of this competition...these zoning restrictions may leave payday lending consumers economically worse off than they were in an unfettered payday location market."

The full report can be found at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2346515

Policy Recommendation: Lawmakers should consider more carefully the effects of anti-payday restrictive zoning ordinances on consumer welfare.

Zoning Restrictions can Harm Consumer Welfare

- "Zoning restrictions which limit or prevent firm agglomeration can increase [consumer] search costs and reduce the incentives for competition between retail firms."
- An examination of California payday lender zoning restrictions suggests that, "great skepticism" should be applied to the "claim that zoning ordinances designed to disrupt or prevent payday lender concentrations shield or protect consumers from payday lenders."

Consumers Forced to Choose Other Products are Not Necessarily Better Off

- "...even where banks exist in neighborhoods heavily populated with traditional banking sources, some populations make the understandable, and even rational, choice to use alternative products over more traditional banking products."
- "Moreover, it is not necessarily the case that traditional banking products contain the most competitive terms for economically vulnerable populations. Even when customers have equal access to traditional banking products, such as overdraft credit protection, the associated fees and interest can be more expensive than payday loans."
- "If consumers are apt to use payday lenders over other alternatives for reasons of access and convenience, then they will continue to do so albeit with fewer choices."

Regulation

- "Evidence of a dynamic relationship between payday lending markets and state financial regulation suggests that anti-agglomeration zoning regulations are likely to be, at best, neutral and, at worst, harmful to consumer welfare."

¹Agglomeration economies are the benefits that come when firms and people locate near one another together in cities and industrial clusters. These benefits all ultimately come from transportation costs savings: the only real difference between a nearby firm and one across the continent is that it is easier to connect with a neighbor.

Agenda Item:	7
Project Name:	Electronic Vapor Devices, Vapor Inhalation Substances, and Hookah
Request:	Consider new regulations addressing electronic vapor devices, inhalation substances and hookah
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	Informational Only
Project Number(s):	Zoning Code Amendment No. 426
Location:	City Wide
Applicant:	City of El Cajon
Project Planner:	Anthony Shute, AICP
City Council Hearing Required?	No Ordinance hearings will be schedule for a later date
Recommended Actions:	<ol style="list-style-type: none"> 1. Receive staff presentation; and 2. Take public comment 3. Provide staff with feedback

PROJECT DESCRIPTION

On January 14, 2014, the City Council directed staff to prepare a report on the health hazards and other potential effects of electronic vapor substance inhalation products, prepare an overview of related regulations and report back to the Council options for addressing the issue, with an emphasis on protecting the health of citizens, especially youth. Electronic vapor substance inhalation products are commonly referred to as "electronic cigarettes," "e-cigarettes," "hookahs," "water pipes," "hookah pipes," and other similar devices, as well as such cartridges, substances and additives used to experience the sensation of smoking vapors, tobacco and non-tobacco substances.

On March 11, 2014, the City Council was presented with detailed information regarding electronic vapor inhalation products and their use. After discussing the information and hearing public testimony, the City Council adopted Resolution No. 020-14 directing the Planning Commission to hold a public hearing to consider amendments to Title 17 (Zoning Code) adding new regulations for sale and use of such products throughout the City of El Cajon.

On May 13, 2014, the City Council adopted an interim urgency ordinance establishing a moratorium on the approval of any new locations of businesses that sell electronic vapor inhalation products, and those operating lounges. The Council recognized the dramatic increase in the use of these products within the community, and the commensurate increase in businesses offering these products for sale to the public. The

Council expressed concern that there may arise problems associated with unregulated uses of commercial properties by businesses involved in the retail sale of electronic vapor inhalation products for off-site consumption and businesses providing or selling such products, as well as providing areas where customers can smoke or inhale vapor from hookahs, electronic vapor devices, or electronic hookahs, often referred to as lounges or bars.

The purpose of this staff communication is to inform the Planning Commission of the Council's direction, provide the associated background information, present the project schedule, explain the proposed ordinance framework and detail the opportunities for community input. The Planning Commission is encouraged to ask questions and provide feedback. Staff will then return to the Commission with a proposed draft ordinance at its July 15, 2014 regular meeting.

BACKGROUND

Electronic vapor inhalation of substances ("vaping"), with or without nicotine, is a rapidly growing trend, especially among youth per recent studies by federal public health agencies. Most local, state and federal laws only address traditional tobacco smoking. California Penal Code Section 308(b) prohibits minors from purchasing, receiving and possessing tobacco, including tobacco related products. Although state law prohibits the sale of electronic cigarettes to minors (California Health and Safety Code Section 119405), it does not prohibit minors from possessing or using e-cigarettes.

Public health research is ongoing, however there is growing concern and some evidence that this type of behavior is unhealthy. Additionally, the effects of secondhand vapor are not fully understood and are dependent on the chemical makeup of the substance being inhaled.

"Vaping"

"Vaping," through either e-cigarettes or inhaling flavored vapor through a hookah or other similar devices, is becoming more common throughout the country, including here in El Cajon. The inhaled vapor typically contains additives, such as nicotine, which is the addictive drug in tobacco, along with other potentially harmful chemical substances.

Hookah

Hookah is a water pipe used to smoke tobacco and is regulated the same as smoking tobacco cigarettes in the City. Vapor inhalation through a hookah, as an alternative to smoking tobacco, has health and behavioral (addiction) impacts, direct and secondhand. See hookah section below for more details.

Youth Health

According to a publication from the Tobacco Control Legal Consortium, which was provided to the City by the County of San Diego Health and Human Services Agency

Tobacco Control Resource Program and is attached to this report, “[t]he best predictor of adolescent experimentation with cigarettes is the perception by youth that cigarettes are easily available. Not only does youth smoking have life-long and life-ending health implications, but it is also a leading indicator of other high-risk behaviors among youth.” A concern with electronic vapor substance inhalation is that it has analogous effects on the current and future health and behavior of youth, due to its similarity in composition and availability.

Approaches by Other Local Agencies

On May 20, 2104, the County Board of Supervisors adopted an amendment to the county code to prohibit the use of electronic smoking devices in places where tobacco smoking is banned, including public buildings in unincorporated areas and parks. Recently, Carlsbad adopted an ordinance, which simply expanded the definition of smoking to include electronic methods too. Furthermore, the region’s local school districts, including Cajon Valley and Grossmont High School, have rules that prohibit the use of any nicotine delivery device, including e-cigarettes. The Los Angeles City Council on March 4, 2014, adopted an ordinance to include electronic cigarettes with tobacco products by banning their use in parks, restaurants and in most workplaces.

Among the states/localities that have regulated e-cigarettes, the focus has been on making retailers follow responsible business practices, rather than penalizing kids. A cursory review of the legislative history behind the State’s Health and Safety Code indicates the legislators were concerned about sales of e-cigarettes and flavored cartridges in places like mall kiosks, suggesting that their focus was on controlling supply and keeping them away from kids. In summary, many agencies are attempting to get in front of this public health issue by regulating the sale and consumption of those products.

HOOKAH SPECIFICS

Hookahs are water pipes that vary in size, shape and style. A modern hookah has a vaping head, a metal body, a water bowl, and a flexible hose with a mouthpiece. They are used to smoke specially made tobacco or shisha that comes in different flavors, such as apple, mint, cherry, chocolate, coconut, licorice, cappuccino, and watermelon. Shisha is a moist and sticky tobacco that has been soaked in honey or molasses.

Hookahs are also equipped to deliver nicotine from nontobacco products such as “herbal” shisha. Labels and ads for these products often claim that users can enjoy the same taste without the harmful effects of tobacco. However, studies of tobacco-based shisha and “herbal” shisha show that smoke from both preparations contain carbon monoxide and other toxic agents known to increase the risks for smoking-related cancers, heart disease, and lung disease.

Furthermore, new forms of electronic hookah smoking, including steam stones and hookah pens, have been introduced. These products are battery powered and turn

liquid containing nicotine, flavorings, and other chemicals into a vapor, which is inhaled. Very little information is currently available on the health risks of electronic tobacco products.

In summary, the consumption and use of tobacco products by various means is currently regulated by the City's municipal code. However, the code does not address the use of non-tobacco products that contain nicotine, such as vaping liquids, flavored cartridges or fruit based substances used in hookahs. Moreover, the City's codes do not address the various electronic means to consume these non-tobacco nicotine products such as e-cigarettes or e-hookahs. To clarify, hookah use with any tobacco product, weed or plant is currently addressed by the City's Municipal Code Chapter 8.32 *Regulation of Smoking and Secondhand Smoke*, which prohibits such use in enclosed public places and in certain outdoor public areas.

In concert with the following proposed ordinance framework, broadening the municipal code's definition of tobacco to include other tobacco containing substances, such as shisha will give clarity to its meaning and dispel misunderstandings.

PROPOSED ORDINANCE FRAMEWORK

In the broader sense, the City's municipal code would be amended to include electronic vapor inhalation behavior, age restrictions and sale with current tobacco and smoking regulations. A license to sell electronic vapor inhalation products would be required, as is currently the case with tobacco. The Planning Commission will take a land use approach by amending the Zoning Code to address businesses that primarily sell electronic vapor inhalation products or provide areas where customers can smoke or inhale vapor from hookahs, electronic vapor devices, or electronic hookahs. Minors would be prohibited from buying and consuming electronic vapor substance inhalation products. The City does not currently prohibit smoking inside private residences of any kind, including multifamily housing. Therefore, this alternative would not prohibit electronic vapor inhalation in private residences either.

To summarize, the following code language may be modified/added:

1. Equate electronic vapor inhalation regardless of substance with tobacco and smoking, including separation distances from sensitive uses (e.g. schools, parks and playgrounds, churches, health facilities, etc.)
2. Define electronic vapor inhalation substance products
3. Require a minor conditional use permit for businesses that sell electronic vapor inhalation substance products
4. Prohibit lounges where the public can inhale vapor from hookahs, electronic vapor devices, or electronic hookahs; or allow, subject to the granting of a conditional use permit, and incorporate spatial requirements from each other and sensitive uses

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The staff communication item is exempt from CEQA because no discretionary action is being taken at this public hearing.

ATTACHMENTS

1. City Council Resolution No. 020-14
2. Ordinance No. 5008
3. City Council Excerpt Minutes dated 03-11-14
4. California Codes - Health & Safety Section 119405 and Penal Code Section 308(b)
5. Studies and discussion sourced from government public health agencies
6. Public health advocacy groups' resources
7. News articles
8. California Labor Code Section 6404.5 (smoking prohibition in the workplace)
9. Community Notice letter dated 06-19-14

RESOLUTION NO. 020-14

A RESOLUTION OF INTENTION TO INITIATE AN
AMENDMENT TO TITLE 17 OF THE EL CAJON MUNICIPAL
CODE FOR THE PURPOSE OF ADOPTING REGULATIONS
PERTAINING TO THE OPERATION OF ELECTRONIC/VAPOR
SUBSTANCE INHALATION SHOPS AND LOUNGES.

WHEREAS, on January 14, 2014, and March 11, 2014, the City Council heard testimony from the public requesting amendments to the City's Municipal Code to regulate the establishment of locations of businesses that sell electronic/vapor inhalation products (commonly referred to as "electronic cigarettes," "e-cigarettes," "hookahs," "water pipes," "hookah pipes," and other similar devices, as well as such cartridges, substances, and additives used to experience the sensation of smoking vapors and tobacco and non-tobacco substances) (collectively, "Electronic/Vapor Inhalation Products"), as well as to consider amendments to the City's Municipal Code to regulate the consumption of Electronic/Vapor Inhalation Products in the City of El Cajon; and

WHEREAS, the City recognizes the dramatic increase in the use of Electronic/Vapor Inhalation Products within the community, and the commensurate increase in businesses offering Electronic/Vapor Inhalation Products for sale to the public; and

WHEREAS, the problems associated with the unregulated sale of Electronic/Vapor Inhalation Products will lead to increased consumption of such products by the youth of the community, thereby likely leading to unhealthy behavior on the part of youth, with concerns related to the harmful effects Electronic/Vapor Inhalation Products could have on our youth; and

WHEREAS, the City Council desires to reduce the health problems associated with the sale of Electronic/Vapor Inhalation Products, including the potential for harm arising from the secondhand vapors emitted from such devices, and how these emissions might affect non-smokers and those persons who find it objectionable to be subject to the emissions in the public, and has determined that local control through land use regulatory authority is necessary to ensure public health, safety and welfare by addressing the effects and impacts to the community; and

WHEREAS, the City Council has an interest in modifying the City's land use regulations to adopt a legally enforceable method to regulate the establishment of vendors of Electronic/Vapor Inhalation Products, similar to the City's regulation of tobacco-related products in Chapter 17.240 of the El Cajon Municipal Code; and

WHEREAS, amendments are needed in Title 17 (Zoning Code) of the Municipal Code to accommodate this change and pursuant to Municipal Code Section 17.20.020 amendments to Title 17 can be initiated by adoption of a resolution of intention by the City Council or the Planning Commission.

(Continued on Page 2)

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. That the El Cajon City Council hereby directs the Planning Commission to hold a public hearing to consider amendments to Title 17 of the Municipal Code adding new regulations for vendors of Electronic/Vapor Inhalation Products as well as procedures for enforcement of all vendors of Electronic/Vapor Inhalation Products throughout the City of El Cajon.

2. That the scope of work for this amendment is to be generally consistent with Alternative #1, as described in the companion staff report dated March 11, 2014.

3. That staff concurrently conduct stakeholder outreach and consider the input given in preparing amendments to Title 17 applicable to vendors of Electronic/Vapor Inhalation Products.

PASSED AND ADOPTED by the City Council of the City of El Cajon, California at a Regular Joint City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meeting held this 11th day of March 2014, by the following vote to wit:

AYES	:	Ambrose, Bales, Kendrick, McClellan, Wells
NOES	:	None
ABSENT	:	None
DISQUALIFY:	:	None

BILL WELLS
Mayor of the City of El Cajon

ATTEST:

BELINDA A. HAWLEY, CMC
City Clerk

I hereby certify that the above and foregoing is a full and true copy of Resolution No. 020-14 of the Resolutions of the City of El Cajon, California, as adopted by the City Council at the Regular Joint Meeting of the City Council/Housing Authority/Successor Agency to the Redevelopment Agency on the 11th day of March 2014.

Belinda A. Hawley
Belinda A. Hawley, CMC, City Clerk

ORDINANCE NO. 5008

AN INTERIM ORDINANCE ADOPTED AS
AN URGENCY MEASURE PURSUANT TO
CALIFORNIA GOVERNMENT CODE SECTION 65858
TO ESTABLISH A MORATORIUM ON
THE APPROVAL OF ANY NEW HOOKAH
AND ELECTRONIC/VAPOR SUBSTANCE
INHALATION SHOPS AND LOUNGES
IN THE CITY OF EL CAJON.

THE CITY COUNCIL OF THE CITY OF EL CAJON DOES ORDAIN AS FOLLOWS:

SECTION 1: Findings and Declaration of Intent.

That the City of El Cajon has an overriding interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods. Without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with tragic consequences to social, environmental, and economic values.

On January 14, 2014, and March 11, 2014, the City Council heard testimony from the public requesting amendments to the El Cajon Municipal Code ("ECMC") to regulate, through the City's Zoning Code ("Title 17" or "the ECMC"), the establishment of locations of businesses that sell electronic/vapor inhalation products (commonly referred to as "electronic cigarettes," "e-cigarettes," "hookahs," "water pipes," "hookah pipes," and other similar devices, as well as such cartridges, substances, and additives used to experience the sensation of smoking vapors, tobacco and non-tobacco substances) (collectively, "Electronic/Vapor Inhalation Products"), and as well as to consider amendments to the ECMC to regulate the sales of Electronic/Vapor Inhalation Products in the City of El Cajon.

The City Council recognizes the dramatic increase in the use of Electronic/Vapor Inhalation Products within the community, and the commensurate increase in businesses offering Electronic/Vapor Inhalation Products for sale to the public and businesses providing areas where customers can smoke or inhale vapor from hookahs, electronic vapor devices, or electronic hookahs, often referred to as lounges or bars ("Lounges"); and that the problems associated with the unregulated sale of Electronic/Vapor Inhalation Products, and the use of properties for Lounges, will lead to increased consumption of such products by the youth of the community, thereby likely leading to unhealthy behavior on the part of youth, with concerns related to the harmful effects Electronic/Vapor Inhalation Products could have on our youth. The City Council has also become concerned with the unregulated use of commercial property for Lounges, which might create unwanted and undesirable activities in and around the properties where Lounges are established, and has determined that local control through land use regulatory authority is necessary to ensure public health, safety and welfare by addressing the effects and impacts Lounges might have to the community.

Accordingly, the City Council has an interest in modifying the City's land use regulations to adopt a legally enforceable method to regulate the establishment of vendors of Electronic/Vapor Inhalation Products and businesses operating Lounges in the community.

(Continued on Page 2)

Amendments are needed in Title 17 (Zoning Code) of ECMC to accommodate this change. Pursuant to ECMC Section 17.20.020, amendments to Title 17 can be initiated by adoption of a resolution of intention by the City Council or the Planning Commission. Resolution No. 020-14 was adopted by City Council on March 11, 2014.

SECTION 2: Purpose.

The purpose of this ordinance is to place a moratorium on additional Electronic/Vapor Substance Inhalation Shops and Lounges from doing business in the City of El Cajon until such reasonable time as a detailed study of the possible adverse impacts such establishments might have on commercial uses, may be made.

"Electronic/Vapor Substance Inhalation Shops and Lounges" are defined as those businesses that sell electronic/vapor substance inhalation products (commonly referred to as "electronic cigarettes," "e-cigarettes," "hookahs," "water pipes," "hookah pipes," and other similar devices, as well as such cartridges, substances and additives used to experience the sensation of smoking vapors, tobacco and non-tobacco substances) (collectively, "Electronic/Vapor Inhalation Products"), both for off-site uses, and on-site uses by providing areas where customers can smoke or inhale vapor from hookahs, electronic vapor devices, or electronic hookahs, often referred to as lounges or bars ("Lounges").

SECTION 3: Urgency.

This ordinance is an interim ordinance adopted as an urgency measure pursuant to Government Code Section 65858 and is for the immediate preservation of the public peace, health and welfare. The facts constituting the urgency are these:

Unregulated locating of such establishments may be in conflict with contemplated zoning and other regulations to limit the number, location, and activities of such establishments; to deter the increased use of Electronic/Vapor Inhalation Products and resulting health problems from such activities within the City's zones. Thus, in view of the facts set forth in Section 1 of this ordinance, it is necessary to immediately study, hold public hearings, and consider an amendment of the City's Zoning Ordinance and other applicable ordinances, and the adoption of restrictions or regulations as they may be recommended to the City Council by the Planning Commission. A comprehensive set of restrictions and regulations cannot be enacted without due deliberation, and it will take an indeterminate length of time to work out the details of such comprehensive restrictions. It would be destructive of the proposed restrictions if, during the period they are being studied and are the subject of public hearings, parties seeking to evade the operation of these restrictions in the form which may be adopted should be permitted to operate in a manner which might progress so far as to defeat in whole or in part the ultimate objective of those restrictions.

SECTION 4: Condition.

That no persons, partnerships, corporations, or other entities shall commence doing business as, nor shall a business license be issued to owners or operators of, Electronic/Vapor Substance Inhalation Shops and Lounges, as defined herein, except those establishments specifically excluded herein, until such reasonable time as a detailed study may be made and the zoning and/or any necessary specific plan amendment, and public hearing processes pertaining to these matters is completed, or until June 28, 2014, whichever occurs sooner, except as may be extended as provided by Government Code Section 65858.

(Continued on Page 3)

SECTION 5: Regulation.

- (A) Notwithstanding any provision of ECMC to the contrary, no persons, partnerships, corporations, or other entities, shall be issued business licenses, or special operation licenses, to operate businesses as Electronic/Vapor Substance Inhalation Shops and Lounges as defined herein, within the City of El Cajon.
- (B) Establishments excluded from this ordinance are those establishments already in operation at the time of the enactment of this Urgency Ordinance.

SECTION 6: Taking Effect.

This ordinance shall take effect immediately upon passage by a 4/5ths vote of the City Council, and in accordance with Government Code Section 65858 and El Cajon Municipal Code Section 17.15.100 and is of no further force or effect on the date that the above-mentioned zoning ordinance becomes operative, or until June 28, 2014, whichever is sooner, except as may be extended as provided by said sections.

PASSED AND ADOPTED by the City Council of the City of El Cajon, California at a Regular Joint City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meeting held this 13th day of May 2014, by the following vote to wit:

AYES	:	Ambrose, Bales, Kendrick, McClellan, Wells
NOES	:	None
ABSENT	:	None
DISQUALIFY	:	None

BILL WELLS
Mayor of the City of El Cajon

ATTEST:

BELINDA A. HAWLEY, CMC
City Clerk

I hereby certify that the above and foregoing is a full and true copy of Ordinance No. 5008 of the Ordinances of the City of El Cajon, California, as adopted by the City Council at the Regular Joint Meeting of the City Council/Housing Authority/Successor Agency to the Redevelopment Agency on the 13th day of May 2014.

Belinda A. Hawley
Belinda A. Hawley, CMC, City Clerk

CONSENT ITEMS: (Continued)

**1.14 AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH
COMMERCIAL PROPERTIES GROUP AND RETAIL INSITE FOR
REPRESENTATION IN THE SALE OF SELECT SUCCESSOR AGENCY
PROPERTIES**

(Report: Community Development Department Housing Manager)

Authorize the Executive Director, or his designee, to execute an agreement in a form substantially as presented with changes approved by the City Manager, between Commercial Properties Group and Retail Insite, for representation in the sale of select Successor Agency properties identified in the Amended Long Range Property Management Plan, upon approval from the Oversight Board and California Department of Finance.

4. ADMINISTRATIVE REPORTS:

**4.1 REGULATING ELECTRONIC/VAPOR INHALATION AND UPDATING THE
TOBACCO RETAILER INSPECTION AND COST RECOVERY PROGRAM
(Report: Planning Manager)**

RECOMMENDATION: That the City Council:

- Receive comments from the public;
- Discuss the subject matter in this report;

THEN

- Direct the City Manager to prepare amendments to Titles 5, 8 and 17 of the El Cajon Municipal Code to broaden the tobacco definition, regulate e-cigarettes, hookah and similar methods of inhaling substances;
- Direct the City Manager to prepare municipal code amendments to the tobacco licensing inspection and cost recovery program; and
- Move to ADOPT the next RESOLUTION in order APPROVING a Resolution of Intention to amend Title 17 (Zoning Code) of the El Cajon Municipal Code pertaining to tobacco and smoke shops.

OR

- Move to provide policy direction to staff.

ADMINISTRATIVE REPORT – ITEM 4.1 (Continued)

DISCUSSION

City Manager Williford introduces new **Planning Manager Anthony Shute** to give the presentation on Item 4.1.

Planning Manager Shute gives a detailed presentation on ‘vaping’ products, including but not limited to, e-cigarettes, hookah and similar methods of inhaling substances.

David Miyashiro, Superintendent in the Cajon Valley School District speaks on behalf of the PTA Presidents and students to support the proposed Resolution (Option #1).

Frank Tsimboukakis, President of East County Democratic Club, a candidate for State Senate Seat #38, speaks in support of the proposed Resolution, Option #1. He gives statistics on the projected amount of e-cigarette smokers that will transition to using other tobacco products.

Debra Kelly, from The American Lung Association, congratulates the City Council on being leaders in the fight against tobacco consumption in public places, and expresses her support of the proposed Resolution. **Councilmembers** discuss with Ms. Kelly the revenue earned by the tobacco dealers, and different issues caused by vapor inhalation products.

Lorenzo Higley, from Communities Against Substance Abuse (CASA), gives a video presentation on e-cigarettes and how advertising of these products is targeted at the youth population. **Councilmember Bales** asks for clarification on how people under the age of 18 are allowed to be in possession and use e-cigarettes. Mr. Higley provides insight on the issue and the loopholes in the law regulating the use of e-cigarettes.

Lorraine Gonzalez speaks in support of proposed change to the tobacco regulations.

Dana Stevens, from CASA, presents a handout to Council and speaks about the secondhand smoke effect from e-cigarettes, and how TV and web advertising is highly targeted to youth to promote the use of e-cigarettes.

Evelyn Hogan, from CASA, brings a pamphlet for Council and speaks about coordinating tobacco retail license compliance checks to ensure stores are educated about proper signage and rules to be in compliance with City and State laws.

ADMINISTRATIVE REPORT – ITEM 4.1 (Continued)

Stacie Francis, a senior at Santana High School and a public health intern with Students Together Against Alcohol and Drugs, speaks in support of the proposed changes to the tobacco regulations.

Katherine Webb speaks about how accessible e-cigarettes are to the youth, and speaks in support of Option #1 of the proposed Resolution.

Luis Martinez, intern for CASA, speaks in support of the comprehensive regulation of e-cigarettes.

The following people submitted a speaker card in support of the proposed changes, but did not wish to speak:

- **Linda Sheeba**
- **Noor Atto**
- **Normal Jameel**
- **James Riffel**
- **Claudia Llamas**

Mayor Pro Tem Kendrick shows a video on cigarettes being promoted on a cartoon, a commercial featuring Debi Austin, a cancer victim, and a message from actor Yul Brynner encouraging people not to smoke. He suggests exempting common areas at apartment units from the e-cigarette regulations.

MOTION BY KENDRICK, SECOND BY McCLELLAN, to DIRECT the City Manager to prepare amendments to Titles 5, 8 and 17 of the El Cajon Municipal Code to broaden the tobacco definition, regulate e-cigarettes, hookah and similar methods of inhaling substances, exempting apartment buildings to allow e-cigarettes in the common areas.

Mayor Wells requests that further discussion be allowed on this issue.

Councilmember Bales feels it's important to educate students about the dangers of smoking and the use of e-cigarettes.

Councilmember McClellan and **Mayor Pro Tem Kendrick** give testimony on how lung cancer affected their families.

Councilmember Ambrose requests that staff provide a report supporting the recommendation to reduce the number of inspections of tobacco retailers. He fully supports Option #1 on the staff report.

ADMINISTRATIVE REPORT – ITEM 4.1 (Continued)

Mayor Wells, states that while he fully agrees and supports the fight against tobacco products, he feels the negative publicity against e-cigarettes is unjustified as there is not enough information from the scientific community to prove e-cigarettes and the vapor emitted from them to be harmful. He cautions against governmental over-reach.

Discussion ensues about the possibility of an Ordinance that limits the sale of e-cigarettes to minors but that would not change the laws for adults in regards to 'vaping' products.

City Manager Williford reminds Council that a motion and second are on the floor for approval.

MOTION RE-STATED BY KENDRICK, SECOND BY McCLELLAN, to DIRECT the City Manager to prepare amendments to Titles 5, 8 and 17 of the El Cajon Municipal Code to broaden the tobacco definition, regulate e-cigarettes, hookah and similar methods of inhaling substances, exempting apartment buildings to allow e-cigarettes in the common areas.

**MOTION CARRIES BY 4-1 VOTE.
(WELLS – NO)**

MOTION BY WELLS, SECOND BY BALES, to DIRECT Staff to prepare a report on other municipalities with lower tobacco licensing inspection fees and the success rate of their programs in keeping tobacco products from minors.

MOTION CARRIES BY UNANIMOUS VOTE.

MOTION BY WELLS, SECOND BY McCLELLAN to ADOPT RESOLUTION NO. 020-14 APPROVING a Resolution of Intention to amend Title 17 (Zoning Code) of the El Cajon Municipal Code pertaining to tobacco and smoke shops.

MOTION CARRIES BY UNANIMOUS VOTE.

*Recess called at 4:54 p.m.
Meeting called back to order 5:08 p.m.*

HEALTH AND SAFETY CODE

SECTION 119405

119405. (a) To the extent not preempted by federal law, including, but not limited to, the regulation of electronic cigarettes by the United States Food and Drug Administration, it shall be unlawful for a person to sell or otherwise furnish an electronic cigarette, as defined in subdivision (b), to a person under 18 years of age.

(b) "Electronic cigarette" means a device that can provide an inhalable dose of nicotine by delivering a vaporized solution.

(c) A violation of this section shall be an infraction punishable by a fine not exceeding two hundred dollars (\$200) for the first violation, by a fine not exceeding five hundred dollars (\$500) for the second violation, or by a fine not exceeding one thousand dollars (\$1,000) for a third or subsequent violation.

(d) Nothing in this section nor any other law shall be construed to invalidate an existing ordinance of, or prohibit the adoption of an ordinance by, a city or county that regulates the distribution of electronic cigarettes in a manner that is more restrictive than this section, to the extent that the ordinance is not otherwise prohibited by federal law.

California Penal Code section 308 (b):

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars (\$75) or 30 hours of community service work.



Centers for Disease Control and Prevention
CDC 24/7: Saving Lives. Protecting People.™

Press Release

Embargoed Until: Thursday, Sept. 5; 1:00 p.m. ET
Contact: Media Relations (<http://www.cdc.gov/media>)
(404) 639-3286

E-cigarette use more than doubles among U.S. middle and high school students from 2011-2012

More than 75 percent of youth users smoke conventional cigarettes too


The percentage of U.S. middle and high school students who use electronic cigarettes, or e-cigarettes, more than doubled from 2011 to 2012, according to data published by the Centers for Disease Control and Prevention.

The findings from the National Youth Tobacco Survey, in today's Morbidity and Mortality Weekly Report, show that the percentage of high school students who reported ever using an e-cigarette rose from 4.7 percent in 2011 to 10.0 percent in 2012. In the same time period, high school students using e-cigarettes within the past 30 days rose from 1.5 percent to 2.8 percent. Use also doubled among middle school students. Altogether, in 2012 more than 1.78 million middle and high school students nationwide had tried e-cigarettes.

"The increased use of e-cigarettes by teens is deeply troubling," said CDC Director Tom Frieden, M.D., M.P.H. "Nicotine is a highly addictive drug. Many teens who start with e-cigarettes may be condemned to struggling with a lifelong addiction to nicotine and conventional cigarettes."

The study also found that 76.3 percent of middle and high school students who used e-cigarettes within the past 30 days also smoked conventional cigarettes in the same period. In addition, 1 in 5 middle school students who reported ever using e-cigarettes say they have never tried conventional cigarettes. This raises concern that there may be young people for whom e-cigarettes could be an entry point to use of conventional tobacco products, including cigarettes.

"About 90 percent of all smokers begin smoking as teenagers," said Tim McAfee, M.D., M.P.H., director of the CDC Office on Smoking and Health. "We must keep our youth from experimenting or using any tobacco product. These dramatic increases suggest that developing strategies to prevent marketing, sales, and use of e-cigarettes among youth is critical."

Electronic cigarettes, or e-cigarettes, are battery-powered devices that provide doses of nicotine and other additives to the user in an aerosol. E-cigarettes not marketed for therapeutic purposes are currently unregulated by the Food and Drug Administration. The FDA Center for Tobacco Products (<http://www.fda.gov/tobaccoproducts/default.htm>)  (<http://www.cdc.gov/Other/disclaimer.html>) has announced that it intends to expand its jurisdiction over tobacco products to include e-cigarettes, but has not yet issued regulatory rules. Because e-cigarettes are largely unregulated, the agency does not have good information about them, such as the amounts and types of components and potentially harmful constituents.

“These data show a dramatic rise in usage of e-cigarettes by youth, and this is cause for great concern as we don’t yet understand the long-term effects of these novel tobacco products,” said Mitch Zeller, director of FDA’s Center for Tobacco Products. “These findings reinforce why the FDA intends to expand its authority over all tobacco products and establish a comprehensive and appropriate regulatory framework to reduce disease and death from tobacco use.”

Although some e-cigarettes have been marketed as smoking cessation aids, there is no conclusive scientific evidence that e-cigarettes promote successful long-term quitting. However, there are proven cessation strategies and treatments, including counseling and FDA-approved cessation medications.

Cigarette smoking remains the leading preventable cause of disease, disability, and death in the United States, responsible for an estimated 443,000 deaths each year. And for every one death, there are 20 people living with a smoking-related disease. To quit smoking, free help is available at 1-800-QUIT NOW or www.cdc.gov/tips (<http://www.cdc.gov/tips>).

Under the Affordable Care Act, more Americans than ever will qualify to get health care coverage that fits their needs and budget, including important preventive services such as services to quit smoking that are covered with no additional costs. Get ready today for the new Health Insurance Marketplace. Visit Healthcare.gov or call 1-800-318-2596 (TTY/TDD 1-855-889-4325) to learn more. Open enrollment in the Marketplace begins October 1 for coverage starting as early as January 1, 2014.

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(<http://www.cdc.gov/Other/disclaimer.html>)

Page last reviewed: September 5, 2013

Page last updated: September 5, 2013

Content source: Centers for Disease Control and Prevention

Centers for Disease Control and Prevention 1600 Clifton Rd. Atlanta, GA
30333, USA
800-CDC-INFO (800-232-4636) TTY: (888) 232-6348 - Contact CDC-INFO



News & Events

Electronic Cigarettes (e-Cigarettes)

As the safety and efficacy of e-cigarettes have not been fully studied, consumers of e-cigarette products currently have no way of knowing:

- whether e-cigarettes are safe for their intended use,
- how much nicotine or other potentially harmful chemicals are being inhaled during use, or
- if there are any benefits associated with using these products.

Additionally, it is not known if e-cigarettes may lead young people to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death.

Report Adverse Events

Please report adverse events with e-cigarettes by:

- filling out the online form¹ or
- calling 1-800-FDA-1088.

FDA Regulation of e-Cigarettes

Currently, e-cigarettes that are marketed for therapeutic purposes are regulated by the FDA Center for Drug Evaluation and Research (CDER). The FDA Center for Tobacco Products (CTP) currently regulates

- cigarettes,
- cigarette tobacco,
- roll-your-own tobacco, and
- smokeless tobacco.

FDA has stated its intent to issue a proposed rule that would extend FDA's tobacco product authorities to products that meet the statutory definition of "tobacco product." For further details, please see the Unified Agenda entry describing this rulemaking: <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201210&RIN=0910-AG38>².

Warning Letters Sent to Electronic Cigarette Distributors

In September 2010, FDA issued a number of warning letters³ to electronic cigarette distributors for various violations of the Federal Food, Drug, and Cosmetic Act⁴ including "violations of good manufacturing practices, making unsubstantiated drug claims, and using the devices as delivery mechanisms for active pharmaceutical ingredients."

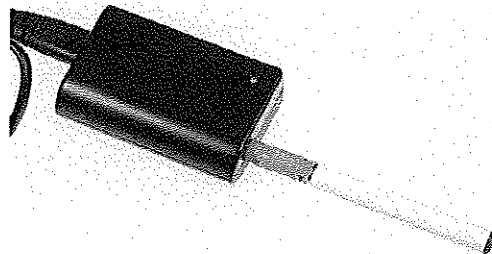
More Information FDA's Authority to Regulate e-Cigarettes

- Letter to Stakeholders: Regulation of e-Cigarettes and Other Tobacco Products⁵

What are electronic cigarettes?

Electronic cigarettes, also known as e-cigarettes, are battery-operated products designed to deliver nicotine, flavor and other chemicals. They turn nicotine, which is highly addictive, and other chemicals into a vapor that is inhaled by the user.

Image of an e-Cigarette inserted into a charger.



Most e-cigarettes are manufactured to look like conventional cigarettes, cigars, or pipes. Some resemble everyday items such as pens and USB memory sticks.

- Federal Food, Drug, and Cosmetic Act⁶

More Information on Safely Quitting Tobacco

- Learn about Smoking Cessation Products⁷
- Talk to a Smoking Cessation Counselor
 - Call 1-800-QUITNOW (1-800-784-8669)
 - For the hearing impaired: TTY 1-800-332-8615
 - Get Instant Messaging Live Help⁸
 - Visit Smokefree.gov⁹ for online resources to help you quit.

1. *Sottera, Inc. v. Food & Drug Administration* held that e-cigarettes and other nicotine-containing products are not drugs or devices unless they are marketed for therapeutic purposes, but that other nicotine-containing products can be regulated as "tobacco products" under the Federal Food, Drug, and Cosmetic Act¹⁰.

Back to Public Health Focus¹¹

Page Last Updated: 04/25/2013

Note: If you need help accessing information in different file formats, see Instructions for Downloading Viewers and Players.

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Tobacco Prevention Program Newsletter, Fall 2009

By John Bennett

Hookahs: No safe alternative

Hookah 101

A hookah is a glass pipe filled with water used for smoking tobacco, marijuana, and other substances such as a tobacco and molasses mixture commonly referred to as shisha. Hookah is often smoked in a social setting where a group of friends gather around a single pipe. Hookah bars or lounges are designed to create a social area where groups can rent hookahs and purchase tobacco.

People who smoke from a hookah often claim that the pipe is less dangerous than cigarettes because the water "cleans" the smoke. In fact, hookah smoking carries all of the health risks associated with cigarettes and other tobacco products. Additionally, because multiple people share the mouthpiece of a hookah, this type of smoking raises concerns about spreading communicable disease. In particular, studies have suggested an increased risk of contracting tuberculosis with hookah use.

Yet the risk of hookahs has not yet stopped their growing popularity, especially among young adults under the legal drinking age looking for an alternative to a bar for an evening out. In the United States, hookah lounges are springing up in urban areas and around colleges. A recent survey of college students in the U.S. found that over 30% reported using hookah within the last year.

Unfortunately, in the last year at least three new hookah bars have opened in King County. Public Health has also received over a dozen inquiries from people interested in opening their own hookah bar.

As the popularity of hookah spreads, business owners are becoming more creative in their attempt to find a loophole in the Washington State Smoking in Public Places Law (RCW 70.160).

Despite these efforts, Public Health is not aware of any businesses in King County that are legally allowing smoking.

The bottom line is that hookah use is a serious public health issue and use is becoming more common in King County. Public Health is working to bring existing hookah bars into compliance with the law while preventing new ones from opening.

If you know of a hookah bar and want to file a complaint please fill out the online form on our website at www.kingcounty.gov/health/tobacco.

Common misconceptions about hookahs

Myth: *The water in the hookah pipe filters out most of the harmful chemicals in the tobacco.*

Fact: The World Health Organization reports that a typical one-hour hookah session exposes the smoker to 100 to 200 times the volume of smoke that is inhaled from a cigarette. Hookah smoke contains high levels of nicotine, heavy metals, and carbon monoxide in addition to the hundreds of other chemicals found in cigarette smoke.

Myth: *Shisha contains little or no tobacco so it is not as addictive as cigarettes.*

Fact: Because hookah smoke is heavily flavored with molasses, fruit, and other ingredients and because it is cooled as it passes through water, users tend to inhale deeper and keep the smoke in their lungs longer- providing more time for nicotine to be absorbed into the system. Nicotine is the addictive chemical in tobacco. Studies have also shown that hookah smoking may serve as a gateway to cigarette smoking and other forms of tobacco use.

Myth: *It is legal to have a hookah bar.*

Fact: The smoking ban (RCW 70.160) does not make any exceptions for hookah smoking. All places that are open to the public or that have employees are prohibited from allowing smoking of any kind. Public Health views smoking in hookah bars as a violation of the law and will actively enforce the smoking ban in hookah bars just as the law is enforced in any other bar or restaurant.

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POSITION STATEMENT ELECTRONIC CIGARETTES (E-CIGARETTES)

The National Association of Local Boards of Health (NALBOH) supports new interventions that are designed to help smokers quit. Currently, little scientific evidence is available to illustrate that electronic cigarettes (e-cigarettes) are effective cessation devices. Additionally, in 2010 a court ruled that e-cigarettes could not be regulated as drugs or drug delivery devices; this is how other cessation products such as nicotine gum and nicotine replacement therapies are regulated.¹

E-cigarettes are battery-operated products designed to deliver nicotine, flavor (candy-, mint-, menthol-, and fruit-flavored), and other chemicals through a vapor inhaled by the user.² The e-cigarette typically has an LED light to mimic the glow of a burning cigarette, a lithium-ion rechargeable battery, an atomizer to vaporize a nicotine solution, and a cartridge filled with liquid nicotine or other chemicals/flavors.¹ Most e-cigarettes are designed to resemble other tobacco products including conventional cigarettes, cigars, and pipes. Some e-cigarettes are even designed to appear as everyday objects including pens and USB memory sticks.² A recent survey conducted by the Centers for Disease Control and Prevention estimates the use of e-cigarettes among Americans has quadrupled from 2009 to 2010, resulting in nearly 3 million current adult users.³

E-cigarettes were first marketed in China in 2004 and have since become a worldwide product largely due to Internet sales.⁴ In addition to online sales, e-cigarettes are also available for sale at American mall kiosks, gas stations, and novelty stores. Both of these sales venues allow youth to breach current restriction laws and purchase the product more readily.^{4,5} Because e-cigarettes are not taxed as tobacco products, they may be particularly attractive to price-sensitive youth.

Manufacturers of e-cigarettes claim the product is safer, more convenient, and more affordable than current tobacco products. However, the science behind these safety claims is limited. In fact, public health authorities generally agree on the need for more clinical studies on these products. At least one study has found that e-cigarette users inhale as much nicotine as smokers of traditional cigarettes.⁶ Also, the Food and Drug Administration (FDA), the federal agency responsible for regulating tobacco products, reported its laboratory analysis of e-cigarettes indicated carcinogens (cancer-causing agents) and toxic chemicals such as diethylene glycol (ingredient found in antifreeze).⁷ The safety of the product is also dependent on the amount of nicotine inhaled in each "puff"⁷ and the quality/components of the cartridge. Due to the current design and regulation of the e-cigarette, users can refill their own cartridges with higher doses of nicotine or other harmful substances including marijuana hash oil.⁸

Due to the similar appearances between e-cigarettes and traditional tobacco products, it can also be difficult to quickly decipher between the products in public environments. This challenge may make it more difficult for business owners and officials to enforce new or existing smoke-free air laws.⁹ People may become confused about the legality of using tobacco products in smoke-free environments.

In April 2011, the FDA announced its intention to develop e-cigarette regulations.¹⁰ Until the FDA can enact strict legislation to regulate the sale and use of e-cigarettes and complete research on the product's health impact, the National Association of Local Boards of Health (NALBOH) encourages boards of health to support and/or adopt the following legislative measures in their communities:

- Use broadly-defined language to include e-cigarettes in smoke-free legislation for indoor and outdoor venues
- Amend existing definitions of "smoke" or "smoking" to include e-cigarettes and e-cigarette vapor
- Oppose legislation that exempts e-cigarettes from the smoking policy/regulation
- Prohibit the sale of e-cigarettes to minors
- Ban the sale of e-cigarette components that may appeal to minors (e.g., flavored cartridges)
- Require tobacco retailer licenses to sell e-cigarettes
- Establish proper enforcement procedures for e-cigarette policies and regulations
- Prohibit e-cigarette manufacturers and retailers from stating unsubstantiated marketing claims about the safety and benefits of the product⁴

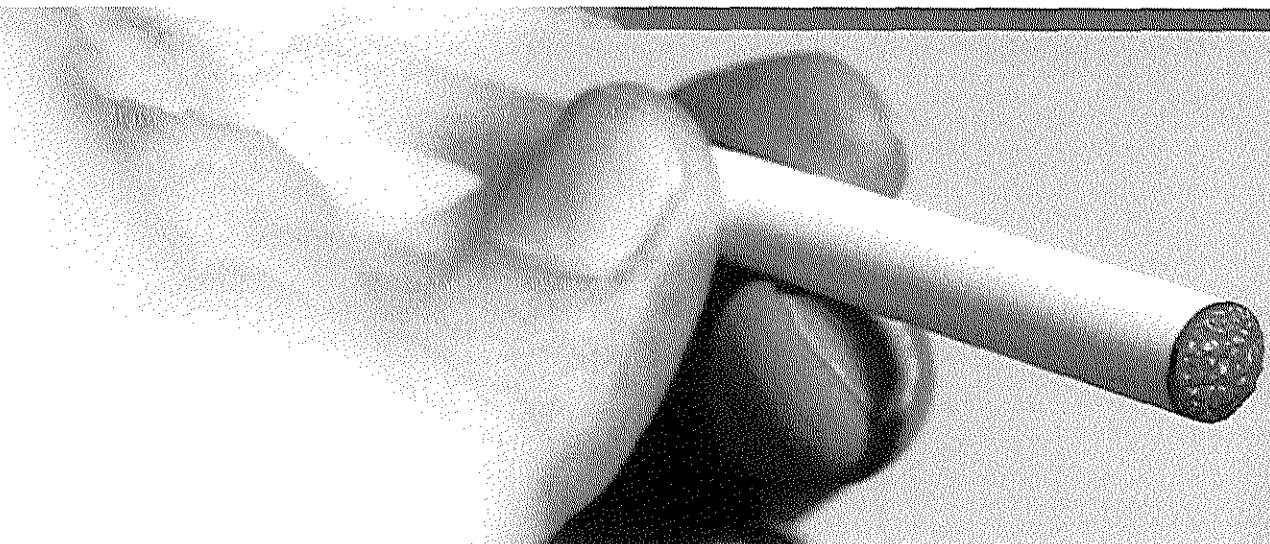
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10. U.S. Food and Drug Administration. (2011). *Electronic Cigarettes*. Available at: <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>.

Approval Process:

NALBOH position statements are reviewed and approved by the Chronic Disease and Tobacco Use Prevention and Control Subcommittee, Education & Training Committee, and Board of Directors. The position statements relate to specific issues that are time sensitive or are in the process of being defined for NALBOH policy. Position statements are not voted on by the full NALBOH membership or other committees.

Reviewed and approved by: NALBOH Board of Directors – March 2012



Local Policies on the Use of Electronic Cigarettes

NOVEMBER 2013

Each year we see an influx of new tobacco products on the shelves of stores in our neighborhoods. Cities and counties across California are taking steps to protect their communities from these new and emerging tobacco products by including broad definitions that can adequately capture new products as they are introduced to the market place. One such product that has seen an increase in use and advertising is the electronic cigarette, or e-cigarette. According to the US Food and Drug Administration (FDA), an e-cigarette is a battery powered device that allows users to inhale a vapor containing nicotine or other substances. The safety of these devices is still unknown, and initial studies have found carcinogens and toxic chemicals, including ingredients used to make antifreeze in the vapor. Furthermore, FDA has not approved e-cigarettes as safe and effective in helping smokers quit – despite claims that many e-cigarette manufacturers are making.

In California, the sale of e-cigarettes to minors has been prohibited since 2011, but their use is still largely unregulated. As a result, advocates throughout California have taken steps to ensure that e-cigarettes are regulated and monitored in their communities.

Below is a list of the **44** cities and counties in California that prohibit the use of e-cigarettes in some outdoor areas, some indoor areas, or both. The matrix below specifies the indoor and outdoor areas where e-cigarettes are prohibited by each community. When a policy is noted with an asterisk (*), more details can be found on the last page.

These cities have included e-cigarettes in their existing smokefree laws. For details on how to include electronic cigarettes go to Changelab Solutions' model ordinance on electronic cigarettes at <http://changelabsolutions.org/>.

For specific questions about a city or county policy, please contact the Center. Additional resources on e-cigarettes produced by the Center are available at <http://center4tobaccopolicy.org/tobacco-policy/tobacco-retail-environment/>

City/County	Outdoor Areas							Indoor Areas						
	Dining Areas	Entryways	Public Events	Recreation Areas	Service Areas	Sidewalks	Worksites	Hallways	Hotels/Motels	Multi-Unit Housing	Public Transit	Places of Employment	Restaurants	Theaters/Convention Centers
Walnut Creek October 2013	X	X	X*	X	X	X*	X			X		X	X	
Benicia September 2013				X				X			X		X*	X
Arcata July 2013	X	X	X	X	X					X*	X	X		X
Pico Rivera July 2013				X										
Contra Costa County April 2013	X	X	X	X	X				X	X*	X	X		X
Petaluma January 2013	X	X	X	X	X			X	X	X	X	X	X	X
Daly City October 2012		X	X	X	X		X		X	X		X		X
Mill Valley September 2012	X	X	X	X	X		X	X	X	X*	X	X	X	X
San Fernando September 2012	X	X	X	X	X		X							
Buellton June 2012	X	X	X	X					X		X		X	
Arcadia June 2012		X	X	X	X			X						X
Marin County May 2012	X	X	X	X	X					X	X	X		
Morgan Hill April 2012	X	X	X	X	X			X			X	X	X	X
Orland February 2012		X		X	X									
Mountain View February 2012	X	X		X				X	X		X	X	X	X
Baldwin Park November 2011										X				
Huntington Park September 2011	X	X	X	X	X		X							
El Monte September 2011				X							X			
Concord September 2011	X*		X*	X*	X*	X*			X		X	X	X	X
Los Altos August 2011				X										

City/County	Outdoor Areas							Indoor Areas						
	Dining Areas	Entryways	Public Events	Recreation Areas	Service Areas	Sidewalks	Worksites	Hallways	Hotels/Motels	Multi-Unit Housing	Public Transit	Places of Employment	Restaurants	Theaters/Convention Centers
Tiburon July 2011	X	X	X	X	X			X		X	X	X	X	X
Fairfax June 2011		X	X	X	X			X	X	X	X	X		X
Cupertino May 2011				X										
Carpinteria February 2011	X	X	X	X	X	X		X	X		X	X	X	X
Santa Clara County November 2010	X	X	X	X	X			X	X		X	X	X	X
Union City November 2010	X	X	X	X	X		X	X	X	X	X	X		X
Menlo Park October 2010	X	X	X	X	X			X		X*	X	X	X	X
Saratoga September 2010				X			X				X	X		
South Pasadena August 2010										X				
Sebastopol August 2010	X	X	X	X	X		X		X	X	X	X		X
Eureka July 2010	X	X	X	X	X		X		X	X*	X	X		X
Hawthorne May 2010			X	X										
Crescent City May 2010		X*	X	X							X			
Santa Barbara County April 2010	X*	X	X	X	X				X		X	X		X
Martinez April 2009	X	X	X	X	X		X	X	X	X*	X	X		X
Glendale October 2008	X	X	X	X	X	X	X	X	X	X*	X	X		X
Culver City September 2008	X*			X										
Novato April 2008	X	X	X	X	X		X		X	X	X	X		X
Belmont October 2007	X	X	X	X	X		X		X	X		X		
Gonzales July 2007				X										

City/County	Outdoor Areas							Indoor Areas						
	Dining Areas	Entryways	Public Events	Recreation Areas	Service Areas	Sidewalks	Worksites	Hallways	Hotels/Motels	Multi-Unit Housing	Public Transit	Places of Employment	Restaurants	Theaters/Convention Centers
Temecula May 2007	x*		x	x	x		x	x	x	x	x	x	x*	
Emeryville December 2006	x	x		x	x			x	x	x	x	x*	x	x
Murrieta October 2006	x	x		x	x			x		x*	x		x	x
Inglewood June 2004			x	x										x

Arcata- Only applies to common areas of multi-unit housing

Benicia- Only applies to restaurants with an occupied capacity of 50 or more persons but must not prevent not prevent (1) the designating of a contiguous area within a restaurant that contains no more than 50 percent of the seating capacity of the restaurant as a smoking area, or (2) the providing of separate rooms designated as smoking rooms, as long said room does not take up more than 50% of the restaurant's seating capacity

Concord- Only applies to downtown Concord

Contra Costa County- Only applies to common areas of multi-unit housing

Crescent City- Only applies to entryways of public buildings

Culver City- Excludes outdoor bar patios

Daly City- Only applies to common areas of multi-unit housing

Emeryville- Only applies if there are fewer than 6 employees

Eureka- Only applies to common areas/patios of multi-unit housing

Glendale- Only applies to common areas/patios of multi-unit housing

Martinez- Only applies to common areas of multi-unit housing

Menlo Park- Only applies to common areas of multi-unit housing

Mill Valley- Only applies to common areas of multi-unit housing

Murrieta- Only applies to common areas of multi-unit housing

Temecula- Only applies to outdoor dining areas if there is an on-sale alcohol license

Walnut Creek- Only applies to the Downtown Pedestrian Retail District

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TOBACCO EDUCATION AND RESEARCH OVERSIGHT COMMITTEE

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TO: California Department of Public Health (CDPH), University of California (UC), and the California Department of Education (CDE)

FROM: Tobacco Education and Research Oversight Committee (TEROC)

DATE: June 13, 2013

SUBJECT: Position on Electronic-Cigarettes (e-cigarettes)

The Tobacco Education and Research Oversight Committee (TEROC) is a legislatively mandated oversight committee (California Health and Safety Code Sections 104365-104370) that monitors the use of Proposition (Prop) 99 tobacco tax revenues for tobacco control, prevention education and tobacco-related research in California. TEROC advises the CDPH, the UC, and the CDE with respect to: policy development, tobacco control and prevention integration, evaluation of tobacco education programs (funded by Prop 99), and is responsible for the development of a master plan for the future implementation of tobacco control.

TEROC conducted a meeting on May 22, 2013 where the Committee deliberated, voted upon, and adopted an official position regarding e-cigarettes:

***The Tobacco Education and Research Oversight Committee (TEROC)
opposes the use of e-cigarettes in all areas where other tobacco
products are banned.***

If you have questions regarding this subject, please contact Michael Ong, M.D., Ph.D., Chairperson at MOng@Mednet.ucla.edu.



Hookah – In Your Community

Ideas for Action

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Don't Know Can Kill You"*

Introduction

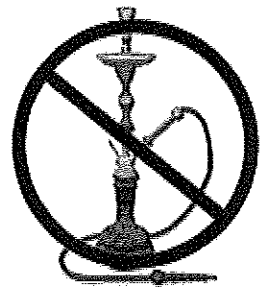


The fact sheets contained in this Hookah Information Packet provide you with basic information for working with local law and code enforcers and to answer basic questions from the public regarding Hookah use.

Currently, there are over 90 hookah venues in California. Their growth has tripled in the past three years. The primary concerns over hookah are both health-related and compliance-related (Labor Code 6404.5, The California Smoke-free Workplace Law).

If you have questions about hookah that are not answered in this material or need further assistance, please contact CCAP (California's Clean Air Project) at 916-452-8065.

Hookah Fact Sheet



- Hookahs are water pipes originated in sixteenth century India and are also known as Shisha, Nargile (Narguileh), “Hubble Bubble,” Nag, and Turkish water pipe. The hookah is a glass or metal water pipe usually highly decorated and shaped somewhat like a bottle or small tank with a long, flexible cord pipe. In most hookah pipes, hot charcoal is used to heat the tobacco.
- Tobacco smoked in hookah pipes is often fruit flavored, such as apple and strawberry; other flavors include cola, spiced or molasses-based. Hookah tobacco is purchased in blocks (large pieces) or squares (smaller pieces).
- When a hookah smoker is exposed to hookah smoke (the addictive stimulant nicotine) for 45–60 minutes, it is the equivalent of smoking 15 cigarettes.¹
- Hookah tobacco contains the same chemicals found in all tobacco, including nicotine, carcinogens and nitrosamines. Secondhand hookah smoke contains the same cancer-causing particulates found in secondhand cigarette smoke. In addition, the charcoal used in the tobacco heating process produces the toxin, carbon monoxide.²

“The use of hookah pipes is not a safe alternative to cigarette smoking. Smoking hookah pipes has been reported to cause oral, esophageal and lung cancer as well as heart disease, chronic bronchitis and of course, nicotine addiction.”
Diana Bonta, Director, California Department of Health Services-July 21, 2003.

- California state law prohibits smoking tobacco—in any form, flavored or unflavored, in a water pipe or in a cigarette or cigar—is prohibited in indoor workplaces. Hookah pipes must be smoked outside – unless the venue is proven to be owner-operated or is a bona fide “retail or wholesale tobacco shop.”³
- All bona fide retail tobacco shops are exempt from the California Smoke-free Workplace Act (Labor Code 6404.5) and may allow smoking inside an enclosed workplace. A hookah venue that serves food and/or beverages for consumption on the premises does not meet the definition of a

(Over)

¹Macaron, C., Macaron, Z., Maalouf, M.T., Macaron, N, and Moore, A. (1997). Urinary cotinine in narguila or chichi tobacco smokers. J. Med. Liban., 45(10): 19-20.

²Ibid

³California Labor Code Section 6404.5



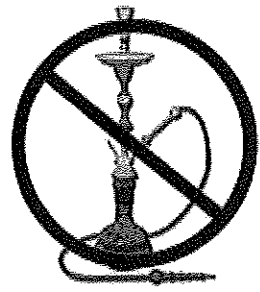
tobacco store. Therefore, it cannot claim an exemption from the Smoke-free Workplace Act and allow smoking indoors. Obtaining a tobacco retail license from the State of California allows a hookah business to sell tobacco. However, such a license does not allow for smoking of the product inside a workplace where the Smoke-free Workplace act otherwise prohibits smoking.

- “A ‘tobacco store’ is defined as a retail business that meets all of the following requirements: (A) Primarily sells tobacco products. (B) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia. (C) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person’s parent or legal guardian, as defined in Section 6903 of the Family Code: (D) Does not sell alcoholic beverages or food for consumption on the premises.”⁴
- The sale of tobacco—in any form: blocks, squares, cigarettes or cigars, flavored or unflavored—to minors under the age of 18 is illegal.⁵

⁴California Business & Professions Code Section 22962.

⁵California Penal Code Section 308(a).

Compliance Issues



Local community experience with hookah establishments around California has revealed a growing pattern of violations with regard to certain California laws. The greatest number of complaints center on the following California State Codes.

Labor Code Section 6404.5 Unlawful smoking of tobacco in hookah pipes in an enclosed place of employment. A violation of the California Smoke-free Workplace Act.

Penal Code Section 308 (a) Unlawful smoking of tobacco in hookah pipes by person under the age of 18. A violation of the state prohibition against providing tobacco to minors.

Health & Safety Code Section 114020 (d) Unlawful smoking of tobacco in hookah pipes in a food service area. A violation of state prohibition against use of tobacco in any form in any area where food (including beverage, ice and water) is prepared, served or stored.

California Business & Professions Code Section 22962 (a) through (e) Violation of State law prohibiting sale of alcohol or food for consumption on-site at a tobacco store.

(4) "Tobacco store" means a retail business that meets all of the following requirements:

- (A) Primarily sells tobacco products.
- (B) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.
- (C) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian, as defined in Section 6903 of the Family Code.
- (D) Does not sell alcoholic beverages or food for consumption on the premises.

Violation of municipal codes regarding disturbing the peace – behavior of young and underage hookah customers who have over indulged at the pipe and vomit on sidewalks and streets in front of and near hookah establishments.

(Over)



Community Response

In response to complaints and compliance issues, several communities have passed local ordinances prohibiting smoking in any form in all public places. These communities include the cities of San Mateo, San Carlos, Berkeley and Laguna Woods, among others. The City of Chico also has such an ordinance. To meet the growing interest in local action to address the violations associated with hookah establishments, TALC (Technical Assistance Legal Center) has prepared a model, comprehensive tobacco control ordinance that includes a prohibition of smoking in public places.

For further information on eliminating smoking in public place: view a Model Comprehensive Ordinance at www.talc.phil.org.

Definition of "Tobacco Store"



California Business & Professions Code

The California Business and Professions Code provides the following definition of a "tobacco store" that may be relevant to communities seeking compliance with the California Smoke-free Workplace Act in hookah establishments that claim to be exempt under Labor Code 6404.5 as a "retail or wholesale tobacco shop."

Full text: California Business & Professions Code, section 22962(a) through (e)22962. (a) For purposes of this section, the following terms have the following meanings:

- (1) "Self-service display" means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.
 - (2) "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.
 - (3) "Tobacco product" means any product containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.
 - (4) "Tobacco store" means a retail business that meets all of the following requirements:
 - (A) Primarily sells tobacco products. Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.
 - (B) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian, as defined in Section 6903 of the Family Code.
 - (C) Does not sell alcoholic beverages or food for consumption on the premises.
- (b) Except as permitted in subdivision (b) of Section 22960, it is unlawful for a person engaged in the retail sale of tobacco products to sell, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by self-service display. A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(Over)



- (c) Subdivision (b) shall not apply to the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, provided that in the case of cigars they are generally not sold or offered for sale in a sealed package of the manufacturer or importer containing less than six cigars. In any enforcement action brought pursuant to this division, the retail business that displays any of the items described in this subdivision in a self-service display shall have the burden of proving that it qualifies for the exemption established in this subdivision.
- (d) The Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.
- (e) This section does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to tobacco products than the restrictions imposed by this section. To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the access to tobacco products, the greater restriction on the access to tobacco products in the local standard shall prevail.

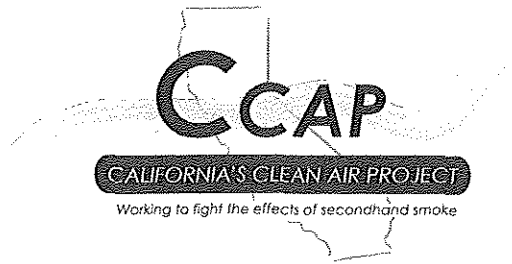
Another relevant California code, Health & Safety Code 113775, states: “Food means any raw, or processed substance, ice, beverage, including water, or ingredient intended to be used as food, drink, confection, or condiment for human consumption.” This code section is relevant because it further stipulates that hookah pipes cannot be smoked indoors where food is consumed and cannot be used in any enclosed area.

Hookah in Your Community: Ideas for Action



Are you concerned about hookah venues in your community? In California, there are hookah bars, cafes and lounges that may not be compliant with the California Smoke-free Workplace Law *Labor Code Section 6404.5*. The following 'Ideas for Action' are ways to learn more about these venues and how to improve compliance with the law in your community.

- An excellent activity for staff and coalition members to do together or separately: Visit each hookah venue in your community and stay for at least 30 minutes. Order something to eat or drink if available, sit down, and just observe what is going on. Are pipes being smoked indoors or outdoors? What is the average age of the customers? Is food being served? Are beverages being served? Do you see minors present? Are minors being allowed to smoke hookah pipes? How is the tobacco being sold, by block (large) or square (small)? Is there a hookah menu or advertisement about how much the tobacco or pipe rental costs? If so, pick up a copy. If you feel comfortable, ask the proprietor if hookah is smoked indoors or outdoors. Please pass this information onto CCAP (contact information below).
- Create a database of hookah venues for county or the cities in your area. Include the name of the establishment, address and phone number. With this information you are assisting statewide tobacco control organizations who are collecting this data; you are also helping your local law enforcement agencies.
- If you have received complaints about a hookah venue, contact local law enforcement and ask them to investigate. Give them any information, activity reports, or complaints you have collected. Inform them of the law and how hookah venues are affected by *Labor Code Section 6404.5*.
- Tell law enforcement officers that free hookah tobacco testing is provided by CCAP. Officers are often told by proprietors that hookah tobacco is not really tobacco or that it is only a fruit mussell product. Testing will prove that there is nicotine content in the tobacco.
- Submit a letter to the editor of your local newspaper. Tell about the health dangers of smoking hookah tobacco and the addictive qualities of hookah tobacco.
- Use the fact sheet in this packet to support your efforts.



Sample Advisory for Hookah Lounge Owners

Hookah tobacco and cigar tobacco contain the *same chemicals* found in all tobacco, including nicotine. Secondhand hookah and cigar smoke contain the same cancer-causing chemicals found in secondhand cigarette smoke.

It's the Law!

Obtaining a tobacco retailer's license does not necessarily mean a hookah or cigar business is a retail or wholesale tobacco shop under California law. Businesses may be required to obtain such licenses even though the sale of tobacco *is not their main purpose*. Example: a foodservice workplace serving food or beverage for consumption on the premises, is *not* exempt from the California Smoke-free Workplace Act, even if they also sell cigarettes or hookah tobacco.

Don't Risk Getting a Ticket!

- ☞ Labor Code Section 6404.5 Violation of the California Smoke-free Workplace Act: No smoking of hookah pipes or cigars in an enclosed workplace. Even ONE part time employee means you must be smoke free all the time. Tobacco smoking is allowed in outdoor patio areas (unless a local law prohibits it).
- ☞ Penal Code Section 308 (a) State law prohibits providing tobacco to minors; it is unlawful to smoke tobacco in hookah pipes or cigars by person under the age of 18.
- ☞ Health & Safety Code Section 114020 (d) State law prohibits using tobacco in any form in any area where food (including beverage, ice and water) is prepared, served or stored; it is unlawful to smoke tobacco in hookah pipes or cigars in a food service area.
- ☞ **California Business & Professions Code, Section 22962(a) through (e)** State law defines a tobacco store as a retail business that meets all these requirements:
 - (A) Primarily sells tobacco products.
 - (B) Generates more than 60 % of its annual gross revenues from the sale of tobacco products and tobacco paraphernalia.
 - (C) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian, as defined in Section 6903 of the Family Code.
 - (D) Does not sell alcoholic beverages or food for consumption on the premises.

If you have any questions regarding any state or local tobacco control laws or compliance issues, please call your county health department or CCAP.

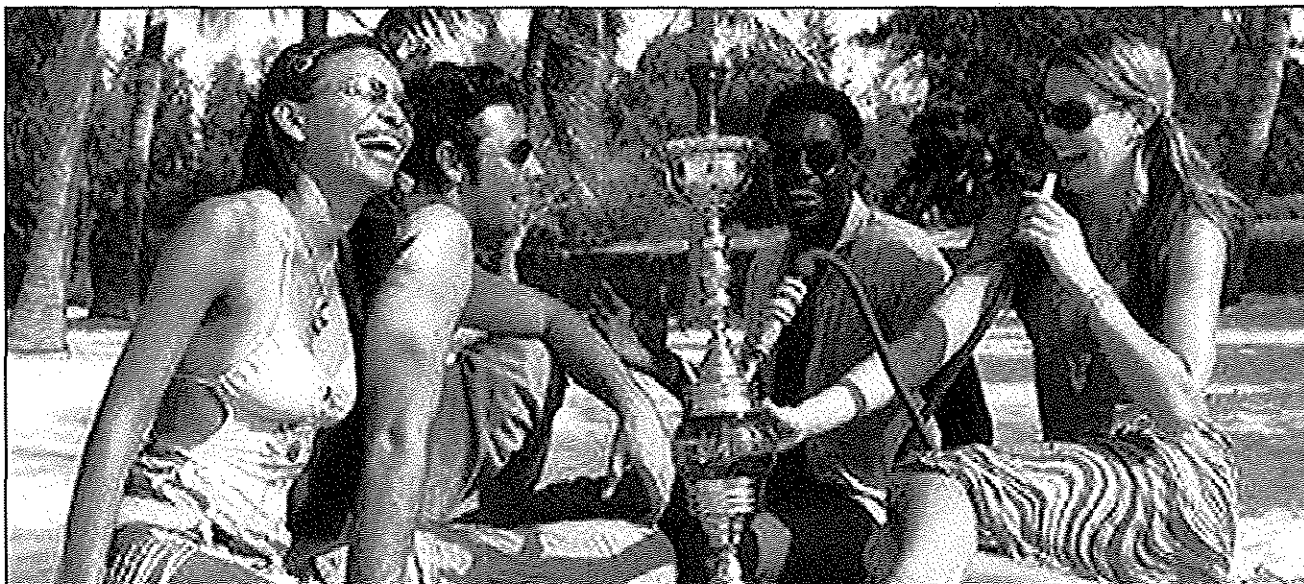
Burning Issues

A TRDRP Publication

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Hooked on Hookah? What You Don't Know Can Kill You



by Kamlesh Asotra, Ph.D.

"Harmful hookahs lure a young crowd"—announces the headline of a recent Contra Costa Times article. According to the article, public health professionals in California are very concerned about hookah smoking among our youth.¹ Researchers across the globe have echoed similar concerns.^{2,3} A growing number of college students and others in the United States who have tried or now regularly participate in hookah smoking claim that they do not smoke cigarettes or use tobacco. Most of these individuals believe that hookah smoke is neither addictive nor as harmful as cigarette or cigar smoke.⁴ This sense of false security may be perpetuated by the myth that the hookah smoke, after bubbling through water becomes devoid of the harmful elements that are present in cigarette smoke.

Among more than 1 billion smokers worldwide, 100 million people in Africa, Asia, and the Middle East use water pipe or hookah to smoke tobacco. Water pipe is variously known in different regions as hookah (Indian sub-continent and Africa), shisha, borri, goza (Egypt, Saudi Arabia), narghile, arghile (Jordan, Lebanon, Syria, and Israel), shui yan dai (China), or hubble-bubble. It's believed to have originated in India in the 16th century and found its way to Persia (Iran), Turkey, and the Eastern

Mediterranean.⁵ In the last 25 years, hookah smoking has become increasingly popular in Arab societies, Europe, and the United States due mainly to the cultural and social practices of new immigrants from countries where hookah smoking is an accepted tradition. Recently, hookah bars have mushroomed across California and in several other states with sizable Arab-American populations. More than 300 hookah bars are operating in the United States, with at least 50 in California. Many are located near colleges, universities, and shopping malls and are frequented by college students and locals. The bars offer an "exotic ambience" where customers can smoke a variety of fruit flavors and aromas in smoking sessions that last 45 to 60 minutes, for the cost of about \$15.⁴

Is hookah smoke really so innocuous? This article describes hookah smoke chemistry and highlights facts related to hookah smoking and diseases that deserve attention and further scientific research.

Hookah tobacco combustion—"cool" burning

Hookah or water pipe is made of a clay bowl, body, water reservoir, and a stem or hose for inhalation of tobacco smoke. Hookah tobacco—mu'essel or maassel (assal means

TABLE A
Chemicals found in hookah smoke versus cigarette smoke.
Adapted from Shihadeh and Saleh¹¹

Chemical	Yield from 1 gm hookah tobacco	Yield from cigarette smoke, 1 gm tobacco	Multiple of average cigarette smoke value
"Tar," mg	802	Range:1-27 Average:11.2	100-fold
Nicotine, mg	2.96	Range: 0.1-2 Average: 0.77	4-fold
Carbon monoxide CO,mg	143	Range: 1-22 Average: 12.6	11-fold
PAH Phenanthrene, µg (co-carcinogen)	0.748	0.2-0.4	2.5-fold
Fluranthracene, µg (co-carcinogen)	0.221	0.009-0.099	4-fold
Chrysene, µg (tumor initiator)	0.112	0.004-0.041	5-fold

honey in Arabic)—is a moist, paste-like mixture of about 30% crude, cut tobacco, fermented with approximately 70% honey, molasses, and pulp of different fruits to create the fruity flavor and aroma of the smoke when subjected to slow combustion with burning charcoal. The combustion processes that produce cigarette smoke and hookah smoke are very different. Mainstream cigarette smoke is produced at 900°C. Hookah smoke is produced at nearly half that temperature at 450°C. Hookah smoke bubbles through water at the base reservoir. During a smoking session, more glowing charcoal is added to the partially consumed hookah tobacco once the original charcoal in the bowl is used up. As the hookah smoking session progresses, the reservoir water becomes increasingly brown in color on account of "tar," dissolved chemicals, and other particulates in the hookah tobacco aerosol. The chemical waste-laden water is discarded and the hookah reservoir is then replenished with fresh water for the next smoking session.

What is in hookah smoke?

During the last 40 years of research, nearly 4,800 chemical compounds have been identified in cigarette smoke, including 69 carcinogens.⁶ In contrast, only five studies have been published in English on the chemical composition of hookah smoke, and those focused on only a relatively small number of chemical compounds.⁷⁻¹¹

Combustion chemistries involved in the production of mainstream cigarette smoke and mainstream hookah smoke differ due to widely different combustion temperatures and the dry or humid characteristics of tobacco. In both cases, plant-derived organic matter undergoes pyrolysis or volatilization, producing addictive nicotine as well as a number of the same toxicants from combustion. These include carbon monoxide (CO), "tar," and myriad carcinogenic polycyclic aromatic hydrocarbons (PAH). Also, hookah smoke contains significantly higher quantities of toxic heavy metals like arsenic, nickel, cobalt, chromium, lead,¹⁰ and cadmium¹², as compared with cigarette smoke.¹³ These facts about hookah smoke are a "screaming warning" that hookah smoking is harmful.

In a carefully designed recent study, researchers Shihadeh and Saleh used a smoking machine that replicated the puffing mechanics derived from precise measurements of 52 hookah smokers in Lebanon.¹¹ Shihadeh and Saleh carried out stringently controlled quantitative chemical analyses of hookah smoke. They found that hookah smoke produced nearly two orders of magnitude greater amount of "tar" from a single smoking session than that produced from a single cigarette. Simply put, hookah smoke produces nearly 100 times more "tar" than cigarette smoke, for each gram of the respective tobaccos. **Table A** shows that hookah smoke contains several-fold greater quantities of harmful chemicals thus far studied than found in cigarette smoke.

In light of these recent chemical data on selected constituents of hookah smoke as compared with those of mainstream cigarette smoke, hookah smoke of various fruity flavors, tastes, and aromas may be even more harmful than disease-causing cigarette tobacco smoke.

Who says hookah smoking isn't addictive?

Hookah smoking is an efficient nicotine delivery system. After a 45-minute hookah smoking session, the concentrations of nicotine and its longer-lived metabolic product, cotinine, become significantly elevated in saliva, plasma, and urine.¹⁴ Comparison of urinary levels of cotinine between hookah smokers and cigarette smokers suggests that in a single hookah smoking session using 20 grams of hookah tobacco, the hookah smoker is exposed to several-fold greater quantities of the addictive stimulant nicotine for up to 45 to 60 minutes. That is equivalent to chain-smoking 15 cigarettes.¹⁵ A cross sectional study on hookah smokers from 112 restaurants and cafes in Aleppo, Syria, reported that 96% of weekly hookah smokers and 50% of daily hookah smokers did not smoke

cigarettes.² This survey found that 91% of weekly hookah smokers and 51% of daily hookah smokers did not have the will to quit, which highlights the addictive nature of hookah smoking² among myriad factors.¹⁶

Carbon monoxide in hookah smoke: Effects on lungs, heart, and brain

Hookah smokers are exposed to three-fold greater amounts of CO—an odorless gas—than are cigarette smokers. Based on their chemical analysis, Shihadeh and Saleh¹¹ provide strong evidence that the CO-to-nicotine ratio in hookah smoke is 50:1, and that for cigarette smoke is 16:1. One of the reasons for the greater CO concentrations in Hookah smoke is the charcoal that is added to enhance the burning of the moist tobacco concoction. Hemoglobin, the iron-containing protein in blood that transports oxygen from lungs to all parts of the body in vertebrates, has extremely high affinity for CO, and forms carboxyhemoglobin (COHb), which can no longer serve as either the oxygen acceptor or as the oxygen carrier. Hookah smokers have significantly higher levels of COHb in their blood than heavy cigarette smokers who smoke 15 to 40 cigarettes.¹⁷

Because the duration of a single puff of hookah smoke is double that of a cigarette, and the suction pressure for inhalation of hookah smoke is four times that for a cigarette, the hookah smoke reaches deeper into lung tissue.¹⁸ Consequently, hookah smoking may cause greater ventilatory incapacitation, especially in older individuals, than cigarette smoking causes.¹⁹ Since smoking rates among 18- to 24-year-olds are the highest of any age group in California²⁰, the recent trend of hookah smoking among youth, unless checked, may exacerbate the future incidence of chronic obstructive pulmonary disease.

Blood pressure (systolic, diastolic, and mean), expired CO, and heart rate all increase upon hookah smoking.²¹ Heart and brain have extremely critical requirements for a minimal threshold of oxygen. Episodes of sudden and short periods of oxygen deprivation can result in heart attack or brain stroke.²² Chronic exposure to nicotine also has a direct effect on the heart, causing atrial flutter.²³ This exposure leaves hookah smokers vulnerable to this debilitating condition.

How hookah smoke may affect fertility, virility and babies

It is becoming increasingly clear that, like tobacco smoking, mainstream hookah smoke and second-hand hookah smoke cause deleterious effects on reproductive systems in men and women and produce genotoxic²⁴, mutagenic, and teratogenic²⁵ effects on babies of smoking parents.

These effects include infertility in females and sterility of males, and low birth weight^{26,27} and birth defects in babies born to smoking mothers.^{28,29} A recent study of 100 Egyptian infertile women determined that the couples' infertility was due to sterility of husbands who were hookah smokers.³⁰

High concentration of CO is a major component of second-hand smoke from hookah. The contribution from burning charcoal in hookah may also have significant and deleterious effects on young babies that may be exposed to mild CO levels. Even at very low levels, such as 25 to 50 parts per million parts of air, CO can produce permanent damage to the inner ear in young babies and irreversible loss of hearing.³¹⁻³⁵

TRDRP research on hookah smoking

TRDRP is at the forefront of recognizing and supporting innovative and novel ideas in a proactive manner. Keeping with its mandate, TRDRP funds innovative and high-quality biomedical, policy, and prevention research in California. This research aims to mitigate the suffering and economic burden due to myriad diseases caused by tobacco products.

This year, as over the past 15 years, TRDRP has once again distinguished itself among all federal and public funding agencies in leading the charge against tobacco by awarding the first ever research grant on hookah smoke. TRDRP has made a three-year new investigator grant award to Nada Kassem, Dr.P.H., M.S., R.N., C.H.E.S., to study "Water Pipe Use, ETS Exposure and Home Policies among Arab Americans." Dr. Kassem is currently a faculty research investigator at the Center for Behavioral Epidemiology and Community Health, Graduate School of Public Health, San Diego State University. This is the first tobacco-related research grant award to Dr. Kassem.

TRDRP invites research grant applications from California scientists on all aspects of hookah smoke for various funding mechanisms.

Dedicated to the fond memory of Surender S. Katoch, B.Sc., M.Sc., M.Phil., Ph.D. - a dear friend and scientific collaborator - who dedicated his life to mitigating cardiovascular disease, and suddenly died on May 14, 2005 due to a massive heart attack. Dr. Katoch was Professor and Chairman, Department of Bio-Sciences, Himachal Pradesh University, Shimla, India. Surender will be sorely missed by family members and numerous friends all over the world.

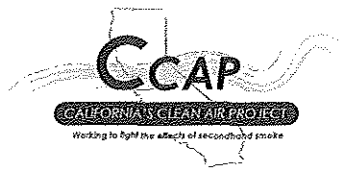
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American Lung Association Statement on E-Cigarettes

The American Lung Association is very concerned about the potential safety and health consequences of electronic cigarettes, as well as claims that they can be used to help smokers quit. There is no government oversight of these products and absent Food and Drug Administration (FDA) oversight, there is no way for the public health, medical community or consumers to know what chemicals are contained in e-cigarettes or what the short and long term health implications might be. That's why the American Lung Association has called on the Obama Administration to halt its delay and for the FDA to propose meaningful regulation of these products to protect to the public health.

The FDA has not approved e-cigarettes as a safe or effective method to help smokers quit. When smokers are ready to quit, they should call 1-800-QUIT NOW or talk with their doctors about using one of the seven FDA-approved medications proven to be safe and effective in helping smokers quit.

A study has estimated that there are 250 different e-cigarette brands for sale in the U.S. today. There is likely to be wide variation in the chemicals that each contain, but in initial lab tests conducted by the FDA in 2009, detectable levels of toxic cancer-causing chemicals were found, including an ingredient used in anti-freeze, in two leading brands of e-cigarettes and 18 various cartridges. That is why it is so urgent for FDA to begin its regulatory oversight of e-cigarettes, which would include ingredient disclosure by e-cigarette manufacturers to FDA.






Also unknown is what the potential harm may be to people exposed to secondhand emissions from e-cigarettes. Two initial studies have found formaldehyde, benzene and tobacco-specific nitrosamines (a carcinogen) coming from those secondhand emissions. While there is a great deal more to learn about these products, it is clear that there is much to be concerned about, especially in the absence of FDA oversight.

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12-04

STATEMENT OF POLICY

Regulation of Electronic Cigarettes (“E-Cigarettes”)

Policy

The National Association of County and City Health Officials (NACCHO) urges the FDA to enact strict regulations overseeing the sale and use of e-cigarettes and to conduct research on their health impact. Until then, NACCHO encourages local health departments (LHDs) to support local legislation that includes any or all of the following measures: ^{1,2}

- Use broadly-defined language to include e-cigarettes in new smoke-free legislation for indoor and outdoor environments
- Make clear that e-cigarettes are covered by existing smoke-free laws through clarifying opinion or regulation/rule (n.b.: opening up or amending the definitions of “smoke” and “smoking” to include e-cigarettes and e-cigarette vapor may jeopardize existing laws)
- Oppose legislation at the local or state level that exempts e-cigarettes from current smoking ban policies and regulations
- Require tobacco retailer licenses to sell e-cigarettes, or add an additional fee for existing tobacco retailers to sell e-cigarettes
- Establish an ordinance limiting the number of retailers or locations where e-cigarettes can be sold
- Prohibit sales of e-cigarettes to minors
- Ban sales of e-cigarette components that may appeal to minors, such as flavored cartridges
- Advocate for state or federal regulation prohibiting sales of e-cigarettes on the internet or through the mail, especially in the case of minors
- Raise excise tax on e-cigarettes as cigarettes and other tobacco products are taxed
- Work with businesses and public locations, such as malls, to voluntarily prohibit e-cigarette sales on premises

Justification

In April 2011, the Food and Drug Administration (FDA) announced that it intends to develop regulations for e-cigarettes.³ E-cigarettes are battery-operated products designed to deliver nicotine, flavor, and other chemicals through a vapor inhaled by the user.⁴ Most e-cigarettes are manufactured to resemble cigarettes, cigars, and pipes⁵, often with an LED light at the tip that mimics the glow of a traditional cigarette.⁶ According to a survey by the Centers for Disease Control and Prevention, the number of Americans who had ever used e-cigarettes quadrupled from 2009 to 2010, and 1.2 percent of adults, or nearly three million people, reported using e-cigarettes in the previous month.⁷



NACCHO recognizes the importance of finding new tools to help smokers quit. Currently, little scientific evidence exists to show that electronic cigarettes, or e-cigarettes, are effective cessation devices. Furthermore, in 2010, a federal court ruling blocked the FDA's attempts to regulate them as drugs or drug delivery devices, as nicotine gum and nicotine replacement therapy are regulated.⁸

Until further research shows that they are safe and effective, NACCHO suggests that e-cigarettes are regulated to the extent that the law allows. To that end, the FDA has the authority to regulate e-cigarettes as tobacco products under the Tobacco Control Act. According to the provisions of the act, state and local governments can take additional steps to regulate the sale and use of tobacco products and enact measures that are more restrictive than federal law.⁹

Further research is needed on the health risks of e-cigarettes, but available evidence suggests harmful effects. A recent study published in the *European Respiratory Journal* found that e-cigarette users get as much nicotine from e-cigarettes as smokers usually get from tobacco cigarettes.¹⁰ The FDA warns users of the potential health risks posed by e-cigarettes.^{11, 12} In addition to nicotine, an FDA laboratory analysis found that e-cigarettes contain carcinogens and toxic chemicals such as diethylene glycol, an ingredient used in antifreeze. Because there is little control or regulation of e-cigarette products, the amount of nicotine inhaled with each "puff" may vary substantially, and testing of sample cartridges found that some labeled as nicotine-free in fact had low levels of nicotine.¹³ Users can refill their own cartridges with much higher doses of nicotine, and the devices can also be filled with other harmful substances. For example, instructions for filling cartridges with marijuana hash oil can be easily accessed on the Internet.¹⁴

The use of e-cigarettes makes it difficult for business owners and officials to enforce existing smoke-free air laws.¹⁵ Their close resemblance to traditional cigarettes may cause confusion and lead people to believe that it is legal to smoke in smoke-free environments. Additionally, some e-cigarettes designed to look like everyday items, such as pens and USB memory sticks¹⁶, make it easy for youth to disguise these products in schools and other settings.

Public health experts have expressed concern that e-cigarettes may increase nicotine addiction and tobacco use in young people.¹⁷ E-cigarettes may be particularly appealing to youth due to their high-tech design, wide array of available flavors, including candy- and fruit-flavored cartridges, and easy availability online and in shopping malls.¹⁸ Because they are not taxed as tobacco products, e-cigarettes may be more easily obtained by price-sensitive youth.

There is strong public support for regulation of e-cigarettes, according to the University of Michigan C.S. Mott Children's Hospital National Poll on Children's Health. Among the findings, 85 percent of U.S. adults favored prohibiting the sale of e-cigarettes to minors, and 91 percent supported requiring manufacturers to test e-cigarettes for safety.¹⁹

Various federal, state, and local regulations are in place or are being considered to restrict e-cigarette use and sales. Amtrak has banned the use of electronic smoking devices, such as e-cigarettes, on trains, in stations, and in any area where smoking is prohibited.²⁰ In a memorandum, the Air Force Surgeon General warned about safety concerns regarding electronic cigarettes and placed them in the same category as tobacco products.²¹ Currently, the U.S. Department of Transportation is proposing a regulation that would ban the use of e-cigarettes on aircraft by clarifying that the use of e-cigarettes is prohibited as tobacco products are

prohibited.²² Several state and local government have taken steps to limit e-cigarette use in public places and prohibit the sale of e-cigarettes to minors.²³

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Record of Action

Submitted by Community Health Committee

Approved by NACCHO Board of Directors

March 2012

that apply to the retailer, or could more narrowly require compliance with certain aspects of tobacco control laws, such as prohibitions against sales to minors, taxation statutes, promotional restrictions, and the like.

- **Fines, penalties and appeals process:** The licensing or zoning laws should explain the penalties for each violation of the law. For instance, penalties could include a graduated system of warnings and fines. Further penalties for certain violations could result in the suspension or revocation of the ability to sell tobacco products. Additional provisions could explain how penalties can be appealed.

Challenges

Tobacco licensing and zoning laws can face several legal challenges, including issues involving:

- **Authority:** First, the governmental unit needs to have the power to carry out a licensing or zoning scheme. While states generally have the power to regulate in this manner, a local government's authority to do so depends largely upon the authority a state has preserved for itself and granted to communities through special legislation, home rule charters, or similar laws. Also, there needs to be a focus on whether any laws preempt the government from carrying out licensing or zoning schemes related to tobacco retailers. Note that simply because a governmental unit is not currently using licensing or zoning to regulate businesses does not mean the power does not exist. It may be that the power exists, but simply hasn't been put to use.
- **Political and Administrative Realities:** If a government has the authority to license or zone, the determination needs to be made about which option is the best fit. For example, existing tensions unrelated to tobacco control efforts may make one option more politically viable than the other. Also, if the government has an existing licensing or zoning framework, give some thought to whether the governmental units administering such schemes might assist or hinder tobacco control efforts.
- **Existing Businesses:** Regardless of the option chosen, part of the process should include a comprehensive analysis of how the proposed requirements would treat those existing businesses whose location or activity would be out of compliance. Drafters should fully understand the legal ramifications of placing conditions on such businesses.

Examples and Select Policies

Below are examples of zoning and licensing policies for tobacco retailers. If you consider adapting any language from these policies, take care to ensure the provision in question is practical and legal in your jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policies.

Location	Name	Policy Type	Link
<i>City Ordinance Boston, MA</i>	Limiting Tobacco Access by Youth	Licensing	http://modelpolicies.thepraxisproject.org/node/94
<i>City Ordinance San Francisco, CA</i>	Permits for the Sale of Tobacco	Licensing	http://library.municode.com/index.aspx?clientId=14136&stateId=5&stateName=California ³
<i>Ordinance of Santa Clara County, CA</i>	Regulates Licensure of Tobacco Retailers	Licensing	http://www.sccgov.org/SCC/docs%2FEnvironmental%20Health%2C%20Department%20of%20%28DEP%29%2Fattachments%2FTMPKeyboard203261357.pdf
<i>City Ordinance Homer Glen, IL</i>	Licensing Retailers of Tobacco and Tobacco Products	Licensing	http://www.homerglenil.org/Ordinances/OR05-063TobaccoLicense.pdf
<i>City Ordinance Mountain View, CA</i>	Regulating Significant Tobacco Retailers	Zoning	http://library.municode.com/HTML/16508/level3/PII_C36_AXII-C.html#PII_C36_AXII-C_sA36.42.160
<i>City Ordinance Henderson, NV</i>	Requiring Zoning of Tobacco Retailers in Relation to Youth Dancehalls	Zoning	http://www.cityofhenderson.com/community_development/docs/devcode/Chapter%2019.5%20-%20Use_Regulations.pdf ⁴

Other Helpful Resources

The Consortium's parent organization, the Public Health Law Center, has a webpage dedicated to the Tobacco Control Legal Consortium. The website includes several publications that discuss tobacco licensing and zoning laws in considerable detail.⁵ The Center for Tobacco Policy & Organizing also maintains a webpage that contains resources related to strong local licensing ordinances in California.

Contact Us

Please feel free to contact the Tobacco Control Legal Consortium at publichealthlaw@wmitchell.edu with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy.

Notes

¹ The information contained in this document is not intended to constitute or replace legal advice. We encourage anyone considering the implementation of any tobacco-related law or policy to seek out local legal counsel to obtain legal advice on these issues.

² J. Paynter et al., *Point of Sale Tobacco Displays and Smoking Across 14-15 Year Olds in New Zealand: A Cross Sectional Study*, 18 TOBACCO CONTROL 268, 272 (2009). The article discusses, in part, how youth exposure to tobacco marketing “at the point-of-sale is significantly associated with being susceptible to smoking, experimenting with smoking and current smoking.”

³ See Article 19H.

⁴ See Section 19.5.5.FF.9, at 5-103.

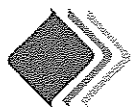
⁵ Publications on the Public Health Law Center’s website that discuss licensing and zoning include: *Regulating Tobacco Retailers: Options for State and Local Governments*; *Licensed to Kill: Tobacco Retailer Licensing as an Effective Tobacco Control Tool*; and *Local Land Use Regulation for the Location and Operation of Tobacco Retailers*.

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A Law Synopsis by the Tobacco Control Legal Consortium



Local Land Use Regulation for the Location and Operation of Tobacco Retailers

Randolph Kline

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Tobacco Technical
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Traditional Zoning Ordinances

The traditional tool employed by local communities to control the use of land is the zoning ordinance, which is enacted to ensure a proposed use is compatible with the surrounding community. Zoning ordinances establish a range of property uses in different areas or zones. For example, residential, commercial, industrial or agricultural zones determine where housing, shopping, manufacturing and farming may or may not occur within the community. Mixed-use zones allow a variety of overlapping activities to occur in the same area. Ideally, zoning ensures that activities that should be near each other, such as housing and grocery stores, can be near each other, and that those activities that should be separated, such as housing and heavy industry, are indeed separate.

Land use regulation is first and foremost a matter of local concern because local governments are, quite literally, in the best position to understand the lay of the land. Local governments have wide discretion in determining which property uses are compatible with the interests of the community. For example, courts have upheld the following zoning ordinances:

- A Lafayette, California ordinance requiring firearm dealers to be located in the city's commercial, rather than residential, zones.⁷
- A Detroit, Michigan ordinance limiting the location of adult theaters to areas that are at least 500 feet away from residential zones,⁸ and a similar Oakland, California ordinance prohibiting adult entertainment businesses within 1,000 feet of residential zones.⁹
- A Jackson, Mississippi regulation restricting adult entertainment businesses to areas zoned for light industrial use in order to control "secondary effects," such as crime, deterioration of retail trade, and decreased property values,¹⁰ and a Long Beach, California ordinance, using the same secondary effects rationale, restricting adult bookstores to industrial zones.¹¹
- A Los Altos Hills, California ordinance "which eliminate[d] virtually all commercial uses of property within the city."¹²

Modern Zoning Ordinances and Conditional Use Permits

Modern land use regulation includes conditional use permits (CUP), also called supplemental use permits. With a CUP requirement, local governments can make an *individualized* determination as to the suitability of a proposed business or other use in a neighborhood.¹³ A CUP requirement also provides flexibility to determine if particularized conditions can be imposed on a proposed business to mitigate potential problems. The conditions for acquiring a CUP can be extensive, such as architectural design requirements, limits on the hours of operation of a business, and further location-related restrictions beyond mere zoning designation.

CUP requirements are often favored over traditional zoning. Traditional zoning is not adaptable to individual or unforeseen circumstances. For example, a traditional zoning ordinance may prohibit all adult entertainment businesses within 500 feet of schools, playgrounds or libraries, but this ordinance might still allow a strip club to open next to a former warehouse currently used as a local Boys and Girls Club. In contrast, if a CUP is required for adult entertainment businesses, the application to open a strip club next to a Boys and Girls Club can be denied or can be conditioned on operating only after the Boys and Girls Club moves or closes.

The following examples illustrate the different kinds of restrictions and conditions that may be imposed through CUP requirements:

- In addition to restricting the location of firearms dealers to commercial zones, the City of Lafayette, California requires gun dealers to obtain permits. Dealers are not automatically prohibited near elementary, middle and high schools, preschools, day care centers, other firearms sales businesses, liquor stores, bars, and residentially zoned areas, but the planning commission is specifically directed to consider the proximity of such uses in issuing a permit, and has the authority to reject a permit if the firearm dealer is located too closely to sensitive existing uses.¹⁴

- The City of Milpitas, California, can deny a CUP for an automobile service station in an area specifically zoned for service stations if the city determines that a sufficient number of service stations already exist in the community.¹⁵
- The City of Los Angeles, California, requires a CUP for liquor sales and requires as a condition of issuance that liquor stores conform to specific public health and safety requirements, such as limits on hours of operation, trash and graffiti removal, and adequate lighting.¹⁶
- The City of Oakland imposes similar conditions on liquor stores and declares violators to be public nuisances. The city thereby has additional authority to permanently close any liquor store that has received multiple citations for violations.¹⁷

Controlling Existing Uses of Land

New or amended land use regulations generally apply only to proposed businesses or other potential property uses. Existing property owners or occupants often have a vested right to continue a lawfully established business or other use of land.¹⁸ However, zoning requirements can sometimes be applied retroactively to existing uses of land through such concepts as *legal nonconforming uses*, *deemed approved status*, and *amortization*. These tools and concepts are explained below.

Legal Nonconforming Uses: When a municipality establishes a new zoning ordinance for a neighborhood, all existing property uses are generally allowed to continue. The property use that existed lawfully before the zoning ordinance and that no longer conforms to the new ordinance is then classified as a legal nonconforming use. For example, if a city declares that all adult entertainment businesses must be located in an industrial zone of the city, an existing adult entertainment business located in a commercial zone would become a legal nonconforming use and be permitted to continue operating. This categorization may be expressly provided for in the zoning ordinance regulating adult businesses or may

exist more generally in the law of the jurisdiction for all uses that have or may become nonconforming. Likewise, an existing property use that was allowed without a CUP when it was established is also considered a legal nonconforming use if a CUP becomes required for the use under an updated zoning ordinance.

From a business's perspective, there are many disadvantages to becoming classified as a legal nonconforming use. Generally, a legal nonconforming use is not allowed to expand or change the nature of its business operations, or to make any significant alterations to the existing building other than necessary repairs and maintenance. If a legal nonconforming use is abandoned for a period of time or is destroyed by fire or another calamity, it may be prohibited from rebuilding without a CUP. Ultimately, local governments expect to eliminate legal nonconforming uses over time through attrition via abandonment, obsolescence or destruction.

Deemed Approved Status: A relatively new strategy, and somewhat novel legal approach, is to re-categorize a legal nonconforming use as "deemed approved." Under this approach, an existing business in an otherwise unlawful location is deemed approved; that is, the business is essentially considered to have been granted a CUP under the new law, provided the business conforms to new land use regulatory standards. The new standards would also be applied to *new* businesses as conditions of their CUPs. The California cities of Los Angeles, Oakland, Vallejo and others have successfully used this approach to ensure the operating standards for existing liquor stores meet basic contemporary community health and safety requirements.¹⁹

The deemed approved status is especially powerful when coupled with a declaration that businesses failing to meet the new standards are public nuisances. (Public nuisance is a legal finding that the conduct unreasonably interferes with a right that is common to the general public.) Because local governments typically have authority to close businesses that are public nuisances, the deemed approved option affords local governments the opportunity to apply new regulatory standards on all businesses, including preexisting

businesses.

Amortization: Communities can also terminate an existing use of property immediately through the payment of cash compensation or after a period of time through “amortization.” In general, amortization is the paying down of a financial obligation over time. A government has a constitutional obligation to pay just compensation if it takes private property (or reduces the property’s value to an impermissible extent). In the context of land use, allowing the nonconforming use to continue for a set period enables the private property owner to recoup his or her investment (i.e., to satisfy his or her expectation interest) without receiving any cash payments from the government.

The amortization period or amount of compensation needed to buy out an existing business is calculated on a case-by-case basis. A property owner who files a judicial challenge to an amortization period has the burden of proving that the period is unreasonable. Note that although amortization is legal in many states, affected landowners frequently file court challenges to gain, at the least, more time to operate.²⁰

Section II — Land Use as a Tool in Tobacco Control

Although no court has yet addressed tobacco-related land use regulations, using local land use regulation to advance public health policy is likely a valid exercise of a local government’s police power. Given that tobacco products produce a significant negative impact on the health and welfare of a community and also are associated with illegal behavior, it is reasonable—and certainly should meet the very low legal bar of being “rational”—for local governments to use their land use authority to regulate the location, density, and even type of tobacco retailers. This governmental role is especially important where youth access is concerned.

Lessons learned from the successful application of land use regulation in other areas of public health suggest a variety of tobacco-related land use policies. For example, to diminish the harm caused by tobacco

in a community, local governments can use zoning and CUPs to:

- Require that tobacco retailers be located in areas distant from places frequented by children. Such a proximity restriction could include prohibitions against tobacco retailers within a certain distance of schools, playgrounds, libraries, churches, youth centers, recreational facilities, youth-focused businesses (e.g., video arcades) and residential areas.
- Restrict new tobacco retailers to areas zoned for light industrial or industrial use to control the effects of easily available tobacco, such as increased youth smoking rates. This restriction has an effect similar to the proximity restriction above in keeping tobacco retailers away from youth-oriented or residential areas.
- Limit the number of all tobacco retailers in any community. Once a city or town determines it has enough tobacco retailers, the city or town can prohibit new retailers from opening. Public health research supports limiting the number of retailers to reduce rates of tobacco use.²¹ These types of controls are analogous to the controls currently imposed by state law to regulate the density of alcohol retailers in a community.²² Such controls may be most easily enforced through a CUP or license requirement.
- Limit the proximity of tobacco retailers to each other. For example, require that tobacco retailers be located no closer than 500 feet from each other. This at least ensures that a tobacco retailer does not occupy every corner at an intersection. Again, such controls may be most easily enforced through a CUP or license requirement.

Section III — Constitutional Concerns

Government Takings

The Fifth Amendment of the U.S. Constitution states that “private property [shall not] be taken for public use, without just compensation.” Traditionally applied to the *physical* taking of property, courts have extended this constitutional protection to some *regulatory* takings. Regulatory takings can occur when a government prohibits landowners from using their properties in a certain way, and are therefore relevant to local land use regulation.²³

A government must always compensate a landowner in two circumstances: when the government physically takes an interest in property, and when a government action deprives the landowner of *all* economically viable use of the land (or business). However, when a regulation limits only *some* uses of land, courts must perform a balancing test to weigh the economic interests affected against the form and purpose of the government’s action. Because tobacco use remains a primary public health concern, and because depriving a landowner of the ability to sell tobacco is unlikely to seriously affect the overall economic value of a business, courts called upon to balance the relative interests could likely determine that the local government’s interests in regulating tobacco retail prevails.

Preemption

Federal preemption refers to the authority of Congress under the Supremacy Clause of the U.S. Constitution to enact laws that supersede state and local laws. Congress’ authority to preempt is subject to constitutional limits on the powers of the federal government. Likewise, state preemption refers to the authority of state governments to enact laws that displace local laws. State authority to preempt local laws is typically limited only by a state’s constitution and the U.S. Constitution.

No federal law directly preempts state or local controls regulating where tobacco retailers may operate, how many may operate, and which types may operate. However, local governments wishing to employ land use regulation of tobacco retailers should first examine

state law to determine if such regulation is wholly or in part preempted. For example, in Minnesota, restricting the location of new tobacco retailers is probably not preempted, while using amortization to close an existing retailer is (see below).

Examples of preemption in the context of land use include:

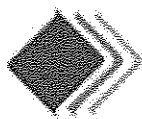
- An Ohio law deems a state permit sufficient for locating a major utility complex on a particular piece of land and expressly exempts the utility from local control, thus preempting local land use regulations on the utility.²⁴
- A Minnesota law preempts the ability of local governments to amortize existing uses by explicitly prohibiting amortization based on zoning laws.²⁵
- The Federal Highway Beautification Act effectively prohibits, and thereby preempts, the use of amortization of signs along nonconforming federal highways by state and local governments.²⁶

Section IV — Analogous Land Use Regulation in Other Areas of Public Health

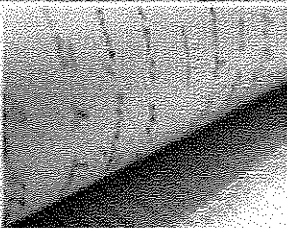
The Analogy to Alcohol

Since the mid-1970s, public health research has validated the hypothesis that even relatively small increases in the availability of alcohol generally lead to increases in alcohol consumption, which in turn increases alcohol-related problems.²⁷ The World Health Organization has concluded that reducing the physical availability of alcohol through limitations on the number and placement of outlets will reduce alcohol-related problems.²⁸

In the 1980s, alcohol control advocates began community-based campaigns to limit the proliferation of retail alcohol outlets and to address the secondary effects of alcohol sales, such as public and domestic violence, driving while intoxicated, high-risk sexual activity and illegal drug sales. Advocates secured passage of innovative local ordinances, subjected them



Tobacco Control
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Tips and Tools

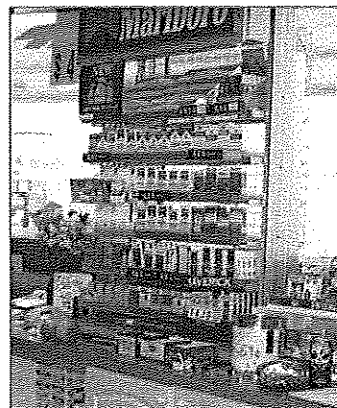
Using Licensing and Zoning to Regulate Tobacco Retailers

The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures.¹ For more details about these policy considerations, please contact the Consortium.

Licensing and Zoning

State and local governments are interested in monitoring and increasing compliance with tobacco control laws, such as laws prohibiting sales of tobacco products to minors. They are also interested in reducing the rates of youth initiation and adult consumption of tobacco products.² Licensing and zoning laws are two long-accepted methods governments may use to accomplish these goals.

The general concept of tobacco licensing is that, consistent with its police power to protect and promote the health of its citizens, a governmental unit can require all businesses that sell tobacco to purchase a license from the government. Zoning ordinances, on the other hand, are generally used to keep incompatible uses of land apart from one another. And when used in conjunction with conditional use permits, zoning can accomplish results similar to licensing.



Many governments already have a history of applying licensing or zoning laws to businesses such as liquor establishments or gun shops. These existing systems might provide a tried-and-true framework that could be adapted to fit the needs of a tobacco control law and might also provide governmental employees who are well-versed in the implementation and enforcement of licensing and zoning laws. This brief guide offers pointers on how governments can use licensing and zoning to control the locations of tobacco retailers and increase compliance with tobacco control laws.

Policy Benefits

Ordinances that control access to tobacco products can benefit the public in several ways. To begin with, both licensing and zoning ordinances can enable governments to place conditions on tobacco retailers, such as requiring compliance with tobacco control laws, restricting the use of coupons, regulating the placement of products or advertising, and other options that advance public health concepts. These laws can also facilitate the creation of comprehensive lists of tobacco retailers, which government inspectors can then use to ensure retailers are complying with tobacco tax laws. In turn, the existence of a license provides governments with a direct and effective enforcement mechanism by which a non-compliant retailer can be prohibited from selling tobacco products or from doing business.

Licensing and zoning laws can also control the location, density or number of retailers—which in turn can benefit public health by lowering the rate of youth initiation. For example, a licensing ordinance can be structured to prohibit a license from being issued for retailers seeking to be located within 1,000 feet of youth-oriented facilities. Similarly, a zoning ordinance could require that tobacco retailers be located in zones that do not contain facilities frequented by youth. The same licensing and zoning laws could also lower the density and quantity of tobacco retailers. For instance, a law could require tobacco retailers to be located a certain distance from one another, could limit the total number of retailers allowed in an area, and could prohibit the transfer or expansion of existing tobacco retailer buildings.

Policy Elements

Effective licensing and zoning ordinances generally contain several common components.

- **Clear definitions and concise language:** As with any law, tobacco control laws must be worded clearly and concisely. Carefully avoid vague or ambiguous language.
- **Well-crafted implementation process:** Licensing and zoning laws should also specify the means by which a retailer applies for, receives, and maintains permission to sell tobacco products. These provisions can include the type of forms to be filed, deadlines and fees for filing, an annual renewal process, and the ramifications of any failure to meet such requirements.
- **Appropriate fees:** The fees assessed to a tobacco retailer should be set at an amount that takes into account the cost of administering the law. For example, annual licensing fees can be used to offset the salary of employees, the cost of inspections, and other overhead and logistical aspects of administering, implementing, and enforcing the law.
- **Robust enforcement options:** The law should clearly describe the type of conduct it prohibits. Laws can require compliance with any and all federal, state and local laws

Local Land Use Regulation for the Location and Operation of Tobacco Retailers

Randolph Kline

The best predictor of adolescent experimentation with cigarettes is the perception by youth that cigarettes are easily available.¹ Not only does youth smoking have life-long and life-ending health implications, but it is also a leading indicator of other high-risk behaviors among youth.² As a result, local communities have a vested interest in the availability and placement of tobacco products, particularly with respect to youth access and exposure to these products. One option to reduce youth access to tobacco may be to use local land use regulations, such as zoning laws, to control the location and operation of tobacco retailers.

Section I of this law synopsis describes local authority for land use regulation and lists a few types of local land use regulation. Section II presents examples in which California communities have employed land use regulation to control the placement of tobacco-only stores. Section III briefly reviews two important issues local governments should consider in this area of the law. For example, land use regulation is a tool that traditionally affects only future uses of land and rarely is used to eliminate existing uses. Finally, section IV highlights the manner in which land use regulation has been successfully applied to other areas of public health—alcohol and firearms.

Section I — Local Land Use Regulation and Authority

Local Land Use Authority

The constitutional “police power” is the inherent authority of the state (and, through delegation, local governments) to enact law and promulgate regulation to protect the health, safety, morals and general welfare of the people. To this end, the state retains the power to restrict private interests, such as personal interests in association and liberty, as well as economic interests in freedom to contract and use property, so long as the restrictions comply with federal and state constitutional limitations.

Courts have upheld the delegation of these broad powers to state and local governments based first on the Tenth Amendment to the U.S. Constitution, which reserves police power to the states, and second on state constitutions, which often delegate police powers to local governments.³ Local laws based upon this delegation are legitimate so long as they “rationally relate” to a legitimate state purpose, such as protecting the public’s health, morals, safety and general welfare.⁴ Local governments have broad discretion in choosing exactly how to protect the health, safety, welfare and morals of their community. Courts rarely find local governments abuse such discretion. Indeed, assuming

a local law does not offend any specific constitutional provision, courts will conclude a local government has abused this discretion only if the law is arbitrary, capricious or entirely lacking in evidentiary support.⁵

In *Euclid v. Ambler Realty*, the United States Supreme Court affirmed that municipalities possessed the necessary state police powers to regulate public and private land use for the “health, safety, welfare, and morals” of the people.⁶ The Court stated the need for zoning regulations “is so apparent that they are now uniformly sustained” and the “scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation.”

Key Points

- Youth access to tobacco products commonly leads to addiction and is associated with other risk behaviors.
- Land use regulation authority can allow municipal control over the location, density, and type of future tobacco retail outlets.
- Municipalities may designate existing tobacco retail outlets as “nonconforming” or take other steps to eventually eliminate them.

This synopsis is provided for educational purposes only and is not to be construed as a legal opinion or as a substitute for obtaining legal advice from an attorney. Laws cited are current as of April 1, 2004. The Tobacco Control Legal Consortium provides legal information and education about tobacco and health, but does not provide legal representation. Readers with questions about the application of the law to specific facts are encouraged to consult legal counsel familiar with the laws of their jurisdictions.

to testing in the courts, and compiled substantial experience in their implementation.

Early in the campaign, California communities took the lead in passing zoning and CUP regulations affecting the location and operations of alcohol outlets.²⁹ By 1993, approximately half of the state's 475 cities had CUP requirements for on- and off-sale alcohol outlets.³⁰ Such ordinances place restrictions on new alcohol outlets, including, for example, limits on the number and concentration of outlets in a neighborhood, limits on outlet placement in proximity to each other or to schools or playgrounds and restrictions on hours of service and the amount and nature of signage visible from the street.

Courts have confirmed that local governments may impose alcohol-related land use restrictions, even in jurisdictions where states have preempted local control over the related issue of the sale of alcohol.³¹ A rational relationship exists between alcohol availability and its secondary effects on public health, safety and welfare. Accordingly, local officials have a legitimate governmental interest in controlling alcohol sales.

For example, in the aftermath of the 1992 Los Angeles riots, liquor store owners in the city's heavily damaged South Central neighborhood sought to rebuild. However, in years prior to the riots, the City of Los Angeles, like many other California communities, began requiring CUPs for all new alcohol outlets. The CUP requirement essentially blocked many previously grandfathered stores from reopening because, having been closed for a certain period of time, the law considered them new stores. Affected owners challenged the CUP ordinance as being both preempted by state law and unconstitutional.³² The California Court of Appeal upheld the city's ordinance, confirming the "local regulation is a valid exercise of the City's authority to enact zoning and land-use regulations."

A similar challenge followed the enactment of the City of Oakland's CUP ordinance.³³ Existing alcohol outlets claimed the imposition of performance standards for the operation of *existing* liquor stores was preempted by state law and unconstitutional. The California Court of Appeal again validated the local government's authority to regulate land use, holding that "a city may properly enact a local ordinance to

control and abate nuisance activities, despite the fact that the business that would be regulated by the ordinance possessed grandfather rights that might ordinarily render it immune from compliance with local ordinances." Illustrating the importance of being able to declare a non-complying business a public nuisance, the court went on to say "no business—not even an alcoholic beverage sales establishment regulated by state law—has a vested right to conduct its business in a manner that attracts public nuisances and encourages criminal activities near its premises."

The Analogy to Firearms

Several California communities have used their land use authority to limit the location of firearms dealers to commercially zoned areas. The City of Lafayette enacted an ordinance that not only limited firearm dealers to commercial zones, but also prohibited dealers from locating near elementary, middle and high schools; preschools; day care centers; other firearms dealers; liquor stores and bars and residentially zoned areas.³⁴

In upholding the city's ordinance, the California Court of Appeal confirmed that local governments may not only confine commercial activities to certain districts, but that they may further limit activities within those districts by requiring CUPs.³⁵ "It is well settled that a municipality may divide land into districts and prescribe regulations governing the uses permitted therein, and that zoning ordinances, when reasonable in object and not arbitrary in operation, constitute a justifiable exercise of police power. . . ." The legal issue, once again, is whether a rational basis exists for the zoning decision.

Conclusion

While land use regulation is a relatively uncharted area of tobacco control law, it may offer communities another way to control the location and operation of tobacco retailers. Local governments might use their land use authority, for example, to prevent tobacco retailers from locating across the street from schools or playgrounds. Optimally, communities should adopt land use controls *before* a tobacco retailer seeks to locate within a local government's geographic jurisdiction.

About the Author

Randolph Kline is Staff Attorney at the Technical Assistance Legal Center, Oakland, California.

Endnotes

- ¹ Leslie A. Robinson et al., *Predictors of Risk for Different States of Adolescent Smoking in a Biracial Sample*, 65 J. CONSULTING CLINICAL PSYCH. 653, 657 (1997).
- ² CDC, *Youth Surveillance Summaries*, 51 (No. SS-4) MMWR 1 (June 28, 2002), available at <http://www.cdc.gov/mmwr/pdf/ss/ss5104.pdf>.
- ³ LAW IN PUBLIC HEALTH PRACTICE chap. 9 (Richard Goodman et al. eds., 2003).
- ⁴ *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).
- ⁵ *Strumsky v. San Diego County Employees Retirement Ass'n*, 11 Cal.3d 28, 34-35 (1974) (judicial review of quasi-legislative acts is limited to whether the action taken was arbitrary, capricious, or entirely lacking in evidentiary support, or contrary to required legal procedures); see also *Arnel Development Co. v. City of Costa Mesa*, 28 Cal.3d 511, 514, 521-24 (1980) (holding that zoning is a legislative act reviewable only under traditional mandate principles, that is, for arbitrary and capricious action); *Lockard v. City of Los Angeles*, 33 Cal.2d 453, 460 (1949) (zoning legislation is presumed to be constitutional and this presumption can only be overcome by a clear showing of arbitrariness and irrationality).
- ⁶ *Village of Euclid*, 272 U.S. at 387.
- ⁷ *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109 (1997). The reason for the city's regulation was to prohibit access by minors to firearm dealerships in areas where minors would congregate or likely be attracted. In a legal challenge to the ordinance, the court determined that the regulation was appropriate because firearm dealerships "can be the targets of persons who are or should be excluded from possessing weapons."
- ⁸ *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 71 (1976).
- ⁹ *Castner v. City of Oakland*, 129 Cal. App. 3d 94, 97-98 (1982).
- ¹⁰ *Lakeland Lounge of Jackson, Inc. v. City of Jackson, Miss.*, 973 F.2d 1255, 1258-59 (5th Cir. 1992).
- ¹¹ *Lim v. City of Long Beach*, 12 F. Supp. 2d 1050, 67 (C.D. Cal., 1998). But see *Levi v. City of Ontario*, 44 F. Supp. 2d 1042 (C.D. Cal., 1999) (holding that alternative business sites must be available to adult bookstore owner and city carries burden of proving site existence and suitability).
- ¹² *Town of Los Altos Hills v. Adobe Creek Props., Inc.*, 32 Cal. App. 3d 488, 491 (1973).
- ¹³ *Saad v. City of Berkeley*, 24 Cal. App. 4th 1206 (1994).
- ¹⁴ *Suter*, 57 Cal. App. 4th at 1122-26, 1131-32.
- ¹⁵ *Van Sicklen v. Browne*, 15 Cal. App. 3d 122, 123-26 (1971).
- ¹⁶ *Korean American Legal Advocacy Found. v. City of Los Angeles*, 23 Cal. App. 4th 376, 382-83, 390 (1994).
- ¹⁷ *City of Oakland v. Superior Court*, 45 Cal. App. 4th 740, 747-49, 756 (1996).
- ¹⁸ This right resides primarily in the Takings Clause of the Fifth Amendment, which establishes the right of private property owners to just compensation when their property is taken for public use. "The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected." *Hansen Brothers Enterprises, Inc. v. Board of Supervisors*, 907 P.2d 1324 (Cal. 1996).
- ¹⁹ *City of Oakland*, 45 Cal. App. 4th at 740 (upholding use in City of Oakland).
- ²⁰ *Bohannon v. City of San Diego*, 30 Cal. App. 3d 416, 426 (1973).
- ²¹ Robinson, *supra* note 1.
- ²² See, e.g., Cal. Bus. & Prof. § 23816 (1997) (limiting alcohol sales to one on-sale alcohol outlet, i.e., a bar, per 2,000 people in California); also Mass. Gen. Laws c. 138, §17 (2001) (generally limiting Massachusetts municipalities to one license to sell liquor, beer and wine for consumption elsewhere for each increment of 5,000 residents).
- ²³ *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002).
- ²⁴ OHIO REV. CODE § 4906.13.
- ²⁵ MINN. STAT. § 394.21 SUBD. 1A.
- ²⁶ 23 U.S.C. § 131 (2000).
- ²⁷ DAN BEAUCHAMP, BEYOND ALCOHOLISM: ALCOHOL AND PUBLIC HEALTH POLICY (1980); James Mosher & David Jernigan, *Making the Link: A Public Health Approach to Preventing Alcohol-Related Violence and Crime*, 6 J. SUBST. USE 273-89 (2001); Robin Room & Ingeborg Rossow, *Share of Violence Attributable to Drinking*, 6 J. SUBST. USE 218-28 (2001).
- ²⁸ ALCOHOL POLICY AND THE PUBLIC GOOD (Griffith Edwards et al. eds., 1995).

Local Land Use Regulation

²⁹ Friedner Wittman & Michael Hilton, *Uses of Planning and Zoning Ordinances to Regulate Alcohol Outlets in California Cities*, CONTROL ISSUES IN ALCOHOL ABUSE PREVENTION: STRATEGIES FOR STATES AND COMMUNITIES 337-66 (Harold Holder, ed., 1987).

³⁰ ALCOHOL: MINIMISING THE HARM 43-71 (Martin Plant, Eric Single & Tim Stockwell eds., 1997).

³¹ *E.g. Korean American*, 23 Cal. App. 4th at 382-83, 390; *City of Oakland*, 45 Cal. App. 4th 740, 747-49, 756 (1996).

³² *Korean American*, 23 Cal. App. 4th at 383.

³³ *City of Oakland*, 45 Cal. App. 4th at 752, 758.

³⁴ *Suter*, 57 Cal. App. 4th 1109 (1997).

³⁵ *Id.* at 1131 (citing *Lockard*, 33 Cal.2d 453, 460 (1949)).



About the Tobacco Control Legal Consortium

The Tobacco Control Legal Consortium is a national network of legal programs supporting tobacco control policy change by giving advocates better access to legal expertise. The Consortium's coordinating office, located at William Mitchell College of Law in St. Paul, Minnesota, fields requests for legal technical assistance and coordinates the delivery of services by the collaborating legal resource centers. Legal technical assistance includes help with legislative drafting; legal research, analysis and strategy; training and presentations; preparation of friend-of-the-court legal briefs; and litigation support. Drawing on the expertise of its collaborating legal centers, the Consortium works to assist communities with urgent legal needs and to increase the legal resources available to the tobacco control movement.



ALTRIA ANNOUNCES AGREEMENT TO ACQUIRE E-VAPOR BUSINESS OF GREEN SMOKE, INC.

February 3, 2014 (Richmond, VA) -- Altria Group, Inc. (Altria) (NYSE:MO) today announced that its subsidiary, Nu Mark LLC (Nu Mark), entered into an agreement to acquire the e-vapor business of Green Smoke, Inc. and its affiliates (Green Smoke) for approximately \$110 million in cash, subject to closing adjustments, and up to \$20 million in incentive payments.

"Nu Mark's entry into the e-vapor category with its MarkTen product was an important development in Altria's innovation strategy. Adding Green Smoke's significant e-vapor expertise and experience, along with its supply chain, product lines and customer service, will complement Nu Mark's capabilities and enhance its competitive position," said Marty Barrington, Altria's Chairman and CEO. "Further, Green Smoke's culture of innovation and history of producing high-quality products are consistent with Altria's culture."

Green Smoke was founded in 2008 and has operations in the United States and Israel. Green Smoke has sold e-vapor products since 2009 and its revenues for 2013 were approximately \$40 million. Green Smoke sells premium products, with most of its sales in the United States. Its product lines, which are sold under the Green Smoke e-vapor brand, include both rechargeable and disposable versions. Green Smoke brings a team of talented employees with significant experience in developing, manufacturing and marketing high-quality e-cigarettes.


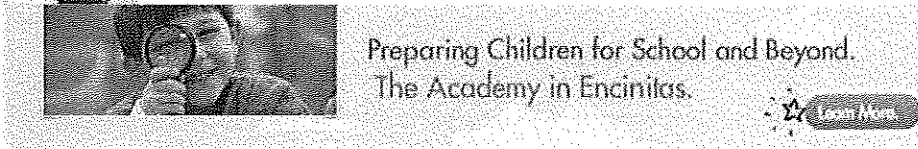

The agreement contains provisions to retain key management infrastructure and talent. Subject to closing conditions, Nu Mark anticipates that the transaction will be completed in the second quarter of 2014.

"We are very pleased to be joining the Altria family of companies," said Robert Levitz, Green Smoke's CEO. "We are dedicated to innovation and believe joining Nu Mark will help us deepen that expertise and create new opportunities for our customers, our employees and our products."


Altria's Profile

Altria directly or indirectly owns 100% of each of Philip Morris USA Inc, U.S. Smokeless Tobacco Company LLC, John Middleton Co., Nu Mark, Ste. Michelle Wine Estates Ltd. and Philip Morris Capital Corporation. Altria holds a continuing economic and voting interest in SABMiller plc.

The brand portfolios of Altria's tobacco operating companies include **Marlboro®**, **Black & Mild®**, **Copenhagen®**, **Skool®** and **MarkTen™**. Ste. Michelle produces and markets premium wines sold under various labels, including **Chateau Ste. Michelle®**, **Columbia Crest®**, **14 Hands®** and **Stag's Leap Wine Cellars®**, and it imports and markets **Antinori®**, **Champagne Nicolas Feuillatte™** and **Villa Maria Estate™** products in the United States. Trademarks and service marks related to Altria referenced in this release are the property of Altria or its subsidiaries or are used with permission. More information about Altria is available at altria.com.






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Solana Beach City Council prohibits e-cigarette use

By Kristina Houck

Solana Beach is the latest city to ban the use of electronic cigarettes.

In a 4-0 vote, the City Council on Feb. 12 amended the city's existing smoking ordinance to include a ban on e-cigarettes wherever smoking is prohibited. Councilman Mike Nichols was absent from the meeting.

"I'm convinced that a lot of the e-cigarettes are geared toward capturing youth and getting them involved and hooked on nicotine and tobacco," said Councilman Peter Zahn, who brought the issue before the council. "This is something that isn't good for our community or any community."

E-cigarettes are battery-powered devices that simulate tobacco smoking, but do not contain tobacco. Users inhale vaporized liquid that usually contains nicotine and can include a variety of other flavors.

Supporters argue e-cigarettes are less harmful than tobacco cigarettes, while critics contend they encourage use by young people.

Although the actual health risks are a subject of debate, the American Lung Association has called for regulation of these devices to protect public health, citing two initial studies that show e-cigarettes emit chemicals such as formaldehyde, benzene and tobacco-specific nitrosamines.

"Our number one concern is that these products are going to make smoking seem normal again, especially to our kids," said Debra Kelley, regional director of Programs and Advocacy for the American Lung Association in California.

"The products are being marketed extremely aggressively. They're essentially using the same tactics that Big Tobacco used 40 years ago to addict another generation to nicotine."


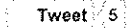

Current state law prohibits e-cigarette sales to minors but does not regulate where the devices can be used.

Solana Beach is the latest city in San Diego County to ban e-cigarettes. Carlsbad and Vista passed similar regulations last year, and Poway introduced a similar ordinance last week. No city in the region has banned sales.

The Solana Beach City Council also opted against banning the sale of the devices.

"I'm slightly worried about sales restrictions, largely because there is some real evidence that these things can be used as a smoking cessation device," said Councilman David Zito. "While there is the issue of it's also an onramp, there is some evidence that it can be a successful off-ramp, too."

"We can always evolve," Mayor Thomas Campbell added.

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your health

Candy Flavors Put E-Cigarettes On Kids' Menu

by JENNY LEI BOLARIO

February 17, 2014 3:37 AM

partner content from:



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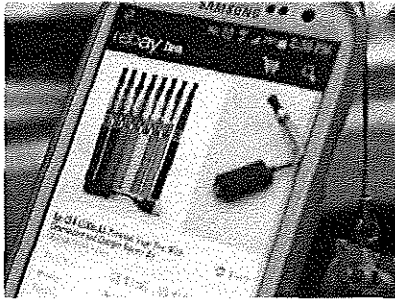


Jenny Lei Bolario/Youth Radio

Electronic cigarettes are often billed as a safe way for smokers to try to kick their habit. But it's not just smokers who are getting their fix this way. According to a survey published by the Centers for Disease Control and Prevention, 1 in 5 middle school students who've tried one say they've never smoked a "real" cigarette. And between 2011 and 2012, e-cigarettes doubled in popularity among middle and high school students.

At a middle school in the San Francisco Bay Area, Viviana Turincio, an 8th grader, recently noticed some kids smoking in class — or at least, that's what it looked like.

"There was a group at the table," she remembers. "And they were just smoking on the vape pen, and the teacher was right there — and the teacher didn't even notice."



Jenny Lei Bolario/Youth Radio

That's because her classmates were smoking an electronic cigarette, sometimes called a "vape pen." It's a hand-held, battery-powered device that vaporizes a liquid that is often infused with nicotine. You inhale the vapor through a mouthpiece, and exhale what looks like smoke. In this case the smoke smelled like candy.

"My favorite flavor is gummy bears because it tastes really good," Viviana says.

Vapor liquids come in various flavors, but teens often prefer dessert-inspired ones, which are more appealing than the smell and taste of burning tobacco. Marleny Samayoa, also in the 8th grade, thinks traditional cigarettes taste too bitter. "It has kind of a weird taste to it, like coffee without sugar," she says.

E-cigarettes are easier for kids to buy than regular cigarettes. There's no federal age restriction for how old you have to be to buy them. But some states, including California, prohibit the sale to minors. That's why middle-schoolers turn to online sites like eBay, where independent sellers don't necessarily ask for your age.

"A lot of kids are getting them online," Marleny explains. "And they're just introducing it to a lot of other kids, and it just keeps going from there."

She has noticed the growing popularity of e-cigs on social media sites like Instagram. Look up #Vapelife and the pictures are endless. "I take pictures and do tricks, like blowing O's," Marleny says, "blowing them on flat surfaces and making tornadoes."



The Two-Way
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Swirling clouds of vapor are touching down in theaters, restaurants and malls, while health professionals are trying to catch up with this new fad.



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Dr. Cathy McDonald runs a center for tobacco dependence, treatment and cessation for Alameda County, Calif. She admits that, "right

**Long List Of
Smoking's Harms**

now we don't have as much information as we would like." What scientists do know, she says, is that "10 minutes of smoking an e-cigarette — for a person who has never smoked a cigarette — does cause a noticeable increase in airway resistance in the lungs."

But, McDonald concedes, "It's probably better than smoke. And I say that because smoking a cigarette is 4,000 chemicals — 400 are poison, 40 cause cancer."

Researchers haven't had the time to do long-term studies comparing traditional cigarettes to electronic ones. But at least among my friends, the smokers who have made the switch say they've noticed a positive change. My boyfriend, Gray Keuankaew, is one of them.

"Within the two months that I've been vaping, my body feels a little bit more healthy," he tells me. "So if [there's going to be] any type of positive benefit, then I'm definitely going to stick to it."

**Children's Health
Study: A Cigarette A
Month Can Get A Kid
Hooked**

I'm glad it's now easier for him to run, but he hasn't outrun his nicotine addiction. E-cigarettes still contain nicotine — you choose what amount you want. The Tobacco Vapor Electronic Cigarette Association estimates that e-cigarette sales will surpass \$2.5 billion this year.

"Our target customer base is those people who felt doomed to a life of smoking," says Geoff Braithwaite, who owns Tasty Vapor, a company in Oakland that sells and distributes liquids for e-cigarettes. But he admits that adults aren't the only ones who may be jumping on this new trend.

"There's going to be that novelty around it — it's a brand new thing, it's an electronic device," he says. "That kind of stuff will always appeal to kids; it would have appealed to me."

Anti-smoking campaigns spent decades and a lot of money to make smoking less appealing to youth — and that helped cut teen smoking by 45 percent. But cheap prices for brightly colored e-cigs, sweet flavors, and the ability to vape anywhere are putting nicotine back on the kids' menu. The Food and Drug Administration has said it plans to regulate e-cigarettes, but so far the agency hasn't issued any rules.

LABOR CODE

SECTION 6400-6413.5

6400. (a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.

(b) On multiemployer worksites, both construction and nonconstruction, citations may be issued only to the following categories of employers when the division has evidence that an employee was exposed to a hazard in violation of any requirement enforceable by the division:

(1) The employer whose employees were exposed to the hazard (the exposing employer).

(2) The employer who actually created the hazard (the creating employer).

(3) The employer who was responsible, by contract or through actual practice, for safety and health conditions on the worksite, which is the employer who had the authority for ensuring that the hazardous condition is corrected (the controlling employer).

(4) The employer who had the responsibility for actually correcting the hazard (the correcting employer).

The employers listed in paragraphs (2) to (4), inclusive, of this subdivision may be cited regardless of whether their own employees were exposed to the hazard.

(c) It is the intent of the Legislature, in adding subdivision (b) to this section, to codify existing regulations with respect to the responsibility of employers at multiemployer worksites. Subdivision (b) of this section is declaratory of existing law and shall not be construed or interpreted as creating a new law or as modifying or changing an existing law.

6401. Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

6401.5. No salvage of materials shall be permitted while demolition is in progress on any building, structure, falsework, or scaffold more than three stories high or the equivalent height for which a permit is required under subdivision (c) of Section 6500.

For this purpose salvage does not include removal of material from premises solely for the purpose of clearing the area to facilitate the continuation of the demolition.

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for

implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard. An employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use employee training provided to the employer's employees under a construction industry occupational safety and health training program approved by the division to comply with the requirements of subdivision (a) relating to employee training, and shall only be required to provide training on hazards specific to an employee's job duties.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program. An employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the division to comply with this subdivision, and shall only be required to keep records of those steps taken to implement and maintain the program with respect to hazards specific to an employee's job duties.

(e) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries that are on a designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section

consistent with the requirements specified in subdivisions (a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) (A) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the "designated list of high hazard industries" shall be the list established pursuant to this paragraph.

(B) For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's periodic, scheduled worksite inspections; investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances; and investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) (A) Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

(B) If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer that controls or directs and directly supervises its own employees on the job.

(i) When a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

(j) (1) The division shall prepare a Model Injury and Illness

Prevention Program for Non-High-Hazard Employment, and shall make copies of the model program prepared pursuant to this subdivision available to employers, upon request, for posting in the workplace. An employer who adopts and implements the model program prepared by the division pursuant to this paragraph in good faith shall not be assessed a civil penalty for the first citation for a violation of this section issued after the employer's adoption and implementation of the model program.

(2) For purposes of this subdivision, the division shall establish a list of non-high-hazard industries in California. These industries, identified by their Standard Industrial Classification Codes, as published by the United States Office of Management and Budget in the Manual of Standard Industrial Classification Codes, 1987 Edition, are apparel and accessory stores (Code 56), eating and drinking places (Code 58), miscellaneous retail (Code 59), finance, insurance, and real estate (Codes 60-67), personal services (Code 72), business services (Code 73), motion pictures (Code 78) except motion picture production and allied services (Code 781), legal services (Code 81), educational services (Code 82), social services (Code 83), museums, art galleries, and botanical and zoological gardens (Code 84), membership organizations (Code 86), engineering, accounting, research, management, and related services (Code 87), private households (Code 88), and miscellaneous services (Code 89). To further identify industries that may be included on the list, the division shall also consider data from a rating organization, as defined in Section 11750.1 of the Insurance Code, and all other appropriate information. The list shall be established by June 30, 1994, and shall be reviewed, and as necessary revised, biennially.

(3) The division shall prepare a Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment, and shall determine which industries have historically utilized seasonal or intermittent employees. An employer in an industry determined by the division to have historically utilized seasonal or intermittent employees shall be deemed to have complied with the requirements of subdivision (a) with respect to a written injury prevention program if the employer adopts the model program prepared by the division pursuant to this paragraph and complies with any instructions relating thereto.

(k) With respect to any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement, subdivision (d) shall not apply.

(l) Every workers' compensation insurer shall conduct a review, including a written report as specified below, of the injury and illness prevention program (IIPP) of each of its insureds with an experience modification of 2.0 or greater within six months of the commencement of the initial insurance policy term. The review shall determine whether the insured has implemented all of the required components of the IIPP, and evaluate their effectiveness. The training component of the IIPP shall be evaluated to determine whether training is provided to line employees, supervisors, and upper level management, and effectively imparts the information and skills each of these groups needs to ensure that all of the insured's specific health and safety issues are fully addressed by the insured. The reviewer shall prepare a detailed written report specifying the findings of the review and all recommended changes deemed necessary to make the IIPP effective. The reviewer shall be or work under the direction of a licensed California professional engineer, certified safety professional, or a certified industrial

hygienist.

6402. No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

6403. No employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

6403.5. (a) As part of the injury and illness prevention programs required by Section 3203 of Title 8 of the California Code of Regulations, or any successor law or regulation, employers shall adopt a patient protection and health care worker back and musculoskeletal injury prevention plan. The plan shall include a safe patient handling policy component reflected in professional occupational safety guidelines for the protection of patients and health care workers in health care facilities.

(b) An employer shall maintain a safe patient handling policy at all times for all patient care units, and shall provide trained lift teams or other support staff trained in safe lifting techniques in each general acute care hospital. The employer shall provide training to health care workers that includes, but is not limited to, the following:

- (1) The appropriate use of lifting devices and equipment.
 - (2) The five areas of body exposure: vertical, lateral, bariatric, repositioning, and ambulation.
 - (3) The use of lifting devices to handle patients safely.
- (c) As the coordinator of care, the registered nurse shall be responsible for the observation and direction of patient lifts and mobilization, and shall participate as needed in patient handling in accordance with the nurse's job description and professional judgment.

(d) For purposes of this section, "lift team" means hospital employees specifically trained to handle patient lifts, repositionings, and transfers using patient transfer, repositioning, or lifting devices as appropriate for the specific patient. Lift team members may perform other duties as assigned during their shifts. A general acute care hospital shall not be required by this section to hire new staff to comprise the lift team so long as direct patient care assignments are not compromised.

(e) For purposes of this section, "health care worker" means a lift team member or other staff responsible for assisting in lifting patients who is a hospital employee specifically trained to handle patient lifts, repositioning, and transfers using patient transfer, repositioning, and lifting devices as appropriate for the specific patient.

(f) For the purposes of this section, "safe patient handling policy" means a policy that requires replacement of manual lifting and transferring of patients with powered patient transfer devices, lifting devices, and lift teams, as appropriate for the specific patient and consistent with the employer's safety policies and the

professional judgment and clinical assessment of the registered nurse.

(g) A health care worker who refuses to lift, reposition, or transfer a patient due to concerns about patient or worker safety or the lack of trained lift team personnel or equipment shall not, based upon the refusal, be the subject of disciplinary action by the hospital or any of its managers or employees.

(h) This section shall not apply to general acute care hospitals within the Department of Corrections and Rehabilitation or the State Department of Developmental Services.

6404. No employer shall occupy or maintain any place of employment that is not safe and healthful.

6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a "place of employment" pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products.

(b) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment. "Enclosed space" includes lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building and not specifically defined in subdivision (d).

(c) For purposes of this section, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally in violation of this section if he or she has taken the following reasonable steps to prevent smoking by a nonemployee:

(1) Posted clear and prominent signs, as follows:

(A) Where smoking is prohibited throughout the building or structure, a sign stating "No smoking" shall be posted at each entrance to the building or structure.

(B) Where smoking is permitted in designated areas of the building or structure, a sign stating "Smoking is prohibited except in designated areas" shall be posted at each entrance to the building or structure.

(2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace.

For purposes of this subdivision, "reasonable steps" does not

include (A) the physical ejection of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee.

(d) For purposes of this section, "place of employment" does not include any of the following:

(1) Sixty-five percent of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment.

(2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking by the establishment. An establishment may permit smoking in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, "lobby" means the common public area of an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment's guests and members of the public typically congregate.

(3) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking is not permitted in a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking in corridors and prefunction areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area on other than a passing basis.

(4) Retail or wholesale tobacco shops and private smokers' lounges. For purposes of this paragraph:

(A) "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.

(B) "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

(5) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no nonsmoking employees are present.

(6) Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than 100,000 square feet of total floorspace, and 20 or fewer full-time employees working at the facility, but does not include any area within a facility that is utilized as office space.

(7) Gaming clubs, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "gaming club" means any gaming club, as defined in Section 19802 of the Business and Professions Code, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under 18 years of age.

(8) Bars and taverns, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. "Bar or tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, "bar" or "tavern" includes

only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

(9) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.

(10) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.

(11) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present.

(12) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.

(13) Breakrooms designated by employers for smoking, provided that all of the following conditions are met:

(A) Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building.

(B) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

(C) The smoking room shall be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this subparagraph, "work responsibilities" does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied.

(D) There are sufficient nonsmoking breakrooms to accommodate nonsmokers.

(14) Employers with a total of five or fewer employees, either full time or part time, may permit smoking where all of the following conditions are met:

(A) The smoking area is not accessible to minors.

(B) All employees who enter the smoking area consent to permit smoking. No one, as part of his or her work responsibilities, shall be required to work in an area where smoking is permitted. An employer who is determined by the division to have used coercion to obtain consent or who has required an employee to work in the smoking area shall be subject to the penalty provisions of Section 6427.

(C) Air from the smoking area shall be exhausted directly to the outside by an exhaust fan. Air from the smoking area shall not be recirculated to other parts of the building.

(D) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

This paragraph shall not be construed to (i) supersede or render inapplicable any condition or limitation on smoking areas made applicable to specific types of business establishments by any other paragraph of this subdivision or (ii) apply in lieu of any otherwise applicable paragraph of this subdivision that has become inoperative.

(e) Paragraphs (13) and (14) of subdivision (d) shall not be

construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.

(f) (1) Except as otherwise provided in this subdivision, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), until the earlier of the following:

(A) January 1, 1998.

(B) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.

(2) If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1998, the exemptions specified in paragraphs (7) and (8) of subdivision (d) shall become inoperative on and after January 1, 1998, until a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(4) From January 1, 1997, to December 31, 1997, inclusive, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), subject to both of the following conditions:

(A) If practicable, the gaming club or bar or tavern shall establish a designated nonsmoking area.

(B) If feasible, no employee shall be required, in the performance of ordinary work responsibilities, to enter any area in which smoking is permitted.

(g) The smoking prohibition set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and shall

supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100-percent) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(h) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment for any reason.

(i) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100-percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100-percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, any area not defined as a "place of employment" or in which smoking is not regulated pursuant to subdivision (d) or (e), shall be subject to local regulation of smoking of tobacco products.

(j) Any violation of the prohibition set forth in subdivision (b) is an infraction, punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one year, and five hundred dollars (\$500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies, including, but not limited to, local health departments, as determined by the local governing body.

(k) Notwithstanding Section 6309, the division shall not be required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (j) of a third violation of subdivision (b) within the previous year.

(l) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

6405. No employer, owner, or lessee of any real property shall construct or cause to be constructed any place of employment that is not safe and healthful.

6406. No person shall do any of the following:

(a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment.

(b) Interfere in any way with the use thereof by any other person.

(c) Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such

employment, or place of employment.

(d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

6407. Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

6408. All employers shall provide information to employees in the following ways, as prescribed by authorized regulations:

(a) Posting of information regarding protections and obligations of employees under occupational safety and health laws.

(b) Posting prominently each citation issued under Section 6317, or a copy or copies thereof, at or near each place a violation referred to in the notice of violation occurred.

(c) The opportunity for employees or their representatives to observe monitoring or measuring of employee exposure to hazards conducted pursuant to standards promulgated under Section 142.3.

(d) Allow access by employees or their representatives to accurate records of employee exposures to potentially toxic materials or harmful physical agents.

(e) Notification of any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels exceeding those prescribed by an applicable standard, order, or special order, and informing any employee so exposed of corrective action being taken.

6409. (a) Every physician as defined in Section 3209.3 who attends any injured employee shall file a complete report of every occupational injury or occupational illness to the employee with the employer, or if insured, with the employer's insurer, on forms prescribed for that purpose by the Department of Industrial Relations. A portion of the form shall be completed by the injured employee, if he or she is able to do so, describing how the injury or illness occurred. The form shall be filed within five days of the initial examination. Inability or failure of an injured employee to complete his or her portion of the form shall not affect the employee's rights under this code, and shall not excuse any delay in filing the form. The employer or insurer, as the case may be, shall file the physician's report with the department within five days of receipt. Each report of occupational injury or occupational illness shall indicate the social security number of the injured employee. If the treatment is for pesticide poisoning or a condition suspected to be pesticide poisoning, the physician shall also file a complete report, which need not include the affidavit required pursuant to this section, with the department, and within 24 hours of the initial examination shall file a complete report with the local health officer by facsimile transmission or other means. If the treatment is for pesticide poisoning or a condition suspected to be pesticide poisoning, the physician shall not be compensated for the initial diagnosis and treatment unless the report is filed with the employer,

or if insured, with the employer's insurer, and includes or is accompanied by a signed affidavit which certifies that a copy of the report was filed with the local health officer pursuant to this section.

(b) As used in this section, "occupational illness" means any abnormal condition or disorder caused by exposure to environmental factors associated with employment, including acute and chronic illnesses or diseases which may be caused by inhalation, absorption, ingestion, or direct contact.

6409.1. (a) Every employer shall file a complete report of every occupational injury or occupational illness, as defined in subdivision (b) of Section 6409, to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid, with the Department of Industrial Relations or, if an insured employer, with the insurer, on a form prescribed for that purpose by the department. A report shall be filed concerning each injury and illness which has, or is alleged to have, arisen out of and in the course of employment, within five days after the employer obtains knowledge of the injury or illness. Each report of occupational injury or occupational illness shall indicate the social security number of the injured employee. In the case of an insured employer, the insurer shall file with the division immediately upon receipt, a copy of the employer's report, which has been received from the insured employer. In the event an employer has filed a report of injury or illness pursuant to this subdivision and the employee subsequently dies as a result of the reported injury or illness, the employer shall file an amended report indicating the death with the department or, if an insured employer, with the insurer, within five days after the employer is notified or learns of the death. A copy of any amended reports received by the insurer shall be filed with the division immediately upon receipt.

(b) In every case involving a serious injury or illness, or death, in addition to the report required by subdivision (a), a report shall be made immediately by the employer to the Division of Occupational Safety and Health by telephone or telegraph. An employer who violates this subdivision may be assessed a civil penalty of not less than five thousand dollars (\$5,000). Nothing in this subdivision shall be construed to increase the maximum civil penalty, pursuant to Sections 6427 to 6430, inclusive, that may be imposed for a violation of this section.

6409.2. Whenever a state, county, or local fire or police agency is called to an accident involving an employee covered by this part in which a serious injury or illness, or death occurs, the responding agency shall immediately notify the nearest office of the Division of Occupational Safety and Health by telephone. Thereafter, the division shall immediately notify the appropriate prosecuting authority of the accident.

6409.3. In no case shall the treatment administered for pesticide poisoning or a condition suspected as pesticide poisoning be deemed to be first aid treatment.

6409.5. (a) Whenever any local public fire agency has knowledge that a place of employment where garment manufacturing operations take place contains fire or safety hazards for which fire and injury prevention measures have not been taken in accordance with local fire and life safety ordinances, the agency may notify the Division of Occupational Safety and Health. This referral shall be made only after the garment manufacturing employer has been given a reasonable amount of time to correct violations.

(b) Whenever the Division of Occupational Safety and Health has knowledge or reasonable suspicion that a place of employment where garment manufacturing operations take place contains fire or safety hazards for which fire and injury prevention measures have not been taken in accordance with local fire and life safety ordinances, the division shall notify the appropriate local public fire agency.

(c) Whenever the Division of Occupational Safety and Health receives a referral by a local public fire agency pursuant to subdivision (a) which informs the division that a place of employment where garment manufacturing operations take place is not safe or is injurious to the welfare of any employee, it shall constitute a complaint for purposes of Section 6309 and shall be investigated.

(d) Whenever a local public fire agency receives a referral by the Division of Occupational Safety and Health pursuant to subdivision (b) which informs the local public fire agency that a place of employment where garment manufacturing operations take place is not safe or is injurious to the welfare of any employee, the local public fire agency may investigate the referral at its discretion.

(e) (1) If the Division of Occupational Safety and Health acquires knowledge that the garment manufacturing employer is not currently registered, it shall notify the Division of Labor Standards Enforcement.

(2) Local public fire agencies may make referrals of individuals not registered as garment manufacturers to the Division of Labor Standards Enforcement.

(3) Whenever the Division of Labor Standards Enforcement is informed by the Division of Occupational Safety and Health or by a local public fire agency that a garment manufacturing employer is unregistered, the Division of Labor Standards Enforcement shall take measures it deems appropriate to obtain compliance.

6410. (a) The reports required by subdivision (a) of Section 6409 and Section 6413 shall be made in the form and detail and within the time limits prescribed by reasonable rules and regulations adopted by the Department of Industrial Relations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Nothing in this chapter requiring recordkeeping and reporting by employers shall relieve the employer of maintaining records and making reports to the assistant secretary, United States Department of Labor, as required under the federal Occupational Safety and Health Act of 1970 (P.L. 91-596). The Division of Occupational Safety and Health shall prescribe and provide the forms necessary for maintenance of the required records, and shall enforce by citation and penalty assessment any violation of the recordkeeping requirements of this chapter.

(c) All state and local government employers shall maintain records and make reports in the same manner and to the same extent as

required of other employers by this section.

6410.5. The reports required by subdivision (a) of Section 6409, subdivision (a) of Section 6409.1, and Section 6413 shall contain, prominently stated, the statement set forth in Section 5401.7.

6411. Every employer or insurer receiving forms with directions from the Department of Industrial Relations to complete them shall cause them to be properly filled out so as to answer fully and correctly each question propounded therein. In case of inability to answer any questions, a good and sufficient reason shall be given for such failure.

6412. No report of injury or illness required by subdivision (a) of Section 6409.1 shall be open to public inspection or made public, nor shall those reports be admissible as evidence in any adversary proceeding before the Workers' Compensation Appeals Board. However, the reports required of physicians by subdivision (a) of Section 6409 shall be admissible as evidence in the proceeding, except that no physician's report shall be admissible as evidence to bar proceedings for the collection of compensation, and the portion of any physician's report completed by an employee shall not be admissible as evidence in any proceeding before the Workers' Compensation Appeals Board.

6413. (a) The Department of Corrections and Rehabilitation, and every physician or surgeon who attends any injured state prisoner, shall file with the Division of Occupational Safety and Health a complete report, on forms prescribed under Sections 6409 and 6409.1, of every injury to each state prisoner, resulting from any labor performed by the prisoner unless disability resulting from such injury does not last through the day or does not require medical service other than ordinary first aid treatment.

(b) Where the injury results in death a report, in addition to the report required by subdivision (a), shall forthwith be made by the Department of Corrections and Rehabilitation to the Division of Occupational Safety and Health by telephone or telegraph.

(c) Except as provided in Section 6304.2, nothing in this section or in this code shall be deemed to make a prisoner an employee, for any purpose, of the Department of Corrections and Rehabilitation.

(d) Notwithstanding subdivision (a), no physician or surgeon who attends any injured state prisoner outside of a Department of Corrections and Rehabilitation institution shall be required to file the report required by subdivision (a), but the Department of Corrections and Rehabilitation shall file the report.

6413.2. (a) With regard to any report required by Section 6413, the Division of Occupational Safety and Health may make recommendations to the Department of Corrections and Rehabilitation of ways in which the department might improve the safety of the working conditions and

work areas of state prisoners, and other safety matters. The Department of Corrections and Rehabilitation shall not be required to comply with these recommendations.

(b) With regard to any report required by Section 6413, the Division of Occupational Safety and Health may, in any case in which the Department of Corrections and Rehabilitation has not complied with recommendations made by the division pursuant to subdivision (b), or in any other case in which the division deems the safety of any state prisoner shall require it, conduct hearings and, after these hearings, adopt special orders, rules, or regulations or otherwise proceed as authorized in Chapter 1 (commencing with Section 6300) of this part as it deems necessary. The Department of Corrections and Rehabilitation shall comply with any order, rule, or regulation so adopted by the Division of Occupational Safety and Health.

6413.5. Any employer or physician who fails to comply with any provision of subdivision (a) of Section 6409, or Section 6409.1, 6409.2, 6409.3, or 6410 may be assessed a civil penalty of not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) by the director or his or her designee if he or she finds a pattern or practice of violations, or a willful violation of any of these provisions. Penalty assessments may be contested in the manner provided in Section 3725. Penalties assessed pursuant to this section shall be deposited in the General Fund.



Community Development

COMMUNITY NOTICE

Community Stakeholder,

The Planning Division apologizes for the inconveniences caused by the cancellation of the June 17, 2014 Planning Commission meeting. We sincerely appreciate your understanding and cooperation.

This community notice is to inform interested stakeholders that the El Cajon Planning Commission will be presented with the City Council's direction, background information and opportunities for community input. This will be presented as a staff communication. **This is an information item only. Public testimony may be given, but the Planning Commission will not take action at this meeting.** The meeting is scheduled for July 1, 2014 at 7:00 PM in the City Council Chambers at 200 Civic Center Way, El Cajon, CA 92020. Subsequent Planning Commission and City Council meetings will be scheduled for public participation, input and comment.

On January 14, 2014, the City Council directed staff to prepare a report on the health hazards and other potential effects of electronic/vapor substance inhalation, prepare an overview of related regulations and report back to the Council options for addressing the issue, with an emphasis on protecting the health of citizens, especially youth. On March 11, 2014, the Council was presented with detailed information regarding electronic/vapor inhalation and their associated effects. After discussing the information and hearing public testimony, the City Council directed City staff to:

1. Amended the Municipal Code to include the use of electronic/vapor inhalation and hookah products with current tobacco and smoking regulations.
2. Require a conditional use permit for businesses that primarily sell electronic/vapor inhalation products, including hookah.
3. Prohibit minors from buying and consuming electronic/vapor substance inhalation products.
4. Require a license to sell electronic/vapor inhalation products, including hookah.
5. Amend the Tobacco License Inspection Program and include outlets that sell electronic/vapor substance inhalation and hookah products.

On May 13, 2014, the City Council adopted an urgency ordinance establishing a moratorium on the approval of any new hookah and electronic/vapor substance inhalation shops and lounges (also called hookah bars, e-vap lounges or bars, or vaping lounges).