

# ZONING ADMINISTRATOR DECISION CONDITIONAL USE PERMIT



## DECISION NO. 2014-24

**HEARING DATE:** December 1, 2014

**DECISION DATE:** December 18, 2014

**FILE NO.:** PCUP14-017

**SUBJECT:** A Conditional Use Permit request to establish a hookah lounge at an existing 1,725 square foot commercial tenant space, within a commercial shopping center located at 2448 South Vineyard Avenue Unit # 103, within the C3 (Commercial Service) zone.

**STAFF**

**RECOMMENDATION:**  Approval     Approval, subject to conditions     Denial

### PART A: BACKGROUND & ANALYSIS

JIMMY HWANG, herein after referred to as "the applicant," has filed an application requesting Conditional Use Permit approval, File No. *PCUP14-017*, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

**(a) Project Setting:** The project site will occupy a 1,725 square foot tenant space within a multi-tenant building located within the Ontario Vineyard Pavilion Shopping Center. The Ontario Vineyard Pavilion Center is a retail center comprised of 94,850 square feet located on 8.9 acres of land. Other tenants within the center include Cardenas market and Zendejas restaurant. The project site is located at 2448 South Vineyard Avenue, Unit #103 (**Exhibit A: Project Site Aerial & Exhibit B: Site Plan**). Existing land uses, General Plan and zoning designations, and specific plan land uses on and surrounding the project site are as follows:

	<i>Existing Land Use</i>	<i>General Plan Designation</i>	<i>Zoning Designation</i>
<i>Site</i>	Commercial Shopping Center	General Commercial	Commercial Service District
<i>North</i>	State Route 60	State Route 60	State Route 60
<i>South</i>	Commercial/retail	General Commercial	Commercial Service District
<i>East</i>	Commercial/retail	General Commercial	Commercial Service District
<i>West</i>	Single Family Residential	Low Density Residential	Single Family Residential

**(b) Project Analysis:**

**1) Background:** Due to an increase in inquiries received from individuals wishing to establish a hookah lounge in the City, on November 18, 2013, the City adopted a Development Code Amendment (File No. PDCA-005), to conditionally allow hookah establishments within the C2 and C3 land use designations, under certain restrictions. These restrictions are:

- i. Use can be a standalone use (lounge);
- ii. Use can be part of a sit-down restaurant or an ABC licensed bona-fide eating establishment with an outside open patio area for smoking;
- iii. Hookah cannot be associated with live entertainment;
- iv. Hookah cannot be part of a bar or nightclub;
- v. Establishments must comply with state laws and regulations pertaining to a smoking facility; and
- vi. Disposal of ash and coals shall be in accordance with Fire Department requirements.

A Hookah Lounge is a commercial establishment where groups of people gather to enjoy in the vaporizing, and smoking, of flavor tobacco from a hookah (*also known as a water pipe*). A hookah lounge offers patrons the opportunity to smoke with a group from a communal hookah pipe. Usually placed in the center of a table with numerous stems to smoke from. The hookah is packed with one of a variety of flavored tobaccos on the menu (**Exhibit G & H**). Considered a unique and acceptable way to socialize with friends, hookah lounges have become a commonly sought after social experience and they have grown in popularity over the last several years. Many cities across the country, such as Anaheim, California, have welcomed these social venues, and the businesses have gone on to be extremely successful.

**2) Proposed Use:** The applicant is requesting a Conditional Use Permit to establish the *Blurr Hookah Lounge*. The proposed 1,725 square foot hookah lounge will be for patrons age 18 and over. The establishment will be a standalone hookah lounge where prepared flavored tobacco will be sold for on-site consumption in a lounge setting. The proposed hours of operation will be 12:00 p.m. to 2:00 a.m. Sunday through Thursdays and 12:00 p.m. to 2:30 a.m. Friday through Saturday. The tenant space will be divided into three general areas: a 50 square foot office area, a 99 square foot preparation area, and a 1,191 square foot lounge area. The lounge area will provide space for 24 couches and will have a maximum seating capacity for 60 patrons (**Exhibit C: Proposed Floor Plan**).

Upon entering the establishment, the patrons will be seated, and an employee will take his/her order. After the order is placed, the employee will go to the preparation area, and prepare the hookah. Once prepared, the hookah will be taken to the lounge area and will be given to the patron where he/she will consume the product. Ancillary to the sale of hookah will be the sale of prepackaged snacks such as Doritos, Lays, Cheetos and pretzels, as well as non-alcoholic drinks such as bottled water, energy drinks, and canned soda. In order to remain compliant with California Labor Code § 6404.5 the business will operate with a maximum of 5 part-time employees.

The California Labor and Workforce Agency (LWDA) is the controlling State entity in charge of enforcing the California labor laws which protect workers. Under California Labor Code § 6404.5 (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." The same code however makes specific exemptions for certain types of workplaces in § 6404.5 (d). One of the exemptions permits an employer who employs five or fewer employees (full-time or part-time) to allow smoking where:

- i. The smoking area is not accessible to minors.
- ii. All employees who enter the smoking area consent to permit smoking, and no one is required as part of their job to work in an area where smoking is permitted.
- iii. Air from the smoking area is exhausted directly outside by an exhaust fan. Air from the smoking area is not recirculated to other parts of the building, and
- iv. The employer complies 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.

As a condition of approval, staff has conditioned the project to comply with California Labor Code § 6404.5.

**3) Parking:** According to the Ontario Development Code, the proposed use is required to provide 18 parking spaces at the rate of 1 space per 100 square feet. As such, the existing shopping center is required to provide 446 parking spaces for the entire center. The center will provide 453 parking spaces. In addition, the existing center has shared parking for all the tenants in the center. Therefore, no parking issues are anticipated as a result of the request.

**4) Land Use Compatibility:** A Conditional Use Permit review is required to ensure the compatibility of adjacent uses by identifying potential nuisance activities and establishing measures for mitigation accordingly. The project site is located within the Ontario Vineyard Pavilion Commercial Shopping Center, some of the tenants include Zendejas restaurant and Cardenas market. Adjacent to the shopping center there is also a gas station, as well as Jack in the Box and Popeye's restaurant.

Staff believes that the proposed use is similar in operation to a restaurant. Staff also believes that the recommended conditions of approval will sufficiently mitigate any potential impacts associated with the proposed use. Additionally, the nearby businesses within and surrounding the shopping center will not be exposed to any impacts resulting from the operation of the hookah lounge beyond those that would normally be associated with any other similar use within the commercial center and surrounding area.

**(c) Airport Land Use Compatibility Plan:** The project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT.

**(d) Departmental Review:** Each City department has been provided the opportunity to review and comment on the subject application and recommend conditions of approval to be imposed upon the application. All departments are recommending approval. Some of the conditions of approval from the Police Department are the following:

- No alcohol will be allowed on the premises.
- No persons under 18 years of age will be allowed on the premises.
- There shall be no live entertainment, disc jockey, karaoke, dancing, dance floor, or dance area provided on the premises.
- Pre-recorded music may be played inside the business. The music/noise level shall follow Section 5-29.04 of the Ontario Municipal Code relating to exterior noise standards.

**(e) Public Community Outreach:** On October 28, 2014, a neighborhood meeting notice was mailed to all owners of real property located within 500-feet of the subject property asking them if they would like the City to hold a community meeting to discuss and explain the proposed project. No request for a meeting was received, however, staff did receive two phone calls:

- 1) **Call #1:** A resident of the area called and left a message stating that she was opposed to the proposal. Once staff contacted her and explained the project, she chose not to voice any specific concerns. Staff informed her that she would receive another notification prior to the hearing date.
- 2) **Call #2:** A resident of the area called asking if alcohol was going to be sold in conjunction with the hookah lounge. Staff informed her that the proposal did not include the sale of alcohol. She had no further questions.

**(f) Public Notification:** The subject application was advertised as a public hearing in at least one newspaper of general circulation in the City of Ontario (Inland Valley Daily Bulletin). In addition, notices were mailed to all owners of real property located within 500 feet of the exterior boundaries of the property that is the subject of the hearing, as shown on the records of the County Assessor.

**(g) Correspondence:** As of the preparation of this report, staff has not received any written or verbal communications from the owners of properties surrounding the project site or from the public in general, regarding the subject application.

**PART B: RECITALS**

WHEREAS, the City of Ontario has received a request for Conditional Use Permit approval as described in Part A, above; and

WHEREAS, Ontario Municipal Code § 9-1.0405(f) provides that the Zoning Administrator has the responsibility and authority to review and act upon Conditional Use Permits for existing structures; and

WHEREAS, all members of the Development Advisory Board of the City of Ontario were provided the opportunity to review and comment on the requested Conditional Use Permit, and no comments were received opposing the proposed use; and

WHEREAS, on December 01, 2014, the Zoning Administrator of the City of Ontario conducted a duly noticed public hearing on the application, as follows:

- (a) Daniel Villa, presented the staff report on the proposed use, indicating the staff recommendation of approval, subject to conditions. Following staff's presentation, the Zoning Administrator opened the public hearing.
- (b) Jimmy Hwang the applicant, explained the business operation and spoke in favor of the application.
- (c) The Zoning Administrator asked a series of questions aimed at understanding how the applicant planned on providing proper ventilation for the unit. The applicant answered the questions by stating that air from the smoking area will be exhausted directly outside by an exhaust fan and that air from the smoking area will not be recirculated to other parts of the building. The applicant also stated that, during the pan check process, he will work with the Building Department in order to ensure that all applicable ventilation standards are addressed.
- (d) There being no one else to offer testimony regarding the application, the Zoning Administrator closed the public hearing.

WHEREAS, all legal prerequisites to the adoption of this Decision have occurred.

**PART C: THE DECISION**

NOW, THEREFORE, it is hereby found, determined and resolved by the Zoning Administrator of the City of Ontario as follows:

- (a) All facts set forth in this Zoning Administrator Report and Decision are true and correct.
- (b) Based upon the evidence presented to the Zoning Administrator during the above-referenced public hearing, the Zoning Administrator hereby finds as follows:

(1) The proposed location of the requested Conditional Use Permit, and the proposed conditions under which it will be operated or maintained, will be consistent with the Policy Plan component of The Ontario Plan and will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity. The proposed 1,725 square foot hookah lounge lies within the C3 (Commercial Service District) land use designation and the use is conditionally allowed within the subject zone.

(2) The proposed hookah lounge is allowed upon approval of a Conditional Use Permit. The project has been conditioned so that the facility and use are operated in a manner that will not be detrimental to the health and safety of the surrounding community. In addition, the Police Department has also reviewed the application and they are in support of the application subject to the attached conditions of approval.

(3) The proposed location of the Conditional Use Permit is in accord with the objectives and purposes of the Ontario Development Code and zoning designation within which the site is located. The use will be operated in accordance with Ontario Development Code and the use meets the objectives and purposes as required by the C3 (Commercial Service District) zone.

(4) The City's traffic Division has reviewed the proposed use and they found that traffic generated by the proposed Conditional Use Permit will not overload the capacity of the surrounding street system, and will not create a hazard to public safety. The use will not generate a significant amount of new traffic nor overload the surrounding circulations system. In addition a sufficient amount of parking will be provided on site. With the proposed use the center is required to provide a total of 446 parking spaces, however, the center will provide 453 spaces.

(5) The proposed Conditional Use Permit will comply with each of the applicable provisions of the Ontario Development Code and applicable municipal codes. The use meets the objectives of the Ontario Development Code, and the recommended conditions of approval will sufficiently mitigate any potential impacts.

**(c)** The Zoning Administrator hereby finds and determines that the project identified in this Decision is categorically exempt from the requirements of the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to § 15301: Class 1 of the State CEQA Guidelines. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The proposed use is located within an existing building and does not include any building additions and is therefore categorically exempt.

**(d)** The Zoning Administrator hereby finds and determines that the proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT.

(e) Based upon the findings and conclusions set forth in Parts A, B and C above, the Zoning Administrator hereby approves File No. PCUP14-017, subject to the conditions of approval attached hereto and incorporated herein by this reference.



APPROVED by the Zoning Administrator of the City of Ontario on this 18<sup>th</sup> day of December, 2014.



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Scott Murphy  
Zoning Administrator

EXHIBITS

Exhibit A: Project Site Aerial

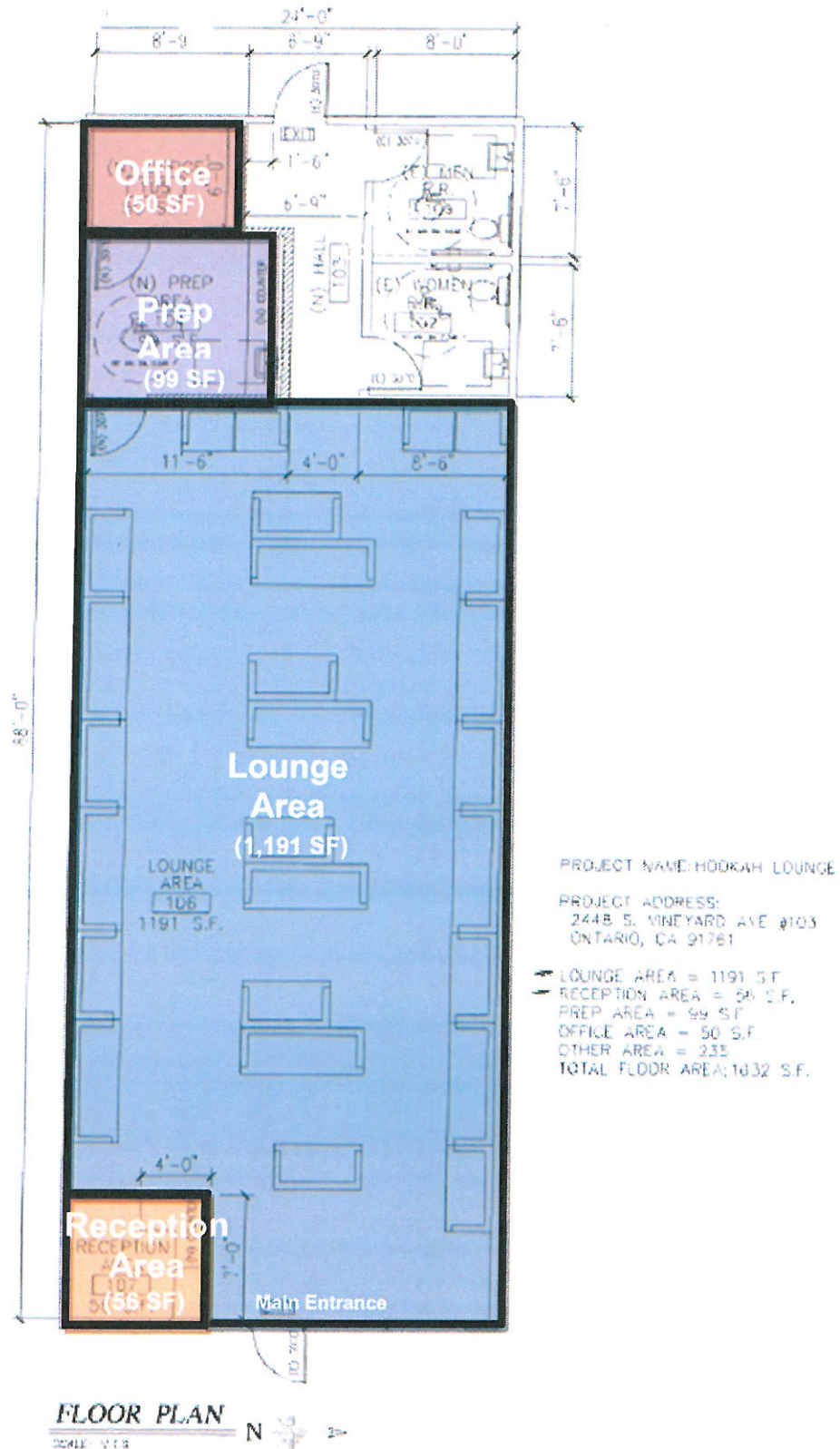




Exhibit B: Site Plan



**Exhibit C: Proposed Floor Plan**



**Exhibit D: Site Photos**



*Project location, exterior.*



*Project location, exterior and adjacent units.*



*Project location, parking lot in front of unit.*

**Exhibit E: Existing Conditions Interior Photos**



*Project location, interior.*



*Project location, interior.*

**Exhibit F: Surrounding Land Uses**



*Looking north from the project location.*



*Looking east from the project location.*



*Looking east from the project location.*

**Exhibit G: Examples of Typical Hookah Lounges**

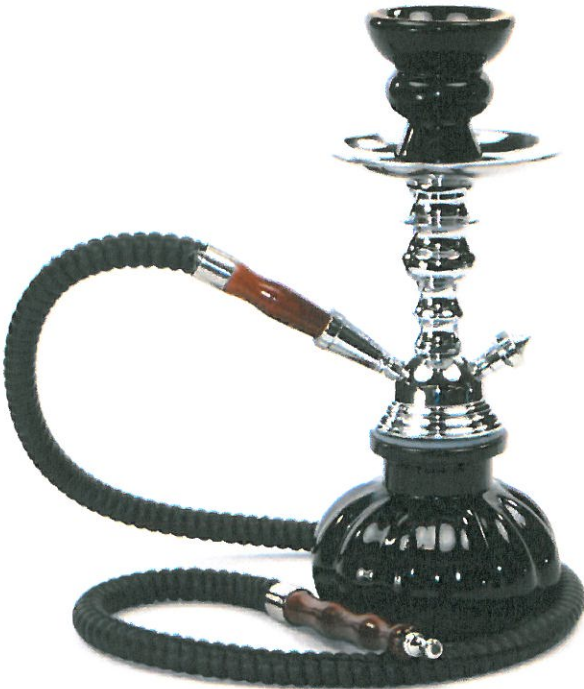


**Example #1: Hookah Lounge.**



**Example #2: Hookah Lounge.**

**Exhibit H: *Examples of Typical Hookah (Water Pipe)***





**PLANNING DEPARTMENT  
CONDITIONS OF APPROVAL**

**File No. PCUP14-017**

**Date:** December 01, 2014

**Project Description:** A Conditional Use Permit request to establish a hookah lounge at an existing 1,725 square foot commercial tenant space, within a commercial shopping center located at 2448 South Vineyard Avenue Unit # 103, within the C3 (Commercial Service) Zone. The proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT. The project is categorically exempt from environmental review pursuant to State CEQA Guidelines Section § 15301 (Class 1 Existing Facilities). (APN: 0216-401-63) **Submitted By: Jimmy Hwang**

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**Reviewed by:** Daniel Villa, Land Development Intern  
**Phone:** (909) 395-2443; **Fax:** (909) 395-2420

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**CONDITIONS OF APPROVAL**

**The above-described Development Plan application shall comply with the following conditions of approval:**

1.0 HOOKAH LOUNGE ESTABLISHMENT

- 1.1 The establishment must comply with state laws and regulations pertaining to a smoking facility.
  - (a) The business shall be operated in strict compliance with the rules, regulations and orders of California Labor Code § 6404.5, regarding the prohibition of smoking in the workplace
  - (b) Air from the smoking area shall be exhausted directly outside by an exhaust fan. Air from the smoking area shall not be recirculated to other parts of the building.



- 1.2 The establishment cannot be associated with live entertainment.
- 1.3 The establishment cannot be part of a bar or a night club.
- 1.4 The disposal of ash and coals shall be in accordance with the Fire Department requirements.
- 1.5 The sale, and consumption, of alcohol shall be prohibited.
- 1.6 All smoking activity associated with the business shall be kept within the building.
- 1.7 Amplified music may be permitted; however, the sound emitted from the premises shall not be audible outside the walls of the business establishment.
- 1.8 The change in use will trigger a change in occupancy classification. The applicant shall work with the Building Department when they submit for tenant improvements to acquire a Certificate of Occupancy.
- 1.9 One (1) year following commencement of the approved use, the Planning Department shall conduct a review of the approved use and shall prepare for Zoning Administrator consideration, a status report identifying impacts associated with the use and any non-compliance with the conditions of approval. In addition, such status report shall contain a police report regarding calls for service to the subject premises during the prior one (1) year period. Nothing herein shall modify or limit the City's ability to regulate the business or modify or revoke the permit upon the City's determination that the business is being operated in a manner adverse to the public health, safety and welfare.
- 1.10 In the event that security problems occur as a result of the approved subject use and at the request of the Police Department, the permittee, at his/her own expense, shall provide a California licensed, uniformed security guard(s) on the subject premises, during such hours and in such number as requested by the Police Department.

## 2.0 ENVIRONMENTAL REVIEW

- 2.1 The proposed project is categorically exempt from the requirements of the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to § 15301 (Class 1: Existing Facilities) of the State CEQA Guidelines.

3.0 ADDITIONAL FEES

- 3.1 Within 5 days following final application approval, the  Notice of Determination (NOD),  Notice of Exemption (NOE), filing fee shall be provided to the Planning Department. The fee shall be paid by check, made payable to the "*Clerk of the Board*", which will be forwarded to the San Bernardino County Clerk of the Board of Supervisors, along with all applicable environmental forms/notices, pursuant to the requirements of the California Environmental Quality Act (CEQA). Failure to provide said fee within the time specified may result in the 30-day statute of limitations for the filing of a CEQA lawsuit being extended to 180 days.



# CITY OF ONTARIO POLICE DEPARTMENT MEMORANDUM

**TO:** Daniel Villa, Associate Planner

**FROM:** Corporal Steve Munoz, COPS Unit, ABC Enforcement Detail

**DATE:** August 27, 2014

**SUBJECT:** FILE NO. PCUP14-017– Hookah Lounge, 2448 S. Vineyard Avenue,  
#103, Ontario, CA 91761

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The Police Department is placing the following conditions of approval: The location must follow all Federal, State, and Local laws and ordinances. In addition, the following conditions of approval shall be imposed by the Police Department:

1. The operating hours will be Sunday through Thursday, 12:00PM to 02:00AM. Friday and Saturday from 12:00PM to 02:30AM.
2. No alcohol will be allowed on the premises.
3. A security camera surveillance system will be installed and maintained in proper working order. A minimum of one camera will show the parking lot, and a minimum of one camera will show the interior of the premises.
4. No persons under 18 years of age will be allowed on the premises.
5. The business is required to use driver license and/or ID card reading devices.
6. No narcotic sales or usage on the premises at any time.
7. There shall be no live entertainment, which includes disc jockey, karaoke, dancing, dance floor, or dance area provided on the premises.
8. No Juke Boxes will be allowed in the premises.
9. Pre-recorded music may be played inside the business. The music/noise level shall follow Section 5-29.04 of the Ontario Municipal Code relating to exterior noise standards.
10. No arcade video game machines will be allowed in the premises.

11. No pool tables or amusement games permitted inside establishment.
12. Graffiti abatement by the business owner/licensee, or management shall be immediate and on-going on the premises, but in no event shall graffiti be allowed unabated on the premises for more than 72 hours. Abatement shall take the form of removal, or shall be covered/painted over with a color reasonably matching the color of the existing building, structure, or other surface being abated. Additionally, the business owner/licensee, or management shall notify the City within 24 hours at (909) 395-2626 (graffiti hotline) of any graffiti elsewhere on the property not under the business owner/licensee's or management control so that it may be abated by the property owner and/or the City's graffiti team.
13. No loitering shall be permitted on any property adjacent to the licensed premise, which is under the control of the applicant, and signs must be posted. A prominent, permanent sign or signs stating, "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES," shall be posted near the entrance and rear door, and clearly visible to patrons.
14. The parking lot will need adequate lighting (minimum 1 foot candle) from dusk to dawn.
15. Lighting within the business must be kept at a reasonable level for the safe movement of patrons.
16. Address to establishment must be illuminated for easy identification by safety personnel.
17. Back door must be alarmed and closed at all times. Patrons will not be allowed to enter/exit the back door except for emergencies. Patrons will not be allowed to loiter in the rear alley.
18. A Code of Conduct will be required to be used and posted at the entrance or in a conspicuous place of the establishment.
19. Ontario Police Officers have the right to limit or reduce the occupancy inside the establishment if situations arise that may compromise the safety of patrons and the officer. Any additional police resources requested to bring peace in the establishment may be charged to the business owner.
20. Any security personnel hired will be required to follow Ontario Municipal Code Article 6, Title 3, Section 3-1.601-621 (security regulations).

A copy of the listed conditions of approval must be posted with your business license at all times in a prominent place in the interior of the premises.

Any special event outside the scope of the Conditional Use Permit will require a TUP (Temporary Use Permit) which will be processed by the Planning Department and conditioned by the Ontario Police Department. (For example a radio station promotion held at the location, or an outdoor event would be a special event and may require Police or security personnel).

If crimes at this location are higher than other similar establishments in the City during any quarter, the CUP will automatically be referred to the Zoning Administrator for review and re-conditioning or revocation of the permit. The Police Department may, at their sole discretion, request a revocation hearing if they determine that the establishment is being operated in violation of this Conditional Use Permit.

The Police Department will conduct a review in six months to determine whether additional conditions are needed.

If you have any questions please call Corporal Steve Munoz at (909) 395-2782.



## CITY OF ONTARIO MEMORANDUM

**TO:** Luis Batres Planner  
Planning Department

**FROM:** Kenna Leonard, Fire Safety Specialist  
Bureau of Fire Prevention

**DATE:** August 14, 2014

**SUBJECT:** PCUP14-017 – A Conditional Use Permit to establish a hooka lounge at 2448 South vineyard Avenue, within the C3 (commercial Service District) zoning district. APN: 0216-401-63

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- The plan does adequately address the departmental concerns at this time.
- No comments
- Report below.
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The following conditions must be met in order to comply with Fire Department Standard for Smoking Lounges, Standard #F-007:

1. Adequate ventilation is required when heating coals. A mechanical exhaust hood system shall be installed to provide adequate ventilation.
2. The mechanical exhaust hood fans shall be running at all times while coals are being prepared.
3. Whenever hot coals are removed from the preparation area, they shall be placed in a ceramic, metal or other non-combustible container. Open mesh containers shall not be used.
4. Coal containers shall not be placed on combustible materials, such as tablecloths or furniture. All devices used to transfer coals from the preparation area to the hookah pipe shall be of non-combustible materials.
5. Hookah pipes shall be securely fastened in place to prevent overturning. An approved clasp or hook may be used to secure the pipe to the table or other stationary object. A shield or other approved device shall be applied to the top of the pipe to prevent accidental contact of patrons to exposed coals.
6. Used coals shall not be discarded in a manner that could cause ignition of combustible materials. Used coals shall be removed and placed into a sealed metal or ceramic container with a lid (no openings other than the lid). The container shall be labeled "Hot

- Coals Only." The container shall not be placed within ten feet of combustible materials, such as combustible storage, walls and partitions, on combustible floors or within two feet of building openings. Hot ashes shall be thoroughly cooled (at least 24 hours) before being discarded.
7. The occupant load of a business shall be determined by the Ontario Fire and/or Building Department. If the occupant load is 50 or more, all requirements of an assembly occupancy shall be met. Assembly occupancies requirements include multiple exits, illuminated exit signs, panic hardware, and flame retardant treated decorative materials. These materials include curtains, tablecloths and all materials hung from ceilings and/or walls. Flame retardant application services and certifications must be obtained from a California State Fire Marshal licensed company.
  8. Minimum 2A10BC fire extinguishers shall be installed in approved locations with one being installed adjacent to the coal preparation area.

For copies of Ontario Fire Department Standards please access the City of Ontario web site at [www.ci.ontario.ca.us](http://www.ci.ontario.ca.us), click on Fire Department and then on forms.