

ZONING ADMINISTRATOR DECISION CONDITIONAL USE PERMIT



DECISION NO. 2015-001

HEARING DATE: February 18, 2015

DECISION DATE: March 02, 2015

FILE NO.: PCUP14-026

SUBJECT: A Conditional Use Permit request to establish a hookah lounge at an existing 2,111 square foot commercial tenant space, within a commercial shopping center located at 4451 East Ontario Mills Parkway, Unit D, within the Commercial/Office land use designation of the Ontario Mills Specific Plan.

STAFF

RECOMMENDATION: Approval Approval, subject to conditions Denial

PART A: BACKGROUND & ANALYSIS

UMAR SOHRAB, herein after referred to as "the applicant," has filed an application requesting Conditional Use Permit approval, File No. *PCUP14-026*, 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 2,111 square foot tenant space within a multi-tenant building located within the Parkway Plaza Shopping Center. The Parkway Plaza is a retail center comprised of 30,336 square feet located on 3.45 acres of land. Other tenants within the center include Chopsticks House restaurant and Metro PCS. The project site is located at 4451 East Ontario Mills Parkway, Unit D (**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>Specific Plan Land Use</i>
<i>Site</i>	Commercial Shopping Center	Mixed Use	Specific Plan-Ontario Mills	Commercial/Office
<i>North</i>	Commercial Shopping Center	Mixed Use	Specific Plan-Ontario Mills	Regional Commercial
<i>South</i>	Commercial Shopping Center	Mixed Use	Specific Plan-Ontario Mills	Commercial/Office
<i>East</i>	Hotel	Mixed Use	Specific Plan-Ontario Mills	Commercial/Office
<i>West</i>	Vacant Buildings	Mixed Use	Specific Plan-Ontario Mills	Commercial/Office

(b) Project Analysis: 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 F & G**). 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.

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. PDCA13-005), to conditionally allow hookah establishments within the C2 and C3 zones, under certain restrictions. The restrictions are:

- Use can be a standalone use (lounge);
- 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;
- Hookah cannot be associated with live entertainment;
- Hookah cannot be part of a bar or nightclub;
- Establishments must comply with state laws and regulations pertaining to a smoking facility; and
- Disposal of ash and coals shall be in accordance with Fire Department requirements.

The Development Code Amendment was not inclusive to Specific Plan land use designations which may be similar to the C2 and C3 zones. Should inquiries arise regarding the establishment of a hookah lounge within a Specific Plan, a determination must first be made by the Zoning Administrator that a hookah lounge is similar to, and of no greater intensity than other allowed or conditionally permitted uses within the Specific Plan.

On October 22, 2014, the City received a request wishing to establish a hookah lounge within the Ontario Mills Specific Plan. On January 29, 2015, the Zoning Administrator approved Determination of Use (File No. PDET14-006), to conditionally allow hookah establishments within the Regional Commercial and Commercial/Office land use designations of the Ontario Mills Specific Plan, with the same restrictions adopted by the Development Code Amendment.

Proposed Use: The applicant is requesting a Conditional Use Permit to establish the *Falak Hookah Lounge* at 4451 East Ontario Mills Parkway, Unit D. The proposed 2,111 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 6:00 p.m. to 2:00 a.m. Monday through Sunday, with occasional closing hours of 3:00 a.m. and 4:00 a.m. on New Year's Eve, Halloween, and 4th of July as approved by the Police Department. The proposed tenant space will be divided into four general areas: a 105 square foot storage area, an 80 square foot office area, a 106 square foot work area and

a 1,558 square foot lounge area. The lounge area will be comprised of 7 tables and 5 booths, with a maximum seating capacity for 48 patrons (**Exhibit C: Proposed Floor Plan**).

Upon entering the establishment, the patrons will be seated, and an employee will take orders. After the order is placed, the employee will go to the work area and prepare the hookah. Once prepared, the hookah will be taken to the lounge area and will be given to the patron where they will consume the product. Ancillary to the sale of hookah will be the retail sale of hookah products such as hookah tobacco, hookah pipes, electronic cigarettes, as well as prepackaged snacks (Doritos, Lays, Cheetos, pretzels), and non-alcoholic beverages (bottled water, energy drinks, 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:

- The smoking area is not accessible to minors.
- 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.
- 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
- 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. The proposed hookah lounge establishment will be the fourth establishment owned by the applicant. The applicant currently operates successful establishments in Glendora, Pomona, and Whittier. Local authorities in the above mentioned cities were contacted in order to discuss the Applicant's existing establishments, and no concerns were addressed.

Parking: According to the Ontario Development Code, the proposed use is required to provide 21 parking spaces at the rate of 1 space per 100 square feet of gross floor area. The existing 29,926 square foot shopping center was required to provide 120 parking spaces at the rate of 1 space per 250 square feet when developed. The center will provide 182 parking spaces, therefore, no parking issues are anticipated as a result of the request.

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 Parkway Plaza Shopping Center, existing tenants include Chopsticks House (restaurant), Labor Exchange (service) and Metro PCS. Other tenants immediately adjacent to this center include AYRES Inn & Suites Hotel, and the Ontario Mills Mall. The site to the west of the shopping center is developed for retail uses, however, the buildings have been vacant for a number of years. Staff believes that the proposed use is similar in operation to the adjacent uses, most notably Chopstick's House, an ABC Licensed restaurant, and the Ontario Mills Mall, one of the major Entertainment Districts in the City. Staff also believes that the recommended conditions of approval will sufficiently mitigate any potential impacts associated with the proposed use.

(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 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 300 feet of the exterior boundaries of the property that is the subject of the hearing, as shown on the records of the County Assessor.

(f) 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 February 02, 2015, 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) Umar Sohrab the applicant, explained the business operation and spoke in favor of the application. In addition, the applicant mentioned that he wished to pursue three modifications to the business operation. He proposed the following:
 - The incorporation of an outdoor patio smoking area;
 - The incorporation of live entertainment in the form of a disc jockey (DJ); and
 - Extending the weekend hours of operation from 2 a.m. to 4 a.m.

Staff explained that both the first and the second proposed modifications were not supported by the Development Code, as stated in Sec. 9-1.1305; *Hookah Establishments*. Corporal Steve Munoz, from the Police Department, spoke on the third proposed modification and it was concluded that more time was needed in order to reach a decision. As a result, the Zoning Administrator continued the meeting to February 18, 2015.

Following the meeting, staff discussed the request from Mr. Sohrab with Police Administration. As a result of the meeting, the following concerns were expressed with extending the weekend hours of operation to 4 a.m.:

- If approved, the Velvet Room and other lounge establishment will also make the request to remain open late; and
- Patrons going to these location after 2 a.m. may be already intoxicated.

As a result of the concerns outlined above and for health and safety reasons, the Police Department is oppose to extending the weekend hours of operation. The Police Department is in support of the application subject to the previous conditions of approval.

WHEREAS, on February 18, 2015, the Zoning Administrator of the City of Ontario conducted the duly noticed public hearing on the application, as follows:

- (a) Daniel Villa, reported on the request made by the applicant at the previous hearing regarding extended hours of operation. It was reported that both the Planning and Police Department would not support the extended hours of operation; the

business shall operate in accordance with the originally stated hours of operation. However the Zoning Administrator did state that per the applicant's request, the request for extended hours of operations may be revisited six months from the application approval date. Should the applicant request it, the Planning Department shall conduct a review of the approved use and shall prepare for Zoning Administrator consideration, a request for an extension on the hours of operation.

- (b) Umar Sohrab the applicant, addressed the Zoning Administrator stating that he is in support of the decision
- (c) 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 2,111 square foot hookah lounge lies within the Commercial/Office land use designation of the Ontario Mills Specific Plan, and the use is conditionally allowed within the subject designation. Staff believes that the recommended conditions of approval will sufficiently mitigate any potential detrimental effect to the public health, safety, or welfare.

(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, Ontario Mills Specific Plan, 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 Commercial/Office land use designation of the Ontario Mills Specific Plan.

(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 170 parking spaces, however, the center will provide 182 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. PCUP14-026, 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 2nd day of March, 2015.


Barbara Millman
Zoning Administrator

EXHIBITS

Exhibit A: Project Site Aerial



Exhibit B: Site Plan



Exhibit C: Proposed Floor Plan

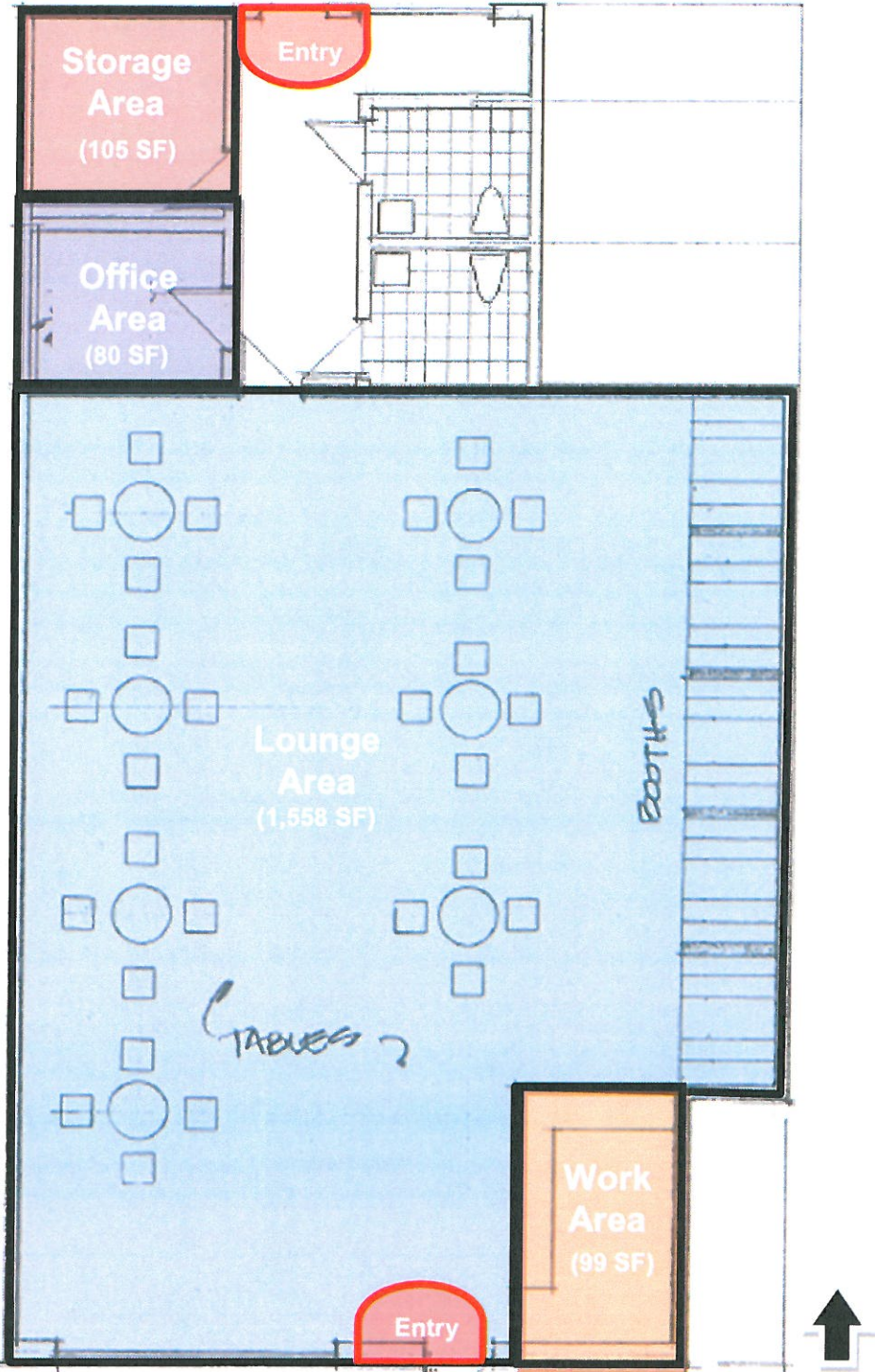


Exhibit D: Site Photos



Project location, exterior.



Project location, exterior and adjacent units.



Project location, parking lot in front of unit.

Exhibit E: Surrounding Land Uses



Site to the east of the project site.



Site to the west of the project site.



Site to the north of the project site.

Exhibit F: Examples of Typical Hookah Lounges



Example #1: Hookah Lounge.



Example #2: Hookah Lounge.

Exhibit G: Examples of Typical Hookah (Water Pipe)





**PLANNING DEPARTMENT
CONDITIONS OF APPROVAL**

File No. PCUP14-026

Date: February 18, 2015

Project Description: A Conditional Use Permit request to establish a hookah lounge at an existing 2,111 square foot commercial tenant space, within a commercial shopping center located at 4451 East Ontario Mills Parkway Unit D, within the Commercial/Office land use designation of the Ontario Mills Specific Plan. 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: 0238-014-10) **Submitted By: Umar Sohrab**

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

CONDITIONS OF APPROVAL

The above-described Conditions of Approval application shall comply with the following conditions of approval:

1.0 HOOKAH LOUNGE ESTABLISHMENT

- 1.1 The establishment shall 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, including a DJ.
- 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 may trigger a change in occupancy classification. The applicant shall work with the Building Department in acquiring a Certificate of Occupancy prior to opening for business.
- 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.
- 1.11 A final inspection from Planning is required prior to opening for business.
- 1.12 An approved business license shall be obtained prior to opening for business.

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: Luis Batres, Planning

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

DATE: October 29, 2014

SUBJECT: FILE NO. PCUP14-026– Hookah Lounge, 4451 E. Ontario Mills Parkway, Unit D, Ontario, CA 91761

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 Daily, 06:00PM to 02:00AM. The business may stay open until 04:00AM on New Year's Eve, Halloween, and the 4th of July.
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, 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. The Code of Conduct will be reviewed by the Police Department prior to opening.
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, Planning Department

FROM: Michelle Starkey, Senior Fire Safety Specialist
Bureau of Fire Prevention

DATE: November 3, 2014

SUBJECT: PCUP14-026 A Conditional Use Permit to establish a hookah lounge at 4451 East Ontario Mills Parkway, Unit D, located on 3.44 acres, within the Commercial/Office land use designation of the Ontario Mills Specific Plan.

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- The plan does adequately address the departmental concerns at this time.
- No comments
 - Report below.

Conditions of approval are as follows:

1. Comply with all the requirements in the Ontario Fire Department Standard: Fire Safety Standard For Smoking Lounges, Standard #F-007.
2. Mechanical exhaust hood system required if heating coals. Proper plans and permits to be submitted and obtained.
3. Maintain fire suppression and/or detection systems.

For copies of Ontario Fire Department Standards please access the City of Ontario web site at www.ci.ontario.ca.us, click on Fire Department and then on forms.