

Planning Commission: August 12, 2014
TOWN OF YUCCA VALLEY
COMMUNITY DEVELOPMENT DEPARTMENT
CURRENT PLANNING DIVISION STAFF REPORT
ALKARADSHEH

Case: ENVIRONMENTAL ASSESSMENT, EA-03-14
CONDITIONAL USE PERMIT, CUP-02-14, ALKARADSHEH

Request: REQUEST FOR APPROVAL FOR THE CHANGE IN USE OF AN EXISTING 1,800 SQUARE FOOT RESTAURANT BUILDING WITH OUTDOOR PATIO AREAS FROM A RESTAURANT TO A HOOKAH LOUNGE/RESTAURANT. THE HOOKAH LOUNGE IS OUTDOOR ONLY.

Applicant: MAKRAM ALKARADSHEH
7208 PALO ALTO, APT 5
YUCCA VALLEY, CA 92284

Property Owner:
TRAN PEW PIN
57345 29 PALMS HWY
YUCCA VALLEY, CA 92284

Representative:
MAKRAM ALKARADSHEH
7208 PALO A LOT, APT 5
YUCCA VALLEY, CA 92284

Location: THE PROJECT IS LOCATED AT 57345 29 PALMS HWY, ON THE SOUTH SIDE OF 29 PALMS HWY, APPROXIMATELY 400 FEET EAST OF JOSHUA LANE AND IS FURTHER IDENTIFIED AS APN: 595-192-04.

Existing General Plan Land Use Designation:
THE SITE IS DESIGNATED MIXED USE (MU)

Existing Zoning Designation:
THE SITE IS DESIGNATED GENERAL COMMERCIAL (C-G)

Surrounding General Plan Land Use Designations:
NORTH: MIXED USE (MU)
SOUTH: MIXED USE (MU)
WEST: MIXED USE (MU)
EAST: MIXED USE (MU)

Division Approvals:
Engineering _____ Building & Safety _____ Public Works _____

Surrounding Zoning Designations:

NORTH: GENERAL COMMERCIAL (C-G)
SOUTH: OFFICE COMMERCIAL (C-O)
WEST: GENERAL COMMERCIAL (C-G)
EAST: GENERAL COMMERCIAL (C-G)

Surrounding Land Use:

NORTH: MEDICAL OFFICE /VACANT LAND
SOUTH: VACANT LAND
WEST: VACANT LAND
EAST: RETAIL /OFFICE COMPLEX

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

THE PROJECT WAS REVIEWED UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). THE PROJECT IS EXEMPT FROM CEQA UNDER SECTION 15303 CLASS 3, CONVERSION OF SMALL STRUCTURES.

OUTSIDE AGENCIES COMMENTS RECEIVED

SAN BERNARDINO COUNTY FLOOD CONTROL

SAN BERNARDINO COUNTY PUBLIC WORKS

MORONGO BAND OF MISSION INDIANS

COPIES OF ALL LETTERS ARE INCLUDED IN THE PACKET.

RECOMMENDATIONS:

ENVIRONMENTAL ASSESSMENT, EA 03-14

That the Planning Commission finds the project exempt from CEQA under section 15303, Class 3, conversion of small structures.

CONDITIONAL USE PERMIT, CUP 02-14:

That the Planning Commission approves Conditional Use Permit, CUP-2-14, based upon the findings and the Conditions of Approval.

Appeal Information:

Actions by the Planning Commission, including any finding that a negative declaration be adopted, may be appealed to the Town Council within 10 calendar days. Appeal Application filing and processing information may be obtained from the Planning Division of the Community Development Department. Per Section 83.030145 of the Development Code, minor modifications may be approved by the Planning Division if it is determined that the changes would not affect the findings prescribed in Section 83.030140 of the Development Code, Required Findings, and that the subject of the proposed changes were not items of public controversy during the review and approval of the original permit, including modifications to phasing schedules for the project.

I. GENERAL INFORMATION

PROJECT DESCRIPTION. The applicant is requesting approval to change the use of an existing 1,800 square foot building with an outdoor patio from a restaurant to a hookah lounge /restaurant. The hookah lounge portion of the project is located on an exterior patio to the rear of the building. Access to the hookah lounge is from the inside of the restaurant.

LOCATION: The project is located at 57345 29 Palms Hwy, on the south side of 29 Palms Hwy, approximately 400 feet east of Joshua Lane, and is further identified as APN: 595-192-04.

PROJECT SYNOPSIS:

SITE COVERAGE

PROJECT AREA

0.35 acre

BUILDING AREA

1,800 square feet existing building and approximately 1000 square feet of patio

PHASED CONSTRUCTION:

No

FLOOD ZONE

Map 8860 zone X, areas determined to be outside the 0.2% annual chance floodplain

ALQUIST PRIOLO ZONE

Yes

OFF-SITE IMPROVEMENTS REQ.

No

ASSESSMENT DISTRICTS REQ.

No

RIGHT-OF-WAY DEDICATION REQ.

No

UTILITY UNDERGROUNDING:

All new service lines shall be underground in conformance to Ordinance No. 233, or as amended by the Town Council

AIRPORT INFLUENCE AREA:

Located inside the Airport Influence area.

TRAILS & BIKE LANE MASTER PLAN

No facilities on or adjacent to the project.

PUBLIC FACILITY MASTER PLAN	No facilities on or adjacent to the project.
PARKS AND RECREATION MASTER PLAN	No public facilities are identified for this site.
MASTER PLAN OF DRAINAGE:	No facilities on or adjacent to the project,
EROSION AND SEDIMENT CONTROL PLAN REQUIRED	No
STREET LIGHTS:	No
SPECIFIC PLAN/ PLANNED DEVELOPMENT AREA:	No
FUTURE PLANNING COMMISSION ACTION REQUIRED	No
FUTURE TOWN COUNCIL ACTION REQUIRED	No, unless appealed

II. PROJECT ANALYSIS

General:

At the Planning Commission meeting of June 17, 2008, the Planning Commission issued a Development Code Interpretation that hookah lounges were allowed in the General Commercial zone. Minutes from that Planning Commission meeting are attached. At that time, the Commission did not have in their discussions differentiation between indoor vs. outdoor hookah lounges. Therefore staff requested the applicant to file a Conditional Use Application so that this matter could be brought to the Planning Commission for consideration.

Without the inclusion of the hookah lounge, no planning approval of this proposed business would be required.

Information regarding hookah lounges or bars is attached to this staff report. In this particular application, the smoking of hookah is limited to the outdoor seating area (patio area). As such, state law does not prohibit smoking in this area. The Town has not adopted any local regulations in excess of those established at the state level.

The restaurant building contains approximately 1,800 square feet. A middle eastern menu is planned, and beer and wine will be served at the restaurant.

The outdoor patio area is accessed from inside the restaurant, to the screened patio.

ADJACENT LAND USES

The site is bounded by 29 Palm Hwy on the north. Across SR 62 to the north are a medical office and vacant lots. To the west and south are vacant lots and to the east is an office/retail complex.

Surrounding General Plan designations are Mixed Use (MU) and Zoning designations are General Commercial, except to the south of the project site, which is designated as Office Commercial (C-O). Retail development was anticipated and planned for on this project site with adoption of the General Plan, and the development meets and satisfies the goals, policies and implementation strategies of the General Plan. General retail and service oriented commercial uses are anticipated in these areas, and the proposed use identified in CUP 02-14 is consistent with the desired development pattern within the Town.

SITE CHARACTERISTICS, GRADING, SETBACKS

The property is an existing 1,800 square foot restaurant with a fenced rear patio.

Setback Area:	Required	Existing Building
North	15'	120'
South	15'	80'
East	10'	0'
West	10'	20'

The Development Code allows for a maximum 60% of the lot to be covered with building area. As proposed, the site is developed at approximately 18% lot coverage.

PHASING

There is no phasing proposed as the project is located on a developed property

BUILDING ELEVATIONS:

The existing structure is a wood framed with stucco, one story structure with a flat roof. No alterations are proposed to the building as part of the project.

CIRCULATION & PARKING

On site circulation as proposed includes two points of ingress/egress from 29 Palms Outer Hwy south. The property contains 22 parking spaces, including two ADA parking spaces, sufficient controls over left hand turn movements into/out of the facility, and on-site circulation meeting Town and Fire Department standards. Internal circulation provides access to required parking. Staff finds the project adequately parked and

consistent with the Development Code. A condition of approval has been included to restripe the parking area.

FLOOD CONTROL/DRAINAGE

The property is located within FEMA flood zone X, areas determined to be outside the 0.2% annual chance floodplain.

UTILITIES:

All new service lines shall be underground in conformance with Ordinance No. 233.

Each utility provider charges connection and service fees which are designed to include the need for additional facilities as growth occurs. The project applicant will be required to go through each utility company permitting processes, including SCE for street lighting.

Electrical services are provided by Southern California Edison. Natural gas services are provided to by The Gas Company. The Hi-Desert Water District (HDWD, District) serves the Town of Yucca Valley. Solid waste services are provided by Burrtec Inc. The Town of Yucca Valley requires mandatory solid waste services and the project will be served by Burrtec.

LANDSCAPING:

The project is located on an existing restaurant site and no additional landscaping is being required.

WALLS/FENCES

The hookah lounge portion of the project is to be located on the rear patio. The rear patio is screened on the west and south sides by a wrought iron fence. The north and east sides of the patio are screened by building walls.

ENVIRONMENTAL CONSIDERATIONS

The project was reviewed under the California Environmental Quality Act (CEQA). The project is exempt from CEQA under Section 15303, Class 3, conversion of small structures.

GENERAL PLAN CONSIDERATION

The project is designated Mixed Use (MU). This designation is intended to allow highly integrated commercial, residential and office uses that facilitate pedestrian access and walkability.

The General Plan supports this project through the following goals and policies:

Policy LU 1-1

Encourage infill development to maximize the efficiency of existing and planned public services, facilities and infrastructure.

Policy LU 1-4

Encourage the development of public spaces within commercial mixed use and residential projects to contribute to the community's stock of gathering places and special event venues.

Policy LU 1-17

Encourage the renovation of existing commercial and industrial areas to improve appearance, environmental responsiveness, use of infrastructure and functionality.

CONCLUSION

Based upon the facts on the record, the project is consistent with the General Plan, the Development Code, and the Town's master plans. Commercial based development was anticipated and planned for on this project site with adoption of the General Plan, and the development meets and satisfies the goals, policies and implementation strategies of the General Plan. The project, as designed, meets all requirements of the Development Code and no variances or deviations from adopted standards are required for approval.

CONDITIONAL USE PERMIT FINDINGS:

- 1. That the location, size, design, density and intensity of the proposed development is consistent with the General Plan, the purpose of the land use district in which the site is located, and the development policies and standards of the Town;**

The site is bounded by 29 Palms Hwy to the north. Across SR 62 to the north are a medical office and vacant lots. To the east of the project is a retail /office complex and to the west and south are vacant lots. Surrounding General Plan designations are Mixed Use (MU). Surrounding zoning designations are all General Commercial, except to the south of the project site, which is designated as Office Commercial (C-O). Commercial based development was anticipated and planned for on this project site with adoption of the General Plan, and the development meets and satisfies the goals, policies and implementation strategies of the General Plan. General retail and service oriented commercial uses are anticipated in these areas, and the proposed uses identified in CUP-02-14 is consistent with the desired development pattern within the Town. The project is developed well below the maximum lot coverage of 60%, and all setbacks for the General Commercial district are met and exceeded, as outlined in this staff report.

- 2. That the location, size, design and architectural design features of the proposed structures and improvements are compatible with the site's natural landform, surrounding sites, structures and streetscapes;**

The project is located on a developed site with an existing wood framed with stucco, one story structure with a flat roof. No alterations are proposed to the building as part of the project.

- 3. That the proposed development produces compatible transitions in the scale, bulk, coverage, density and character of the development between adjacent land uses;**

The project is located on a developed site with an existing wood framed with stucco, one story structure with a flat roof. No alterations are proposed to the building as part of the project

The project is developed below the maximum lot coverage of 60%, and all setbacks for the General Commercial District are met and exceeded, as outlined in this Staff Report. The site is surrounding by 29 Palms Hwy to the north, vacant land to the west and south and a commercial building to the east.

- 4. That the building site and architectural design is accomplished in an energy efficient manner;**

The project is located on a developed site with an existing wood framed with stucco, one story structure with a flat roof. No alterations are proposed to the building as part of the project

The project is developed below the maximum lot coverage of 60%, and all set-backs for the General Commercial District are met and exceeded, as outlined in this Staff Report. The site is surrounding by 29 Palms Hwy to the north, vacant land to the west and south and a commercial building to the east The site has been developed consistent with adopted set back and building height standards, allowing opportunities to maximize energy efficiency and conservation measures..

- 5. That the materials, textures and details of the proposed construction, to the extent feasible, are compatible with the adjacent and neighboring structures;**

The project is located on a developed site with an existing wood framed with stucco, one story structure with a flat roof. No alterations are proposed to the building as part of the project

- 6. That the development proposal does not unnecessarily block views from other buildings or from public ways, or visually dominate its surroundings with respect to mass and scale to an extent unnecessary and inappropriate to the use;**

The project is located on a developed site with an existing wood framed with stucco, one story structure with a flat roof. No alterations are proposed to the building as part of the project

- 7. That the amount, location, and design of open space and landscaping conforms to the requirements of the Development Code, enhances the visual appeal and is compatible with the design and functions of the structure(s), site and surrounding area;**

The project is located on an existing restaurant site and no additional landscaping is being required.

- 8. That there are existing public facilities, services, and utilities available at the appropriate levels and/or that new or expanded facilities, services and utilities shall be required to be installed at the appropriate time to serve the project as they are needed;**

The project is located on a developed parcel and utilities are existing on the project site.

Each utility provider charges connection and service fees which are designed to include the need for additional facilities as growth occurs. The project applicant will be required to pay these fees as applicable.

Electrical services are provided by Southern California Edison. Natural gas services are provided to by The Gas Company. The Hi-Desert Water District (HDWD, District) serves the Town of Yucca Valley. Solid waste services are provided by Burrtec Inc. The Town of Yucca Valley requires mandatory solid waste services and the project will be served by Burrtec. Verizon facilities are not indicated on the schematic utility plan, but are available to the site.

- 9. That access to the site and circulation on and off-site is required to be safe and convenient for pedestrians, bicyclists, equestrians and motorists;**

On site circulation as proposed includes two points of ingress/egress from 29 Palms Outer Hwy south. The property contains 22 parking spaces, including two ADA parking spaces, sufficient controls over left hand turn movements into/out of the facility, and on-site circulation meeting Town and Fire Department standards. Internal circulation provides access to required parking. Staff finds the project adequately parked and consistent with the Development Code.

- 10. That traffic generated from the proposed project has been sufficiently addressed and mitigated and will not adversely impact the capacity and physical character of surrounding streets;**

The project was reviewed under the California Environmental Quality Act (CEQA). The project is exempt from CEQA under Section 15303, Class 3, conversion of small structures.

No negative impacts created by the project have been identified, including traffic impacts.

11. **That traffic improvements and/or mitigation measures have been applied or required in a manner adequate to maintain a Level of Service D or better on arterial roads, where applicable, and are consistent with the Circulation Element of the Town General Plan;**

The project was reviewed under the California Environmental Quality Act (CEQA). The project is exempt from CEQA under Section 15303, Class 3, conversion of small structures.

No negative impacts created by the project have been identified, including traffic impacts.

12. **That there will not be significant harmful effects upon environmental quality and natural resources including endangered, threatened, rare species, their habitat, including but not limited to plants, fish, insects, animals, birds or reptiles;**

The project was reviewed under the California Environmental Quality Act (CEQA). The project is exempt from CEQA under Section 15303, Class 3, conversion of small structures.

No negative impacts created by the project have been identified, including biological resources.

13. **That there are no other relevant or anticipated negative impacts of the proposed use that cannot be mitigated and reduced to a level of non-significance in conformance with CEQA, the California Environmental Quality Act;**

The project was reviewed under the California Environmental Quality Act (CEQA). The project is exempt from CEQA under Section 15303, Class 3, conversion of small structures.

No negative impacts created by the project have been identified.

14. **That the impacts which could result from the proposed development, and the proposed location, size, design and operating characteristics of the proposed development, and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety and welfare of the community or be materially injurious to properties or improvements in the vicinity or be contrary to the adopted General Plan; and**

The project was reviewed under the California Environmental Quality Act (CEQA). The project is exempt from CEQA under Section 15303, Class 3, conversion of small structures.

No negative impacts created by the project have been identified.

15. **That the proposed development will comply with each of the applicable provisions of this code, and applicable Town policies; except approved variances.**

The project, as designed, complies with the standards and requirements set forth in the Yucca Valley Development Code and the adopted General Plan policies, as identified and set forth in this Staff Report.

Attachments:

1. Standard Exhibits
2. Application materials
3. Site Plan & Elevations
4. Agency comments
5. Notice of Exemption

**TOWN OF YUCCA VALLEY
CONDITIONS OF APPROVAL
ENVIRONMENTAL ASSESSMENT, EA 03-14
CONDITIONAL USE PERMIT, CUP 02-14
ALKARADSHEH**

This approval is for Conditional Use Permit, CUP 02-14 a request to change the use of an existing 1,800 square foot building with an outdoor patio from a restaurant to a hookah lounge /restaurant. The hookah lounge portion of the project is located on an exterior patio to the rear of the building. Access to the hookah lounge is from the inside of the restaurant.

The project is located at 57345 29 Palms Hwy and is identified as APN: 595-192-04.

GENERAL CONDITIONS

- G1. The applicant shall agree to defend, indemnify and hold harmless the Town of Yucca Valley, its agents, officers and employees, at his sole expense, against any action, claim or proceedings brought against the Town or its agents, officers or employees, to attack, set aside, void, or annul this approval or because of the issuance of such approval, or in the alternative, to relinquish such approval, in compliance with the Town of Yucca Valley Development Code. The applicant shall reimburse the Town, its agents, officers, or employees for any court costs, and attorney's fees which the Town, its agents, officers or employees may be required by a court to pay as a result of such action. The Town may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition. The Town shall promptly notify the applicant of any claim, action or proceedings arising from the Town's approval of this project, and the Town shall cooperate in the defense.
- G2. This Conditional Use Permit shall become null and void if the tentative tract map has not recorded within three (3) years of the Town of Yucca Valley date of approval. Extensions of time may be granted by the Planning Commission and/or Town Council, in conformance with the Town of Yucca Valley Development Code. The applicant is responsible for the initiation of an extension request.

CUP-02-14 Approval Date:	August 12, 2014
Expiration Date:	August 12, 2017

- G3. The applicant shall ascertain and comply with requirements of all State, County, Town and local agencies as are applicable to the project. These include, but are not limited to, County of San Bernardino Environmental Health Services, County of San Bernardino Transportation/Flood Control, County of San Bernardino Fire Department, Yucca Valley Building and Safety, Caltrans, High Desert Water

District, Airport Land Use Commission, California Regional Water Quality Control Board, Colorado River Region, the Federal Emergency Management Agency, MDAQMD-Mojave Desert Air Quality Management District, Community Development, Engineering, and all other Town and utility company requirements.

- G4. All conditions are continuing conditions. Failure of the applicant to comply with any or all of said conditions at any time may result in the revocation of any construction permits for the project.
- G5. No on-site or off-site work shall commence without obtaining the appropriate permits for the work required by the Town and the appropriate utilities. The approved permits shall be readily available on the job site for inspection by Town personnel.
- G6. The applicant shall pay all fees charged by the Town as required for application processing, plan checking, construction and/or inspection. The fee amounts shall be those which are applicable and in effect at the time work is undertaken and accomplished. Fees for entitlement prior to construction permits are based on estimated costs for similar projects. Additional fees may be incurred, depending upon the specific project. If additional fees for services are incurred, they must be paid prior to any further processing, consideration, or approval(s).
- G7. All improvements shall be inspected by the Town as appropriate. Any work completed without proper inspection may be subject to removal and replacement under proper inspection.
- G8. All refuse shall be removed from the premises in conformance with Yucca Valley Town Code 33.083.
- G9. During construction, if any, the applicant shall be responsible to sweep public paved roads adjacent to the project as necessary and as requested by the Town staff to eliminate any site related dirt and debris within the roadways. During business activities, the applicant shall keep the public right-of-way adjacent to the property in a clean and sanitary condition.
- G10. The applicant shall pay Development Impact Fees in place at the time of issuance of Building Permits.
- G11. At the time of permit issuance the applicant shall be responsible for the payment of fees associated with electronic file storage of documents
- G12. The Applicant shall reimburse the Town for the Town's costs incurred in monitoring the developer's compliance with the Conditions of Approval including, but not limited to, inspections and review of developer's operations and activities for compliance with all applicable dust and noise operations. This condition of approval is supplemental and in addition to normal building permit and public

improvement permits that may be required pursuant to the Yucca Valley Municipal Code.

- G13. Prior to the issuance of a Certificate of Occupancy for any habitable structure in each phase of the project, all improvements shall be constructed, final inspection performed, punch-list items completed, and all installations approved by the appropriate agency.
- G14. The site shall be developed in accordance with the approved plans on file with the Town of Yucca Valley, in accordance with the Conditions of Approval approved for the project, and in accordance with the General Plan and Development Code. Prior to any use of the project site or business activity being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the Town.
- G15. The applicant or the applicant's successor-in-interest shall be responsible for maintaining any undeveloped portion of the site in a manner that provides for the control of weeds, erosion and dust.
- G16. Violations of any condition or restriction or prohibition set forth in these conditions, including all approved construction plans, public and private, for this project and subject to the Town's overall project approval and these conditions of approval, shall subject the owner, applicant, developer or contractor(s) to the remedies as noted in the Municipal Code. In addition, the Town Engineer or Building Official may suspend all construction related activities for violation of any condition, restriction or prohibition set forth in these conditions until such time as it has been determined that all operations and activities are in conformance with these conditions.

PLANNING CONDITIONS

- P1. The development of the property shall be in conformance with FEMA requirements and the Town's Floodplain Management Ordinance requirements. Adequate provision shall be made to intercept and conduct the existing tributary drainage flows around or through the site in a manner that will not adversely affect adjacent or downstream properties at the time the site is developed. Protection shall be provided by constructing adequate drainage facilities, including, but not limited to modifying existing facilities or by securing a drainage easement.
- P2. All exterior lighting shall comply with the Ordinance 90, Outdoor Lighting and shall be illustrated on all construction plans.

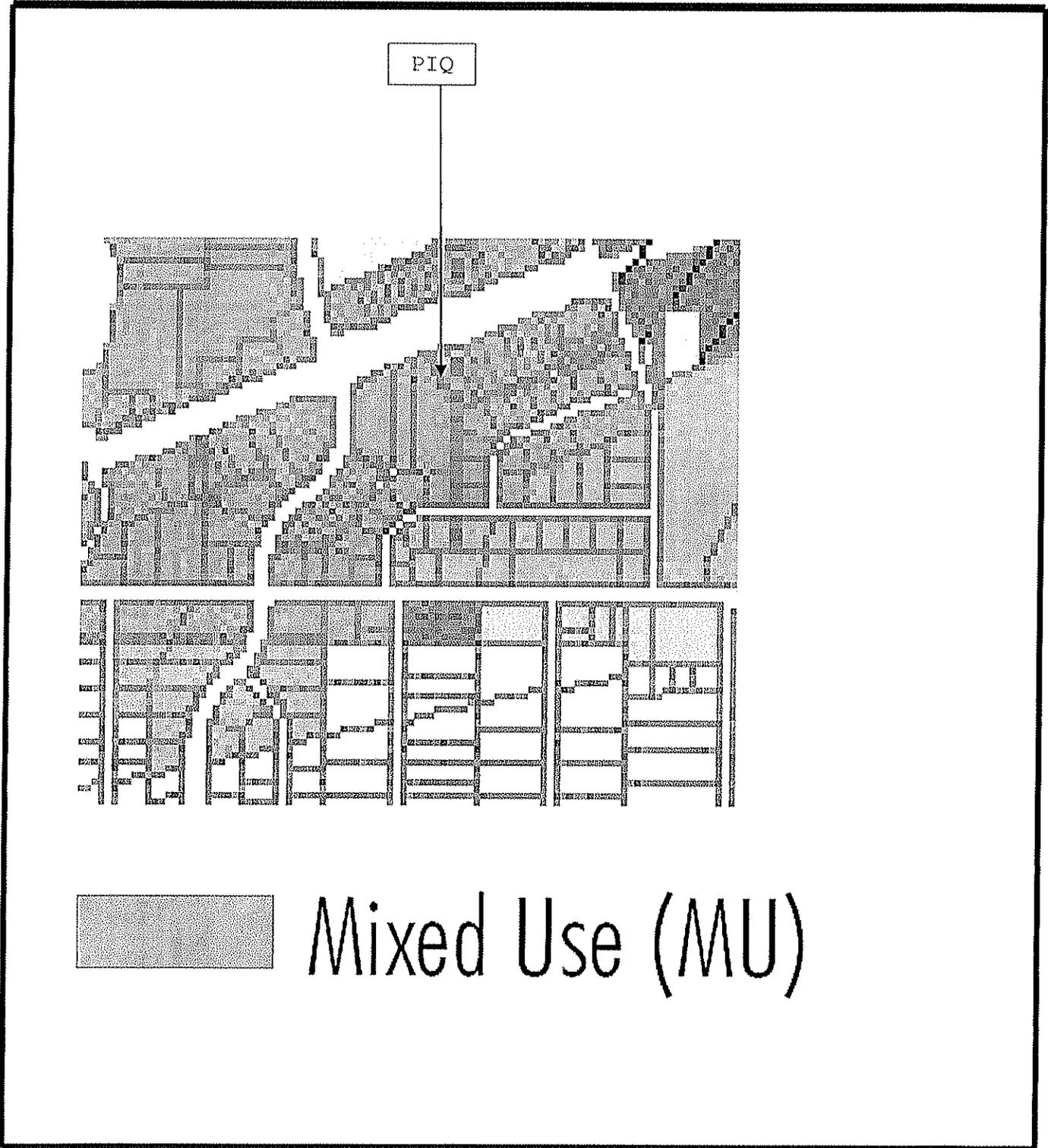
- P3. Hours of operation shall be 10 am to 1 am.
- P4. All patrons of the hookah lounge shall be at least 18 years or older.
- P5. The business shall be operated in a manner that conforms to all requirements of California Labor Code Section 6404.5.
- P6. Only tobacco-based projects shall be sold or smoked in the hookah lounge. No other substances shall be smoked, sold or distributed, including but not limited to, marijuana.
- P7. There shall be no smoking within ten (10) feet of any doors or windows
- P8. Should calls for law enforcement increase due to the establishment of the business, the applicant may be required to provide security subject to approval by the Chief of Police.
- P9. There shall be no live entertainment permitted on the premises at any time without modifications to the Conditional Use Permit by the Planning Commission.
- P10. The applicant shall take whatever steps are necessary to prohibit customers from loitering or smoking in front of the establishment.
- P11. The Town shall periodically review the operation for potential impacts to the surrounding properties and neighborhood. If impacts including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, lewd and/or disorderly conduct, noise in excess of established Development Code standards, and disturbing the peace result from the proposed land use, the Conditional Use Permit will be scheduled for Planning Commission consideration of amendments to and/or revocation of the Conditional Use Permit.
- P12. The outside patio fence shall be prohibited from displaying any type of signage.
- P13. The outside patio gate shall only be operable from inside the hookah lounge.

I HEREBY CERTIFY THAT THE APPROVED CONDITIONS OF APPROVAL WILL BE SATISFIED PRIOR TO OR AT THE TIMEFRAMES SPECIFIED AS SHOWN ABOVE. I UNDERSTAND THAT FAILURE TO SATISFY ANY ONE OF THESE CONDITIONS WILL PROHIBIT THE ISSUANCE OF ANY PERMIT OR ANY FINAL MAP APPROVAL.

Applicant's Signature _____ Date _____

TOWN OF YUCCA VALLEY

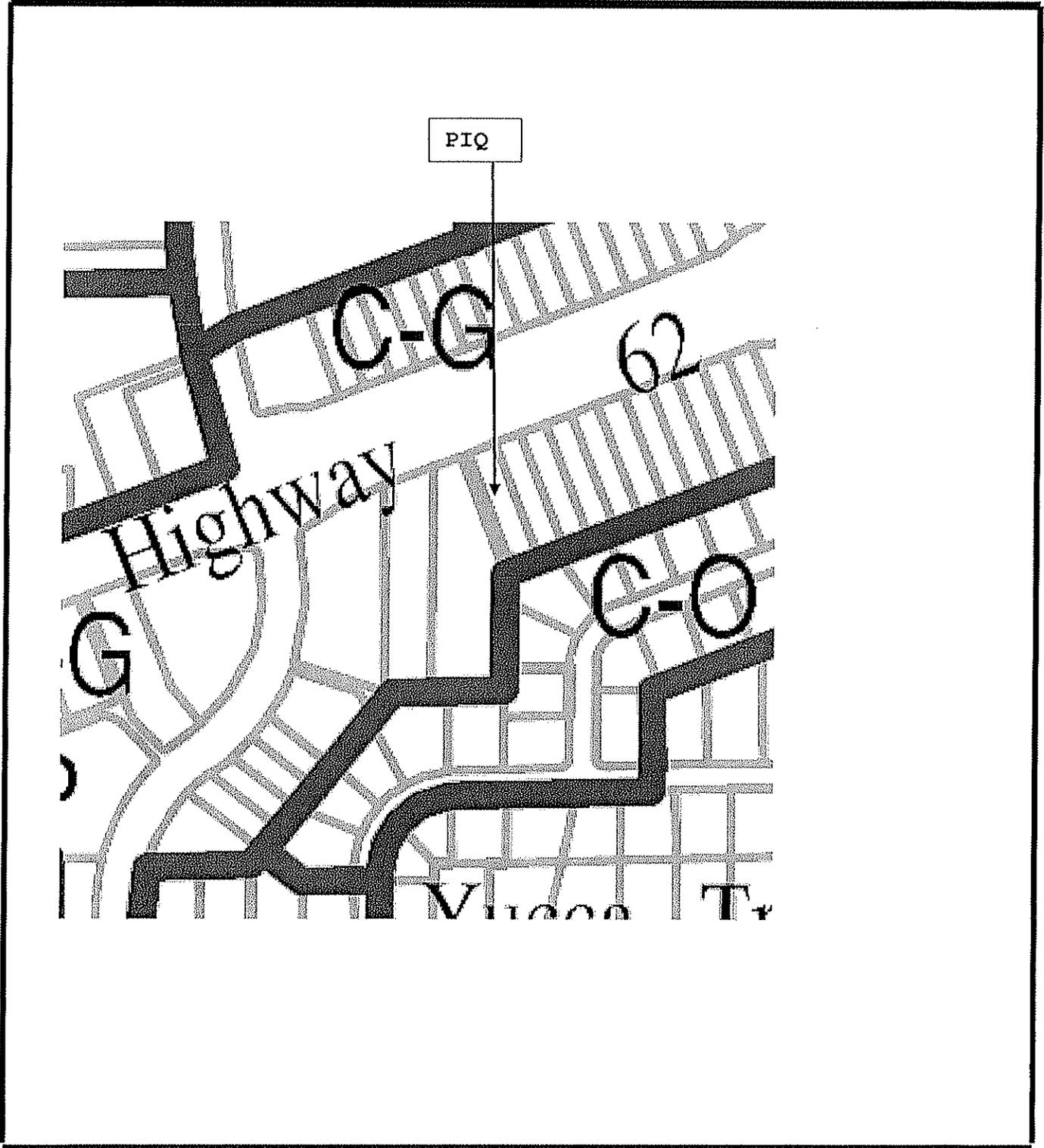
PROJECT NO.: CONDITIONAL USE PERMIT, CUP 02-14 ALKARADSHEH



GENERAL PLAN LAND USE MAP

TOWN OF YUCCA VALLEY

PROJECT NO.: CONDITIONAL USE PERMIT, CUP 02-14 ALKARADSHEH



ZONING MAP

TOWN OF YUCCA VALLEY

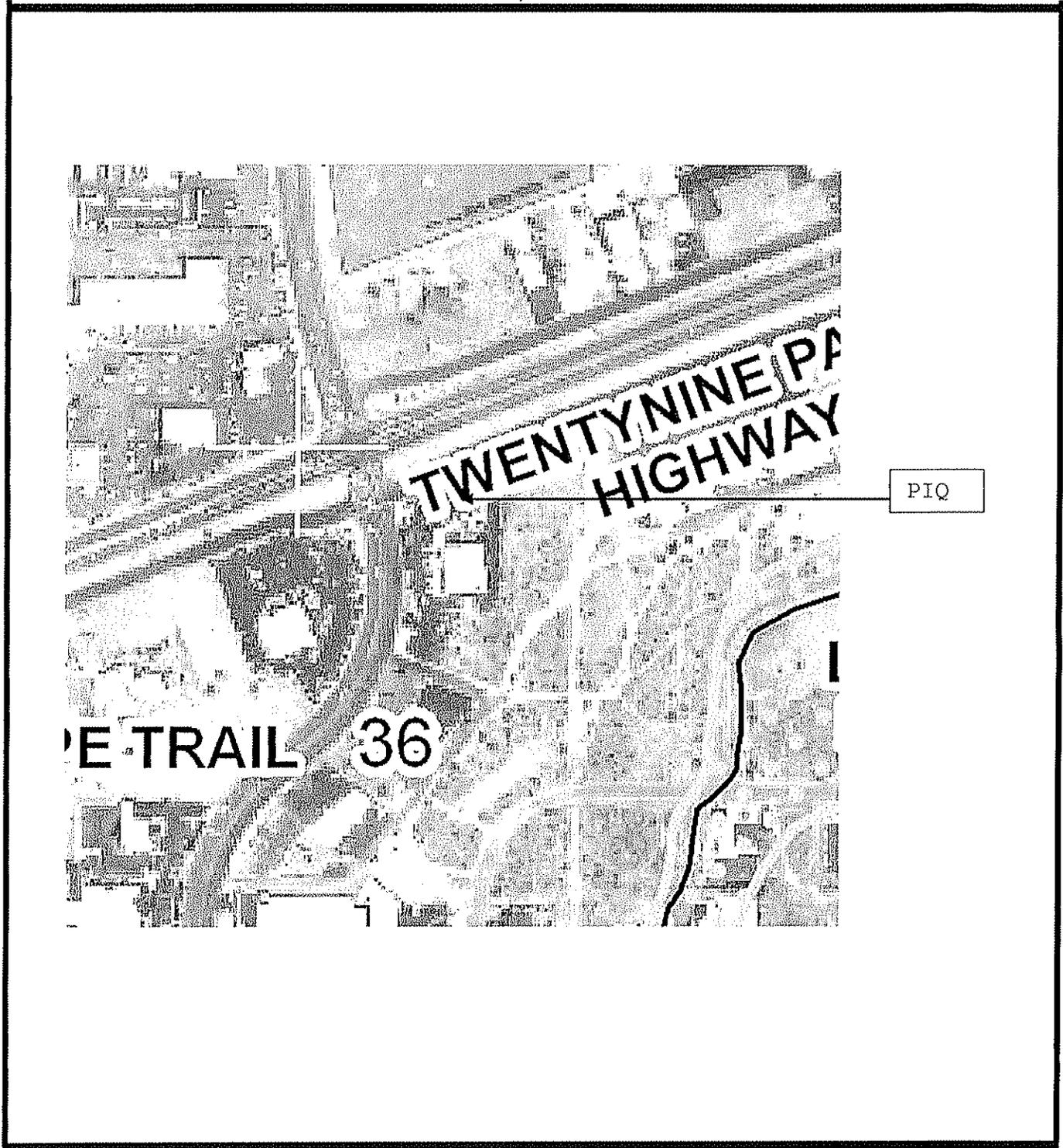
PROJECT NO.: CONDITIONAL USE PERMIT, CUP 02-14 ALKARADSHEH



AERIAL PHOTO

TOWN OF YUCCA VALLEY

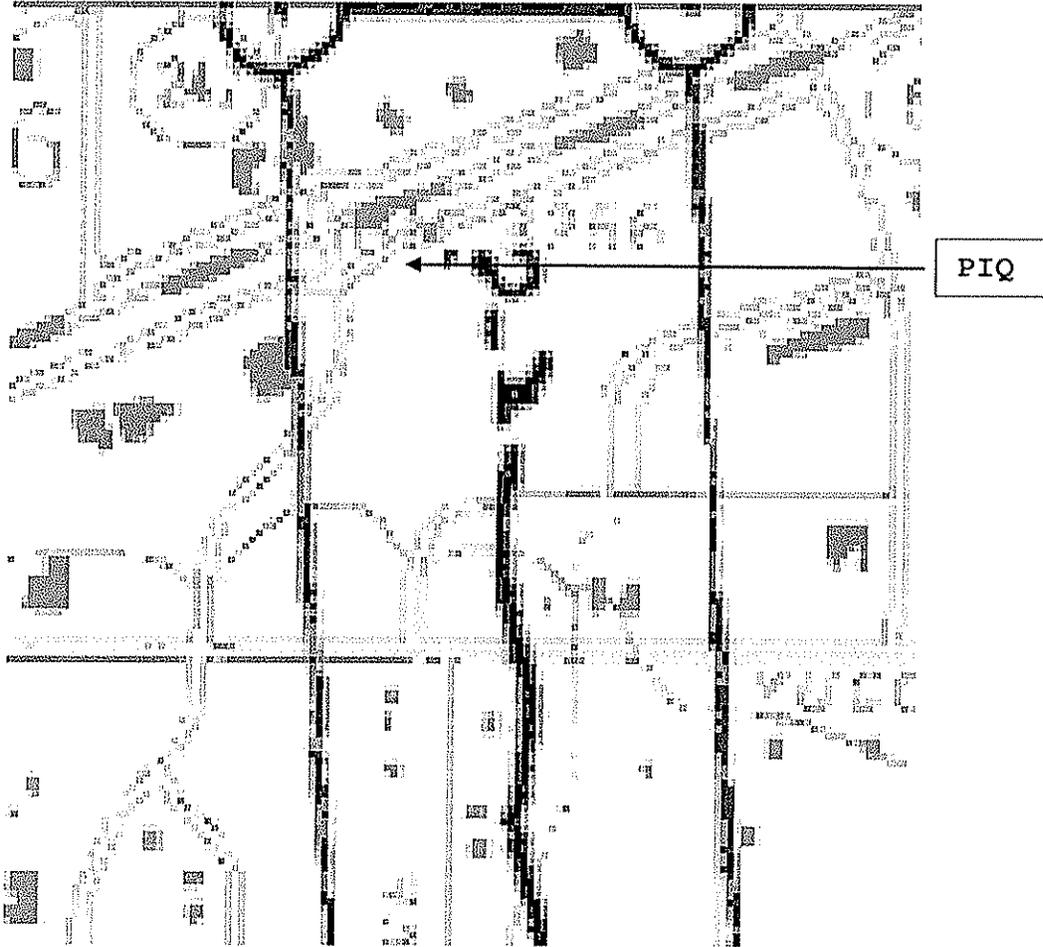
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FEMA FLOOD MAP-ZONE X, MAP 8860

TOWN OF YUCCA VALLEY

PROJECT NO.: CONDITIONAL USE PERMIT, CUP 02-14 ALKARADSHEH



ALQUIST PRIOLO MAP

Notice of Exemption

Form D

To: Office of Planning and Research
 PO Box 3044, 1400 Tenth Street, Room 222
 Sacramento, CA 95812-3044

County Clerk
 County of San Bernardino
385 N. Arrowhead, 2nd Flr.
San Bernardino, CA. 92415

From: (Public Agency) Town of Yucca Valley
58928 Business Center Drive
Yucca Valley, CA 92284
 (Address)

Project Title: Conditional Use Permit, CUP 02-14 Alkaradsheh

Project Location - Specific:

The project is at 57345 29 Palms Hwy and is identified as APN:595-192-04.

Project Location – City: Yucca Valley Project Location – County: San Bernardino

Description of Project:

A proposal to convert and existing restaurant into a hookah lounge/restaurant.

Name of Public Agency Approving Project: Town of Yucca Valley

Name of Person or Agency Carrying Out Project: Makram Alkaradsheh

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Section 15303 Class 3 conv of small struct
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:

The project is located at an existing facility and no expansion of the existing building is proposed.

Lead Agency
 Contact Person: Shane Stueckle Area Code/Telephone/Extension: (760) 369-6575 X305

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____ Date: _____ Title: _____

- Signed by Lead Agency Date received for filing at OPR: _____
- Signed by Applicant

Revised May 1999

To: Whom it may concern.

Dear

The buyer Makram (Mark) Karadsheh (I myself) is applying for a conditional use permit to open a Middle Eastern Restaurant and Hookah Lounge, in what is currently Chen's Chinese Restaurant. The restaurant will feature Middle Eastern food including: BBQ kebabs, Falafel, Hummus, Tabouleh, Salads etc. There will also be a special menu for vegetarians to meet the healthy people needs. Included in the offerings will be an assortment of exotic, natural juice drinks, Turkish coffee, etc.

Very popular is other parts of the world. I'm making plans to bring a head chef from a prominent hotel in Amman, Jordan who has expertise in not only Middle Eastern fare but European Continental cuisine as well. In addition, he was a chef at the American Embassy in Amman.

The restaurant will be open for lunch and dinner. The Hookah Lounge will be outside on the extensive patio area that is currently not being used. Hookah Lounges are one of the hottest up and coming businesses in the United States "Hookah is flavored tobacco smoked from a water pipe which is smoother because of the water filtration", usually people who don't smoke will not have any problems smoking hookah. It is not inhaled and is a very socially appealing experience.

Hours of operation for both the restaurant and Hookah lounge will be approximately from 10:00 am – 1:00 am. Mr. Makram anticipates hiring about 16 employees.

Our belief that this type of project will help the prosperity of the region and find an outlet for young people to enjoy their time.

Makram Karadsheh



Conditional Use Permit Application

Date Received	07/15/14
By	
Fee	2705
Case #	CUP-02-14
EA #	03-14

General Information

APPLICANT MAKRAM ALKARADSHET ⁹⁰⁹ Phone 362-6693 Fax ---

Mailing Address 7208 PALO ALTO ^{APT. 5} Email makramsami2@gmail.com

City YUCCA VALLEY State _____ Zip _____

REPRESENTATIVE KOLLEEN LAMB ⁷⁶⁰ Phone 221-4774 ⁷⁶⁰ Fax 305-8883

COLDWELL BANKER REALTOR FOR PURCHASE OF PROPERTY

Mailing Address 7231 DUMOSA AVE Email Kolleen.lamb@aol.com
STE 2

City Y.V. State _____ ZIP _____

PROPERTY OWNER TRAN PEU-PIN ⁷⁶⁰⁻ Phone 369-9566 Fax NA

OHON'S CHINESE RESTAURANT

Mailing Address 57345 29 PALMS HWY Email NA

City Y.V. State _____ Zip _____

Project Information

Project Address 57345 29 PALMS HWY Assessor Parcel Number(s) 059519204

Project Location NEXT TO STAR MARKET

Project Description: HOOKAH LOUNGE + MIDDLE EASTERN FOOD RESTAURANT + Beer & Wine

Please attach any additional information that is pertinent to the application.

Town of Yucca Valley
 Community Development Department
 Planning Division
 58928 Business Center Dr
 Yucca Valley, CA 92284
 760 369-6575 Fax 760 228-0084
www.yucca-valley.org

Environmental Assessment

1. Property boundaries, dimensions and area (also attach an 8 1/2 x 11" site plan):
SEE ATTACHED PROPERTY PROFILE
2. Existing site zoning: COMM RETAIL 3. Existing General Plan designation: _____
4. Precisely describe the existing use and condition of the site: CHINESE RESTAURANT + GOOD CONDITION
5. Existing Zoning of adjacent parcels:

North _____ South _____ East _____ West _____

6. Existing General Plan designation of adjacent parcels:

North _____ South _____ East _____ West _____

7. Precisely describe existing uses adjacent to the site: VACANT LOTS BEHIND ON SOUTH + WEST - ANGIE'S UNIFORMS

8. Describe the plant cover found on the site, including the number and type of all protected plants: ONE JOSHUA TREES ON BACK PATIO, ~~ROCKS~~

Note: Explain any "Yes" or "Maybe" responses to questions below. If the information and responses are insufficient or not complete, the application may be determined incomplete and returned to the applicant.

Yes Maybe No

9. Is the Site on filled or slopes of 15% or more or in a canyon? (A geological and/or soils Investigation report is required with this application.)

DON'T KNOW

10. Has the site been surveyed for historical, paleontological or archaeological resources? (If yes, a copy of the survey report is to accompany this application.)

DON'T KNOW

11. Is the site within a resource area as identified in the archaeological and historical resource element?

12. Does the site contain any unique natural, ecological, or scenic resources?

13. Do any drainage swales or channels border or cross the site?

14. Has a traffic study been prepared? (If yes, a copy of the study is to accompany this application.)

15. Is the site in a flood plain? (See appropriate FIRM)

Project Description

Complete the items below as they pertain to your project. Attach a copy of any plans submitted as part of the project application and any other supplemental information that will assist in the review of the proposed project pursuant to CEQA.

1. Commercial, Industrial, or Institutional Projects:

- A. Specific type of use proposed: HOOKAH LOUNGE + RESTAURANT
- B. Gross square footage by each type of use: 1800 BLDG + BACK + SIDE PATIOS - APPROX. 1100 DINING + SMOKING AREA
- C. Gross square footage and number of floors of each building: 1800 sq. ft SINGLE STORY
- D. Estimate of employment by shift: 4
- E. Planned outdoor activities: POSSIBLE USE OF PATIOS FOR HOOKAHS + DINING

2. Percentage of project site covered by:

0.0 % Paving, 20 % Building, .05 % Landscaping, 65 % Parking

3. Maximum height of structures 20 ft. _____ in.

4. Amount and type of off street parking proposed: ALREADY EXISTS

5. How will drainage be accommodated? EXISTING

6. Off-site construction (public or private) required to support this project:

NONE

7. Preliminary grading plans estimate NA cubic yards of cut and NA cubic yards of fill

8. Description of project phasing if applicable: NA

9. Permits or public agency approvals required for this project: X

10. Is this project part of a larger project previously reviewed by the Town? If yes, identify the review process and associated project title(s) _____

NO

11. During construction, will the project: (Explain any "yes" or "maybe" responses to questions below – attach extra pages if necessary.)

Yes Maybe No

- A. Emit dust, ash, smoke, fumes or odors?
- B. Alter existing drainage patterns?
- C. Create a substantial demand for energy or water?
- D. Discharge water of poor quality?
- E. Increase noise levels on site or for adjoining areas?
- F. Generate abnormally large amounts of solid waste or litter?
- G. Use, produce, store, or dispose of potentially hazardous materials such as toxic or radioactive substances, flammable or explosives?
- H. Require unusually high demands for such services as police, fire, sewer, schools, water, public recreation, etc.
- I. Displace any residential occupants?

Certification

I hereby certify that the information furnished above, and in the attached exhibits, is true and correct to the best of my knowledge and belief.

Signature: Makram Samir Date: 7/15/2014

Owner/Applicant Authorization

Applicant/Representative: I/We have reviewed this completed application and the attached material. The information included with this application is true and correct to the best of my/our knowledge. I/We further understand that the Town may not approve the application as submitted, and may set conditions of approval. Further, I/We understand that all documents, maps, reports, etc., submitted with this application are deemed to be public records. This application does not guarantee approval or constitute a building permit application. Additional fees may be required depending on additional administrative costs.

Signed: _____

Markham S. ...

Date: _____

7/15/2014

Property Owner: I/We certify that I/We are presently the legal owner(s) of the above described property (If the undersigned is different from the legal property owner, a letter of authorization must accompany the form). Further, I/We acknowledge the filing of this application and certify that all of the above information is true and accurate. I/We understand that I/We are responsible for ensuring compliance with conditions of approval. I/We hereby authorize the Town of Yucca Valley and or/its designated agent(s) to enter onto the subject property to confirm the location of existing conditions and proposed improvements including compliance with applicable Town Code Requirements. Further, I/We understand that all documents, maps, reports, etc., submitted with this application are deemed to be public records. This application does not guarantee approval or constitute a building permit application. Additional fees may be required depending on additional administrative costs. I am hereby authorizing

to act as my agent and is further authorized to sign any and all documents on my behalf.

Signed: _____

Markham S. ...

Dated: _____

7/15/2014

Agreement to Pay All Development Application Fees

In accordance with Town Council Resolution 04-38 the Town collects certain fees based on the actual cost of providing service. The application deposit for this project (as indicated below) may not cover the total cost of processing this application. I/We are aware that if the account has 25% or less remaining prior to completion of the project, staff will notify the undersigned in writing, of the amount of additional deposit required to complete the processing of the application, based on Staff's reasonable estimate of the hours remaining to complete this application process.

Further, I understand that if I do not submit the required additional deposit to the Town within 15 business days from the date of notification by the Town, the Town will cease processing of the application and/ or not schedule the project for action by the Planning Commission or Town Council until the fees have been paid.

Any remaining deposit will be refunded to me at time of closeout after I have submitted any required approved project plans and forms, including signed conditions of approval, or upon my written request to withdraw the application.

As the applicant, I understand that I am responsible for the cost of processing this application and I agree that the actual costs incurred processing this application will be paid to the Town of Yucca Valley.

Deposit Paid: \$ 2765.00

Applicant's Signature Makina S Date: 7/15/2011

Applicants Name _____
(Please print)



SURROUNDING PROPERTY OWNERS LIST CERTIFICATION
(To be submitted with application)

I, _____, certify that on _____ the attached property owners list was prepared by _____ pursuant to the requirements of the Town of Yucca Valley. Said list is a complete compilation of the owner(s), applicant(s) and representative of the subject property and all owners of surrounding properties within a radius of _____ feet from all exterior boundaries of the subject property and is based on the latest equalized assessment rolls of the San Bernardino County Assessor's Office dated _____. I further certify that the information filed is true and correct to the best of my knowledge; I understand that incorrect and erroneous information may be grounds for rejection or denial of the development application.

Signed: Mokhammad S. Al Karadsho

Print Name: Mokhammad Al Karadsho Date: 7/15/2014

Developer Disclosure Statement

WA

This portion of the application must be fully completed and signed by the applicant. If not fully completed and signed, the application will be deemed incomplete.

Address of subject property: 57345 29 PALMS HWY, YV

Cross street: JOSHUA LANE

Date this Disclosure Statement is completed: _____

Name of Applicant: MAKRAM ALKARADSEH

The Applicant is a:

- Limited Liability Company (LLC)
- Partnership
- Corporation
- None of the above

Information for LLC, Partnership, Corporation

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

State of Registration _____

Managing member(s), General Partner(s) officer(s)

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

Attach additional sheets if necessary

Agent for Service of Process

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

For Corporations, Shareholder with Fifty Percent or More Share or Controlling Shareholder

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

The Owner is a:

- Limited Liability Company (LLC)
- Partnership
- Corporation
- None of the above

Information for LLC, Partnership, Corporation

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

State of Registration _____

Managing member(s), General Partner(s) officer(s)

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

Attach additional sheets if necessary

Agent for Service of Process

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

For Corporations, Shareholder with Fifty Percent or More Share or Controlling Shareholder

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

The Party in escrow is a (if property is in escrow):

- Limited Liability Company (LLC)
- Partnership
- Corporation
- None of the above

Information for LLC, Partnership, Corporation

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

State of Registration _____

Managing member(s), General Partner(s) officer(s)

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

Attach additional sheets if necessary

Agent for Service of Process

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

For Corporations, Shareholder with Fifty Percent or More Share or Controlling Shareholder

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

For any deeds of trust or other liens on the property (other than real property tax liens) please state the following:

A. Name of beneficiary of the deed of trust or lien _____

B. Date of the deed of trust or lien. _____

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on the date and location set forth below

Makram S
Signature

Print Name: Makram Al Karadshie

Title: _____

Date of signing: 7/15/2014

Location: _____



HAZARDOUS WASTE SITE STATEMENT

I have been informed by the Town of Yucca Valley of my responsibilities, pursuant to California Government Code Section 65962.5, to notify the Town as to whether the site for which a development application has been submitted is located within an area which has been designated as the location of a hazardous waste site by the Office of Planning and Research, State of California (OPR).

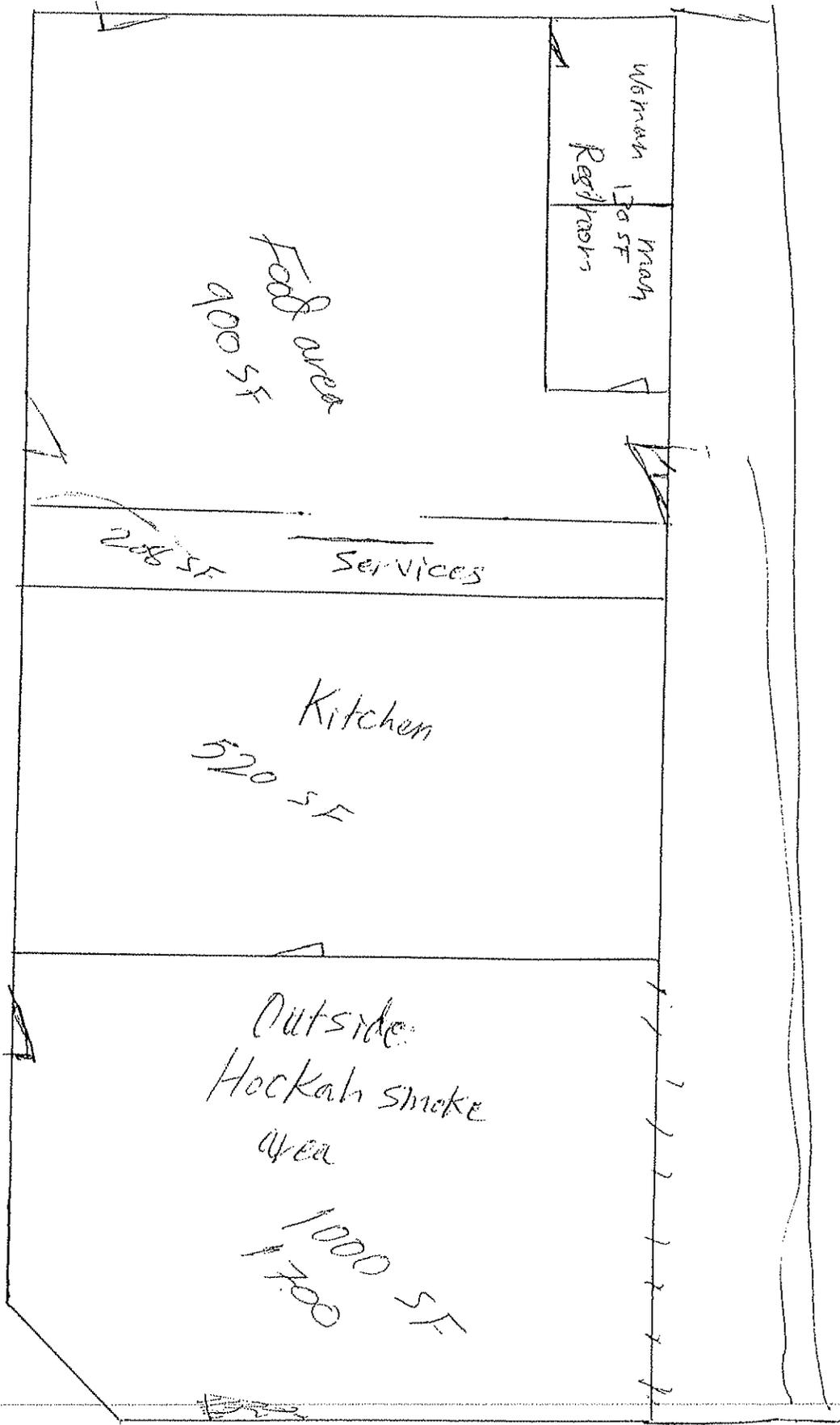
I am informed and believe that the proposed site, for which a development application has been submitted, is not within any area specified in said Section 65962.5 as a hazardous waste site.

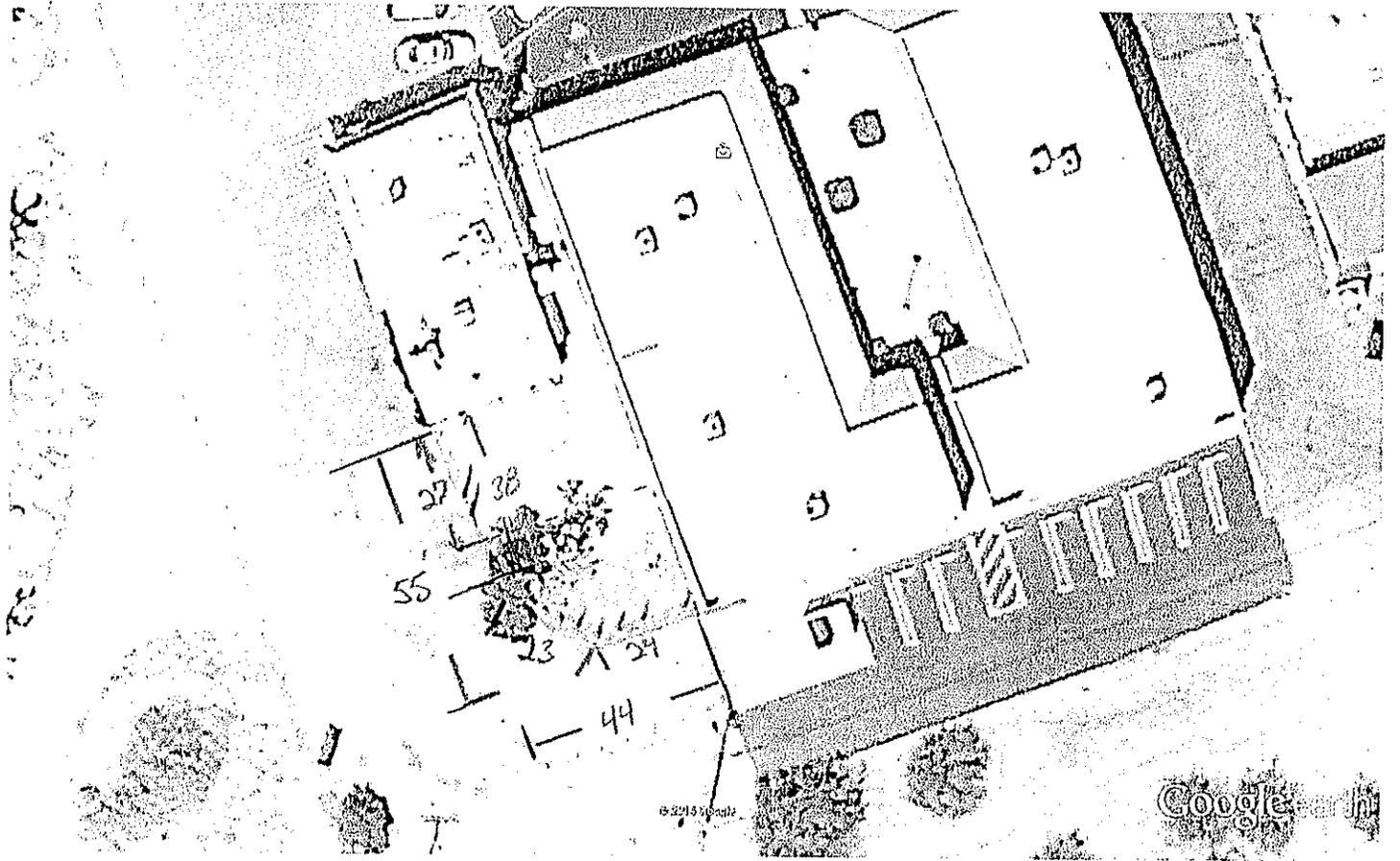
I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: 7/15/2014

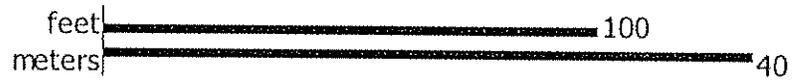
Mohammed Al-Sayid
Applicant/Representative printed name

Applicant/Representative signature





Google earth



Diane Olsen

From: Ali, Mohammad <mali@dpw.sbcounty.gov>
Sent: Wednesday, July 30, 2014 5:29 PM
To: Diane Olsen
Subject: RE: Town of Yucca Valley Conditional Use Permit

No impact to Flood Control District facilities. THx

From: Ali, Mohammad
Sent: Wednesday, July 30, 2014 5:16 PM
To: Truett, Michael
Subject: FW: Town of Yucca Valley Conditional Use Permit

Hi Mike,
Please respond to the Town. It appears a county road is being impacted. I do not see an impact to any existing FCD facility. Thx

From: Diane Olsen [<mailto:dolsen@YUCCA-VALLEY.ORG>]
Sent: Wednesday, July 30, 2014 3:42 PM
Subject: Town of Yucca Valley Conditional Use Permit

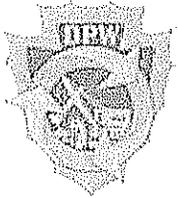
The Town of Yucca Valley is currently reviewing an application for a Conditional Use Permit for a hookah lounge/restaurant. Please review the attached materials and provide any comments/concerns. Please contact me if you have any questions.

Thank you,
Diane Olsen
Planning Technician
760-369-6575 x317

Diane Olsen

From: Truett, Michael <mtruett@dpw.sbcounty.gov>
Sent: Thursday, July 31, 2014 11:22 AM
To: Diane Olsen
Cc: Ali, Mohammad; Lam, Hoa
Subject: FW: Town of Yucca Valley Conditional Use Permit for RFC CUP 02-14 Alkaradsheh application

Hello Ms. Olsen,
The Transportation Operations/Permits Section has reviewed the information forwarded from Muhammad Ali and we find no County road right-of-way conflicts or concerns regarding this RFC CUP 02-14 Alkaradsheh application.



Michael Truett, P.E.
Permit Engineer
Permits/Operations Support Division
Department of Public Works
County of San Bernardino
mtruett@dpw.sbcounty.gov
(909) 387-7995

"Our job is to create a county in which those who reside and invest can prosper and achieve well-being."

From: Ali, Mohammad
Sent: Wednesday, July 30, 2014 5:16 PM
To: Truett, Michael
Subject: FW: Town of Yucca Valley Conditional Use Permit

Hi Mike,
Please respond to the Town. It appears a county road is being impacted. I do not see an impact to any existing FCD facility. Thx

From: Diane Olsen [<mailto:dolsen@YUCCA-VALLEY.ORG>]
Sent: Wednesday, July 30, 2014 3:42 PM
Subject: Town of Yucca Valley Conditional Use Permit

The Town of Yucca Valley is currently reviewing an application for a Conditional Use Permit for a hookah lounge/restaurant. Please review the attached materials and provide any comments/concerns. Please contact me if you have any questions.

Thank you,
Diane Olsen
Planning Technician
760-369-6575 x317

July 31, 2014

Diane Olsen, Planning Technician
Town of Yucca Valley
Community Development Public Works Department
58928 Business Center Drive
Yucca Valley, CA 92284

**SUBJECT: Request For Comments
Conditional Use Permit
CUP 02-14
Alkaradsheh**

Dear Ms. Olsen:

Thank you for contacting the Morongo Band of Mission Indians regarding the above referenced project. The Tribe greatly appreciates the opportunity to review the project and, respectfully, offer the following comments.

The project is outside of the Tribe's current reservation boundaries but within an area that may be considered a traditional use area or one in which the Tribe has cultural ties (e.g. Cahuilla/Serrano territory). Because the project involves a proposal for a Conditional Use Permit for the conversion of an existing 1,800 square foot restaurant to a hookah lounge/restaurant, to include the sale of beer and wine, with an outdoor patio area of approximately 1,000 square feet for the hookah lounge, the Morongo Band of Mission Indians asks that you impose specific conditions regarding cultural and/or archaeological resources and buried cultural materials on any development plans or entitlement applications as follows:

- If human remains are encountered during grading and other construction excavation, work in the immediate vicinity shall cease and the County Coroner shall be contacted pursuant to State Health and Safety Code §7050.5.
- In the event that Native American cultural resources are discovered during project development/construction, all work in the immediate vicinity of the find shall cease and a qualified archaeologist meeting Secretary of Interior standards shall be hired to assess the find. Work on the overall project may continue during this assessment period.

If significant Native American cultural resources are discovered, for which a Treatment Plan must be prepared, the developer or his

archaeologist shall contact the Morongo Band of Mission Indians ("Tribe")¹. If requested by the Tribe, the developer or the project archaeologist shall, in good faith, consult on the discovery and its disposition (e.g. avoidance, preservation, return of artifacts to tribe, etc.).

If I may be of further assistance with regard to this matter, please do not hesitate to contact me at your convenience.

Very truly yours,

MORONGO BAND OF MISSION INDIANS

Franklin A. Dancy,
Director of Planning

¹ The Morongo Band of Mission Indians realizes that there may be additional tribes claiming cultural affiliation to the area; however, Morongo can only speak for itself. The Tribe has no objection if the archaeologist wishes to consult with other tribes and if the city wishes to revise the condition to recognize other tribes.



Mojave Desert Air Quality Management District

14306 Park Avenue, Victorville, CA 92392-2310

760.245.1661 • fax 760.245.2699

Visit our web site: <http://www.mdaqmd.ca.gov>

Eldon Heaston, Executive Director

July 31, 2014

Ms. Diane Olsen, Planning Technician
Town of Yucca Valley
58928 Business Center Drive
Yucca Valley, CA 92284

Project: Conditional Use Permit, CUP 02-14 Alkaradsheh

Dear Ms. Olsen:

The Mojave Desert Air Quality Management District (District) has received the Request for Comments for Conditional Use Permit, CUP 02-14 Alkaradsheh. This is an application for the conversion of an existing 1,800 square foot restaurant to a hookah lounge/restaurant, to include the sale of beer and wine, with an outdoor patio area of approximately 1,000 square feet for the hookah lounge. The property is located at 57345 29 Palms Highway.

The District has reviewed the information provided and based on the information available to us at this time, we have no comments.

Thank you for the opportunity to review this planning document. If you have any questions regarding this letter, please contact me at (760) 245-1661, extension 6726, or Tracy Walters at extension 6122.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan J. DeSalvio".

Alan J. DeSalvio
Supervising Air Quality Engineer

AJD/tw

YV CUP 02 14 Alkaradsheh

RECEIVED

AUG 05 2014

TOWN OF YUCCA VALLEY
SOM DEV

California Labor Code 6404.5

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.

HOOKAH SMOKING

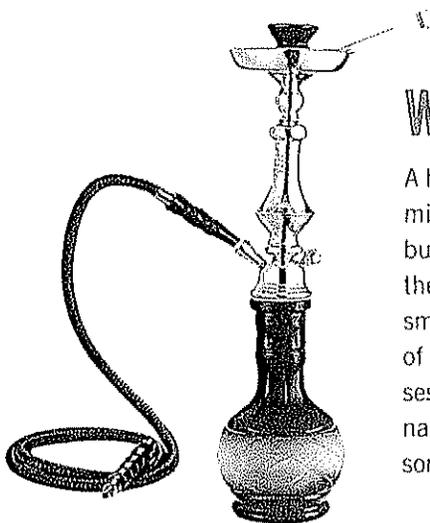
A Growing Threat to Public Health

Hookah (or waterpipe) smoking is gaining popularity nationwide, especially among urban youth, college students, and young professionals.¹⁻² Despite the growing popularity and increased adoption of state and local smokefree workplace laws, hookah bars remain largely unregulated. In addition, many hookah smokers consider the practice less harmful than smoking cigarettes.³ This is troubling from a public health perspective since evidence shows that hookah smoking carries many of the same health risks and has been linked to many of the same diseases caused by cigarette smoking.² As the American Lung Association and its public health partners continue to move forward to protect workers and patrons from the harmful effects of secondhand smoke, it is vital that we address the health risks hookah use poses to youth and young adults, and close the loopholes in smokefree workplace laws that often exempt hookah bars.

Originating in ancient Persia and India, hookah smoking is a highly social activity during which users smoke tobacco filtered through a waterpipe

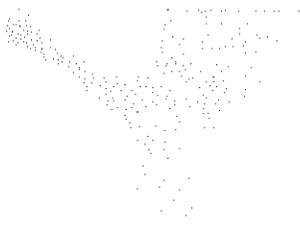
that is often shared by the group.⁴ Hookah tobacco often contains flavors, including candy and fruit flavors such as orange, white grape or chocolate mint, which help mask the harshness of smoking.⁵ Hookah smoking is most common in the United States among young adults ages 18 to 24; however, some studies suggest significant use among middle and high school students.⁶ Hookah smoking may serve as a bridge to other forms of tobacco use and is falsely perceived as less harmful than cigarette smoking.⁷

Hookah smoking has increased with the growth of retail establishments that rent waterpipes and sell the flavored tobacco mixtures. Laws and regulations governing the use of hookahs in public places vary from state to state and sometimes from community to community. In many communities, hookah bars and cafes are exempt from smokefree air laws. Given the well-documented dangers of tobacco smoke, stringent policies to limit hookah smoking—especially among youth—are needed to halt this emerging public health threat.



WHAT IS A HOOKAH AND HOW IS IT USED?

A hookah is a waterpipe used to pass charcoal heated air through a tobacco mixture and ultimately through a water-filled chamber. The charcoal or burning embers are placed on top of a perforated aluminum foil and the tobacco mixture is placed below. The user inhales the water filtered smoke through a tube and mouthpiece. The water lowers the temperature of the smoke. Hookahs are often shared by several users in a smoking session. The tobacco mixtures used in the hookahs are called shisha, boory, narghile, goza, argihileh, or hubble bubble. They vary in composition, with some having flavorings and additives that can reduce the nicotine content.



PREVALENCE AND RISK FACTORS

What We Know

Most national and state surveys of tobacco use do not track hookah smoking. As a result, the public health community must rely primarily on research conducted with college students and a limited number of state-based surveys to ascertain the extent of hookah use in the U.S. Despite these limitations, a troubling picture of this trend is emerging. Estimates of hookah use among college students over the past month and lifetime range from 9.5 percent to 20.4 percent and 41 percent to 48 percent, respectively.^{5, 8} In a sample of users from Memphis, Tennessee and Richmond, Virginia, researchers reported most users were younger than 26 years of age, male, and college graduates or students. Greater frequency of use was found among people who owned a waterpipe, shared hookahs with more than one other person, and were younger when they first used a hookah.²

In a recent national survey of 12th graders, 17 percent reported smoking a hookah within the past year.⁹ A survey of Arizona high school and middle school students found 10.3 percent and 2.1 percent reported having smoked a hookah, respectively.¹⁰ Data from the Florida Youth Tobacco survey indicate that 11 percent of high school students and four percent of middle school students reported using hookahs.⁶ Cigarette use and hookah use were found to be associated with each other, but it is unclear whether cigarette smoking leads to hookah smoking, vice versa, or an unknown third factor affects both.⁶ Middle school and high school students who viewed cigarettes as helpful in relieving stress and in social situations were more likely to report hookah use.⁶ Evidence also suggests 18 to 24 year olds who smoke cigarettes and marijuana, consume alcohol, or use other illicit drugs have higher rates of hookah use.⁸



FAR FROM SAFE

Why Hookah Use Needs Greater Attention

Hookah use carries many of the same health risks as cigarette smoking.

Hookah smoking appears to be associated with lung cancer, respiratory disease, and low birth weight in babies.¹¹ Changes measured in the amount of air moved in and out of the lungs when smokers breathe suggest that cigarette smoking and hookah smoking have similar effects on a person's breathing.^{12, 13} The combination of charcoal and tobacco is unique to hookah smoking and the charcoal has its own set of health effects in addition to the health effects associated with tobacco use.^{14, 12} Additionally, the use of shared mouthpieces during smoking sessions can spread infectious diseases such as tuberculosis, herpes, influenza, and hepatitis.¹⁴

Hookah smokers may be exposed to more nicotine than cigarette smokers.

Many users think hookah smoking is less addictive and exposes them to less nicotine than cigarette smoking.^{2, 15} As research on the health effects of waterpipe smoking increases, studies suggest hookah smokers may inhale larger amounts of smoke than cigarette smokers during a single smoking session.^{7, 11} Hookah smoking sessions are generally longer (1/2 hour or more) which results in considerably greater nicotine exposure.^{16, 5} In one study that pooled results from other similar studies looking at cotinine (a by-product of nicotine in urine and blood), researchers estimated daily waterpipe use to be equivalent to smoking 10 cigarettes a day.¹⁶ When smoking a hookah, very little nicotine is filtered out when the smoke passes through the water in the pipe, with less than a five percent decrease observed.¹⁶

Increased availability and flavored tobacco make hookah use attractive, especially to youth and young adults.

A recent review of the global waterpipe smoking trend suggests hookah use may "represent the second global tobacco epidemic since the cigarette."⁷ Hookahs are often smoked in private homes. Becoming increasingly common is patrons renting hookahs and purchasing flavored tobacco in public places such as bars, cafes, and lounges.^{5, 2, 6} Two-thirds of states have hookah bars and cafes.¹² Many of these establishments are located near college campuses and students can purchase pipes and accessories online.^{5, 2, 6} Additionally, some hookah establishments can cater to youth under the age of 21 as long as alcohol is not served.

continued on next page ➡



FAR FROM SAFE

Why Hookah Use Needs Greater Attention *(continued)*

Youth and young adults perceive hookah use as less dangerous than smoking cigarettes.

The increasing popularity of hookah smoking is in part driven by the social context in which use occurs (e.g., among friends in popular social settings), the attractive flavors used in the tobacco mixtures and the perception that it is safer and less irritating than cigarette smoking.^{2, 12, 14} *The American Journal of Public Health* recently published findings from the California Tobacco Study that showed a 40 percent increase in hookah smoking among California adults between 2005 and 2008, much of this use in young, college educated adults.¹⁷ Surveys of youth and young adults reveal that this population believes they will experience fewer health effects from hookah smoking than from cigarette smoking.^{2, 12} In a survey of attitudes among hookah smokers in Richmond and Memphis the majority of smokers believed that their risk of addiction is less, and reported that they could quit at any time.² Most reported that if they switched from cigarettes to hookahs it would reduce their health risks from tobacco.² Researchers also report that hookah smoke may be less irritating to smokers, presumably because the smoke is filtered through water before inhalation occurs.⁷

Regulatory environment is murky and varies from state to state. Despite widespread adoption of smokefree workplace legislation in many states and localities, tobacco stores and hookah bars continue to operate. They are often exempted from the requirements that prohibit smoking in public places because they sell tobacco and are classified primarily as tobacco retail establishments. The retail exemption has sometimes been interpreted to mean that patrons can sample the tobacco products they purchase on site.¹⁸ Some establishments qualify for exemptions because they do not serve alcohol on the premises.¹⁸ The definition of smoking can also be an impediment to effective regulation and enforcement, because water pipe smoking is not consistently defined as smoking across jurisdictions.^{18, 20}

With the exception of menthol cigarettes, the U.S. Food and Drug Administration (FDA) prohibits the sale of cigarettes with "characterizing flavors" but does not regulate other flavored tobacco products such as those used in waterpipes. The FDA is currently examining options for regulating these products, which, according to a fact sheet posted on FDA's website, the agency considers unsafe and harmful.¹⁹



REGULATING HOOKAH USE

What Some States and Local Governments Are Doing

In some states, bars and lounges that derive a portion of their income from the sale of non-cigarette tobacco products are exempt from smokefree workplace legislation that prohibits smoking in indoor public places.²⁰ New Jersey exempts bars and restaurants from their smokefree air ordinance if more than 15 percent of income is from sale of these products and in New York, a similar exemption applies if more than 10 percent of the income is derived from such sales.¹⁸ Michigan's 2010 'Smoke Free Air Law' prohibits hookah smoking unless an exemption as a tobacco specialty store is obtained, and as a tobacco specialty store they can't have any type of liquor, food or restaurant license. North Carolina limits hookah smoking to establishments that do not serve food or alcohol.²¹ Boston and Maine have ended their indoor-smoking exemptions that previously allowed customers at hookah bars to smoke indoors.¹

San Francisco recently applied California's state law prohibiting smoking inside enclosed workplaces to hookah establishments, prohibiting the serving of food or alcohol in those establishments and requiring that they be owner-occupied and located in commercial buildings.²² This local interpretation was necessary because the California state law does not explicitly reference hookah bars and lounges.²¹ Some communities in California seem to be interpreting state law differently, however, with Sacramento permitting indoor hookah smoking in family-owned establishments.²¹

POLICY RECOMMENDATIONS

A broad range of strategies are needed to reverse the accelerating trend of hookah use in the United States. To accomplish this objective, the American Lung Association recommends the following:

- 1 Close loopholes in state and local laws that exempt hookah bars.** States with smokefree workplace laws often include specific exemptions that enable hookah establishments to continue to allow smoking. In some states and local jurisdictions, hookah bars can qualify as tobacco retail stores, tobacco/cigar bars, private clubs, or owner-operated businesses. Exemptions for hookah bars should be closed in existing laws when possible and not included in new smokefree workplace laws.
- 2 Close loopholes in laws/regulations by clearly defining smoking to include waterpipes.** State laws should clearly include waterpipes in their definitions of smoking. This loophole has been used to exempt hookah bars from laws prohibiting smoking in public places and workplaces in some states.
- 3 FDA should assert authority over tobacco used in hookahs.** The U.S. Food and Drug Administration should assert authority over the manufacturing and marketing of tobacco used in waterpipes, and apply regulations to these products as needed to protect public health.
- 4 Prohibit flavorings in hookah tobacco.** Federal, state or local laws/regulations should be used to eliminate flavorings in hookah tobacco. Flavorings are one of the factors associated with increasing use in youth and young adults. Prohibiting flavors is likely to lessen the appeal of hookah smoking.
- 5 Include questions in national surveys to provide data on hookah use to the public health community.** National surveys such as the Behavioral Risk Factor Surveillance Survey (BRFSS) and the Youth Risk Behavior Survey (YRBS) should include questions about hookah smoking so that better estimates of national incidence and prevalence will be available for policymakers and public health professionals.
- 6 Implement and enforce laws prohibiting the sale of hookah tobacco and its smoking paraphernalia to minors.** The varying definitions of smoking in some jurisdictions allow minors to be admitted to establishments where hookahs are used and/or where paraphernalia is sold. Closing these loopholes will help prevent minors from purchasing hookah tobacco or its paraphernalia.
- 7 Use licensure requirements or zoning rules to regulate hookah establishments.** License and zoning requirements for the sale of tobacco, alcohol or food, hours of operation, age of patrons, and live music or belly dancing can be tools to restrict hookahs bars and lounges. Some jurisdictions prohibit tobacco use and the sale of food and alcohol on the premises. Zoning regulations could prohibit hookah bars and lounges near college campuses.

In addition to the policy recommendations outlined above, alternate measures to discourage hookah use should also be considered. Prohibiting advertising in college newspapers or websites can help to discourage college students from frequenting hookah establishments. Additionally, public awareness campaigns that highlight the health effects of hookahs and counter the myths about reduced harm (compared to cigarette smoking) could help build public support for more effective regulations.

Conclusions A comprehensive approach to limiting access to hookah use is critical to averting a potentially deadly trend. Hookah smoking is a growing public health threat that may lead to a resurgence in tobacco use among vulnerable populations. Both the American Lung Association and the World Health Organization recommend that laws or regulations prohibiting cigarette or other tobacco use in public places apply to hookah smoking.¹⁸ Efforts should be made to restrict hookah use, especially among teens and young adults.

RESOURCES

**American Academy of Pediatrics
Julius P. Richmond Center of Excellence**
[www.aap.org/richmondcenter/
RCEwebinars.html#webinar2](http://www.aap.org/richmondcenter/RCEwebinars.html#webinar2)

American Cancer Society
[www.njgasp.org/ACS_Hookah_
Factsheet.pdf](http://www.njgasp.org/ACS_Hookah_Factsheet.pdf)

Americans for Nonsmokers' Rights
[www.no-smoke.org/goingsmokefree.
php?id=581](http://www.no-smoke.org/goingsmokefree.php?id=581)

**American Lung Association State
Legislated Actions on Tobacco Issues**
www.lungusa2.org/slati/search.php

**Tobacco Free U.org
(The Bacchus Network)**
[www.tobaccofreeu.org/pdf/
HookahWhitePaper.pdf](http://www.tobaccofreeu.org/pdf/HookahWhitePaper.pdf)

Tobacco Control Network
[www.ttac.org/tcn/peers/other/
08.12.10.html](http://www.ttac.org/tcn/peers/other/08.12.10.html)

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- ¹³ Hakim et al. The acute effects of water-pipe smoking on the cardiorespiratory system. *Chest*. 2011; 139(4):775-781.
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HOOKAH TOBACCO IS UNSAFE

What Are Hookahs?

- Hookahs are glass or metal waterpipes that originated in India. They are shaped somewhat like a bottle and have long, flexible hoses with tips that people put into their mouths to inhale tobacco smoke. In most hookahs, hot charcoal is placed on top of tobacco in a bowl to heat it.¹ The tobacco, or shisha, is typically flavored, and contains the same chemicals found in all tobacco, including nicotine.²
- In recent years, there has been tremendous growth in the number of hookah bars and lounges in California.^{3,4,5} Hookah smoking is **increasingly popular among underage youth and young adults**, exposing them to both tobacco use and secondhand smoke.⁶ Many of these young people do not think that hookah smoke is as harmful and addictive as cigarette smoke.⁷

Why Are Hookahs Harmful?

- Smoking hookah for 45-60 minutes can be equivalent to smoking 100 or more cigarettes.⁸
- Secondhand hookah smoke contains the same cancer-causing chemicals found in secondhand smoke from cigarettes.
- In addition, the charcoal used in the tobacco heating process produces the toxin carbon monoxide.⁹
- In 2005, the World Health Organization (WHO) issued an Advisory Note about hookah use, stating that people who smoke hookah pipes or who are exposed to secondhand hookah smoke are at risk for the same diseases that are caused by smoking cigarettes, including:
 - Cancer
 - Heart disease
 - Respiratory disease
 - Adverse effects during pregnancy
- The WHO Advisory Note also warned that sharing a waterpipe mouthpiece poses a serious risk of transmission of communicable diseases, including tuberculosis and hepatitis.¹⁰
- The proliferation of hookah bars and lounges in California is leading to a growing public acceptance of smoking. This threatens to setback twenty years of progress in reducing tobacco-related death and disease.

How Can Hookah Bars and Lounges Allow Indoor Smoking?

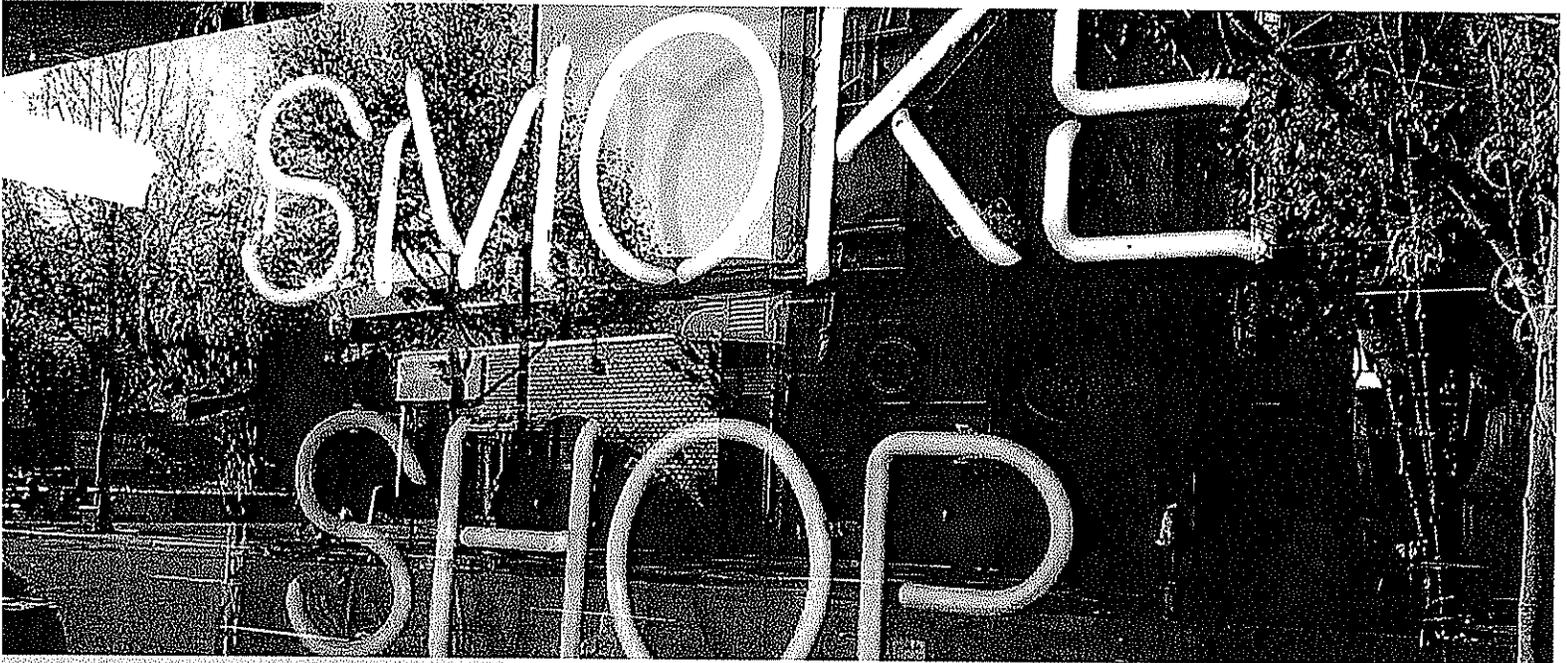
- While smoking inside restaurants and bars has been banned since 1998 in California, the Smoke-Free Workplace law (Labor Code Section 6404.5) includes twelve exemptions that allow smoking in certain indoor workplaces.
- Hookah bars and lounges typically claim they operate as tobacco shops and private smokers' lounges, which are among the businesses that can allow indoor smoking under exemptions in California's Smoke-Free Workplace law.
 - The California Smoke-free Workplace law defines a tobacco shop as a business establishment whose "main purpose" is to sell tobacco products. Unfortunately, the definition of "main purpose" is unclear.



- For example, some hookah bars and lounges have obtained licenses to sell alcohol, serve food and nonalcoholic beverages, and provide entertainment –operating more like a bar or restaurant where smoking inside is prohibited under state law. The assertion that the “main purpose” of these businesses is the sale of tobacco is questionable.
- Other hookah bars and lounges assert that the business is owner-operated and has no employees and is therefore exempt from the state labor law.
- It is unfair that hookah bars and lounges are trying to take advantage of ambiguities in the law to allow indoor smoking, while other similar businesses (bars and restaurants) are following the law.
- The ambiguity and contradictions in state law make enforcement by cities and counties throughout California difficult. Investigating claims that hookah bars and lounges are violating the state Smoke-Free Workplace law can be time-consuming and challenging because of these seemingly contradictory interpretations of business classifications and permitting and licensing requirements and standards.

All California workers deserve to be protected from secondhand smoke. All businesses should be on a level playing field, required to abide by the same rules when it comes to protecting California’s workers from secondhand smoke exposure. It’s time to close the loophole on hookah bars and lounges.

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Tobacco Shops & Smokers' Lounges

Understanding the Exceptions to California's Smokefree Workplace Act

This fact sheet describes how to determine when a business is in violation of the smokefree workplace law, and provides strategies for communities to address the proliferation of businesses that allow smoking.

California's smokefree workplace law prohibits smoking in most places of employment, such as bars, restaurants, and retail establishments.¹ Passed in 1994 to create a uniform standard for protecting employees from secondhand smoke exposure,² the law contains several exceptions for specific types of businesses, permitting indoor smoking on some or all of their premises.

The most common types of businesses that may allow indoor smoking are tobacco shops (for example, smoke shops and tobacconists), and smokers' lounges (for example, cigar bars and hookah lounges). These businesses have become increasingly popular throughout California. They are legally permitted to allow indoor smoking because of an exception in the smokefree workplace law for "retail or wholesale tobacco shops and private smokers' lounges."³

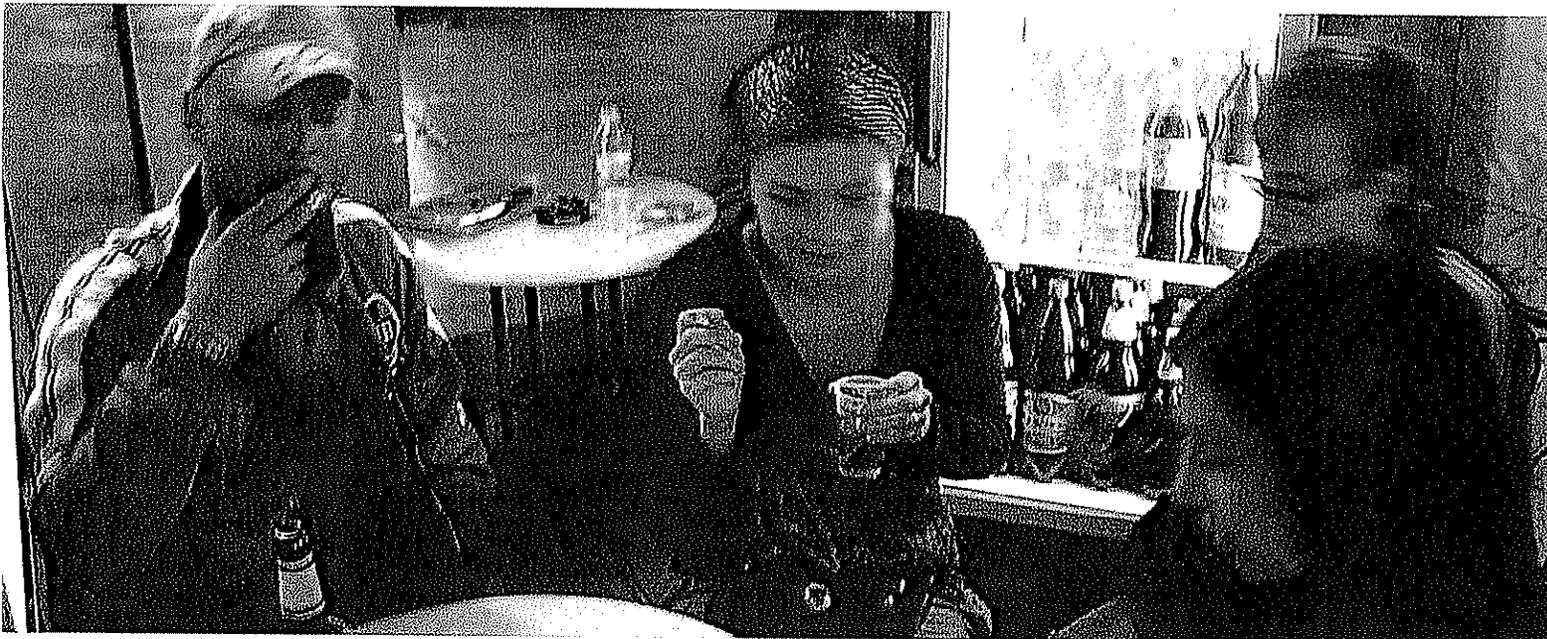
Many communities are concerned that the proliferation of these businesses in their neighborhoods may create a number of problems. For example, drifting smoke from a tobacco shop may severely impact neighboring businesses and residences, endangering occupants' health. There is also a concern that these businesses contribute to the normalization of tobacco use among youth and young adults. Hookah smoking in particular has become extremely popular with young people, and many communities have recently seen a boom in the number of tobacco shops opening up as hip bars.



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Businesses must meet very specific requirements to qualify for the tobacco shop/smokers' lounge exemption, and many businesses may mistakenly believe that they qualify for the exemption when they actually do not.

This fact sheet describes how to determine when a business is in violation of the smokefree workplace law, and provides strategies for communities to address the proliferation of businesses that allow smoking.

How Does the Law Define "Tobacco Shop?"

The law defines a "retail or wholesale tobacco shop" as "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."⁴

How Does the Law Define "Smokers' Lounge?"

The law defines "private smokers' lounge" as "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."⁵

In understanding the distinction between tobacco shops and smokers' lounges, it's important to recognize that they overlap. A "retail or wholesale tobacco shop" may contain a smokers' lounge, but it can allow smoking in its premises regardless of whether or not it contains a smokers' lounge, so long as it exists specifically to sell tobacco products and paraphernalia. On the other hand, a "private smokers' lounge" must be inside or attached to a retail or wholesale tobacco shop, and cannot exist independently. Note also that despite the use of the word "private," a smokers' lounge may be open to the public and still qualify for the exemption, so long as it meets all the necessary criteria discussed in this fact sheet.

Interpreting the Definitions

The smokefree workplace law requires that a tobacco shop's "main purpose" be the sale of tobacco products⁶ and that a smokers' lounge be "dedicated to" the use of tobacco products.⁷ If a business operates in a way that falls outside the parameters of these definitions, it is not exempt from the requirements of Labor Code section 6404.5 and may not permit smoking. Because the law does not define the key terms "main purpose" or "dedicated to," some law enforcement officials have struggled to interpret this language. In determining the scope of the exemption for tobacco shops and smokers' lounges, legal interpretations from the California Legislative Counsel, the California Attorney General, and several City Attorney's offices provide some useful guidance.

Understanding the terms "main purpose" and "dedicated to" is extremely important from an enforcement standpoint because businesses such as bars, restaurants, and clubs will sometimes claim to be tobacco stores so that they can allow smoking, but still sell or serve food, alcohol, and/or other products. According to analyses by the California Legislative Counsel and the California Attorney General, businesses that sell food or alcohol do *not* qualify for the tobacco shop exception because their "main purpose" is not to sell tobacco products.^{8,9} In addition, such businesses cannot simply designate a room (or an attached enclosed space) as a "smokers' lounge," because smokers' lounges can only exist inside, or attached to, a bona fide retail or wholesale tobacco shop.

Furthermore, a joint analysis from the City Attorneys' offices of San Francisco, Los Angeles, and San Jose concluded that because a tobacco shop's *main purpose* is to sell tobacco products and paraphernalia, a business owner cannot simply convert a portion of their store, restaurant, or bar into a tobacco shop in order to allow smoking on the premises.¹⁰ Consistent with this analysis, they note that a tobacco shop should have a separate entrance, separate enclosure, and separate business license from any bar, restaurant, or other type of retail establishment.¹¹

The Attorney General's Opinion on the Exemption for Retail or Wholesale Tobacco Shops and Private Smokers' Lounges

The California Attorney General, as the state's chief law enforcement officer, issues formal legal opinions on questions related to the enforcement of particular laws. Although these opinions are not legally binding like a court decision, they carry a great deal of weight with courts that are considering a legal question for the first time.¹² Therefore, the Attorney General's formal legal opinions serve as guidance for law enforcement on how a law should be interpreted.

In 2011, the California Attorney General issued an opinion that interpreted the definitions of "tobacco shop" and "smokers' lounge," and determined that when an establishment that is open to the public sells alcohol (and by logical extension, food or any other non-tobacco products) it is no longer exempt from the smokefree workplace law.¹³ The Attorney General also concluded that both a tobacco shop and an attached smokers' lounge should be set aside exclusively for the sale and use of tobacco products—if they want to allow smoking inside the premises.¹⁴

The 2011 Attorney General's opinion builds upon similar analyses that have been done in the past. For example, in 2008, the Legislative Counsel of California issued an opinion concluding that smokers' lounges attached to tobacco shops are not exempt from the smokefree workplace law if they serve alcoholic beverages to patrons, noting that the terms "main purpose" and "dedicated to" indicate exclusion of other types of retail.¹⁵

What does this mean for cigar bars?

Cigar bars, as the name suggests, are businesses that specialize in selling a variety of cigars that patrons can smoke onsite in a social environment. Oftentimes, cigar bars cater to an affluent clientele, offering expensive "premium" cigars. Many establishments also offer a wide selection of inexpensive flavored cigars which have become increasingly popular among youth.¹⁶

Communities may be concerned about cigar bars for different reasons. In some cases, the smoke from cigar bars drifts into neighboring buildings or neighboring units in the same building. This drifting smoke impacts neighbors' health, and may have a harmful economic impact on neighboring businesses. Communities may also be concerned about the increased availability of cheap, candy-flavored cigars (and so-called "little cigars," or "cigarillos") to children and teenagers.

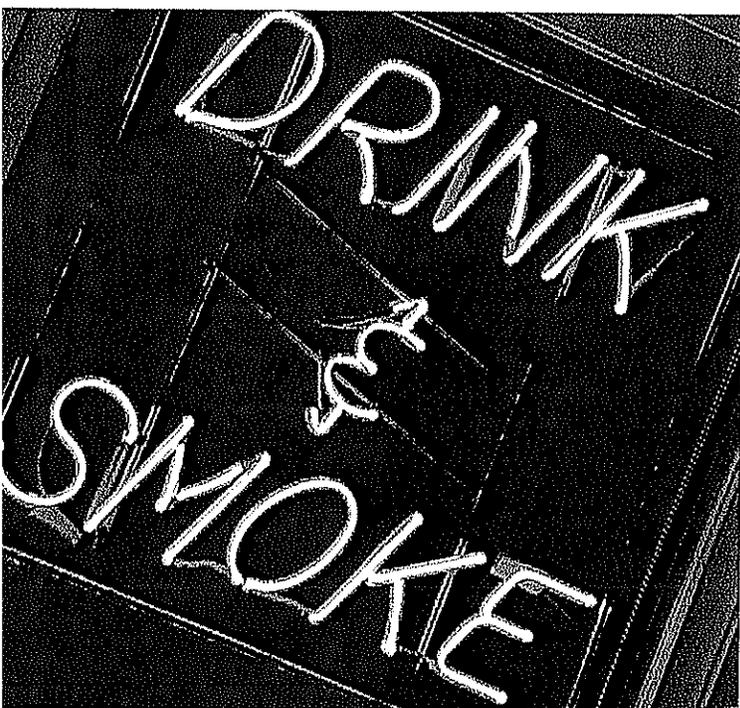
Cigar bars qualify for the smokefree workplace law's tobacco shop/smokers' lounge exemption; however, they may only permit smoking if the criteria listed on page 6 are met. If they sell or serve food, alcohol, or other products, they may *not* permit smoking inside their establishment.

What does this mean for hookah lounges?

A hookah lounge is an establishment where customers pay to rent a hookah that is placed at a table for communal use. A hookah is a tobacco pipe with a long, flexible tube that draws smoke through water contained in a bowl. Many hookah lounges offer patrons a menu of flavored tobacco to choose from. They also frequently offer food and beverages, even though the smokefree workplace law prohibits such businesses from serving food or beverages.

Many communities are very concerned about the recent increase in the popularity of hookah lounges among youth and young adults. Youth and young adults who may not otherwise be inclined to use tobacco may be attracted to hookah smoking because of the sweetened, flavored smell and taste of the tobacco used in hookahs.¹⁷ In addition, young people may not be aware of the health consequences of hookah use, erroneously believing that it's somehow safer or less addictive than other tobacco products. This misunderstanding may account for the increase in popularity of hookah smoking and the increase in the number of hookah lounges established in recent years.¹⁸

As with cigar bars, hookah lounges may permit smoking under the tobacco shop/smokers' lounge exemption only if they meet the criteria listed on page 6.



What Communities Can Do

There are several ways that cities or counties can address the issue of smoking in tobacco shops, cigar bars, and hookah lounges in their community.

Enforcing Existing Law

Cities and counties are authorized to enforce the state smokefree workplace law.¹⁹ If an individual witnesses a business illicitly permitting smoking – for example, allowing smoking while also serving food or beverages – they can contact their local police or public health department to lodge a complaint. The state smokefree workplace law gives authority to local law enforcement, including public health departments, to issue citations to such businesses until they comply with the law. Businesses have typically been required to pay \$100-\$300 per violation.²⁰

After the owner of an establishment is found to have violated the smokefree workplace law on three occasions, the case can be referred to the California Division of Occupational Safety and Health (Cal/OSHA). Cal/OSHA can then conduct an inspection and issue significant fines if they find severe or repeated violations of the law.²¹

For example, in Shasta County, two separate bar owners who continued to allow smoking in their bars were each fined \$54,000 by Cal/OSHA for “willful and serious” violations of the California Smokefree Workplace Act.²² (These were some of the largest fines that have been levied against business owners for failing to comply with the smokefree workplace law.)

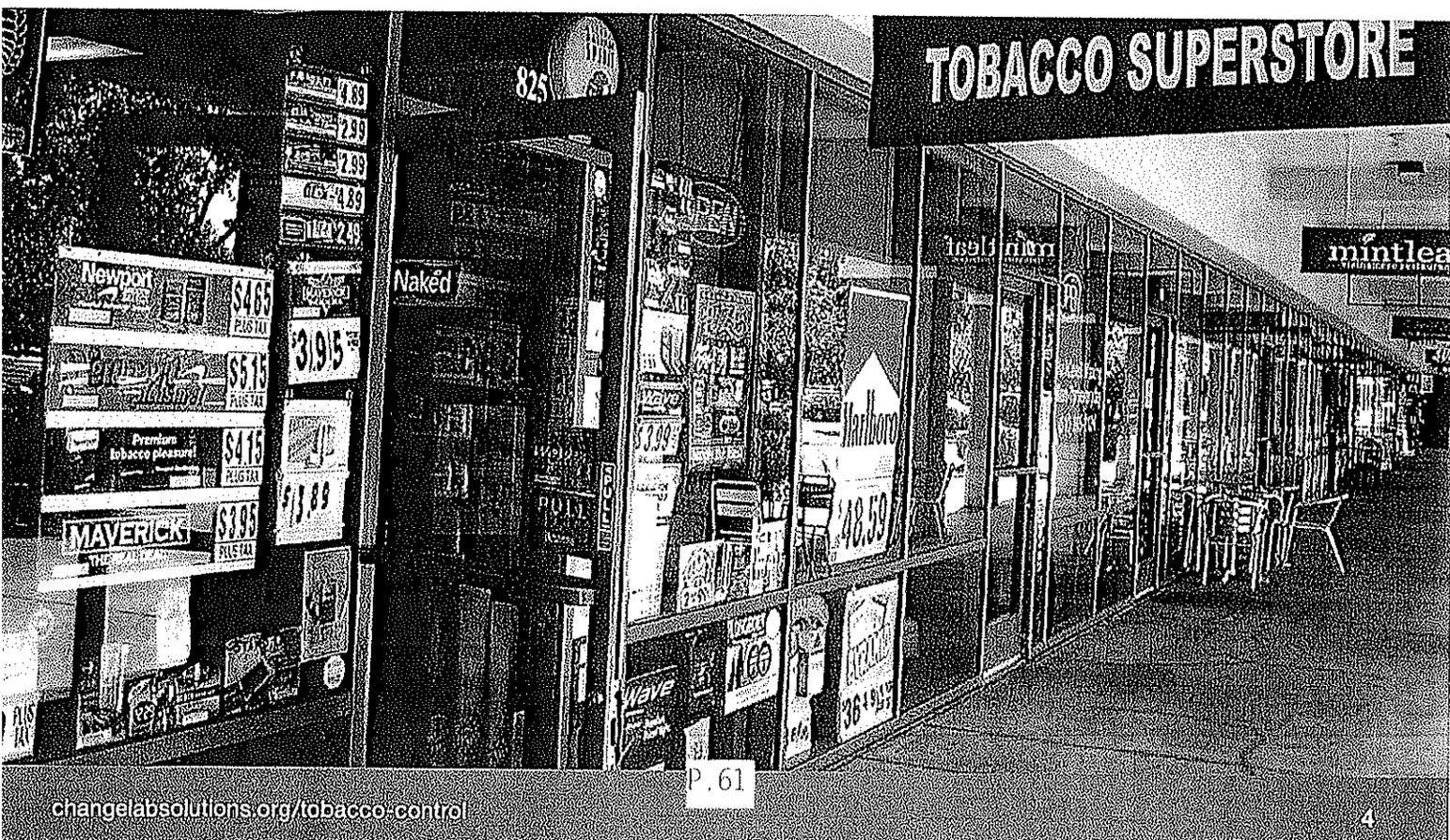
Enacting Local Smokefree Workplace Ordinances

The state smokefree workplace law explicitly gives authority to local governments to pass laws that are more restrictive than the state law.²³ This means that cities and counties can pass their own laws to prohibit smoking in any or all places of employment, even those that are exempted from the state smokefree workplace law, such as tobacco shops and smokers' lounges. Because local governments can prohibit smoking anywhere within their jurisdiction, local smokefree laws can be very broad, possibly without any exemptions at all.

Enacting Local Tobacco Retailer Licensing Ordinances

Communities can also pass tobacco retailer licensing ordinances, requiring businesses to obtain a license in order to sell tobacco, and subjecting retailers to certain conditions. For example, a community can require that tobacco retailers prohibit smoking on their premises or limit access to minors. A licensing law can also be used to regulate the types of tobacco products that are sold. For example, a licensing law could require retailers to refrain from selling candy-flavored tobacco products that may be attractive to children or teenagers. This can be a direct way of limiting hookah lounges that specialize in such youth-friendly flavors, or cigar bars and other tobacco shops that sell a wide variety of flavored cigarillos or “little cigars.”

For more information on tobacco retailer licensing ordinances, and the types of conditions that can be placed on obtaining and maintaining a license, *visit our website.*



Other Types of Exemptions

Establishments like cigar bars and hookah lounges often try to claim that they are exempt from the smokefree workplace law in other ways, so that they might avoid having to meet the qualification criteria for the tobacco shop/smokers' lounge exemption (i.e., so they can serve food or alcohol). Two arguments in particular are frequently made by these businesses: 1) that they qualify for the smokefree workplace law's exemption for businesses with five or fewer employees; and 2) that they are not covered by the smokefree workplace law at all because they are an owner-operated business. For reasons described below, it is actually extremely difficult for businesses to qualify for these particular exemptions.

Exemption: Businesses with Five or Fewer Employees

The "five or fewer employees" exemption contains very strict criteria.

In order for to qualify for this exemption: 1) the smoking area must not be accessible to minors; 2) all employees who enter the smoking area must consent to allow smoking in that area; 3) the air from the smoking area must be vented directly outside and not re-circulated into the rest of the building; and 4) the ventilation used in the smoking area must meet OSHA or EPA standards.

Even if the above criteria can be met, the California Attorney General's analysis of the exemption is that bars, taverns, and gaming clubs *cannot* qualify for this exemption.²⁴

Restaurants and other food service establishments also *cannot* qualify for the "five or fewer" exemption, as they are not permitted to arbitrarily prohibit minors from their premises just so that they might qualify.²⁵

Owner-Operated Businesses and Volunteers

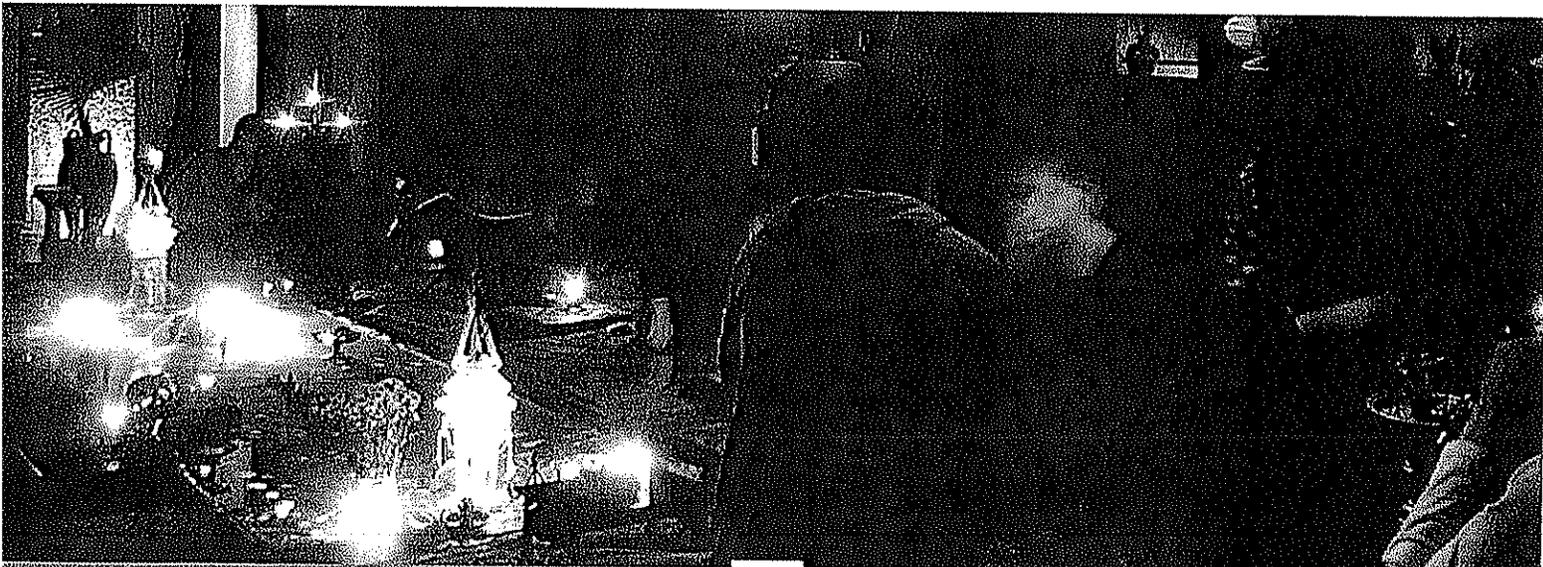
The smokefree workplace law does not have a specific exemption for "owner-operated" businesses. However, because the law itself only applies to "places of employment," establishments that have no employees are not covered by the law and are therefore not subject to its smokefree requirement.

Some business owners have tried to "transform" their employees into "co-owners" in order to circumvent the law and allow indoor smoking. In many cases, courts have found this to be a "sham" operation and have held that the smokefree workplace law did indeed apply.²⁶

Finally, businesses sometimes claim that they're not places of employment for purposes of the smokefree workplace law because they're operated by volunteers rather than employees. However, courts have found that there actually is an employment relationship between a business owner and volunteers if the business owner has the right to direct and control the activities of the volunteers, and if the volunteers receive some sort of benefit in return for their services.^{27,28}

For a more detailed discussion of owner-operated businesses and/or volunteer-operated establishments, see ChangeLab Solutions' Law Notes: "*How to Prohibit Smoking in Owner-Operated Businesses*," and "*How to Prohibit Smoking in Places Operated by Volunteers*," available at www.changelabsolutions.org/tobacco-control.

For more about the different exemptions contained in the California Smokefree Workplace Act, see "Tobacco Laws Affecting California," available at www.changelabsolutions.org/tobacco-control.



Additional Resources

ChangeLab Solutions has a *Comprehensive Smokefree Places Model Ordinance* with provisions to address smoking in workplaces, as well as a *Tobacco Retailer Licensing Model Ordinance and Associated Plug-ins*. ChangeLab Solutions can help cities or counties expand or customize language from these model ordinances to address problems associated with smoking lounges in their communities. To request technical assistance, please *visit our website*.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

This fact sheet was made possible by funds received from Grant Number 09-11182 with the California Department of Public Health, California Tobacco Control Program.

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Checklist for determining if a business qualifies for the tobacco shop or smokers' lounge exemption created by California Labor Code 6404.5(i)(d)(4)

Consistent with the legal analyses discussed in this fact sheet, if a business does not meet all of the following criteria, it does not qualify as a "retail or wholesale tobacco shop" under the smokefree workplace law and cannot allow smoking in their establishment pursuant to that exemption:

- The main purpose of the business is the sale of tobacco products and smoking accessories
- The business does not sell or serve other products for consumption, such as beverages or food
- The business has its own business license separate and apart from any other business
- The business has its own entrance to the premises, separate and apart from any other business
- The business has its own separate enclosure (unit, suite, etc.), separate and apart from any other business

Consistent with the legal analyses discussed in this fact sheet, if a space does not meet all of the following criteria, it does not qualify as a "private smokers' lounge" under the smokefree workplace law and cannot allow smoking within its walls pursuant to that exemption:

- The lounge is attached to or inside of a retail or wholesale tobacco shop that meets the the criteria listed on the left
- Other products such as food or beverages are not served for consumption in the lounge
- The lounge is used only for the consumption of tobacco products; it is not used for the consumption of other types of products such as beverages or food

¹ Cal. Lab. Code § 6404.5.

² Cal. Lab. Code § 6404.5(a). ("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.")

³ Cal. Lab. Code § 6404.5(i)(d)(4).

⁴ Cal. Lab. Code § 6404.5(i)(d)(4)(B).

⁵ Cal. Lab. Code § 6404.5(i)(d)(4)(A).

⁶ Cal. Lab. Code § 6404.5(i)(d)(4)(B).

⁷ Cal. Lab. Code § 6404.5(i)(d)(4)(A).

⁸ Cal. Att'y Gen. Op. No. 09-507 (Dec. 21, 2011).

⁹ Legis. Counsel of Cal. Op. No. 0824950, at 3 (September 15, 2008).

¹⁰ Solomon, Barbara, Deputy City Attorney, San Francisco, Evan Braude, Special Assistant City Attorney, Los Angeles, Brian Doyle, Senior Assistant City Attorney, San Jose. Legal Parameters of the California Smokefree Workplace Law (Labor Code 6404.5), Section 9.A. Available at: http://changelabsolutions.org/sites/philipact.org/files/Legal_Parameters_of_the_California_Smokefree_Workplace_Law.pdf

¹¹ *Id.*

¹² See *Thorning v. Hollister School Dist.*, 11 Cal. App. 4th 1598, 1604 (1992); *Napa Valley Educators' Assn. v. Napa Valley Unified School Dist.*, 194 Cal. App. 3rd 243, 251 (1987)

¹³ Cal. Att'y Gen. Op. No. 09-507 (Dec. 21, 2011).

¹⁴ *Id.* at 6.

¹⁵ See Legis. Counsel of Cal. Op. No. 0824950, at 3 (September 15, 2008).

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 5.

¹⁸ California Department of Public Health, California Tobacco Control Program. 2011. *Hookah Tobacco is Unsafe*, 1. www.cdph.ca.gov/programs/tobacco/Documents/Hookah%20Fact%20Sheet.pdf

¹⁹ Cal. Lab. Code § 6404.5(j).

²⁰ See California's Clean Air Project. *California Court Decisions on Smokefree Bars*, *supra* note vii, at Section 4.

²¹ See California's Clean Air Project. *The Role of Cal OSHA in Enforcing Labor Code 6404.5*, *supra* note vii, at Section 7.1. ("Example of past practice: [...] Upon referral Cal-OSHA obtained an inspection warrant, conducted an inspection (including an air sample), and levied an administrative fine based on all California code violations they found. The fine amounted to \$10,000.")

²² See California's Clean Air Project. *California Court Decisions on Smokefree Bars*, *supra* note vii, at Section 4.3.

²³ Cal. Lab. Code § 6404.5(i) (West). ("[L]ocal governments shall have the full right and authority [...] 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.")

²⁴ Cal. Att'y Gen. Op. No. 82-190 (Oct. 8, 1999).

²⁵ Cal. Att'y Gen. Op. No. 79-8 (Feb. 15, 1996).

²⁶ See *People v. The Beacon Lounge*, Lake Elsinore Municipal Court, Riverside County (June 26, 2000). A summary is available at: www.changelabsolutions.org/sites/philipact.org/files/Cite_Summary.pdf, at page 4.9.

²⁷ See Cal. Dept. of Educ., Letter to TEROC Chairperson Jennie Cook, May 18, 1998. Available at: http://changelabsolutions.org/sites/default/files/documents/Cal_Dept_of_Edu_Letter_to_TEROC_Chairperson_Jennie_Cook_May_18_1998.pdf

²⁸ *Riskin v. Indus. Accident Comm'n*, 26 Cal. 2d 130, 135 (1943) (defendant's claim that plaintiff was independent contractor and not employee fails because, in part, defendant had right to issue instructions and to expect them to be followed).



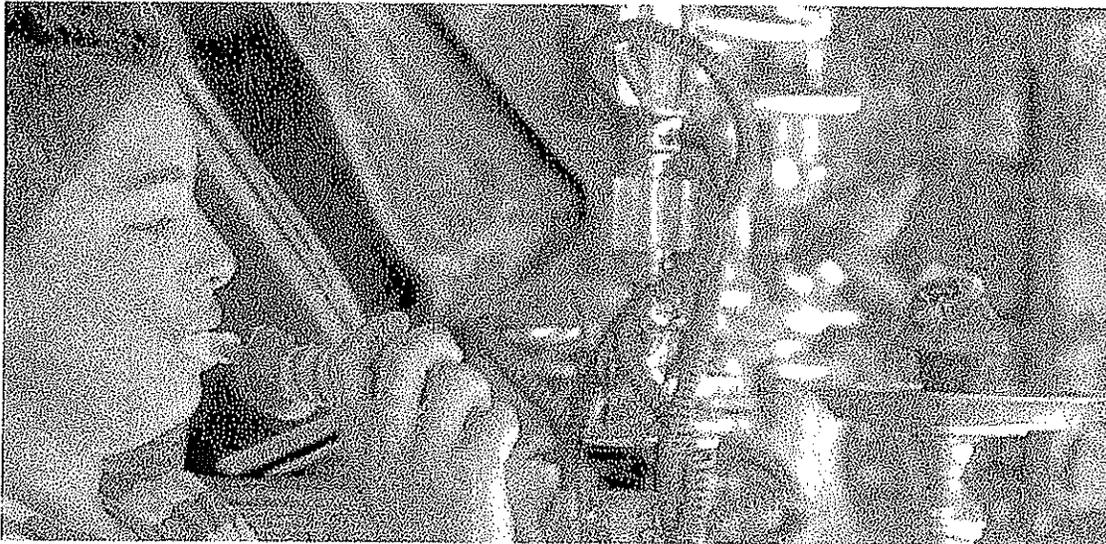
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With Public Smoking Bans in Place, Hookah Use Is on the Rise

By Esther Entin

Contrary to popular belief, hookah is not safer than cigarettes, and there are some ways that it poses even greater medical risks



A recent study looked at hookah use in California, and the results were concerning. From 2005 to 2008, hookah use among adults in the state increased by 40 percent, with young men, ages 18-24, reporting hookah use twice as often as all adult men. Use was more common among people with some college education, non-Hispanic whites, young adults, and current and former cigarette smokers.

While public indoor smoking is banned in California, hookah use is allowed in hookah lounges that are classified as retail tobacco shops. The researchers note that the American Lung Association suggests that the public cigarette ban may actually be helping to increase the popularity of the lounges because they provide a legal alternative for smoking socially with peers. It may also give the impression that

the Doctor
will see you now

MORE FROM THE DOCTOR:

Get a Flu Shot to Boost Immunity

A New Way to Study Pain

hookah smoking is safe.

Salmonella Outbreaks Raise Questions

Contrary to popular belief, however, hookah use is not safer than cigarette smoking, and there are some ways that it poses even greater medical risks to users.

A hookah is a water pipe that has a smoke chamber through which the smoke from specially formulated tobacco is passed. It is then drawn into a rubber hose and into a mouthpiece from which it is inhaled. The dangerous contaminants, including tar, carbon monoxide, heavy metals, and carcinogens remain in the smoke, despite passing through the water.

Hookah sessions often last as long as an hour and smokers inhale more deeply from the pipe than from cigarettes, so hookah smokers may in fact inhale 100-200 times the volume of smoke inhaled from a single cigarette in a typical hookah session. They receive the same amount of nicotine as from cigarettes and are at equal risk of addiction.

Hookah smokers are exposed to higher levels of carbon monoxide than cigarette smokers because charcoal is used to heat the tobacco in the pipe. The health risks associated with hookah smoke include lung, bladder, and oral cancers, cardiovascular disease, and low birth weight babies. Additionally, because pipes are often shared, hookah smoking increases the risk of transmission of infections, including tuberculosis, viruses such as herpes and hepatitis, and others.

The secondhand smoke from a hookah is as dangerous to nonsmokers as from cigarettes and has the additional toxicity of a higher carbon monoxide level.

The study was published in the American Journal of Public Health, online, ahead of print.

Image: REUTERS/Baz Ratner.

This article originally appeared on TheDoctorWillSeeYouNow.com.

This article available online at:

<http://www.theatlantic.com/health/archive/2011/09/with-public-smoking-bans-in-place-hookah-use-is-on-the-rise/245213/>

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Context Sensitive Design

Lot sizes or product types other than those identified as “typical” in this section may be considered. Variations in residential product type or design may be considered on a case-by-case basis in an effort to preserve a property owner’s right to develop and concurrently conserve or preserve valuable open space resources, habitat, or wildlife corridors. The total number of units allowed on a site will be determined by the gross acres of the subject site.

Commercial, Mixed Use, and Industrial Land Uses

The Commercial, Mixed Use, and Industrial land use designations allow a range of nonresidential and mixed use development to support the Town’s position as the economic hub of the Morongo Valley.

Commercial (C) 0.20 to 0.50 FAR

Local and regional serving retail and service uses, including uses such as shopping centers and malls, small commercial centers, hotels, commercial recreation uses such as movie theaters and bowling alleys, restaurants, supermarkets, and personal services. Office uses are also allowed, including financial, legal, insurance, and other professional office uses. Research and development, technology centers, and business parks are also permitted.

Mixed Use (MU) 0.35 to 1.0 FAR and 25 du/acre maximum

Intended for a mix of uses, including commercial, professional office, recreational, and high density residential land uses along SR-62 corridor in concentrated nodes. Its purpose is to allow highly integrated commercial, residential, and office uses that facilitate pedestrian access and walkability. Proximity of residential uses near employment and activity centers can reduce vehicle trips and greenhouse gas emissions. Housing opportunities are also encouraged in these areas, providing walkable accessibility to services and facilities. Development in this designation will require the preparation of a Specific Plan or compliance with a new mixed use zoning designation and associated development standards.

Industrial (I) 0.25 to 1.0 FAR

Industrial and related uses, including warehousing/distribution, assembly and light manufacturing, repair facilities, and supportive retail uses. Preferred development types include master planned business and industrial parks with integrated access and internal circulation. Outdoor storage is also permitted in this designation; however, special screening and design treatments must be applied to outdoor storage within the Rural Mixed Use Special Policy Area for properties on the north side of Skyline Ranch Road.

**TOWN OF YUCCA VALLEY
PLANNING COMMISSION MEETING MINUTES**

JUNE 17, 2008

Vice-Chair Goodpaster called the regular meeting of the Yucca Valley Planning Commission to order at 7:00 p.m.

Commissioners present: Vice-Chair Shannon Goodpaster, Commissioners George Huntington, Steve Willman and Robert Lombardo

Chair McKoy was excused from attendance at the meeting for family reasons.

Vice Chair Goodpaster led the P ledge of Allegiance.

APPROVAL OF AGENDA:

Mr. Willman moved approval of the Agenda, which motion was seconded by Mr. Lombardo and passed unanimously by voice vote of the Commissioners present.

PUBLIC COMMENTS:

None

PUBLIC HEARING:

None

BUSINESS ITEMS:

1. SPECIFIC PLAN 01-05, PARCEL MAP 17455, CONDITIONAL USE PERMIT 06-05, ENVIRONMENTAL ASSESSMENT 09-05 – HOME DEPOT

A request from staff that the Planning Commission discuss, interpret the provisions of the Specific Plan and Commercial Design Guidelines; and provide direction regarding the appropriateness of the use of chain link fencing surrounding the southern detention basin located behind the Home Depot building on Palisade Dr. and identified as APN's 601-201-31 & 601-201-32.

With reference to the complete printed staff report provided in the meeting packets and preserved in the project and meeting files, Associate Planner Robert Kirschmann presented the project discussion to the meeting. He announced that a request was received from the applicant on June 13, 2008 for a continuance of this item to the Planning Commission meeting of July 15, 2008. Staff requests that the item be continued.

Mr. Willman moved that the item be continued to the meeting of July 15, 2008. The motion was seconded by Mr. Lombardo and passed unanimously by voice vote of the Commissioners present.

2. DETERMINATION OF APPROPRIATE LAND USE DESIGNATION FOR A "HOOKAH" BAR/LOUNGE

A discussion of whether "Hookah" Bars are a permitted use, prohibited use or a conditional use in the non-residential zoning districts based upon a verbal request to establish a "Hookah" Bar/Lounge at an undisclosed location within the Town boundaries.

With reference to the complete printed staff report provided in the meeting packets and preserved in the project and meeting files, Associate Planner Robert Kirschmann presented the project discussion to the meeting. A Hookah Lounge is an establishment where patrons share flavored tobacco from a communal Hookah pipe. Some Hookah bars include live entertainment, some serve food and beverages. In order to comply with indoor smoking laws, a majority focus of the business must be dedicated to smoking.

A Hookah Bar is not currently listed in any of the Town's land use classifications. Staff researched surrounding cities and discovered a wide range of approvals. Some cities permit the use as a matter of right while others, specifically Hemet, Indio and Palm Springs, classify them as smoke shops. Riverside and Palm Desert consider them to be cafes. La Quinta, Victorville and Hemet all require a Conditional Use Permit. Current Town regulations do not address smoke shops which have been considered General Retail.

San Bernardino County Health Department verified there are no special requirements or inspections for Hookah Bars unless food is being served. These establishments could, however, be subject to periodic inspections. Some city police departments have expressed concerns with these types of bars. The San Bernardino County Sheriff's Dept. does not have a concern with Hookah Bars.

Staff requests that the Commission discuss and provide direction to staff regarding the following issues:

1. Is this use similar to live entertainment or another land use already specified in the Development Code?
2. Where is this type of business most appropriate to locate? General Commercial, Industrial or other areas?
3. Should a Conditional Use Permit be required to allow this type of use?

Mr. Lombardo commented staff did a nice job with the presentation of the table comparing the various other cities and their approaches to the issue. He requested and received confirmation that Starbucks is classified as a restaurant by the Town and that a Hookah Bar can be similar to a coffee shop in that people congregate, talk and linger there. He requested elaboration of the application of the indoor smoking laws.

Mr. Kirschmann replied the primary focus must be on the smoking of the tobacco and a notice must be posted stating tobacco is smoked on the premises. Mr. Lombardo stated he is concerned about people under the age of 18 being at the facility. Mr. Kirschmann replied some of the other cities required a Conditional Use Permit to establish age limits and hours of operation. Mr. Lombardo requested and received confirmation that a Conditional Use Permit ("CUP") would allow the use and establish limitations on the use and that a restaurant is approved through a Site Plan Review.

Mr. Huntington requested and received confirmation that the present Town Code does not address tobacco shops and no permits are required for them.

Mr. Goodpaster opened the public comments. There being no one wishing to speak, Mr. Goodpaster closed public comments.

Mr. Huntington commented there is a potential for abuse with Hookah Bars. Other jurisdictions address those issues and are re-writing some of their codes. Since no specific regulations exist for Hookah Bars we have no option but to require a CUP. The General Commercial zoning should apply to Hookah Bars to keep them close to or on the highways.

Mr. Willman agreed with the use of a CUP and with the General Commercial zoning districts.

Mr. Lombardo agreed it should be General Commercial and stated we have to be able to control some of the circumstances under which it operates because there is a potential for health problems. It needs to be regulated for hours of operation with age restrictions. There should also be no lingering outside the door with severe penalties if anyone under 18 is admitted. But there is nothing inherently wrong with the concept.

Mr. Goodpaster agreed a CUP should be required and the General Commercial district is the only logical fit for this kind of operation.

Mr. Lombardo moved that the Planning Commission after interpreting existing codes and regulations allow Hookah Bars in the General Commercial land use district subject to a Conditional Use Permit approval. The motion was seconded by Mr. Huntington and passed unanimously by voice vote of the Commissioners present.

CONSENT AGENDA:

3. MINUTES –

Mr. Willman moved to approve as submitted the minutes of the Regular Planning Commission Meeting held June 3, 2008. The motion was seconded by Mr. Lombardo and passed unanimously by voice vote of the Commissioners Present.

STAFF REPORTS AND COMMENTS: None

FUTURE AGENDA ITEMS:

Mr. Kirschmann reported the following items are scheduled for the July 15, 2008 meeting:

- Home Depot chain link fence issue
- An extension of time for Tract Map 16733
- A rear set-back Variance on Buena Vista
- A CUP for a small commercial building on Pueblo Tr at Geronimo Tr.

Deputy Town Manager Shane Stueckle reported the extension of time for a residential development known as Yucca 87 has expired and therefore the Tentative Tract Map has expired.

Mr. Huntington commented that was a Mayer/Luce project and they just filed for a Chapter 7 Bankruptcy.

COMMISSIONER REPORTS AND REQUESTS:

Commissioner Willman questioned the status of the construction site on the Outer Highway east of Washington Mutual. Mr. Kirschmann replied grading permits have been approved but no building plans have been submitted and they may not be proceeding with the project.

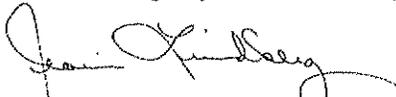
Mr. Willman asked, in that case, if the ground can be treated to prevent erosion. Town Engineer Art da Rosa commented there is a Storm Water Pollution Prevention Plan in place and those conditions are being met. The site is still an eyesore and the fence is in disrepair. Staff has contacted the applicant about the issues but has not heard back about the time schedule for repairs. He will report back to the Commission on the project.

ANNOUNCEMENTS:

Mr. Goodpaster announced that since there are no Agenda Items for a meeting on July 1, 2008; the next regular meeting of the Yucca Valley Planning Commission will be held on Tuesday, July 15, 2008 at 7:00 p.m.

ADJOURNMENT

The meeting adjourned at 7:18 p.m.


Respectfully submitted by,

Jeannie Lindberg
Administrative Assistant III