



AGENDA REPORT

Department: Community Development
Prepared by: David Welch, Associate Planner
Meeting Date: Tuesday, September 6, 2022
Approved by: Brad Raulston, City Manager

SUBJECT:

Public Hearing – Conditional Use Permit (CUP) for the operation of a tobacco specialty business to be located at existing commercial suite, 120 National City Boulevard.

RECOMMENDATION:

Staff recommends approval of the request to operate a tobacco specialty business, subject to the attached recommended conditions. A tobacco specialty business is a conditionally-allowed use within Development Zone 1A of the Downtown Specific Plan.

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

The Planning Commission recommended approval of the Conditional Use Permit by unanimous vote of those present. Commissioners Natividad and Sanchez were absent.

EXPLANATION:

Case File No.: 2022-14 CUP

Location: West side of the 100 block of National City Boulevard

Assessor's Parcel Nos.: 555-020-14

Staff report by: David Welch – Associate Planner

Applicant: Mr. V Smoke Shop

Zoning designation: Downtown Specific Plan / Development Zone 1A

Adjacent use and zoning:

- North: Barber shop / Development Zone 1A
- East: Auto paint and body across National City Blvd. / Development Zone 2
- South: Vacant commercial suite / Development Zone 1A
- West: Fire safety equipment sales and residential across alley / Development Zone 1A

Environmental review: Not a project per California Environmental Quality Act (CEQA) as defined in Section 15378

Executive Summary

The property has an existing commercial building with two suites. The suite addressed 120 National City Boulevard has been vacant with the most recent use a drug addiction non-profit. The new tenant (Mr. V Smoke Shop) proposes to operate a tobacco specialty business that sells imported and domestic cigars and cigar smoking paraphernalia. Proposed hours of operation are 10:00 a.m. to 10:30 p.m. daily.

Site Characteristics

The project site is a suite within a small existing commercial building along National City Boulevard. The property is approximately 6,098 square feet in size. The suite is approximately 896 square feet in size and occupies half of the building, with the remaining space currently vacant. The area is mostly commercial in nature, with a few residences located on the same block as the proposed use.

Proposed Use

The applicant is proposing to sell tobacco products and paraphernalia in an existing 896 square-foot commercial retail suite. Proposed operation hours are 10:00 a.m. to 10:30 p.m. daily.

Analysis

Section 18.30.230 of the Land Use Code (LUC) allows for tobacco specialty businesses with an approved Conditional Use Permit (CUP). Additional requirements for a tobacco specialty business CUP include distance requirements, a restriction on the selling of alcohol or food, and a restriction on allowing minors on the premises without a parent or legal guardian.

As of 2016, the U.S. Food and Drug Administration (FDA) has regulatory authority over cigars and all other tobacco products. The FDA states that “cigars are not a safe alternative to cigarettes and cigar smoke is at least as toxic as cigarette smoke, if not more.” Furthermore, the FDA has proposed product standards prohibiting flavored cigars to prevent youth initiation¹.

While this business proposes to primarily sell cigars, electronic cigarettes and similar products could also be sold under a CUP for a tobacco specialty business. The health effects of these products are a concern to the FDA due to the exposure to the risks of tobacco-related disease and death. In addition, safety problems have been reported including overheating, fires, and explosions, lung injuries, and seizure and other neurological symptoms. “A drastic increase in youth use of e-cigarette products in recent years” has led the FDA to increase prevention efforts.²

The Health and Environmental Justice (HEJ) element of the National City General Plan states that the rates of asthma and chronic obstructive pulmonary disease (COPD) are higher in the 91950 zip code than the rest of San Diego County. These diseases are tied to environmental air

¹ U.S. Food & Drug Administration website (<https://www.fda.gov/tobacco-products/products-ingredients-components/cigars-cigarillos-little-filtered-cigars#:~:text=.FDA%20Regulation%20of%20Cigars.sale%2C%20and%20distribution%20of%20cigars.>)

² U.S. Food and Drug Administration website (<https://www.fda.gov/tobacco-products/products-ingredients-components/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends#Are%20You%20Looking%20for%20General%20Health%20Information%20about%20ENDS%20Products?>)

quality with risk factors stemming from both outdoor air pollution and cigarette smoke. One goal and one policy from the HEJ element are related to air quality and tobacco usage:

Goal HEJ-2: Improved air quality to protect human and environmental health and minimized air quality impacts on sensitive population groups.

Policy HEJ-2.8: Encourage smoke-free workplaces, multi-family housing, parks, and other outdoor gathering places to reduce exposure to second-hand smoke.

The above goal and policy do not specifically address the sale of tobacco or tobacco-related products. However, they are intended to reduce exposure of the public to the harmful effects of poor air quality and smoking. Conditions of approval are proposed to reduce this risk with restrictions related to products and advertising that may lead to youth initiation such as e-cigarettes and flavored cigars.

Land Use – A tobacco specialty business is defined as any business the primary use of which is the use and/or sale of tobacco products or paraphernalia. At least 40% of the floor area must be dedicated to the sale of these items to be considered this use. The proposed business is requesting retail sales of these items in excess of 40% of the floor area. The subject property is located within the Downtown Specific Plan in Development Zone 1A. A commercial business, including retail sales, is a permitted use in this zone.

Additional Requirements – Section 18.030.230 of the LUC requires a one thousand-foot (1,000) distance from any school, playground, recreation center or facility, childcare center, or library in the City. No such land uses are within one thousand feet of the subject property. The applicant proposes to only sell to clients 21 years old or older. No alcohol or food sales are proposed for this business. Conditions of approval placing restrictions on the age of customers and prohibiting the sale of alcohol and food are attached.

Mailing – All property owners and occupants within a distance of 300 feet are required to be notified of a public hearing for CUP applications. Notice of this public hearing was sent to 86 occupants and owners.

Public Comments

One public comment was received in response to the public hearing held by Planning Commission on July 18, 2022.

Department Comments

Comments were received from the Building Division and Fire Department. These comments are related to physical improvements of the commercial suite and have been included as conditions of approval. The applicant has not proposed any commercial tenant improvements for the property at this time. In addition, the Institute for Public Strategies stated they have no comments.

Findings for Approval

The Municipal Code contains six required findings for CUPs as follows:

1. The proposed use is allowable within the applicable zoning district pursuant to a Conditional Use Permit and complies with all other applicable provisions of the Land Use Code.

The use is permitted within Development Zone 1A of the Downtown Specific Plan pursuant to a CUP and the proposed use meets the required standards in the Land Use Code for a tobacco specialty business, as discussed in the staff report.

2. The proposed use is consistent with the General Plan and any applicable specific plan.

Tobacco specialty businesses are permitted, subject to a CUP, by the Land Use Code, which is consistent with the General Plan. Commercial businesses are a permitted use in Development Zone 1A of the Downtown Specific Plan.

3. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity.

No expansion of the building is proposed. The proposal involves an existing commercial space, which was previously analyzed for traffic impacts when it was constructed.

4. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

The site has sufficient access to streets and highways that are adequate in width and pavement type of traffic generated by the proposed use, since National City Boulevard is classified as an arterial street in the Circulation Element, and the use will be within an existing retail suite and thus is not expected to result in an appreciable increase in traffic.

5. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone in which the property is located.

The proposed use will not have an adverse effect upon adjacent or abutting properties, since the proposed retail use is compatible with nearby businesses; and since the proposed use will be subject to conditions that limit the sale and display of tobacco products and/or electronic cigarettes to minors.

6. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

The project is not considered a project under CEQA, as no development is proposed. In addition, the proposed use is similar to other commercial uses in the area, which are permitted in Development Zone 1A.

Finding for Denial

Due to the health risks of tobacco usage, there is also a finding for denial as follows:

1. The proposed use is not deemed essential and desirable to the public convenience and welfare, since the proposed use for the sale and display of tobacco products and paraphernalia may lead to more people trying the products, which are known to cause disease and lead to premature death.

Conditions of Approval

Standard Conditions of Approval have been included with this permit as well as conditions specific to the operation of a tobacco specialty business.

CEQA

The project is not subject to CEQA as the proposal involves a retail use on a commercial-zoned property which allows retail uses by right. No physical or environmental impacts would occur as a result of approval of this application.

Summary

A tobacco specialty store is a retail use, permitted with the issuance of a CUP in Development Zone 1A of the Downtown Specific Plan. Concerns related to advertising and sales to minors or of incidental drug use are addressed by Conditions of Approval. The business would also be required to comply with all applicable federal government regulations.

Options

1. Approve 2022-14 CUP subject to the conditions listed within, based on the attached findings, or findings to be determined by the City Council; or
2. Deny 2022-14 CUP based on the attached finding or findings to be determined by the City Council; or,
3. Continue the item to a specific date in order to obtain additional information.

FINANCIAL STATEMENT:

Not applicable

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Not Applicable

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review.CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

ORDINANCE:

Not Applicable

EXHIBITS:

- Exhibit A – Overhead Map
- Exhibit B - 2022-14 CUP Staff Report
- Exhibit C - PC Resolution No. 2022-15
- Exhibit D - Exhibit A to the PC Report – Floor Plan
- Exhibit E - PowerPoint Slides from PC meeting
- Exhibit F - Resolution