



## Planning Commission Minutes

Meeting of April 7, 2014  
Planning Commission Meeting  
City Council Chambers, Civic Center  
1243 National City Boulevard  
National City, CA 91950

These minutes have been abbreviated. Video recordings of the full proceedings are on file and available to the public.

### Agenda Items

The meeting was called to order by Chairwoman Pruitt at 6:00 p.m.

### **Roll Call**

Commissioners Present: Garcia, Baca, Bush, Pruitt, Alvarado, Flores, DeLaPaz

Staff Also Present: Deputy City Attorney Jennifer Knight, Executive Director Brad Raulston, Principal Planner Martin Reeder

**Pledge of Allegiance** by Commissioner Dela Paz

### **Approval of Minutes**

1. Approval of Minutes of the Meeting held on March 17, 2014.

Motion by Baca, 2<sup>nd</sup> by Alvarado, to approve the Minutes from the meeting of March 17, 2014.

**Motion carried by unanimous vote.**

## **Approval of Agenda**

2. Approval of Agenda for the Meeting on April 7, 2014.

Motion by Alvarado, 2<sup>nd</sup> by Bush for approval of the Agenda for the meeting of April 7, 2014.

**Motion carried by unanimous vote.**

## **ORAL COMMUNICATION**

None

## **PRESENTATIONS**

3. Presentation of Rosenberg's Rules of Order moved to end of the Agenda

## **OTHER BUSINESS**

4. Review of a Street Vacation for the vacation of a portion of alleyway bisecting the block between West 16<sup>th</sup> and West 18<sup>th</sup> Streets and between Cleveland and McKinley Avenues for conformance with the General Plan. (Case File No.: 2013-30 SC).

Architect for the Applicant, Randall Ehm answered questions from the commissioners. Owner of YYK, Paul Ralph, answered additional questions from the commissioners. No public speakers and no speaker slips were submitted for this item.

Motion by Baca, 2<sup>nd</sup> by Alvarado to find the Street Vacation request for the vacation of a portion of alleyway bisecting the block between West 16<sup>th</sup> and West 18<sup>th</sup> Streets and between Cleveland and McKinley Avenues in conformance with the General Plan. (Case File No.: 2013-30 SC).

**Motion carried by unanimous vote.**

5. Resolution 8a-2014 taking action on a review of a Street Vacation for the vacation of a portion of alleyway bisecting the block between West 16<sup>th</sup> and West 18<sup>th</sup> Streets and between Cleveland and McKinley Avenues for conformance with the General Plan. (Case File No.: 2013-30 SC).

Motioned by Baca, 2<sup>nd</sup> by Alvarado to approve Resolution 8a-2014 taking action on a review of a Street Vacation for the vacation of a portion of alleyway bisecting the block between West 16<sup>th</sup> and West 18<sup>th</sup> Streets and between Cleveland and McKinley Avenues for conformance with the General Plan. (Case File No.: 2013-30 SC).

**Motion carried by unanimous vote.**

## **PUBLIC HEARINGS**

6. Public Hearing – Conditional Use Permit for the expansion of an existing auto body shop located at 2013 Haffley Avenue (Case File No.: 2014-03 CUP)

Presented by Principal Planner Martin Reeder

Applicant Michael Bates, Caliber Collision, addressed questions presented by the commissioners.

No public speakers and no speaker slips were submitted for this item.

Motion by Dela Paz, 2<sup>nd</sup> by Alvarado to close the public hearing and approve the Conditional Use Permit for the expansion of an existing auto body shop located at 2013 Haffley Avenue (Case File No.: 2014-03 CUP)

**Motion carried by unanimous vote.**

7. Resolution 9-2014 taking action on a Conditional Use Permit for the expansion of an existing auto body shop located at 940 West 19<sup>th</sup> Street (Case File No.: 2014-03 CUP).

Motion by Dela Paz, 2<sup>nd</sup> by Flores to approve Resolution 9-2014 taking action on a Conditional Use Permit for the expansion of an existing auto body shop located at 940 West 19<sup>th</sup> Street (Case File No.: 2014-03 CUP).

**Motion carried by unanimous vote.**

8. Public Hearing – Coastal Development Permit for the vacation of a portion of alleyway bisecting the block between West 16<sup>th</sup> and West 18<sup>th</sup> Streets and between Cleveland and McKinley Avenues. (Case File No.: 2013-30 CDP).

Presented by Principal Planner Martin Reeder

Architect for Applicant Randall Ehm and property owner Paul Ralph answered questions from the commissioners

No public speakers and no speaker slips were submitted for this item.

Motion by Baca, 2<sup>nd</sup> by Flores to close the public hearing and approve the Coastal Development Permit for the vacation of a portion of alleyway bisecting the block between West 16<sup>th</sup> and West 18<sup>th</sup> Streets and between Cleveland and McKinley Avenues. (Case File No.: 2013-30 CDP).

**Motion carried by unanimous vote.**

9. Resolution 10-2014 taking action on a Coastal Development Permit for the vacation of a portion of alleyway bisecting the block between West 16<sup>th</sup> and West 18<sup>th</sup> Streets, and between Cleveland and McKinley Avenues (Case File No.: 2013-30 CDP)

Motion by Baca, 2<sup>nd</sup> by Alvarado to approve Resolution 10-2014 taking action on a Coastal Development Permit for the vacation of a portion of alleyway bisecting

the block between West 16<sup>th</sup> and West 18<sup>th</sup> Streets, and between Cleveland and McKinley Avenues (Case File No.: 2013-30 CDP)

**Motion carried by unanimous vote.**

## PRESENTATIONS

3. Rosenberg's Rules of Order presented by City Attorney Claudia Silva

## STAFF REPORTS

Deputy City Attorney: No report

Executive Director: No report

Principal Planner: No Report

### **Commissioners:**

Garcia – No Report

Baca – No report.

Bush – Was accepted into the Marine Corps Officer Training School and will be leaving in June for boot camp. Plans to work in the reserves.

Alvarado: Questions about plans for the LA Fitness building. Hearing that it may close in July. If the use is changing will it be presented to the Planning Commission? Mr. Reeder will follow up and report back to the commission.

Flores – Asked when the new Social Security building is going to open. Mr. Reeder stated that the process was taking longer than expected, but that it was moving along. She congratulated Commissioner Bush on his acceptance.

Dela Paz – No report

Pruitt – Would like Mary Donato of the Social Security Administration to give a presentation to the public prior to the ribbon cutting so they may have opportunity for a walk through and to have information on how it works. Mr. Reeder will follow up

Adjournment at 7:20 p.m. to next regularly scheduled meeting on April 21, 2014.

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CHAIRPERSON



# Planning Commission Agenda

Meeting of May 5, 2014 6:00 PM.  
Council Chambers, Civic Center  
1243 National City Boulevard  
National City, CA 91950

Welcome to the Planning Commission meeting. The National City Planning Commission conducts its meeting in the interest of community benefit. Your participation is helpful. These proceedings are video recorded.

## Roll Call

**Pledge of Allegiance Led by Commissioner Alvarado**

## Approval of Minutes

1. Approval of Minutes of the Meeting held on April 7, 2014.

## Approval of Agenda

2. Approval of Agenda for the Meeting on May 5, 2014.

## ORAL COMMUNICATIONS (3 MINUTE TIME LIMIT).

NOTE: Under State law, items requiring Commission action must be brought back on a subsequent agenda unless they are of a demonstrated emergency or urgent nature.



The Planning Commission requests that all Cell Phones and Pagers be turned off during the meeting.

*Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the Planning Division at (619) 336-4310 to request a disability-related modification or accommodation. Notification 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.*

## **PRESENTATIONS**

### **OTHER BUSINESS**

3. Certificate of Compliance and Parcel Map Waiver for the subdivision of an existing commercial property into three parcels located at 2414-2424 Hoover Avenue (Case File No.: 2014-06 CC).
4. Resolution 11-2014 taking action on a Certificate of Compliance and Parcel Map Waiver for the subdivision of an existing commercial property into three parcels located at 2414-2424 Hoover Avenue (Case File No.: 2014-06 CC).
5. Interpretation regarding classification of electronic cigarettes.

### **PUBLIC HEARINGS**

6. Public Hearing – Conditional Use Permit for a tobacco specialty shop located in South Bay Plaza at 1430 E. Plaza Blvd., Suite E7B (Case File No.: 2014-04 CUP).
7. Resolution 12-2014 taking action on a Conditional Use Permit for a tobacco specialty shop located in South Bay Plaza at 1430 E. Plaza Blvd., Suite E7B (Case File No.: 2014-04 CUP).
8. Public Hearing – Conditional Use Permit modification and Zone Variance for less than required parking for an apartment complex located at 2525 Highland Avenue (Case File No.: 2014-05 CUP, Z).

### **STAFF REPORTS**

City Attorney

Executive Director

Principal Planner

Commissioners

Chairperson

### **ADJOURNMENT**

Adjournment to next regularly scheduled meeting on May 19, 2014



CITY OF NATIONAL CITY - PLANNING DEPARTMENT  
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

**PLANNING COMMISSION STAFF REPORT**

**Title:** CERTIFICATE OF COMPLIANCE AND PARCEL MAP WAIVER FOR THE SUBDIVISION OF AN EXISTING COMMERCIAL PROPERTY INTO THREE PARCELS LOCATED AT 2414-2424 HOOVER AVENUE.

**Case File No.:** 2014-06 CC

**Property Location:** Southport Business Center

**Assessor's Parcel No.:** 562-340-15

**Staff report by:** Martin Reeder, AICP – Principal Planner

**Applicant:** HG Fenton Company

**Zoning designation:** Major Mixed-Use Corridor (MXC-2)

**Project size:** 3.12 acres

**Adjacent land use/zoning:**

**North:** Office Building/ITT Tech across Mile of Cars Way / MCR-2 (Multi-Use Commercial-Residential)

**East:** Office Use / MXC-2

**South:** Southport Business Center / MXC-2 and IL (Light Industrial)

**West:** Denny's across Southport Way / MXC-2

**Environmental review:** Exempt pursuant to Class 5, Section 15315, Minor Land Divisions

## **BACKGROUND**

### **Site Characteristics**

The 3.12-acre project site is developed with four separate buildings and 140 parking spaces. The property is part of the Southport Business Center located south of Mile of Cars Way and west of Hoover Avenue, and is within the MXC-2 (Major Mixed-Use Corridor) zone. A Conditional Use Permit (CUP) was recently approved for a drive-through coffee shop at 404 Mile of Cars Way (Starbucks). The CUP will result in the loss of four parking spaces for a total of 136.

### **Proposal**

The applicant is proposing to subdivide the property into three new parcels. The sizes of the new lots would be as follows:

- Parcel 1 – 0.7 acres (30,492 square feet)
- Parcel 2 – 0.7 acres (30,492 square feet)
- Parcel 3 – 1.7 acres (74,052 square feet)

The lot was part of a legal subdivision created in 1974, around the time the property was originally developed. Being that the original subdivision would have been subject to the City's Subdivision Ordinance at that time, the applicant is requesting a waiver from the Tentative Parcel Map requirement.

### **Analysis**

Section 17.03.040 (Waiver of parcel map procedures) of the Municipal Code states that under certain circumstances, the requirement that a parcel map be prepared may be waived by the Planning Commission, if requested by the subdivider, for the following:

1. The property is a division of real property interests therein created by probate, eminent domain procedures, partition, or other civil judgments or decrees; or,
2. The property to be divided is a result of conveyance of land, or interest therein, to or from a public agency for a public purpose, such as school sites, public building sites, or rights-of-way for streets, sewers, utilities, drainage, etc.; or,
3. Any other division of real property which would otherwise require a parcel map.

Although a waiver is being requested, the applicant must still file a Tentative Parcel Map (Exhibit A), which must contain a written waiver request. For approval of the request, the Subdivision Ordinance requires the Commission to find that the proposed division of land complies with the requirements as to area, improvement and design,



floodwater drainage control, sanitary disposal facilities, water supply availability, appropriate improved public roads, environmental protection and other requirements of the Subdivision Map Act and Title 17 of the National City Municipal Code.

Lot Area

The minimum lot size in the MXC-2 zone is 5,000 square feet. All three new lots would be in excess of 30,000 square feet. Therefore, the subdivision request is compliant with the minimum lot size requirement.

Improvement and design

Title 17.07.040 requires the following with regard to design of lots:

1. All lots shall front on a public street. All three lots have frontage on either Mile of Cars Way or Hoover Avenue.
2. The side line of lots shall be as nearly at right angles or radial to the street upon which the lots face as practicable. All new lot lines are at right angles to the street.
3. The width and the minimum area of each residential lot shall be governed by Title 18 of this code (Zoning). All lots exceed the minimum lot area (see above) and minimum lot width of 50 feet (the minimum proposed lot line dimension would be 134 feet).
4. Lots must not be cut by a city boundary line. City boundary lines may be lot lines or centerlines of streets or alleys. No lot lines are cut by the City boundary line.

The following items have been verified by the Engineering Department:

Floodwater drainage control

The lots are already graded and improved. In addition, all curbs, gutters, and sidewalks are also in place. All areas of the existing property drain to existing drainage facilities designed to accommodate floodwater. As no physical improvements are being constructed, the new lots will continue to drain to existing drainage facilities.

Sanitary disposal facilities, water supply availability

All four buildings on the existing property have separate sewer (sanitary disposal) and water service in place. As no physical improvements are being constructed, the new lots will continue to provide sanitary disposal and water supply to each building.

Appropriate improved public roads

The property is flanked by Mile of Cars Way – an arterial street, and Hoover Avenue – a collector street. All three proposed lots would have access to at least one of these two public roads.

Environmental protection

There are no areas of floral or faunal habitat in the area that would be affected by the proposed subdivision. Furthermore, the proposed subdivision is exempt pursuant to Class 5, Section 15305, Minor Alterations to Land Use Limitations, of the California Environmental Quality Act (CEQA).

Other requirements

As part of the application, the applicant submitted a reciprocal access and parking agreement, which will be recorded as an easement on the Final Map. This will ensure that all of the existing parking spaces on the property will continue to be accessible to all users, regardless of which property they are located. Conditions are also included regarding Final Map requirements, which will be administered by the Engineering Department during Final Map Review.

Summary

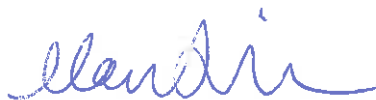
The proposed parcel map waiver is consistent with the Subdivision Ordinance and applicable City standards. Conditions require a Final Map and for all requirements of the Subdivision Ordinance to be met, all of which are already met. Each new parcel would be in excess of the minimum 5,000 square-foot lot size requirement, and would also have in excess of 50 feet of lot width. All of the existing buildings have water, sewer, and drainage facilities. No physical changes are being proposed, therefore the existing drainage and street improvements (curbs, gutters, sidewalks, and driveways) would continue to be maintained.

RECOMMENDATION

Approve 2014-06 CC subject to the conditions listed below, based on attached finding.

ATTACHMENTS

1. Recommended Findings for Approval
2. Recommended Conditions of Approval
3. Location Map
4. Notice of Exemption
5. Applicant's Plans (Exhibit A, Case File No. 2014-06 CC dated 4/14/2014)



MARTIN REEDER, AICP  
Principal Planner



BRAD RAULSTON  
Executive Director

**RECOMMENDED FINDINGS FOR APPROVAL**  
**OF THE PARCEL MAP WAIVER**  
2014-06 CC – 2414-2424 HOOVER AVENUE

1. That the proposed division of land complies with the requirements as to area, because the minimum lot size in the MXC-2 zone is 5,000 square feet and all three new lots would be in excess of 30,000 square feet.
2. That the proposed division of land complies with the requirements as to improvement and design, because all three lots have frontage on either Mile of Cars Way or Hoover Avenue, all new lot lines are at right angles to the street, all lots exceed the minimum lot area and minimum lot width of 50 feet (the minimum proposed lot line dimension would be 134 feet), and no lot lines are cut by the City boundary line.
3. That the proposed division of land complies with the requirements as to floodwater drainage control, sanitary disposal facilities, and water supply availability, because the lots are already graded and improved, all curbs, gutters, and sidewalks are already in place, all areas of the existing property drain to existing drainage facilities designed to accommodate floodwater, and the new lots will continue to drain to existing drainage facilities.
4. That the proposed division of land complies with the requirements as to appropriate improved public roads, because the property is flanked by Mile of Cars Way – an arterial street, and Hoover Avenue – a collector street, so all three proposed lots would have access to at least one of these two public roads.
5. That the proposed division of land complies with the requirements as to environmental protection, because there are no areas of floral or faunal habitat in the area that would be affected by the proposed subdivision. Furthermore, the proposed subdivision is exempt pursuant to Class 5, Section 15305, Minor Alterations to Land Use Limitations, of the California Environmental Quality Act (CEQA).
6. That the proposed division of land complies with the requirements as to other requirements of the Subdivision Map Act and Title 17 of the National City Municipal Code, because the applicant submitted a reciprocal access and parking agreement, which will be recorded as an easement on the Final Map in order to ensure that all of the existing parking spaces on the property will continue to be accessible to all users, regardless of which property they are located.

**RECOMMENDED CONDITIONS OF APPROVAL**  
**2014-06 CC – 2414-2424 HOOVER AVENUE**

1. This Certificate of Compliance authorizes the subdivision of Assessor's Parcel Number 562-340-15 into three new parcels. Except as required by conditions of approval, all plans submitted for permits associated with the project shall conform to Exhibit A, Case File No. 2014-06 CC dated 4/14/2014.
2. Within four (4) days of approval, pursuant to Fish and Game Code 711.4 and the California Code of Regulations, Title 14, Section 753.5, the applicant shall pay all necessary environmental filing fees for the San Diego County Clerk. **Checks shall be made payable to the County Clerk** and submitted to the National City Planning Department.
3. A Final Map shall be submitted to the City Engineering Department. The Final Map shall meet all of the requirements of the Subdivision Map Act, and the City of National City Municipal Codes, including certification, acknowledgement, complete boundary information and monumentation.
4. The Final Map shall include a statement from the County Tax Collector that all taxes due have been paid or that a tax bond or other adequate form of security assuring payments of all taxes which are a lien but not yet payable has been filed with the County.
5. The Final Map shall show that the proposed division of land complies with the requirements as to area, improvement and design, floodwater drainage control, sanitary disposal facilities, water supply availability, appropriate improved public roads, environmental protection and other requirements of the Subdivision Map Act and Title 17 (Subdivisions) of the National City Municipal Code.
6. The Final Map shall show a reciprocal access and parking easement for pedestrian and vehicular access and for vehicle parking in, on, over and across the parking areas, access roads, driveways, pedestrian walkways and similar areas located on the property for the benefit of the current owners and all future owners of each parcel. The easement shall be approved as to form by the City Attorney.



CITY OF NATIONAL CITY - PLANNING DEPARTMENT  
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

**NOTICE OF EXEMPTION**

TO: County Clerk  
County of San Diego  
P.O. Box 1750  
1600 Pacific Highway, Room 260  
San Diego, CA 92112

**Project Title:** 2014-06 CC

**Project Location:** 2414-2424 Hoover Avenue, National City, CA 91950

**Contact Person:** Martin Reeder **Telephone Number:** (619) 336-4313

**Description of Nature, Purpose and Beneficiaries of Project:**

Certificate of Compliance and Parcel Map Waiver for the subdivision of an existing commercial property into three parcels located at 2414-2424 Hoover Avenue.

**Applicant Name and Address:**

HG Fenton Co.  
c/o: Brian Gates  
7577 Mission Valley Road, suite 200  
San Diego, CA 92108

**Telephone Number:**

(619) 400-0169

**Exempt Status:**

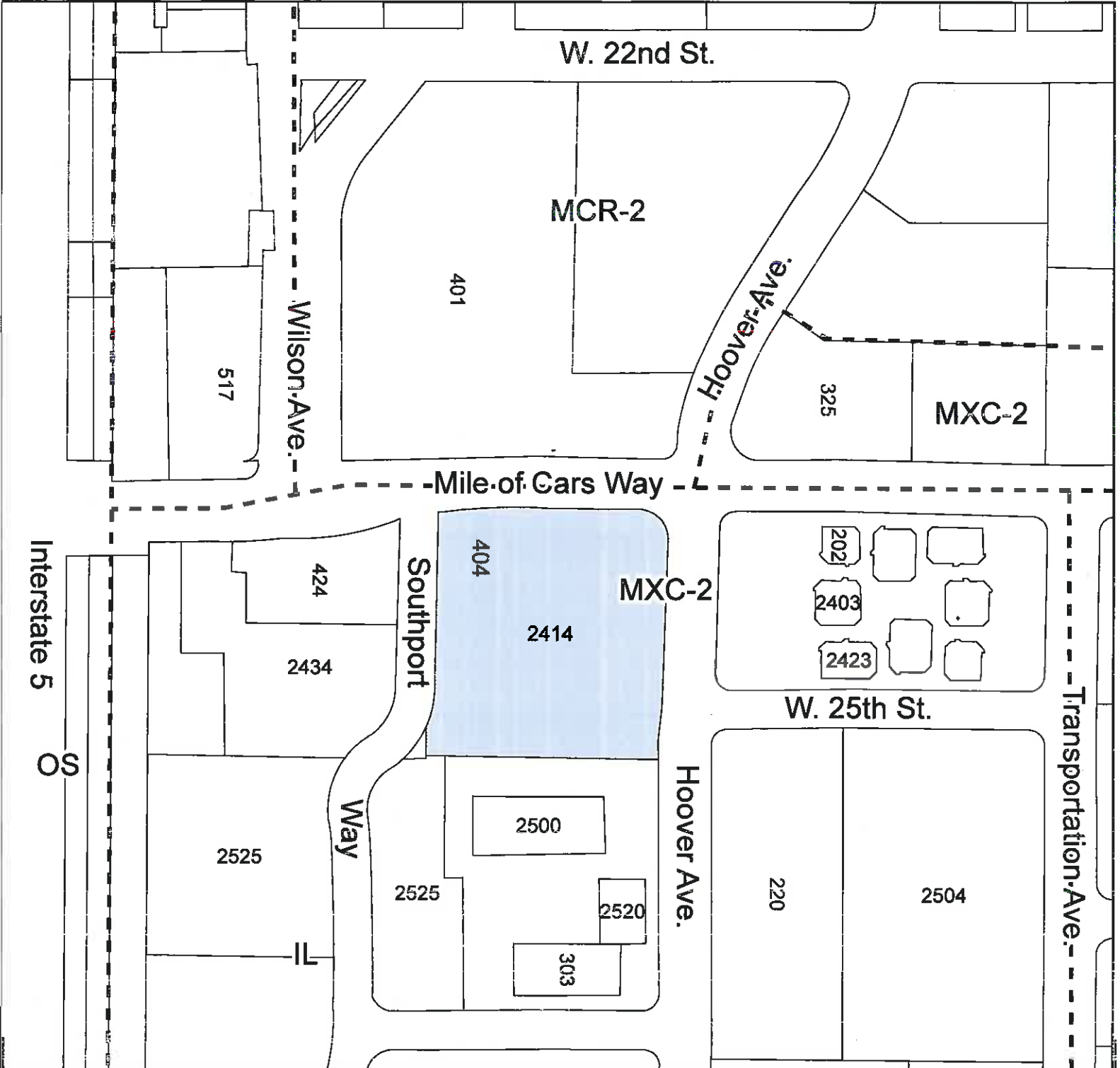
**Categorical Exemption – Section 15315 (Minor Land Divisions)**



**Reasons why project is exempt:**

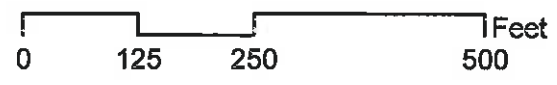
It can be seen with certainty that the project will not have a significant effect on the environment. The project is a minor land division within the city limits of National City, an urbanized area. The 3.12-acre property is fully developed and has no value as habitat. The division fulfills the General Plan's intent for this land use designation with regard to commercial/office development.

Date:

MARTIN REEDER, AICP  
Principal Planner



 Project Locations  
 Zone Boundary



APN:  
562-340-15

# Planning Commission Location Map

2014-06 CC

RESOLUTION 11-2014

A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF NATIONAL CITY, CALIFORNIA,  
APPROVING A CERTIFICATE OF COMPLIANCE AND  
PARCEL MAP WAIVER FOR THE SUBDIVISION OF AN EXISTING  
COMMERCIAL PROPERTY INTO THREE PARCELS  
LOCATED AT 2414-2424 HOOVER AVENUE.  
APPLICANT: HG FENTON COMPANY  
CASE FILE NO. 2014-06 CC

WHEREAS, application was made for approval of a Certificate of Compliance and Parcel Map Waiver for a three-lot split at 2414-2424 Hoover Avenue on property generally described as:

Lots 17 to 20 inclusive in Block 11 of Wilbur's Additions, according to Map thereof No. 251, filed in the office of the County Recorder of San Diego County.

WHEREAS, the Planning Commission of the City of National City considered a Certificate of Compliance and Parcel Map Waiver for a three-lot split at 2414-2424 Hoover Avenue at a hearing held on May 5, 2014, at which time oral and documentary evidence was presented; and,

WHEREAS, at said public hearings the Planning Commission considered the staff report contained in Case File No. 2014-06 CC, which is maintained by the City and incorporated herein by reference along with evidence and testimony at said hearing; and,

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

WHEREAS, the action recited herein is found to be essential for the preservation of public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of National City, California, that the testimony and evidence presented to the Planning Commission at the hearing held on May 5, 2014, support the following findings:

1. That the proposed division of land complies with the requirements as to area, because the minimum lot size in the MXC-2 zone is 5,000 square feet and all three new lots would be in excess of 30,000 square feet.
2. That the proposed division of land complies with the requirements as to improvement and design, because all three lots have frontage on either Mile of

Cars Way or Hoover Avenue, all new lot lines are at right angles to the street, all lots exceed the minimum lot area and minimum lot width of 50 feet (the minimum proposed lot line dimension would be 134 feet), and no lot lines are cut by the City boundary line.

3. That the proposed division of land complies with the requirements as to floodwater drainage control, sanitary disposal facilities, and water supply availability, because the lots are already graded and improved, all curbs, gutters, and sidewalks are already in place, all areas of the existing property drain to existing drainage facilities designed to accommodate floodwater, and the new lots will continue to drain to existing drainage facilities.
4. That the proposed division of land complies with the requirements as to appropriate improved public roads, because the property is flanked by Mile of Cars Way – an arterial street, and Hoover Avenue – a collector street, so all three proposed lots would have access to at least one of these two public roads.
5. That the proposed division of land complies with the requirements as to environmental protection, because there are no areas of floral or faunal habitat in the area that would be affected by the proposed subdivision. Furthermore, the proposed subdivision is exempt pursuant to Class 5, Section 15305, Minor Alterations to Land Use Limitations, of the California Environmental Quality Act (CEQA).
6. That the proposed division of land complies with the requirements as to other requirements of the Subdivision Map Act and Title 17 of the National City Municipal Code, because the applicant submitted a reciprocal access and parking agreement, which will be recorded as an easement on the Final Map in order to ensure that all of the existing parking spaces on the property will continue to be accessible to all users, regardless of which property they are located.

BE IT FURTHER RESOLVED that the application for the Certificate of Compliance and Parcel Map Waiver is approved pursuant to National City Municipal Code 17.03.040 subject to the following conditions:

1. This Certificate of Compliance authorizes the subdivision of Assessor's Parcel Number 562-340-15 into three new parcels. Except as required by conditions of approval, all plans submitted for permits associated with the project shall conform to Exhibit A, Case File No. 2014-06 CC dated 4/14/2014.
2. Within four (4) days of approval, pursuant to Fish and Game Code 711.4 and the California Code of Regulations, Title 14, Section 753.5, the applicant shall pay all necessary environmental filing fees for the San Diego County Clerk. **Checks shall be made payable to the County Clerk** and submitted to the National City Planning Department.
3. A Final Map shall be submitted to the City Engineering Department. The Final Map shall meet all of the requirements of the Subdivision Map Act, and the City of



National City Municipal Codes, including certification, acknowledgement, complete boundary information and monumentation.

4. The Final Map shall include a statement from the County Tax Collector that all taxes due have been paid or that a tax bond or other adequate form of security assuring payments of all taxes which are a lien but not yet payable has been filed with the County.
5. The Final Map shall show that the proposed division of land complies with the requirements as to area, improvement and design, floodwater drainage control, sanitary disposal facilities, water supply availability, appropriate improved public roads, environmental protection and other requirements of the Subdivision Map Act and Title 17 (Subdivisions) of the National City Municipal Code.
6. The Final Map shall show a reciprocal access and parking easement for pedestrian and vehicular access and for vehicle parking in, on, over and across the parking areas, access roads, driveways, pedestrian walkways and similar areas located on the property for the benefit of the current owners and all future owners of each parcel. The easement shall be approved as to form by the City Attorney.

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted forthwith to the applicant.

BE IT FURTHER RESOLVED that this resolution shall become effective and final upon adoption, unless appealed pursuant to Section 18.12.060 of the City of National City Municipal Code.

**CERTIFICATION:**

This certifies that the Resolution was adopted by the Planning Commission at their meeting of May 5, 2014, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

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CHAIRPERSON



CITY OF NATIONAL CITY - DEVELOPMENT SERVICES DEPARTMENT  
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

**PLANNING COMMISSION STAFF REPORT**

Title: INTERPRETATION REGARDING CLASSIFICATION OF ELECTRONIC CIGARETTES.

Case File No.: 2014-04 CUP

Location: Citywide

Staff report by: Martin Reeder, AICP – Principal Planner

**BACKGROUND**

Vapure USA, the applicant for Item No. 6 on the agenda, is requesting to operate a retail business that sells electronic cigarette products (electronic cigarettes, batteries, atomizers, and eLiquid) and accessories (lanyards, apparel, stickers, and custom wraps). Staff has determined based on that application and several other recent inquiries that electronic cigarette retailers and the like come under the umbrella of “tobacco specialty shops”, a conditionally-allowed use. The Title 18 Glossary (18.50.010) defines “tobacco specialty shop” as follows:

“Tobacco specialty shop” means any business, the primary use of which is the sale of tobacco products or tobacco related paraphernalia. A business shall be determined a tobacco specialty shop when more than forty percent of its retail floor area is devoted to the display and sales of tobacco products and/or paraphernalia.

Staff is of the opinion that stores meeting the above classification who sell electronic cigarettes meet the definition of tobacco specialty stores based on the *spirit and intent* of the Land Use Code.

Section 18.10.050 of the Land Use Code sets forth requirements and allows for interpretations of the Code that can be made by the Planning Commission or staff. Although staff has made an interim interpretation, it would be appropriate for the Planning Commission to make a formal interpretation on the matter, given the current application for a Conditional Use Permit (CUP) for a tobacco specialty store (Item No. 6).

## Analysis

Electronic cigarettes (e-cigarettes), personal vaporizers (PV), or electronic nicotine delivery systems (ENDS), collectively known as electronic cigarettes, are battery-powered devices which simulate tobacco smoking. These devices generally use a heating element (atomizer) that vaporizes a liquid solution. Some solutions contain a mixture of nicotine and flavorings, while others release a flavored vapor without nicotine. e-Cigarettes are partially regulated by the U.S Food and Drug Administration (FDA); e-Cigarettes are considered "other tobacco products", which are subject to the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act. However, only e-cigarettes that are marketed for therapeutic purposes are currently regulated by the FDA Center for Drug Evaluation and Research (CDER).<sup>1</sup>

Based on the determination by the FDA that e-Cigarettes are classified under the same umbrella as traditional cigarettes and other tobacco products, staff is of the opinion that they should be included in the definition of tobacco products, as noted in the Land Use Code glossary term of "tobacco specialty shop". Although some electronic cigarettes have the ability to deliver non-nicotine products, it is generally impossible to tell without chemical analysis if the liquid contains nicotine or not. Therefore, it is assumed that all electronic cigarettes deliver and/or are capable of delivering nicotine and should therefore be regulated as such. Including electronic cigarettes in the definition will make the rule more clear.

It should be noted that retail stores that sell electronic cigarettes would only be subject to a CUP if the sales area devoted to such products exceeds 40% of the total sales area.

## General Plan Consistency

There are several Land Use Policies in the General Plan that focus on reducing adverse health effects, reducing exposure to smoking, and raising awareness of healthy behaviors and physical fitness. These include Health & Environmental Justice Policies 1.2, 2.8, and 3.5. Therefore, requiring that purveyors of electronic cigarettes comply with the same regulations concerning tobacco-related products is consistent with General Plan policy. However, it should be pointed out that the FDA states on their website that e-cigarettes have not been fully studied so consumers currently don't know:

- The potential risks of e-cigarettes when used as intended,
- How much nicotine or other potentially harmful chemicals are being inhaled during use, or
- If there are any benefits associated with using these products.

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<sup>1</sup> U.S. Food and Drug Administration website  
(<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>)

Additionally, the FDA states that it is not known if e-cigarettes may lead young people to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death.

### Summary

Electronic cigarettes are similar to traditional tobacco-related products with regard to government regulation and the concerns related to potential health effects. As such, it would make sense to regulate the sale of such products similarly to traditional tobacco products. If interpreted as such, existing Land Use Code language would be modified during the next amendment process.

### RECOMMENDATION

1. Determine, based on attached findings, that electronic cigarettes, including personal vaporizers or other electronic nicotine delivery systems, are similar to traditional tobacco-related products with regard to government regulation and the concerns related to potential health effects and, as such, should be regulated the same as traditional tobacco-related products; or
2. Determine, based on findings to be determined by the Planning Commission, that electronic cigarettes, including personal vaporizers or other electronic nicotine delivery systems, are not similar to traditional tobacco-related products with regard to government regulation and the concerns related to potential health effects and, as such, should not be regulated the same as traditional tobacco-related products.



MARTIN REEDER, AICP  
Principal Planner



BRAD RAULSTON  
Executive Director

## **RECOMMENDED FINDINGS – BASIS FOR INTERPRETATION**

1. That electronic cigarettes, including personal vaporizers or other electronic nicotine delivery systems, are similar to traditional tobacco-related products with regard to government regulation and the concerns related to potential health effects, since the U.S. Food and Drug Administration classifies electronic cigarettes as "other tobacco products" subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act, the same as traditional tobacco-related products.
2. That regulation of electronic cigarettes the same way as for traditional tobacco-related products is consistent with the General Plan and all applicable Specific Plans, since Land Use Policies in the General Plan focus on reducing adverse health effects, reducing exposure to smoking, and raising awareness of healthy behaviors and physical fitness.



CITY OF NATIONAL CITY - PLANNING DEPARTMENT  
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

**PLANNING COMMISSION STAFF REPORT**

**Title:** PUBLIC HEARING – CONDITIONAL USE PERMIT  
FOR A TOBACCO SPECIALTY SHOP LOCATED IN  
SOUTH BAY PLAZA AT 1430 E. PLAZA BLVD.,  
SUITE E7B.

**Case File No.:** 2014-04 CUP

**Location:** South side of Plaza Blvd and N Ave in Bay Plaza

**Assessor's Parcel No.:** 557-322-14

**Staff report by:** Martin Reeder

**Applicant:** Vapure USA, Inc.

**Property owner:** ROIC INC.

**Combined General Plan/  
Zoning designation:** MXD-2 (Major Mixed-Use District)

**Adjacent land use/zoning:**

**North:** Commercial across Plaza Blvd (Plaza Square) / MXD-2

**East:** Residential/ RS-2

**South:** Commercial/ MXD-2

**West:** Commercial across N Ave / MXD-2

**Environmental review:** Not subject to CEQA

## **BACKGROUND**

### **Site Characteristics**

The project location is a commercial suite within the Bay Plaza shopping center located at 1430 E. Plaza Blvd., in the Major Mixed-Use District (MXD-2) zone. The suite is approximately 1,599 square feet in size and located adjacent to International House of Pancakes. The area is mostly adjacent to other commercial uses including Plaza Village Center to the north across Plaza, and South Bay Plaza Shopping Center to the east across N Avenue. Single-family residential uses are located to the east in the Single-Family Residential (RS-2) zone, atop a large embankment.

### **Proposed Use**

The applicant is proposing to operate a retail business that primarily sells electronic cigarette products, such as electronic cigarettes, batteries, atomizers, and eLiquid (liquid that is vaporized for purposes of inhalation) and accessories such as lanyards, apparel, stickers, and custom wraps. The retail business would be open from 9 a.m. to 9 p.m. Monday to Friday, and 11 a.m. to 7 p.m. on weekends.

### **Analysis**

This type of use is considered to be a "Tobacco specialty shop", which means any business the primary use of which is the sale of tobacco products or tobacco related paraphernalia. A business shall be determined a tobacco specialty shop when more than forty percent of its retail floor area is devoted to the display and sales of tobacco products and/or paraphernalia.

The U.S. Food and Drug Administration (FDA) classifies electronic cigarettes as "other tobacco products", which also include hookahs, cigars, and pipe tobacco. Staff is of the opinion that stores meeting the above classification that sell electronic cigarettes meet the definition of tobacco specialty stores based on the *spirit and intent* of the Land Use Code. An interpretation of this Code section is included as a separate item on this agenda. The FDA opines that electronic cigarettes may lead young people to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death.

Section 18.24.050 of the National City Land Use Code allows for tobacco specialty shops with an approved Conditional Use Permit (CUP) in the MXC-2 and MXD-2 zones. Tobacco specialty shops are also regulated by Section 18.30.230 of the Code, which requires that they not be located within one thousand feet of 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.

### **Conditions of Approval**

Concerns related to tobacco specialty shops are generally related to potential health effects and secondary impacts to youth, such as sales or advertising to minors. There is also the issue of using electronic cigarettes to consume marijuana or cannabinoid-containing substances (not permitted in the City).

The health effects of electronic cigarettes are also of concern to the FDA. The FDA has not evaluated any e-cigarettes for safety or effectiveness. When the FDA conducted limited laboratory studies of certain samples, they found significant quality issues that indicate that quality control processes used to manufacture these products are substandard or non-existent. The FDA found that cartridges labeled as containing no nicotine contained nicotine and that three different electronic cigarette cartridges with the same label emitted a markedly different amount of nicotine with each puff. Experts have also raised concerns that the marketing of products such as e-cigarettes can increase nicotine addiction among young people and may lead minors to try other tobacco products.<sup>1</sup>

These types of conditions are very similar to those required for alcohol sales, which often have the same concerns. According to the U.S. Department of Health & Human Services, alcohol and tobacco are among the top causes of preventable deaths in the United States. Moreover, these substances often are used together: Studies have found that people who smoke are much more likely to drink, and people who drink are much more likely to smoke. Dependence on alcohol and tobacco also is correlated: People who are dependent on alcohol are three times more likely than those in the general population to be smokers, and people who are dependent on tobacco are four times more likely than the general population to be dependent on alcohol.<sup>2</sup>

Based on the concerns related to potential health impacts, conditions have been included that intend to protect from these issues. Conditions No. 8 through 11 are related to the following:

- Prohibition of exterior advertising promoting or indicating the availability of electronic cigarettes.
- Prohibition of products containing tetrahydrocannabinol (THC).
- No sales of tobacco products or electronic cigarettes to minors.
- Compliance with U.S. Food and Drug Administration requirements.

### **CEQA**

The project is not subject to the California Environmental Quality Act 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 the MXC-2 and MXD-2 zones. 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.

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<sup>1</sup> U.S. Food and Drug Administration website  
(<http://www.fda.gov/forconsumers/consumerupdates/ucm225210.htm>)

<sup>2</sup> National Institute on Alcohol Abuse and Alcoholism website  
(<http://pubs.niaaa.nih.gov/publications/aa71/aa71.htm>)



## **RECOMMENDATION**

1. Approve 2014-04 CUP subject to the conditions listed below, based on attached findings; or
2. Deny 2014-04 CUP based on attached findings/findings to be determined by the Planning Commission; or
3. Continue the item to a specific date.

## **ATTACHMENTS**

1. Recommended Findings for Approval/Denial
2. Recommended Conditions
3. Location Map
4. Public Hearing Notice (Sent to 26 property owners and occupants)
5. Applicant's Plans (Exhibit A, case file no. 2014-04 CUP, dated 3/17/2014)
6. Site Photos



MARTIN REEDER, AICP  
Principal Planner



BRAD RAULSTON  
Executive Director

**RECOMMENDED FINDINGS FOR APPROVAL**

2014-04 CUP, 1430 E. Plaza Blvd., suite E7B

1. That 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, since the proposal involves a conditionally-permitted retail use on a commercial-zoned property which allows retail uses by right in the MXD-2 zone.
2. That the proposed use is consistent with the General Plan and any applicable specific plans, since retail businesses are an identified use in the Major Mixed-Use land use designation, and since no Specific Plans exist in this area.
3. That the site for the proposed use is adequate in size and shape, since the proposed use is a retail use for which the property has been developed and has historically been used.
4. That the site has sufficient access to streets and highways that are adequate in width and pavement type to carry the volume and type of traffic generated by the proposed use, since Plaza Blvd. 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. That the proposed use will not have an adverse effect upon adjacent or abutting properties, since the proposed retail use is compatible with other 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. That the proposed project has been reviewed in compliance with the California Environmental Quality Act, since staff has already determined that the proposed use 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.

**RECOMMENDED FINDING FOR DENIAL**

2014-04 CUP, 1430 E. Plaza Blvd., suite E7B

1. That 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/or electronic cigarettes may lead young people to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death.

## RECOMMENDED CONDITIONS OF APPROVAL

2014-04 CUP, 1430 E. Plaza Blvd., suite E7B

### General

1. This Conditional Use Permit authorizes the sale of electronic cigarettes (e-cigarette), personal vaporizers (PV), or electronic nicotine delivery systems (ENDS), collectively known as electronic cigarettes, and related accessories at the property located at 1430 East Plaza Boulevard, suite E7B. Plans submitted for permits associated with this project shall conform with Exhibit A, case file no. 2014-04 CUP, dated 3/17/2014. This CUP shall not limit the sales of traditional tobacco products except as otherwise stated by these Conditions of Approval.
2. Within four (4) days of approval, pursuant to Fish and Game Code 711.4 and the California Code of Regulations, Title 14, Section 753.5, the applicant shall pay all necessary environmental filing fees for the San Diego County Clerk. Checks shall be made payable to the County Clerk and submitted to the National City Planning Department.
3. This permit shall become null and void if not exercised within one year after adoption of the Resolution of approval unless extended according to procedures specified in the Municipal Code.
4. This permit shall expire if the use authorized by this resolution is discontinued for a period of 12 months or longer. This permit may also be revoked, pursuant to provisions of the Land Use Code, if discontinued for any lesser period of time.
5. This Conditional Use Permit may be revoked if the operator is found to be in violation of Conditions of Approval.
6. Before this *Conditional Use Permit* shall become effective, the applicant and the property owner both shall sign and have notarized an Acceptance Form, provided by the Planning Department, acknowledging and accepting all conditions imposed upon the approval of this permit. Failure to return the signed and notarized Acceptance Form within 30 days of its receipt shall automatically terminate the *Conditional Use Permit*. The applicant shall also submit evidence to the satisfaction of the Executive Director that a Notice of Restriction on Real Property is recorded with the County Recorder. The applicant shall pay necessary recording fees to the County. The Notice of Restriction shall provide information that conditions imposed by approval of the *Conditional Use Permit* are binding on all present or future interest holders or estate holders of the property. The Notice of Restriction shall be approved as to form by the City Attorney and signed by the Executive Director prior to recordation.

### Building/Fire

7. Plans submitted for improvements must comply with the 2013 edition of the California Building, Electrical, Plumbing, Mechanical, and Fire Codes.

### Planning

8. Excepting business identification signage, exterior advertising and signs of all types, promoting or indicating the availability of electronic cigarettes (e-cigarettes), personal vaporizers (PV), or electronic nicotine delivery systems (ENDS), collectively known as electronic cigarettes, or tobacco products, including advertising/signs directed to the exterior from within, are prohibited. Interior displays of electronic cigarettes and

signs, which are clearly visible to the exterior, shall constitute a violation of this condition.

9. No products containing tetrahydrocannabinol (THC), or any other cannabinoid, may be sold on the premises.
10. No sales of tobacco products, electronic cigarettes, personal vaporizers, or any other electronic or non-electronic nicotine delivery systems are permitted to minors.
11. The business shall comply with all requirements of the U.S. Food and Drug Administration (FDA) related to electronic cigarettes (e-cigarettes), personal vaporizers (PV), electronic nicotine delivery systems (ENDS), or any tobacco products sold at the store.

#### Police

12. Permittee shall comply with any regulatory provisions of the Business and Professions Code that pertain to the sale, display and marketing or merchandising of tobacco products.



CITY OF NATIONAL CITY - PLANNING DEPARTMENT  
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

NOTICE OF PUBLIC HEARING

CONDITIONAL USE PERMIT FOR A  
TOBACCO SPECIALTY SHOP  
LOCATED IN SOUTH BAY PLAZA  
AT 1430 E. PLAZA BLVD., SUITE E7B.  
CASE FILE NO.: 2014-04 CUP  
APN: 557-322-14

The National City Planning Commission will hold a public hearing after the hour of 6:00 p.m. **Monday, May 5, 2014**, in the City Council Chambers, Civic Center, 1243 National City Boulevard, National City, California, on the proposed request. (Applicant: Vapure USA, Inc.)

The applicant proposes to sell electronic cigarette products (electronic cigarettes, batteries, atomizers, and eLiquid) and accessories (lanyards, apparel, stickers, and custom wraps). Business hours are 9 a.m. to 9 p.m. Monday to Friday, and 11 a.m. to 7 p.m. on weekends.

Information is available for review at the City's Planning Department, Civic Center. Members of the public are invited to comment. Written comments should be received by the Planning Department on or before 12:00 p.m., **May 5, 2014**, who can be contacted at 619-336-4310 or [planning@nationalcityca.gov](mailto:planning@nationalcityca.gov)

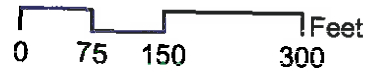
If you challenge the nature of the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

NATIONAL CITY PLANNING DEPARTMENT

FOR BRAD RAULSTON  
Executive Director



--- Zone Boundary



APN:  
557-322-14

Planning Commission  
Location Map

2014-04 CUP

RESOLUTION NO. 12-2014

A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF NATIONAL CITY, CALIFORNIA,  
APPROVING A CONDITIONAL USE PERMIT FOR A  
TOBACCO SPECIALTY SHOP LOCATED IN SOUTH BAY PLAZA  
AT 1430 E. PLAZA BLVD., SUITE E7B.  
APPLICANT: VAPURE USA, INC.  
CASE FILE NO. 2014-04 CUP

WHEREAS, the Planning Commission of the City of National City considered a Conditional Use Permit for a tobacco specialty shop located in South Bay Plaza at 1430 E. Plaza Blvd., suite E7B., at a duly advertised public hearing held on May 5, 2014, at which time oral and documentary evidence was presented; and,

WHEREAS, at said public hearings the Planning Commission considered the staff report contained in Case File No. 2014-04 CUP maintained by the City and incorporated herein by reference along with evidence and testimony at said hearing; and,

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

WHEREAS, the action recited herein is found to be essential for the preservation of public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of National City, California, that the testimony and evidence presented to the Planning Commission at the public hearing held on May 5, 2014, support the following findings:

1. That 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, since the proposal involves a conditionally-permitted retail use on a commercial-zoned property which allows retail uses by right in the MXD-2 zone.
2. That the proposed use is consistent with the General Plan and any applicable specific plans, since retail businesses are an identified use in the Major Mixed-Use land use designation, and since no Specific Plans exist in this area.
3. That the site for the proposed use is adequate in size and shape, since the proposed use is a retail use for which the property has been developed and has historically been used.

4. That the site has sufficient access to streets and highways that are adequate in width and pavement type to carry the volume and type of traffic generated by the proposed use, since Plaza Blvd. 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. That the proposed use will not have an adverse effect upon adjacent or abutting properties, since the proposed retail use is compatible with other 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. That the proposed project has been reviewed in compliance with the California Environmental Quality Act, since staff has already determined that the proposed use 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.

BE IT FURTHER RESOLVED that the application for Conditional Use Permit is approved subject to the following conditions:

#### General

1. This Conditional Use Permit authorizes the sale of electronic cigarettes (e-cigarette), personal vaporizers (PV), or electronic nicotine delivery systems (ENDS), collectively known as electronic cigarettes, and related accessories at the property located at 1430 East Plaza Boulevard, suite E7B. Plans submitted for permits associated with this project shall conform with Exhibit A, case file no. 2014-04 CUP, dated 3/17/2014. This CUP shall not limit the sales of traditional tobacco products except as otherwise stated by these Conditions of Approval.
2. Within four (4) days of approval, pursuant to Fish and Game Code 711.4 and the California Code of Regulations, Title 14, Section 753.5, the applicant shall pay all necessary environmental filing fees for the San Diego County Clerk. Checks shall be made payable to the County Clerk and submitted to the National City Planning Department.
3. This permit shall become null and void if not exercised within one year after adoption of the Resolution of approval unless extended according to procedures specified in the Municipal Code.
4. This permit shall expire if the use authorized by this resolution is discontinued for a period of 12 months or longer. This permit may also be revoked, pursuant to provisions of the Land Use Code, if discontinued for any lesser period of time.
5. This Conditional Use Permit may be revoked if the operator is found to be in violation of Conditions of Approval.
6. Before this *Conditional Use Permit* shall become effective, the applicant and the property owner both shall sign and have notarized an Acceptance Form, provided by the Planning Department, acknowledging and accepting all conditions imposed upon the approval of this permit. Failure to return the signed and notarized Acceptance Form within 30 days of its receipt shall automatically terminate the *Conditional Use*



*Permit.* The applicant shall also submit evidence to the satisfaction of the Executive Director that a Notice of Restriction on Real Property is recorded with the County Recorder. The applicant shall pay necessary recording fees to the County. The Notice of Restriction shall provide information that conditions imposed by approval of the *Conditional Use Permit* are binding on all present or future interest holders or estate holders of the property. The Notice of Restriction shall be approved as to form by the City Attorney and signed by the Executive Director prior to recordation.

#### Building/Fire

7. Plans submitted for improvements must comply with the 2013 edition of the California Building, Electrical, Plumbing, Mechanical, and Fire Codes.

#### Planning

8. Excepting business identification signage, exterior advertising and signs of all types, promoting or indicating the availability of electronic cigarettes (e-cigarettes), personal vaporizers (PV), or electronic nicotine delivery systems (ENDS), collectively known as electronic cigarettes, or tobacco products, including advertising/signs directed to the exterior from within, are prohibited. Interior displays of electronic cigarettes and signs, which are clearly visible to the exterior, shall constitute a violation of this condition.
9. No products containing tetrahydrocannabinol (THC), or any other cannabinoid, may be sold on the premises.
10. No sales of tobacco products, electronic cigarettes, personal vaporizers, or any other electronic or non-electronic nicotine delivery systems are permitted to minors.
11. The business shall comply with all requirements of the U.S. Food and Drug Administration (FDA) related to electronic cigarettes (e-cigarettes), personal vaporizers (PV), electronic nicotine delivery systems (ENDS), or any tobacco products sold at the store.

#### Police

12. Permittee shall comply with any regulatory provisions of the Business and Professions Code that pertain to the sale, display and marketing or merchandising of tobacco products.

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted forthwith to the applicant and to the City Council.

BE IT FINALLY RESOLVED that this Resolution shall become effective and final on the day following the City Council meeting where the Planning Commission resolution is set for review, unless an appeal in writing is filed with the City Clerk prior to 5:00 p.m. on the day of that City Council meeting. The City Council may, at that meeting, appeal the decision of the Planning Commission and set the matter for public hearing.

**CERTIFICATION:**

This certifies that the Resolution was adopted by the Planning Commission at their meeting of May 5, 2014, by the following vote:

**AYES:**

**NAYS:**

**ABSENT:**

**ABSTAIN:**

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**CHAIRMAN**



CITY OF NATIONAL CITY - PLANNING DEPARTMENT  
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

**PLANNING COMMISSION STAFF REPORT**

**Title:** PUBLIC HEARING – CONDITIONAL USE PERMIT  
MODIFICATION AND ZONE VARIANCE FOR LESS  
THAN REQUIRED PARKING FOR AN APARTMENT  
COMPLEX LOCATED AT 2525 HIGHLAND  
AVENUE.

**Case File No.:** 2014-05 CUP, Z

**Location:** South side of Plaza Blvd and N Ave in Bay Plaza

**Assessor's Parcel No.:** 563-010-50

**Staff report by:** Martin Reeder, Principal Planner

**Applicant:** Nationwide Enterprises

**Property owner:** Joseph Bendah

**Combined General Plan/  
Zoning designation:** MXC-2 (Major Mixed-Use Corridor)

**Adjacent land use/zoning:**

**North:** Multi-family Residential / MXC-2

**East:** Single-family Residential / RS-2 and RS-3

**South:** Church / MXC-2

**West:** Olivewood School across Highland Avenue / I

## **BACKGROUND**

### **Site Characteristics**

The site is located on the east side of Highland Avenue, between 24<sup>th</sup> and 26<sup>th</sup> Streets. The 1.03-acre, L-shaped parcel extends from Highland Avenue to I Avenue and is zoned Major Mixed-Use Corridor (MXC-2). The site contains a three-story structure previously approved as a 151-unit senior assisted living facility, with some surface parking and underground parking (totaling 55 spaces), and an adult day care.

### **History**

A 151-unit, 230 bed, assisted living facility was approved for the site in 1987. In 2002, a parking Variance was approved to allow a portion of the parking garage to be converted to an adult day care and reduce the allowable number of beds to 190. In 2010 the applicant was approved for the conversion of the property to a senior independent living facility with a variance for less than required parking (apartments require more parking than an assisted living facility).

As part of the 2010 approval, the applicant was required to have a parking agreement with the neighboring church for overflow parking. The agreement has since ceased to be honored by either signing party due to a dispute, which is proving to be a problem for a potential buyer currently trying to acquire the property. The agreement includes language that it cannot be removed without the express written permission of the City.

### **Proposed Use**

The applicant wishes to modify the Conditional Use Permit to remove an existing condition requiring an agreement for overflow parking on an adjacent lot. As part of the proposal an existing Adult Day Health Care Center on the project site would be converted back to parking spaces. Although 23 parking spaces would potentially be added back to the site due to closure of the day care center, the removal of the agreement for parking on the adjacent property would result in a shortage of on-site parking as required by the Land Use Code. The removal of the condition is being requested by the applicant at the request of the potential buyer.

### **Analysis**

Senior apartments are considered the same as standard apartments with regard to parking. In a normal case, a 151-unit apartment complex would require a minimum of 218 spaces to be provided on site. There are only 55, although conversion of the day care center would add 23 more for a total of 78 parking spaces. However, other recent senior apartment complexes have been approved with less parking due to less need for personal vehicles for seniors.

The city has approved two senior living complexes since 2005. Paradise Village was approved at a ratio of 0.8 parking spaces per unit and Plaza City Apartments was approved at a ratio of 0.65 spaces per unit. In order to be consistent with the lowest required parking ratio (0.65/unit), the subject property would need to provide 98 parking

spaces. This equates to a shortage of 20 parking spaces, or 43 if the day care center is not converted.

Although there is an agreement in place (based on the City not permitting it to be removed) allowing parking on the neighboring property, the potential buyer of the subject property objects to the language in the agreement. Although this is of no concern to the City, staff has suggested that the potential owner formulate their own agreement with the church to the satisfaction of the City Attorney. This would need to provide for 20 or 43 parking spaces (depending on the status of the day care facility) to continue to be provided on the church property. If this can happen, the need to remove the condition would be moot and the application could be withdrawn. However, as of the writing of this report, no such amended agreement has been reached. In order to give the potential buyer time to reach such an agreement and gain City approval, staff is suggesting that the Planning Commission continue the item off calendar. The applicant has agreed to the continuance.

In the event that an agreement is reached to the satisfaction of all parties, the application will be withdrawn. However, if no agreement is reached and the applicant wishes to continue with this CUP and variance application, staff would return at a newly-advertised hearing with a full staff report. In this event, additional information would be presented regarding parking as well as appropriate findings and conditions.

### RECOMMENDATION

Continue the item off calendar.

### ATTACHMENTS

1. Location Map
2. Public Hearing Notice (Sent to 42 property owners and occupants)



MARTIN REEDER, AICP  
Principal Planner



BRAD RAULSTON  
Executive Director



CITY OF NATIONAL CITY - PLANNING DEPARTMENT  
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

NOTICE OF PUBLIC HEARING

CONDITIONAL USE PERMIT MODIFICATION AND ZONE VARIANCE  
FOR LESS THAN REQUIRED PARKING FOR AN APARTMENT COMPLEX  
LOCATED AT 2525 HIGHLAND AVENUE.  
CASE FILE NO.: 2014-05 CUP, Z  
APN: 563-010-50

The National City Planning Commission will hold a public hearing after the hour of 6:00 p.m. **Monday, May 5, 2014**, in the City Council Chambers, Civic Center, 1243 National City Boulevard, National City, California, on the proposed request. (Applicant: Nationwide Enterprises)

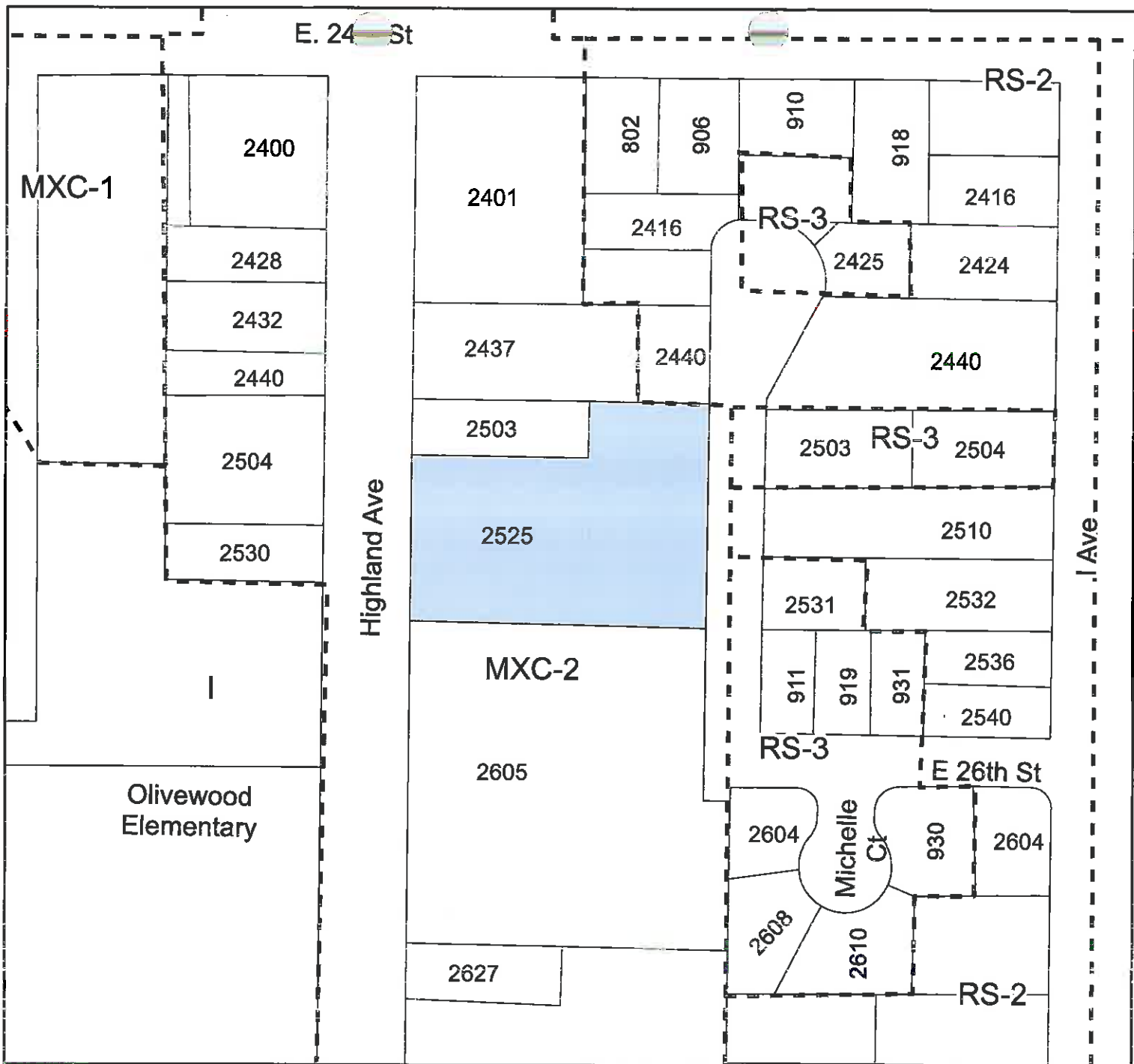
The applicant wishes to remove an existing condition requiring an agreement for overflow parking on an adjacent lot. As part of the proposal an existing Adult Day Health Care Center on the project site would be converted back to parking spaces.

Information is available for review at the City's Planning Department, Civic Center. Members of the public are invited to comment. Written comments should be received by the Planning Department on or before 12:00 p.m., **May 5, 2014**, who can be contacted at 619-336-4310 or [planning@nationalcityca.gov](mailto:planning@nationalcityca.gov)

If you challenge the nature of the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

NATIONAL CITY PLANNING DEPARTMENT

*BR* BRAD RAULSTON  
Executive Director



Subject Parcel



Zone Boundary



APN:  
563-010-50

Planning Commission  
Location Map

2014-05 CUP, Z