
From: Thomas J LaLanne [tomlalanne@sbcglobal.net]
Sent: Monday, January 05, 2015 5:13 PM
To: Carroll, John (BOS); Lamug, Joy; BOS Legislation (BOS)
Cc: rckaris@gmail.com; blakehe@gmail.com; 'Stefano Cassolato'
Subject: BOS Appeal / 1963 Ocean Avenue Conditional Use Authorization
Attachments: Washington Examiner.Ross.pdf; Carroll.3.pdf

Categories: 141291

Gentlepeople:

Please excuse my error. The project sponsor's appellate response that I emailed minutes ago was incomplete. This revised version includes a last paragraph requesting denial of the appeal that was not included in the first version. Please accept this letter in its place.

Tom LaLanne

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January 5, 2015

BY EMAIL ONLY

john.carroll@sfgov.org

Mr. John Carroll
Legislative Clerk
Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102

Re: 1963 Ocean Avenue Conditional Use Authorization Appeal
Hearing: January 13, 2015 at 3:00 p.m.
Blake He / Happy Vape
Our File No. 1038

Dear Mr. Carroll:

I write on behalf of my client, project sponsor Blake He, who is the owner-operator of Happy Vape. Mr. He was granted a conditional use permit granted by the San Francisco Planning Commission on November 6, 2014, to open a tobacco paraphernalia establishment at 1963 Ocean Ave., San Francisco. The intended business of Happy Vape is the sale of electronic cigarettes.

The permit has now been appealed by an individual, Dr. Robert Karis. It must be understood that after considerable study and scrutiny, the conditional use permit was recommended by the San Francisco Planning Staff as a necessary, desirable and compatible use for the 1900 block of Ocean Avenue. Moreover, after a contested hearing, with opposition led by Dr. Karis, the permit was granted by a vote of 5-2 of the Planning Commission.

The purpose of this letter is to present to the Board of Supervisors a summary of the issues raised by the appellant, and the applicant's response.

First Claim of Appeal:

The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity.

Response to First Claim:

The project consists of an electronic cigarette retail and steam stone hookah lounge. Contrary to appellant's claims, neither such products have been determined to be detrimental to health or safety. In fact, there are many who argue exactly the opposite.

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Project sponsor intends to comply fully with the terms of the conditional use permit to assure that the business will be beneficial to the general welfare of the community, including:

a. Project Sponsor shall ensure that e-cigarette and other Tobacco Paraphernalia is not tasted on the sidewalk outside the establishment and that there is no loitering outside the establishment in relation to the subject business.

b. While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.

c. Signage at Front. Appropriate Identification scanning equipment should be installed and utilized at the entry for monitoring entry by individual's ages to ages 18 and older. Appropriate code-complying signage shall be affixed to entry door(s) indicating entry by individuals ages 18 and older. Sponsor with comply with and enforce the Board of Supervisors decision in March of 2014, for File 131208 – Ordinance amending Health Code Article 19N, Sections 19N.1 -19N.9 restricting e-cigarette use to the same regulations as cigarettes. We will not allow loitering or vaping on the sidewalk, we are required to install an odor control unit, and will have an ID reader along with checking ID to guarantee minors will not have access. Thus showing that we are required to be non-detrimental to the health, safety, convenience or general welfare of person residing or working in the vicinity. Improve the space to be compliant with city and county of San Francisco Codes.

d. Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated. This project is not a new development, this is an existing retail establishment that is currently applying for a special conditional use for a tobacco paraphernalia establishment. It will remain a retail establishment, concurrent with current use, and we are required by the conditional use to limit our influence on the neighborhood, with limited operating hours, e-cigarette use regulations, and age restrictions. The 1900 block of Ocean Avenue is unacceptably vacant and this establishment will fill in one of these vacant spaces creating a safer atmosphere for pedestrians and patrons.

e. Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts. This space was a retail establishment and will remain a retail establishment. We are a unique retail store providing an electronic cigarette retail and a steam stone hookah lounge, unheard of in the San Francisco. There are no solely dedicated vape shops in the Ocean Avenue NCT and District 7, creating a destination place to attract pedestrian traffic to the Ocean Avenue Corridor.

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Without a vape shop in the area, cigarette smokers will be less likely to be introduced to a possible solution and therefore continue to pollute the atmosphere. Also, an e-cigarette user in the area would have to travel, by car, 15 minutes to the nearest Vape store to obtain similar service and products.

Second Claim of Appeal:

Nicotine containing e-cigarettes are addictive and the fumes from e-cigarettes and hookah are unhealthy.

Response to Second Claim:

Studies and research show that both sides of this claim are equally arguable, and all results are inconclusive of the benefits and harms of e-cigarettes. We know nicotine is addictive, we are here to provide an alternative to cigarettes. The fumes from e-cigarettes have been equated with taking a breath of air in a major metropolitan city. Steam stone hookah is believed to contain no nicotine, tar, or carcinogens. We encourage more studies to be done on both these new products, however we believe these products have the potential to do greater good than harm. We have communicated with hundreds of vape store operators and patrons, many who have turned to e-cigarettes as an alternative to traditional smoking. We have concluded that many current e-cigarette users have been able to quit smoking cigarettes. Also, many have quit both products after a period of time. Many have stated that e-cigarettes have saved their lives.

Third Claim of Appeal:

It is undesirable to have a business whose goal is to attempt to increase usage of these products and which will expose our children and students in our area to them. The use of e-cigarettes for smoking cessation is unapproved and they are not recommended by existing clinics for this purpose.

Response to Third Claim:

As stated previously, we are here to provide an alternative to smoking cigarettes, not addiction to e-cigarettes. We will post proper signage, utilize an ID reader, prohibit minors, and ban vaping on premise. This is all in compliance with the legislation sponsored by San Francisco Supervisor Eric Mar in March of 2014. We are in line with recent legislation, sponsored by Supervisor Eric Mar, which states that over a span of 10-15 years, it hopes to decrease by 50% the tobacco sales permits in San Francisco. Of the 1001 tobacco sales permits currently in San Francisco, 980 are traditional tobacco outlets. We are a part of the solution with this new legislation, by providing an alternative to cigarettes, and promoting a method of quitting cigarettes that we believe will eventually decrease the number of cigarette smokers and vendors in the city. Also,

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recommended reading on this subject is attached in the form of a December 11, 2014 article in the "Washington Examiner" written by Gilbert Ross, MD.

Fourth Claim of Appeal:

The use of e-cigarettes is unapproved as method of smoking cessation currently, since research has not shown any conclusive evidence to support otherwise.

Response to Fourth Claim:

This product is growing in acceptance and therefore more research and evidence is being developed to create a larger awareness of the existence of a possible alternative to traditional smoking. Although this product may not be personally desirable to some, it may be desirable to others. Recommended viewing on this subject is provided in the BBS video entitled "Trust Me, I'm a Doctor." The video can be reached at the following link, and will be delivered in CD form on January 6, 2015.

<http://info-electronic-cigarette.com/bbcs-trust-me-im-a-doctor-talks-about-e-cigarettes/>

Fifth Claim of Appeal:

The 1900 block of Ocean Avenue needs many other businesses that will better serve the neighbors.

Response to Fifth Claim:

The 1900 block of Ocean Avenue currently has 20% vacancies, which attract the derelicts and miscreants of the city. This completely undermines the Board of Supervisors decision in July 2014, on File #140284 – Ordinance amending the Building Code to establish a procedure for maintaining and registering a vacant or abandoned commercial storefronts, including imposition of a registration fee sponsored by Supervisor Katy Tang. New businesses are not currently lining up to enter the 1900 block area on Ocean Avenue. Although this area could better serve the neighborhood by providing other goods and services that are necessary, desirable, and compatible, we will provide a retail business that will attract these new businesses to open on the 1900 block of Ocean Avenue. We will install a security camera system and will remain a constant presence on Ocean Avenue. We will breathe some life to this corridor of Ocean Avenue and provide some sense of safety. There are currently no vape stores in either the Ocean Avenue NCT or District 7. We can show that this area is profitable and renew investment interest on Ocean Avenue, inviting new retail operators to open nearby.

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In summary, it is submitted that the appellant has failed to negate the well-reasoned recommendations of the San Francisco Planning Staff or the findings of the San Francisco Planning Commission in this matter. It is submitted that the appeal should be denied, and that the project sponsor be allowed to move forward with his project under the conditional use permit that was granted to him.

We remain open to question about any of the material contained herein.

Very truly yours,

/s/ Thomas J. LaLanne

THOMAS J. LaLANNE

TJL/jdl

Enclosures

cc: Clerk, Board of Supervisors (by email)
Ms. Joy Lamug (by email)
Mr. Blake He (by email)
Robert Karis, M.D. (by email)

The Examiner

WASHINGTON

Want to help smokers quit? Stop lying about e-cigs

GILBERT ROSS • | DECEMBER 11, 2014 | 5:00 AM

America's public health establishment, including big nonprofit organizations and many academics, is playing a shameful role in fighting our nation's most important health scourge: cigarette smoking. Without exception, our health leaders have proven reluctant to help smokers quit; although three-quarters of smokers wish to do so, only one in twenty succeed in any given year.

The reasons for the officials' dereliction in this area include a stubborn adherence to a worldview mired in the 20th century "tobacco wars." But more important is their inexcusable willful blindness to, or complicity with, the intentional manipulation of science.

The CDC trumpeted the recently-reported decline in smoking rate to 17.8 percent — a barely perceptible reduction from last year's figure. But behind this self-congratulatory façade stands the unpleasant reality: The number of American smokers stands at 42 million, about the same number as a decade ago. Worse, the latest estimates are that almost a half million of us die every year from smoking-related diseases.

While the official agencies urge smokers to use the FDA-approved methods to help them quit, they neglect to inform them that these methods — gums, nicotine patches, drugs — are not terribly effective. They actually warn smokers who want to quit against trying reduced-harm nicotine delivery devices such as e-cigarettes and vapor products ("e-cigs"). They go out of their way to alarm desperate smokers about hypothetical concerns — and their scare tactics work. More smokers are now fearful of trying these products than last year. Media comments by officials of the CDC and the big nonprofits (American Lung Association, American Cancer Society, among others) imply that the nascent, innovative e-cig industry is merely a ploy by "Big Tobacco" to lure young people into nicotine addiction.

Such assertions are mere propaganda, as their spokesmen well know. Rather than being pawns of tobacco companies, the harm-reduction "industry" consists of thousands of small businesses. Further, recent surveys — including the CDC's own — indicate that e-cigs are actually helping young smokers quit their deadly addiction by "vaping" (the term for using e-cigs) — just as their elders are doing. "Experts" based at academic centers, including especially the University of California-San Francisco, as well as highly-placed CDC officials, are widely quoted opposing the uptake of e-cigs, although millions of smokers have at last escaped their cigarette addiction by vaping.

While the long-term effects of e-cigs are unproven now, numerous published studies show that their efficacy in helping smokers quit is at least equal to the FDA-approved products, with fewer adverse effects. Those data are consistent with common sense, as e-cigs deliver only nicotine, water and a mist of safe humectants and (if preferred) flavors, as compared with the hundreds of toxins and carcinogens in cigarette smoke.

How can the drumbeat of official opprobrium directed against these miraculous, lifesaving devices be explained? One possibility: greed. The "Big Pharma" companies that market ineffective but highly lucrative nicotine-replacements are very generous donors to the same public health groups whose minions travel around the country regaling regulators and legislators to ban e-cigs. While their rationale ("protecting our children") sounds believable to the media and politicians, in fact their agendas are antithetical to public health. They never disclose their conflicts of interest involving millions of dollars of pharmaceutical company funding, believing themselves exempt from such ethical dicta.

This unethical breach of public trust will crush the burgeoning, decentralized e-cig "industry." It will effectively protect cigarette markets (whose excise taxes prop up many state and local budgets), and, lest we forget, it will keep smokers smoking. These officials know that addiction will eventually kill over one-half of smokers, and sicken twenty-fold that number. Isn't it time that smokers and the public heard the truth?

Gilbert Ross, M.D., is the medical director and acting president of The American Council on Science and Health, a public health nonprofit. ACSH accepts no-strings-attached funding from many corporations, trade associations and individual donors. A small portion of ACSH's funding comes from e-cigarette makers. Thinking of submitting an op-ed to the Washington Examiner? Be sure to read our guidelines on submissions for editorials, available at this link.