

We are appealing the decision of the Planning Commission by its Motion No. 19271, approving a Conditional Use Authorization identified as Planning Case No. 2014.0206C on property located at 1963 Ocean Avenue, to allow establishment of a tobacco paraphernalia establishment within the Ocean Avenue Neighborhood Commercial Transit District and located at Assessor's Block No. 6915, Lot No. 020

The Planning Commission did not properly apply the following sections of the Planning Code¹:

1. SEC. 303. CONDITIONAL USES.

(c)(1): That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community:

(c)(4): With respect to applications filed pursuant to Article 7 of this Code, that such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Neighborhood Commercial District;

SEC. 737.1. OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT. The Ocean Avenue NCT District is intended to provide convenience goods and services to the surrounding neighborhoods as well as limited comparison shopping goods for a wider market. The range of comparison goods and services offered is varied and often includes specialty retail stores, restaurants, and neighborhood-serving offices.

1.1 The 1900 block of Ocean Ave. is located between two RH-(1)D neighborhoods, Ingleside Terraces and Mt. Davidson Manor. These neighborhoods are family oriented with many children and seniors.

1.2 In the past few years, there have been several studies of the Ocean Avenue Neighborhood Commercial District. A smoke shop, vape shop, tobacco outlet, or any type of hookah lounge has never been requested in any of these documents.^{2, 3, 4, 5}

1.3 A high percentage of neighbors are opposed to a vape shop/hookah lounge in this location. As a required part of the appeal process, the appellant collected signatures from owners of property located within 300 feet of the proposed tobacco paraphernalia establishment. 33 signatures were obtained from owners of residential properties and only three declined.⁶ This is consistent with our experience in gathering more than 100 signatures on a petition opposing the vape shop for the Planning Commission hearing.

1.4 The 1900 block of Ocean Ave. has many businesses that are used by the neighbors; for example, two barbers, beauty and nail salons, a bicycle shop, a coffee shop, a dentist's office, a dry cleaner, a pizzeria, a sewing shop, three restaurants, and a yoga studio. A furniture store and a waffle shop are opening soon in the 1900 block. There is a 24 Hour Fitness at Ashton at the beginning of the 1900 block of Ocean Ave.

1.5 The 1900 block of Ocean Avenue also has several "alternative" businesses that are not neighborhood serving, for example two tattoo parlors and a medical marijuana dispensary. The 1900 block of Ocean Ave. has three massage parlors that are listed in the San Francisco Board of Supervisors File No. 130789, Ordinance No. 266-13 introduced by President Tang and approved 11/27/13, Health Code - Licensing and Regulation of Massage Establishments and Practitioners, pp.39-44, rubmaps San Francisco erotic massage parlors.⁷

1.6 The 1900 block of Ocean Avenue also has a few vacant storefronts. This is not surprising as the 1900 block of Ocean Avenue has 40 storefronts (this includes a few

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storefronts around the corner on Ashton Avenue, which are in the same building as 1901 Ocean Avenue, the former Masonic Lodge).

1.7 Ocean Avenue went 20 years without a bank, grocery store, or hardware store. In the past few years a Chase Bank, a Whole Foods, and this year a hardware store, have moved into the 1100 to 1600 blocks of Ocean Ave. These are a few of the types of businesses that residents would like to have in the 1900 block in our neighborhood. A Target Express is applying for a Conditional Use permit to open in the 1800 block of Ocean Ave.

1.8 The neighbors do not want vacant storefronts in the 1900 block of Ocean Ave. to be filled with unnecessary, undesirable, non-neighborhood serving, or unhealthy businesses, that will make this block less attractive to the residents and to possible new traditional businesses.

1.9 **In summary**, the appellant holds that the statement in the Final Motion of the Planning Commission (Exhibit_A⁸) page 4, 7.A.) that “The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.” is incorrect. This statement is not based on any valid measure of the needs or desires of the neighborhood.

The Planning Commission also did not properly apply the following sections of the Planning Code:

2. SEC. 303. CONDITIONAL USES. (c)(2): **That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity**, or injurious to property, improvements or potential development in the vicinity, **with respect to aspects including but not limited to the following:** (A) The nature of the proposed site, including its size and shape...(B) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic...(C) The safeguards afforded to prevent noxious or offensive emissions...(D) Treatment given, as appropriate, to such aspects as landscaping, screening...

2.1 The Planning Commission Final Motion (Exhibit_A⁸) page 5, 7.B.i-iv. quotes the Planning Code Sec. 303 (c)(2) with a few changes in wording and leaves out the crucial phrase “**with respect to aspects including but not limited to the following:**” The Final Motion then discusses how the proposed project is consistent with subsections (A) to (D) of 303 (c)(2). (7.B.i.to iv. in the numbering system used in the Final Motion.)

The appellant believes that the proposed use is “**detrimental to the health and general welfare of persons residing or working in the vicinity**”. This tobacco paraphernalia establishment intends to sell electronic cigarettes (e-cigarettes), vaporizers, e-liquids containing nicotine, and to operate a steam stone hookah lounge in the basement. In support of our position that e-cigarette use is detrimental to the health and general welfare of persons residing or working in this vicinity, we reference the following documents from the City and County of San Francisco:

2.1.1 E-Cigarette Fact Sheet, Feb. 4, 2013, **TOBACCO FREE PROJECT, San Francisco Department of Public Health, Population Health and Prevention.(Exhibit_B⁹)**
Health Risks Identified by the Food and Drug Administration (FDA)

The FDA and many public health experts are concerned about health risks posed by e-cigarettes. The FDA has conducted a preliminary analysis of 18 of the various types of cartridges from 2 leading brands of e-cigarettes, labeled as flavored, nicotine and no-nicotine. Following were findings of the samples tested:

- Diethylene glycol, an ingredient used in antifreeze that is toxic to humans, was found in one sample.
- Certain tobacco-specific nitrosamines that are carcinogens for humans were found in half of the samples.
- Tobacco-specific impurities suspected of being harmful to humans were found in most of the samples. These included anabasine, myosine, and β -nicotyrine.
- Cartridges labeled as “no nicotine” had low levels of nicotine, with the exception of one.
- The amount of nicotine emitted with each puff varied markedly among 3 cartridges that all had the same label.
- One high-nicotine cartridge delivered twice the amount of nicotine compared to an FDA approved nicotine inhalation product that was developed as a smoking cessation aid.

Additional Health Concerns

- The devices include no health warnings.
- E-cigarettes could increase nicotine addiction among young people and encourage them to try other tobacco products such as conventional cigarettes due to introduction to addictive nicotine.
- E-cigarettes available in chocolate, strawberry and mint flavors would appeal to children.
- Consumers have no information about the safety of these products, the types and concentrations of nicotine and other chemicals inhaled when using them.
- Research conducted at the Lawrence Berkeley National Laboratory found that nicotine in third hand smoke, the residue from tobacco smoke that clings to surfaces long after a cigarette has been extinguished, reacts with a common indoor air pollutant called nitrous acid and produces a hazardous carcinogen. This study demonstrates that nicotine, the addictive ingredient in tobacco smoke, is harmful. Research co-author James Pankow has stated that the results of this study should raise concerns about the safety of electronic cigarettes.

<http://www.sciencedaily.com/releases/2010/02/100208154651.htm>

Not a Smoking Cessation Device

- These products have not been tested for safety or efficacy in helping people quit smoking.
- The American Cancer Society, American Heart Association, and American Lung Association have developed statements expressing concern about the increase of e-cigarette marketing and use.

2.1.2. These health concerns provided the basis for the following legislation which was passed unanimously by the San Francisco Board of Supervisors in March, 2014.

File No. 131208, Ordinance No. 030-14 (Exhibit_C¹⁰)

Ordinance amending the Health Code to prohibit the use of electronic cigarettes where smoking is otherwise prohibited; require a tobacco permit for the sale of electronic cigarettes; prohibit the sale of electronic cigarettes where the sale of tobacco products is otherwise prohibited; and making environmental findings.

Sponsored by Supervisors Mar, Avalos, Chiu, Yee, and Cohen. Passed unanimously by the Board of Supervisors on March 18 and March 25, 2014, and signed by Mayor Ed Lee on 3/27/14.

p.2 of the Ordinance:

6 *The FDA 's Center (or Drug Evaluation and Research. Division of*
7 *Pharmaceutical Analysis (DPA) analyzed the cartridges from these electronic cigarettes (or nicotine*
8 *content and for the presence of other tobacco constituents, some of which are known to be harmful to*
9 *humans. including those that are potentially carcinogenic or mutagenic. The DPA's analysis of the*
10 *electronic cigarette samples showed:*

11 *(1) The products contained detectable levels of known carcinogens and toxic chemicals to*
12 *which users could be exposed.*

13 *(2) Quality control processes used to manufacture these products are inconsistent or non-*
14 *existent.*

15 *(3) Tobacco-specific impurities suspected of being harmful to humans-anabasine. myosmine.*
16 *and 8-nicotyrine-were detected in a majority of the samples tested.*

17 *(4) Three different electronic cigarette cartridges with the same label were tested and each*

18 cartridge emitted a markedly different amount of nicotine with each puff. The nicotine levels per puff
19 ranged from 26.8 to 43.2 mcg nicotine/100 mLpuff
20 (d) The Surgeon General has found that the chemical nicotine is a powerful pharmacologic
21 agent that acts in the brain and throughout the body and is highly addictive. The United States
22 Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or
23 heroin and is a highly toxic substance. Use of nicotine in any form may cause or contribute to
24 cardiovascular disease, complications of hypertension, reproductive disorders, cancers of many types.
25 and gastrointestinal disorders, including peptic ulcer disease and gastro esophageal reflux.

p.3:

1 (e) The FDA has raised concerns that electronic cigarettes, including but not limited to
2 flavored electronic cigarettes, can increase nicotine addiction among young people and may lead youth
3 to try conventional tobacco products. A CDC study showed that in 2011 4. 7% of all high schoolers had
4 tried e-cigarettes and that in 2012 that number increased to 10.0% of all high schoolers. Electronic
5 cigarettes may not be legally sold to minors in California. Electronic smoking devices and other
6 unapproved nicotine delivery products have a high appeal to youth due to their high tech design and
7 availability in child-friendly flavors like cotton candy, bubble gum, chocolate chip cookie dough and
8 cookies and cream milkshake. [Also, E-cigarette ads are directed towards young people.]
9 (f) Health authorities have also expressed concerns that the vapors released into the air
10 through the use of an electronic cigarette present a danger to others who breathe them.

A further explanation of the health problems regarding e-cigarettes is as follows:

2.1.3 The e-liquids used in e-cigarettes are mixtures of nicotine, solvents (glycerol and/or propylene glycol) and flavorings. Chronic inhalation of these chemicals may have unhealthy effects.¹¹

2.1.4 E-cigarettes use a metal coil heated up to 600 degrees Fahrenheit to vaporize the e-liquids.¹² Temperatures that high result in chemical breakdown of the ingredients and the production of harmful fumes that are then inhaled.¹³ The coils themselves produce nanoparticles of metals that lodge in the lungs.¹⁴

2.1.5 One e-cigarette can be the equivalent of a pack or more of conventional cigarettes, increasing the likelihood of prolonged exposure to these fumes.¹⁵ The larger, 2nd and 3rd generation e-cigarette devices or vaporizers, which are favored by “vape shops” allow longer duration of vaping and higher voltages and temperatures, which increase the exposure to these harmful fumes.^{16,17}

2.1.6 It is the opinion of the appellant that due to the above facts, e-cigarettes are, and will continue to be, detrimental to the health of the users.

2.2 The proposed business at 1963 Ocean Avenue intends to operate a steam stone hookah lounge.

2.2.1 In this type of hookah, burning charcoal is used to vaporize flavored liquids and the fumes are then inhaled. Typically, tobacco is not used. Charcoal burns at high temperatures, resulting in chemical breakdown of the ingredients and harmful fumes that are then inhaled. Inhaling fumes from the burning charcoal itself can result in carbon monoxide poisoning.^{18,19}

2.2.2 It is the opinion of the appellant that due to the above facts, hookah usage, steam stone or other varieties, is and will continue to be, detrimental to the health of the users.

2.3 The proposed tobacco paraphernalia establishment claims that it is in the business of “harm reduction”. That claim is disingenuous.

2.3.1 E-cigarettes are not more effective for smoking cessation than approved stop smoking programs, which do not use e-cigarettes.^{20,21} E-cigarettes are not approved by the FDA as a stop smoking product.²² E-cigarettes are not proven to be safer than cigarettes for long term use.²³

2.3.2 Cigarette consumption has been decreasing dramatically for fifty years since the Surgeon General's report of 1964 (Exhibit_D, Figure 1).^{24, 25} This decline is due to extensive public health measures including restrictions on advertising and sales, not to E-cigarettes. E-cigarettes and the newer variants may be a way for tobacco companies to reverse their declining sales.²² The nicotine in e-cigarettes is extracted from tobacco leaves and is a tobacco product.

2.3.3 E-cigarettes are currently a multi-billion dollar business backed by millions of dollars of advertising. If e-cigarette manufacturers were sincere about being considered as stop smoking products, they would apply for FDA approval, similar to other nicotine replacement products that are approved by the FDA for smoking cessation. However, due to the characteristics of e-cigarettes discussed in 1.1 above, existing e-cigarettes may not meet FDA criteria for approval.²²

2.3.4 The proposed business is not a stop smoking clinic. A primary goal of this business is to increase the sale and use of e-cigarettes, which will result in more people becoming addicted to nicotine and being exposed to these harmful fumes.²⁶ The proposed business also intends to operate a steam stone hookah lounge, which is not part of a stop smoking program. As discussed in 1.2 above, hookah, steam-stone or otherwise, has adverse health effects.

2.3.5 It is the opinion of the appellant that due to the above facts, the claim of "harm reduction" as a primary goal of this business is not credible.

2.4 **In summary**, the appellant maintains that the statement in the Final Motion of the Planning Commission (p.5, 7.B.) that "The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity." is incorrect and is not supported by recognized health agencies.

The Planning Commission also did not properly apply the following sections of the Planning Code:

3. SEC. 303. CONDITIONAL USES.(n) **Tobacco Paraphernalia Establishments**

(1)(B) The concentration of such establishments in the particular zoning district for which they are proposed does not appear to adversely impact the health, safety, and welfare of residents of nearby areas.

3.1 As seen on the map (Exhibit_E, Figure 2), there are eight businesses that sell cigarettes on this section of Ocean Avenue; five of these sell e-cigarettes. (In addition, there are two businesses that sell cigarettes and/or e-cigarettes on the adjacent blocks of Holloway Ave.) The western half of the Ocean Avenue Neighborhood Commercial District is particularly impacted, as it has six businesses that sell cigarettes (four of which sell e-cigarettes): 1490, 1521, 1551, 1799, and 2000 Ocean Avenue, and 395 Ashton Avenue, which is in the same building as 1901 Ocean Avenue. These six stores are located in a five block distance, a little over 2,000 feet distance, which means that there is already one tobacco establishment every 335 feet on average.

3.2 1963 Ocean Ave. is 350 feet from the 7-Eleven at 2000 Ocean Avenue which sells cigarettes and e-cigarettes, and less than 400 feet west of the E-C Mart on Ashton which sells cigarettes.

3.3 The proposed tobacco paraphernalia establishment is across Ocean Avenue, 130 feet, from the Voice of Pentecost Academy, an accredited K-12 school. It is 900 feet from the K-8

Stratford School. It is less than 1,200 feet from the Aptos Playground and Middle School, which has 1,000 students. A large number of Aptos students walk past 1963 Ocean Avenue twice a day.

3.4 The principal business of this vape shop will be selling tobacco products and paraphernalia, which will increase usage of these potentially harmful products in the Ocean Avenue neighborhood.

3.5 The appellant realizes that the proposed tobacco paraphernalia establishment will not sell its products to underage students. However, despite state and local restrictions, minors continue to obtain cigarettes and other tobacco products. It has been stated that “*Higher tobacco retail density encourages smoking by making cigarettes more accessible and available, by normalizing tobacco use, and through increasing environmental cues to smoke.*” and “*it is in the City's interest to reduce the disproportionate exposure to tobacco outlets that exists.*”²⁷

3.6 Teen use of e-cigarettes has been increasing at an alarming rate.²⁸ Communities across the country are trying to limit this growth.

3.7 **In summary**, the appellant holds that the statement in the Final Motion of the Planning Commission (p. 6, E.ii.) that “The concentration of such establishments in the particular zoning district for which they are proposed does not appear to adversely impact the health, safety, and welfare of residents of nearby areas” is incorrect and is inconsistent with the data.

Conclusion: The proposed tobacco paraphernalia establishment does not meet the Conditional Use criteria of being necessary or desirable to our neighborhood. This business would adversely impact the health, safety, and welfare of residents of nearby areas, as has been stated by the San Francisco Department of Public Health and accepted by the San Francisco Board of Supervisors in unanimous votes on prior legislation. Ocean Avenue already has too high a concentration of tobacco paraphernalia establishments. San Francisco has always been in the forefront of efforts to protect the health of its citizens, and we ask that the Board of Supervisors continue this admirable tradition.

We ask that the Board of Supervisors fully and correctly apply the relevant sections of the San Francisco Planning Code as documented in this Appeal; deny the Conditional Use Authorization; and disapprove the proposed tobacco paraphernalia establishment at 1963 Ocean Avenue.

The appellant wishes to thank the members of the Board for giving us the opportunity to make these presentations to the San Francisco Board of Supervisors.

Robert Karis, M.D.



(Exhibit F - Appeal Document)

Annotated References:

(Some of these URL's may need to be copied and pasted into your web browser.)

¹ San Francisco Planning Code. American Legal Publishing Company. Current through Ordinance 228-14, File No. 120814, effective Dec. 13, 2014. <http://www.amlegal.com/library/ca/sfrancisco.shtml>

² Balboa Park Station Area Plan. San Francisco General Plan

www.sf-planning.org/Modules/ShowDocument.aspx?documentid=1983

³ Ocean Avenue Neighborhood Profile. San Francisco Invest in Neighborhoods 2013
<http://investsf.org/wordpress/wp-content/uploads/2014/03/Neighborhood-Profile-OCEAN-AVENUE.pdf>

⁴ San Francisco Formula Retail Economic Analysis June, 2014 http://www.sf-planning.org/ftp/files/legislative_changes/form_retail/Final_Formula_Retail_Report_06-06-14.pdf

⁵ Kjelstrom Economic Development Final Report
http://www.sfog.us/ocean_ave/kjelstrom_20141031.pdf

⁶ Appeal Ltr 120814 pdf pp.19-25.
<https://sfgov.legistar.com/View.ashx?M=F&ID=3417053&GUID=CB4A6F8A-BCD2-4C22-B3AE-7B77B498C61F>

⁷ San Francisco Board of Supervisors: Licensing and Regulation of Massage Establishments and Practitioners, File No. 130789 [Board Pkt 111913](https://sfgov.legistar.com/View.ashx?M=F&ID=2729803&GUID=7C730750-B402-42E5-A679-91963AE186F4)
<https://sfgov.legistar.com/View.ashx?M=F&ID=2729803&GUID=7C730750-B402-42E5-A679-91963AE186F4>

⁸ Planning Commission Final Motion No. 19271, Hearing Date: November 6, 2014. San Francisco Planning Department. Online in [Appeal Ltr 120814](https://sfgov.legistar.com/View.ashx?M=F&ID=3417053&GUID=CB4A6F8A-BCD2-4C22-B3AE-7B77B498C61F) pdf pp.3-18.
<https://sfgov.legistar.com/View.ashx?M=F&ID=3417053&GUID=CB4A6F8A-BCD2-4C22-B3AE-7B77B498C61F>

⁹ E-Cigarette Fact Sheet, Tobacco Free Project, San Francisco Department of Public Health, Feb. 2013.
<https://www.sfdph.org/dph/files/hc/HCCommPublHlth/Agendas/2014/April%2015/FactSheetLongFeb2013%20Final.pdf>

¹⁰ San Francisco Board of Supervisors: Restrictions on Sale and Use of Electronic Cigarettes. File No. 131208, Ordinance No. 030-14, approved 3/27/14. [Leg Final](https://sfgov.legistar.com/View.ashx?M=F&ID=2952910&GUID=50D33A11-51BA-4BD9-B040-A155302C0464)
<https://sfgov.legistar.com/View.ashx?M=F&ID=2952910&GUID=50D33A11-51BA-4BD9-B040-A155302C0464>

¹¹ Hazardous Substance Fact Sheet, Propylene Glycol. New Jersey Department of Health, Sept, 2009.
<http://nj.gov/health/eoh/rtkweb/documents/fs/3595.pdf>

¹² Schripp T, Markewitz D et al. Does e-cigarette consumption cause passive vaping? *Indoor Air* 23:25-31, Feb. 2013. <http://onlinelibrary.wiley.com/doi/10.1111/j.1600-0668.2012.00792.x/full>

¹³ Kosmider L, Sobczak A, et al. Carbonyl Compounds in Electronic Cigarette Vapors—Effects of Nicotine Solvent and Battery Output Voltage. *Nicotine Tob Res* 16 (10):1319-1326, Oct. 2014.
<http://ntr.oxfordjournals.org/content/16/10/1319.full>

¹⁴ Williams M, Villareal A et al. Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol *PLoS One*. 2013;8:e57987
<http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0057987>

¹⁵ One cartridge of e-liquid equals approximately one pack of cigarettes.
<http://store.blucigs.com/flavor-cartridges>

¹⁶ http://en.wikipedia.org/wiki/Electronic_cigarette

¹⁷ Meier B: <http://www.nytimes.com/2014/12/25/business/race-to-deliver-nicotines-punch-with-less-risk.html>

¹⁸ Shihadeh A, Salman R, et al. Does switching to a tobacco-free waterpipe product reduce toxicant intake? A crossover study comparing CO, NO, PAH, volatile aldehydes, tar and nicotine yields. *Food Chem Toxicol*. May 2012; 50(5): 1494–1498.
<http://www.sciencedirect.com/science/article/pii/S0278691512001251>

¹⁹ Youn OL, Mukherjea, Grana R: Hookah steam stones: smoking vapour expands from electronic cigarettes to waterpipes. *Tob Control*. Mar 2013; 22(2): 136–137.

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3529746/>

²⁰ Franck C, Budlovsky BA et al. Electronic Cigarettes in North America: History, Use, and Implications for Smoking Cessation. *Circulation*. 2014; 129: 1945-1952

<http://circ.ahajournals.org/content/129/19/1945.full> Review. E-cigarettes can help reduce the number of cigarettes smoked and may be as effective for smoking cessation as the nicotine patch. Conclusion— Given the limited available evidence on the risks and benefits of e-cigarette use, large, randomized, controlled trials are urgently needed to definitively establish their potential for smoking cessation.

²¹ Nowak D, Jorres RA, R  ther T: E-cigarettes--prevention, pulmonary health, and addiction. *Dtsch Arztebl Int*. 2014 May 16;111(20):349-55

<http://www.ncbi.nlm.nih.gov/pubmed/?term=nowak+d++e-cigarettes> In contrast to the demonstrated efficacy of multimodal smoking-cessation programs with pharmacological and psychotherapeutic support, the efficacy of e-cigarettes in smoking cessation has not yet been satisfactorily shown.

²² American Lung Association Statement on E-Cigarettes. 2014 <http://www.lung.org/stop-smoking/tobacco-control-advocacy/federal/e-cigarettes.html>

²³ Meier B: <http://www.nytimes.com/2014/12/25/business/race-to-deliver-nicotines-punch-with-less-risk.html>

²⁴ Warner KE, Pollack HA: The Nicotine Fix. *The Atlantic*, Nov. 13, 2014, Per Capita Cigarette Consumption (figure) <http://www.theatlantic.com/features/archive/2014/11/the-nicotine-fix/382666/>

²⁵ The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General, 2014. <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/>

²⁶ Bunnell RE, Agaku IT: Intentions to Smoke Cigarettes Among Never-Smoking U.S. Middle and High School Electronic Cigarette Users, National Youth Tobacco Survey, 2011-2013. *Nicotine Tob Res* 2014 Aug 20. <http://www.ncbi.nlm.nih.gov/pubmed/25143298> In 2013, over a quarter million never-smoking youth had used e-cigarettes. E-cigarette use was associated with increased intentions to smoke cigarettes. Enhanced prevention efforts for youth are important for all forms of tobacco, including e-cigarettes.

²⁷ San Francisco Board of Supervisors: Tobacco Sales Permits and Associated Fees. File No. 141098, Ordinance No. 259-14 [Leg Final](#) <https://sfgov.legistar.com/View.ashx?M=F&ID=3423953&GUID=42A94485-60D5-4D03-AF83-DC49520B69DD>

²⁸ University of Michigan Monitoring the Future: E-cigarettes surpass tobacco cigarettes among teens. www.monitoringthefuture.org/pressreleases/14cigrp_complete.pdf Among 12th-graders, 17 percent reported e-cigarette use and 14 percent reported use of a tobacco cigarette in the last 30 days.



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
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Planning Commission Final Motion No. 19271

HEARING DATE: NOVEMBER 6, 2014

Date: October 30, 2014
Case No.: **2014.0206C**
Project Address: **1963 Ocean Avenue**
Zoning: Ocean Avenue NCT (Neighborhood Commercial Transit)
 45-X Height and Bulk District
Block/Lot: 6915/020
Project Sponsor: Cong Phuong T Nguyen/Yong (Blake) He [agent]
 948 Moscow Street
 San Francisco, CA 94112
Staff Contact: Marcelle Boudreaux – (415) 575-9140
marcelle.boudreaux@sfgov.org
Recommendation: **Approval with Conditions**

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 737.69 OF THE PLANNING CODE TO ALLOW ESTABLISHMENT OF A TOBACCO PARAPHERNALIA ESTABLISHMENT (D.B.A. HAPPY VAPE) WITHIN THE OCEAN AVENUE NCT (NEIGHBORHOOD COMMERCIAL TRANSIT) DISTRICT AND A 45-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On February 7, 2014 Cong Phuong Nguyen (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section(s) 737.69 to allow establishment of a Tobacco Paraphernalia Establishment retail use (d.b.a. Happy Vape) within the Ocean Avenue NCT (Neighborhood Commercial Transit) District and a 45-X Height and Bulk District.

On November 6, 2014, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2014.0206C.

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2014.0206C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on the southern side of Ocean Avenue, between, Block 6915, Lot 020. The property is located within the Ocean Avenue NCT (Neighborhood Commercial Transit) District with 45-X height and bulk district. The property is developed with a one-story-over-partial-basement commercial building, with tenants including a travel agent, a massage/acupuncture establishment and the vacant retail space at 1963 Ocean Avenue. The street frontage of the proposed tenant space is 20 feet. The parcel is approximately 4,500 square feet. *The site is within the Balboa Park Station Plan Area.*
3. **Surrounding Properties and Neighborhood.** The length of the Ocean Avenue NCT District is approximately $\frac{3}{4}$ mile and the City College of San Francisco anchors the southern end of the district, with approximately 35,000 students. The area surrounding the project site on Ocean Avenue is mixed-use in character. A variety of commercial establishments are located within ground floor storefronts in the Ocean Avenue NCT, including restaurants, cafes, professional services, convenience stores, liquor stores, auto service stations, and other types of retailers.

Buildings along Ocean Avenue typically range from one to five stories in height. Upper floors of buildings are generally occupied by residential units. The surrounding properties are located within the RH-1(D) (Residential House, One-Family Detached), RH-1 (Residential House, One-Family) and RH-2 (Residential House, Two-Family) Districts, with some NC-2 and NC-1 zoned districts interspersed. The area is transit-oriented with the MUNI K-Ingleside line on Ocean Avenue and several bus lines on and connecting to Ocean Avenue. The Ocean Avenue NCT District is intended to provide convenience goods and services to the surrounding neighborhoods as well as limited comparison shopping goods for a wider market. The range of comparison goods and services offered is varied and often includes specialty retail stores, restaurants, and neighborhood-serving offices.

4. **Project Description.** The project sponsor proposes to establish a Tobacco Paraphernalia Establishment retail use in a vacant retail space to be known as "Happy Vape", which will include e-cigarette sales at the ground floor and a steam stone hookah lounge at the basement

level. The existing tenant space measures approximately 1,334 square feet at ground floor and 1,054 square feet at basement level. The project also includes minor interior tenant improvements, new signage but otherwise proposed no storefront alterations.

The project sponsor proposes a business that will sell devices (e-cigarettes/vaporizers), vaping liquids/e-juices and batteries both in-store and some accessory sales on-line. In the basement level, the project sponsor proposes establishing a steam stone hookah lounge. Together, these activities have been determined as Tobacco Paraphernalia Establishment uses and account for more than 10% of the square footage of occupied floor area. The proposed hours of operation are from 11 a.m. to 12 a.m. daily. No ABC license is being sought in conjunction with this Conditional Use authorization.

E-cigarette smoking, or "vaping", is not allowed inside commercial establishments within San Francisco.

The proposed use is an independent use and locally owned, which has been encouraged throughout San Francisco. The proposed use is not a Formula Retail use. The proposal requires a Section 312-neighborhood notification, which was conducted in conjunction with the Conditional Use Authorization process.

The proposed operation will employ between 2-4 employees. The subject site is well served by public transit so that potential customers should not adversely affect the traffic flow.

5. **Public Comment.** To date, the Department has received emails and letters in opposition to the proposal from 22 individuals, and 2 letters of opposition from neighborhood groups, including the Westwood Park Association and from the Ingleside Terraces Homes Association. These individuals and groups expressed concerns regarding the safety of e-cigarettes, the safety and welfare of children in relation to e-cigarettes, possibility of odor, crime in the area, and problems with the outdoor area (which the project sponsor has since removed from the project). The Department has also received a letter of support from the Ocean Avenue Association. The project sponsor has obtained 21 signed letters of support from neighboring business owners, including a petition with two signatures.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Use Size.** Planning Code Section 737.21 permits use sizes up to 3,999 square feet, with a Conditional Use Authorization required for use sizes of 4,000 square feet and above, as defined by Planning Code Section 790.130.

The proposed use size of the ground floor and basement level is approximately 2,423 square feet.

- B. **Outdoor Activity.** Planning Code Section 737.24 states that a Conditional Use Authorization is required for an Outdoor Activity Area, as defined by Planning Code Section 790.70.

The Project Sponsor does not intend to establish an outdoor activity area.

- C. **Hours of Operation.** Planning Code Section 737.27 permits operation by-right from 6 a.m. to 2 a.m. Operation between the hours of 2 a.m. to 6 a.m is allowed through conditional use authorization only.

The Sponsor does not seek to operate beyond the permitted hours of operation for the Zoning District. The proposed hours of operation for Happy Vape are 11 a.m. to 12 a.m. daily in the ground and basement levels.

- D. **Rear Yard Requirement in the Ocean Avenue NCT District.** Planning Code Section 737.12 and 134 states that the minimum rear yard depth shall be equal to 25 percent of the total depth of a lot in which it is situated, but in no case less than 15 feet.

The proposal does not include any structural expansion. The rear yard meets the Planning Code requirements.

- E. **Parking.** Planning Section 151 of the Planning Code requires off-street parking for every 200 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

The Subject Property contains approximately 2,423 square-feet of occupied floor area and thus does not require any off-street parking.

- F. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that within NC Districts space for active uses shall be provided within the first 25 feet of building depth on the ground floor. Frontages with active uses must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building.

The subject commercial space has approximately 20-feet of frontage on Ocean Avenue with approximately 20 feet devoted to either the retail entrance or window space. The windows are proposed as clear and unobstructed. There are no changes proposed to the commercial frontage.

- G. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department per Article 6 of the Planning Code.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The size of the proposed use is in keeping with other storefronts on the block face. The proposed Tobacco Paraphernalia Establishment will not impact traffic or parking in the District, as the use is not changing from retail. This will compliment the mix of goods and services currently available in the district by providing diverse commercial offerings and contribute to the economic vitality of the neighborhood by removing a vacant storefront.

B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The height and bulk of the existing building will remain the same and will not alter the existing appearance or character of the project vicinity. The proposed work will not affect the building envelope.

ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Planning Code does not require parking or loading for a 2,423 occupied square-foot retail use. The proposed use is designed to meet the needs of the immediate neighborhood as well as limited comparison shopping goods for a wider market. The site is easily accessible by transit for surrounding neighborhoods, and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide.

iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The proposed use is subject to conditions of approval outlined in Exhibit A. Conditions 3 and 6 specifically obligates the project sponsor to mitigate odor generated by the Tobacco Paraphernalia Use.

iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The proposed use does not require additional exterior improvements, nor does the project require parking or loading. The Department shall review all signs proposed for the new business in accordance with Article 6 of the Planning Code.

C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed project is consistent with the stated purposes of the Ocean Avenue NCT District in that the intended use is located at the ground floor and below, will provide convenience goods and services to the surrounding neighborhoods as well as limited comparison shopping goods for a wider market. The proposal enhances the range of comparison goods and services offered by adding another specialty retail store to the District. The project seeks to retain an existing storefront, which will preserve the fine grain character of the district. Further, a survey conducted by the Mayor's Office of Economic and Workforce Development Invest in Neighborhoods program (February 2013) determined that more diverse commercial offerings were desired by the neighborhood.

- E. With respect to a Tobacco Paraphernalia Establishment, as defined in Section 227(v) of the Planning Code, the Commission shall make the following findings:

- i. The concentration of such establishments in the particular zoning district for which they are proposed does not appear to contribute directly to peace, health, safety, and general welfare problems, including drug use, drug sales, drug trafficking, other crimes associated with drug use, loitering, and littering, as well as traffic circulation, parking, and noise problems on the district's public streets and lots;

The proposal is a new establishment, which proposes to utilize a vacant retail space for an electronic cigarette retail store and steam stone hookah lounge. There are no other Tobacco Paraphernalia Establishments within the Ocean Avenue NCT that have received Conditional Use authorization. The approximate concentration of establishments that sell e-cigarettes – including as peripheral goods and the proposed business – within the Ocean Avenue NCT is 6% of commercial frontage. The project sponsor will maintain current contact information for a Community Liaison per Condition 6 in Exhibit A, will endeavor to create a safe business environment, discourage loitering and e-cigarette smoking outside the storefront, and maintain the public space in front of the storefront free from litter per Condition 4 in Exhibit A. Street parking exists along Ocean Avenue and the area is well-served by MUNI K-Ingleside lightrail line and several bus lines on and connecting to Ocean Avenue.

- ii. The concentration of such establishments in the particular zoning district for which they are proposed does not appear to adversely impact the health, safety, and welfare of residents of nearby areas, including fear for the safety of children, elderly and disabled residents, and visitors to San Francisco;

The proposal is a new establishment, which proposes to utilize a vacant retail space for an electronic cigarette retail store and steam stone hookah lounge. There are no other Tobacco Paraphernalia Establishments within the Ocean Avenue NCT that have received Conditional Use authorization. The approximate concentration of establishments that sell e-cigarettes –

including as peripheral goods and the proposed business - within the Ocean Avenue NCT is 6% of commercial frontage. The project sponsor will maintain current contact information for a Community Liaison per Condition 6 in Exhibit A, will endeavor to create a safe business environment, discourage loitering and e-cigarette smoking outside the storefront, and maintain the public space in front of the storefront free from litter per Condition 4 in Exhibit A.

- iii. The proposed establishment is compatible with the existing character of the particular district for which it is proposed.

The proposal is a new commercial establishment, which proposes to utilize a vacant retail space for an electronic cigarette retail store and steam stone hookah lounge. The use will remain as retail establishment, and no changes are proposed to the fine-grained, pedestrian-oriented storefront. The establishment is compatible with the existing character of particular district for which it is proposed.

8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The proposed development will provide specialty goods and services to the neighborhood and will provide employment opportunities to those in the community. Further, the Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

The Project will introduce a new commercial retail use and will enhance the diverse economic base of the City.

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

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.

No commercial tenant would be displaced and the project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood. The proposed business seeks to occupy a vacant retail storefront with a diverse commercial use.

Policy 6.2:

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to the economic and technological innovation in the marketplace and society.

An independent entrepreneur is sponsoring the proposal. This is not a Formula Retail use.

BALBOA PARK STATION AREA PLAN

Objectives and Policies

OBJECTIVE 1.2:

STRENGTHEN THE OCEAN AVENUE NEIGHBORHOOD COMMERCIAL DISTRICT.

Policy 1.2.3:

Retain and improve the neighborhood's existing businesses while also attracting new businesses that address unmet retail and service needs of the diverse local neighborhoods.

An independent entrepreneur is seeking to bring a new retail use to the District. No retail use is being displaced as the storefront space is currently vacant.

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposal would enhance the district by filling a vacant storefront and preserve a retail use. The business would be locally owned and it creates 2-4 employment opportunities for the community. The proposed alterations are within the existing building footprint.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The existing units in the surrounding neighborhood would not be adversely affected.

- C. That the City's supply of affordable housing be preserved and enhanced,

No housing is removed for this Project.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The site is on Ocean Avenue and is well served by transit. Street parking lines both sides of Ocean Avenue. Ocean Avenue has one MUNI light-rail (K-Ingleside) and several bus lines on and connecting to Ocean Avenue.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

This proposal will not impact the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

A landmark or historic building does not occupy the Project site.

H. That our parks and open space and their access to sunlight and vistas be protected from development.

The project will have no negative impact on existing parks and open spaces. The Project does not have an impact on open spaces.

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2014.0206C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated October 30, 2014, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 19271. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on November 6, 2014.

Jonas P. Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: November 6, 2014

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a Tobacco Paraphernalia Establishment (d.b.a. **Happy Vape**) located at 1963 Ocean Avenue, Block 6915, Lot 020, pursuant to Planning Code Section(s) **303, 737.69** within the **Ocean Avenue NCT** District and a **45-X** Height and Bulk District; in general conformance with plans, dated **October 30, 2014**, and stamped "EXHIBIT B" included in the docket for Case No. **2014.0206C** and subject to conditions of approval reviewed and approved by the Commission on **November 6, 2014** under Motion No **19271**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on **November 6, 2014** under Motion No **19271**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **19271** shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

PERFORMANCE

Validity. The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

Expiration and Renewal. Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

Diligent pursuit. Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

Extension. All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

Conformity with Current Law. No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

Conditions of Approval, Compliance, Monitoring, and Reporting

1. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code

Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

2. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

DESIGN – COMPLIANCE AT PLAN STAGE

3. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the project is operational, the building permit application to implement the project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

4. **ID Reader and Signage at Front.** In order to ensure that the business owner maintains restrictions on entry to ages 18 and older, the building permit application to implement the project shall include an Identification reader installed at the entry door and signage at the entry door(s) indicating entry by individuals ages 18 and older.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

OPERATION

5. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>

6. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards. Further the 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.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>

7. **Odor Control.** 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.

For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

8. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Community Liaison is Yong (Blake) He, at a business address of 1963 Ocean Avenue, San Francisco, CA 94127, and phone number 415-513-2620. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

9. **Hours of Operation.** The subject establishment is limited to the following hours of operation: 11 a.m. – 10 p.m. daily.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

10. **ID Reader and Signage at Front.** Appropriate Identification scanning equipment should be installed and utilized at the entry for monitoring entry by individuals ages 18 and older. Appropriate code-complying signage shall be affixed to entry door(s) indicating entry by individuals ages 18 and older.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

11. **Six-Month Monitoring.** Planning Commission shall be provided an update on operations six months after approval.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org



City and County of San Francisco
Mayor Edwin Lee

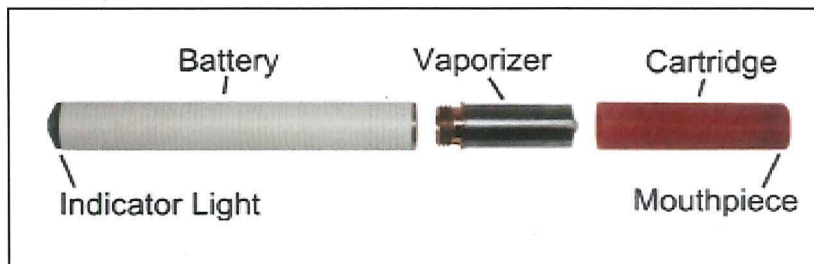
TOBACCO FREE PROJECT
Department of Public Health
Population Health and Prevention
Community Health Education Section
Community Health Promotion & Prevention Branch

E-Cigarette Fact Sheet

February 4, 2013

What Are E-Cigarettes?

E-cigarettes are electronic cigarettes that are battery-operated devices designed to look like and to be used like conventional cigarettes. The devices contain cartridges filled with nicotine, flavor and other chemicals. E-cigarettes turn nicotine and other chemicals into a vapor that is inhaled by the user. No smoke or combustion is involved. Rather the device emits a vapor. E-cigarettes are marketed as less expensive and safer than tobacco cigarettes, as a more socially acceptable way to smoke in smoke-free environments and as providing relief from the social stigma of being a smoker.



Health Risks Identified by the Food and Drug Administration (FDA)

The FDA and many public health experts are concerned about health risks posed by e-cigarettes. The FDA has conducted a preliminary analysis of 18 of the various types of cartridges from 2 leading brands of e-cigarettes, labeled as flavored, nicotine and no-nicotine. Following were findings of the samples tested:

- Diethylene glycol, an ingredient used in antifreeze that is toxic to humans, was found in one sample.
- Certain tobacco-specific nitrosamines that are carcinogens for humans were found in half of the samples.
- Tobacco-specific impurities suspected of being harmful to humans were found in most of the samples. These included anabasine, myosine, and β -nicotyrine.
- Cartridges labeled as "no nicotine" had low levels of nicotine, with the exception of one.
- The amount of nicotine emitted with each puff varied markedly among 3 cartridges that all had the same label.
- One high-nicotine cartridge delivered twice the amount of nicotine compared to an FDA approved nicotine inhalation product that was developed as a smoking cessation aid.

Additional Health Concerns

- The devices include no health warnings.
- E-cigarettes could increase nicotine addiction among young people and encourage them to try other tobacco products such as conventional cigarettes due to introduction to addictive nicotine.
- E-cigarettes available in chocolate, strawberry and mint flavors would appeal to children.

- Consumers have no information about the safety of these products, the types and concentrations of nicotine and other chemicals inhaled when using them.
- Research conducted at the Lawrence Berkeley National Laboratory found that nicotine in third hand smoke, the residue from tobacco smoke that clings to surfaces long after a cigarette has been extinguished, reacts with a common indoor air pollutant called nitrous acid and produces a hazardous carcinogen. This study demonstrates that nicotine, the addictive ingredient in tobacco smoke, is harmful. Research co-author James Pankow has stated that the results of this study should raise concerns about the safety of electronic cigarettes.
<http://www.sciencedaily.com/releases/2010/02/100208154651.htm>

Not a Smoking Cessation Device

- These products have not been tested for safety or efficacy in helping people quit smoking.
- The American Cancer Society, American Heart Association, and American Lung Association have developed statements expressing concern about the increase of e-cigarette marketing and use.

Undermine Progress in Changing Social Norms around Smoking

- A key benefit to smoke-free laws is to change social norms around smoking and to make smoking less socially acceptable. E-cigarette use, particularly in areas that are covered by the second hand smoke ordinance, would undermine the progress made in social norm change.
- Use of e-cigarettes in non-smoking areas would give the public the impression that smoking is permitted as these products closely resemble traditional cigarettes and one could easily assume that the vapor emitted is smoke. In addition, e-cigarette use in areas where smoking is prohibited misleads people into believing that smoking is permitted in these areas without any consequence.

Complicate Enforcement Efforts

- Allowing use of e-cigarettes would likely complicate efforts by the City as well and business owners to enforce Health Code Article 19F. Since enforcement is complaint driven, there will be no way to distinguish whether a complaint is based on e-cigarettes or smoking of traditional cigarettes. Business owners' attempts to comply with the law would also be complicated if use of e-cigarettes is not banned in the same areas.

E Cigarettes Already Regulated by San Francisco Government Entities

- San Francisco General Hospital (SFGH) adopted a smoke free campus policy in 2008. In 2011, the policy was amended to include a ban on e-cigarettes on campus.
- E-cigarette use at SF Airport: In response to concerns regarding use of e-cigarettes at the airport and impact on compliance with smoke-free legislation, the Executive Committee of the San Francisco Airport Commission approved a proposal on September 20, 2010 to adopt a policy to ban the use of e-cigarettes where conventional cigarette smoking is prohibited.
- Department of Transportation prohibits use of e-cigarettes on airline flights:

On June 17, 2010, at a Senate Committee on Commerce, Science and Transportation hearing, the Assistant Secretary for Aviation and International Affairs of the U.S. Department of Transportation stated that smoking of electronic cigarettes was already banned on U.S. air carrier and foreign air carrier flights in scheduled intrastate, interstate and foreign air transportation (49 USC §41706 and 14 CFR Part 252). Additionally, the Department of Transportation planned to issue a notice of proposed rulemaking that would amend the existing general regulatory language in Part 252 to explicitly ban smoking of electronic cigarette aboard aircraft.

FDA Legal Authority

- The FDA could issue regulations of e-cigarettes as a tobacco product under the 2009 the Family Smoking Prevention and Tobacco Control Act. However the FDA cannot regulate where e-cigarettes are used and it cannot prohibit their use in places where smoking traditional cigarettes is already prohibited. The FDA also provides state and local governments with the authority to regulate the sale or use of tobacco products, including e-cigarettes.
- In September 2008, the FDA moved to establish authority over e-cigarettes as drug delivery devices based on the Food, Drug and Cosmetic Act. Specifically, the FDA banned the import of new e-cigarette product shipments.
- E-cigarette manufacturers sued the FDA, claiming that their products should be regulated as tobacco products, not as drugs.
- In January 2010, a Washington DC district court ruled that the FDA could not regulate e-cigarettes as a drug or drug delivery device (because the nicotine was derived from tobacco) but that the FDA could regulate them as tobacco products.

Authority of State or Local Governments to Regulate E-cigarettes

1. Local smoke free laws can include e-cigarettes in their definition of smoking.
2. Local tobacco licensing laws can include a requirement to obtain a local tobacco permit to sell e-cigarettes. In San Francisco, no tobacco permits are allowed in business establishments with pharmacies or on city and county property.
3. New local legislation can be adopted with findings unique to e-cigarettes that apply local smoking restrictions to e-cigarettes.

Limits on E-cigarettes Adopted by State and Local Governments

As of September 2010, California law banned e-cigarette sales to minors, putting the product in the same category as traditional cigarettes. The table below provides a list of e-cigarette legislation adopted by various government entities, including the rationale cited for the policies.

E-cig Law Enacted	Sale of E-cigarettes	Use of E-cigarettes
Canada, Argentina, Singapore, Brazil, Israel, Hong Kong,	No e-cigarette sales, distribution or importation.	

Jordan, Victoria (Australia), Turkey		
Malta		Bans use in public places where smoking is banned.
California	No sales to minors	
Savannah, Georgia		Bans use in public places and workplaces
Madison County, Kentucky		Bans use in public places and workplaces
New Jersey	No sales to minors	Bans use in enclosed indoor places of public access and workplaces
New Hampshire	No sales to minors or free sampling; Includes liquid nicotine	
Utah		Bans use in public places
Boston, Massachusetts	No sales of unregulated nicotine delivery products to minors	Bans use in workplaces
North Adams, Massachusetts	No sales to or use by minors	Bans use in public places and workplaces
Great Barrington, Massachusetts		Bans use where smoking is prohibited
Saugus, Massachusetts	No sales to minors	Bans use in public places.
Paramus, NJ		Bans use in indoor public places and workplaces
Cattaraugus County, NY	No sales to minors	Bans use in public places and workplaces
Suffolk County, NY	No sales to minors	Bans use in public places and workplaces
Bergen County, NJ		Bans use in county parks where children present, inside county buildings, and county vehicles
King County, WA (includes Seattle)	No sales to minors, or sampling, or coupons	Bans use in places where smoking is prohibited by law (workplaces, public places)
Tacoma- Pierce County, Washington	No sales to minors or free sampling.	Bans use in public places where minors are permitted (exempts places of employment that are not public places)

Ordinance Proposed would:

1. Prohibit use of and sale of e-cigarettes on City and County property.
2. Prohibit use of e-cigarettes in places where smoking is prohibited by law.
3. Require a tobacco permit for the sale or furnishing of e-cigarettes.

Rationale:

1. A ban on the use and sale of e-cigarettes on City and County property would be of particular priority, to be consistent with other policies adopted by the City to protect the public health. These include the bans on: tobacco advertising and tobacco sales on City and County property; smoking in City parks, gardens and squares, smoking within 20 feet of entrances to the airport, as well as the smoke-free campus policy adopted by San Francisco General Hospital in 2008. As an example, SFGH has conducted extensive education and training of staff and outreach to patients and visitors to gain compliance with the smoke-free campus policy. SFGH later amended the policy to ban e-cigarettes. Allowing e-cigarettes in locations where cigarette smoking is not allowed would act as a trigger for smokers and former smokers, and would also send a confusing message regarding the smoking policy.
2. Allowing use of e-cigarettes would likely complicate efforts to enforce Health Code Article 19F by the City as well as business owners. Since enforcement is complaint driven, there will be no way to distinguish whether a complaint is based on e-cigarettes or smoking of traditional cigarettes. A key benefit to smoke-free laws is to change social norms around smoking and to make smoking less socially acceptable. E-cigarette use, particularly in areas that are covered by the second hand smoke ordinance, would undermine the progress made in social norm change.
3. Requiring a tobacco permit for the sale or furnishing of e-cigarettes would provide another mechanism to regulate e-cigarettes. Police youth decoy operations conducted to enforce Penal Code 308, the ban on tobacco sales to minors, could be utilized to assure retailers are complying with the California ban on e-cigarette sales to minors. Permitting would additionally result in a ban on the sale of e-cigarettes in pharmacies, consistent with the fact that the FDA has not approved e-cigarettes as medical smoking cessation devices. The permit requirement would ensure establishments selling e-cigarettes be in a permanent location and would not permit temporary e-cigarette booths at shopping malls as have been seen in Westfield and Stonestown shopping centers.

1 [Health Code - Restrictions on Sale and Use of Electronic Cigarettes]

2
3 **Ordinance amending the Health Code to prohibit the use of electronic cigarettes where**
4 **smoking is otherwise prohibited; require a tobacco permit for the sale of electronic**
5 **cigarettes; prohibit the sale of electronic cigarettes where the sale of tobacco products**
6 **is otherwise prohibited; and making environmental findings.**

7
8 NOTE: Additions are *single-underline italics Times New Roman*;
9 deletions are *strike-through italics Times New Roman*.
10 Board amendment additions are double-underlined;
11 Board amendment deletions are ~~strikethrough normal~~.

12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. The Planning Department has determined that the actions contemplated in
14 this ordinance comply with the California Environmental Quality Act (California Public
15 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
16 Board of Supervisors in File No. 131208 and is incorporated herein by reference.

17
18 Section 2. The San Francisco Health Code is hereby amended by adding Article 19N,
19 Sections 19N.1 – 19N.9, to read as follows:

20 **SEC. 19N.1 FINDINGS AND STATEMENT OF PURPOSE.**

21 (a) Electronic smoking devices, commonly referred to as electronic cigarettes or e-cigarettes,
22 are battery-operated devices that may resemble cigarettes, although they do not contain tobacco leaf.
23 People who use electronic smoking devices inhale vaporized liquid nicotine extracted from tobacco, or
24 inhale other vaporized liquids, created by heat through an electronic ignition system, and exhale the
25 vapor in a way that mimics smoking.

1 (b) Electronic cigarettes are presently available for purchase and use in San Francisco.

2 (c) The FDA's Center for Drug Evaluation and Research, Office of Compliance purchased two
3 samples of electronic cigarettes and components from two leading brands. These samples included 18
4 of the various flavored, nicotine, and no-nicotine cartridges offered for use with these products. These
5 cartridges were obtained to test some of the ingredients contained in them and inhaled by users of
6 electronic cigarettes. The FDA's Center for Drug Evaluation and Research, Division of
7 Pharmaceutical Analysis (DPA) analyzed the cartridges from these electronic cigarettes for nicotine
8 content and for the presence of other tobacco constituents, some of which are known to be harmful to
9 humans, including those that are potentially carcinogenic or mutagenic. The DPA's analysis of the
10 electronic cigarette samples showed:

11 (1) The products contained detectable levels of known carcinogens and toxic chemicals to
12 which users could be exposed.

13 (2) Quality control processes used to manufacture these products are inconsistent or non-
14 existent.

15 (3) Tobacco-specific impurities suspected of being harmful to humans—*anabasine, myosmine,*
16 and *β-nicotyrine*—were detected in a majority of the samples tested.

17 (4) Three different electronic cigarette cartridges with the same label were tested and each
18 cartridge emitted a markedly different amount of nicotine with each puff. The nicotine levels per puff
19 ranged from 26.8 to 43.2 mcg nicotine/100 mL puff.

20 (d) The Surgeon General has found that the chemical nicotine is a powerful pharmacologic
21 agent that acts in the brain and throughout the body and is highly addictive. The United States
22 Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or
23 heroin and is a highly toxic substance. Use of nicotine in any form may cause or contribute to
24 cardiovascular disease, complications of hypertension, reproductive disorders, cancers of many types,
25 and gastrointestinal disorders, including peptic ulcer disease and gastro esophageal reflux.

1 (e) The FDA has raised concerns that electronic cigarettes, including but not limited to
2 flavored electronic cigarettes, can increase nicotine addiction among young people and may lead youth
3 to try conventional tobacco products. A CDC study showed that in 2011 4.7% of all high schoolers had
4 tried e-cigarettes and that in 2012 that number increased to 10.0% of all high schoolers. Electronic
5 cigarettes may not be legally sold to minors in California. Electronic smoking devices and other
6 unapproved nicotine delivery products have a high appeal to youth due to their high tech design and
7 availability in child-friendly flavors like cotton candy, bubble gum, chocolate chip cookie dough and
8 cookies and cream milkshake.

9 (f) Health authorities have also expressed concerns that the vapors released into the air
10 through the use of an electronic cigarette present a danger to others who breathe them.

11 (g) The use of an electronic cigarette in public is often indistinguishable from the use of
12 traditional tobacco products, prompting confusion among members of the public wherever smoking is
13 prohibited. Consequently, persons who smoke traditional tobacco products may be induced to do so in
14 areas where smoking is illegal under the mistaken belief that smoking is legal in such areas, or that the
15 ban on smoking in such areas is not being enforced.

16 (h) Owners of establishments such as office buildings and restaurants encounter similar
17 obstacles seeking to comply with the laws prohibiting smoking in certain locations. An owner may
18 request that a patron stop smoking cigarettes in a restaurant only to have the patron demonstrate that it
19 is an electronic cigarette. The Owner may also be placed in the position of having to confront and
20 examine the cigarettes of any number of customers absent a prohibition on the use of electronic
21 cigarettes where traditional cigarettes are banned.

22 (i) The agencies charged with enforcing compliance in enclosed and unenclosed spaces will
23 similarly have to devote considerable time and resources determining the individuals smoking
24 electronic cigarettes versus traditional cigarettes.

1 (j) Some agencies in San Francisco have already adopted restrictions on e-cigarette usage
2 including San Francisco General Hospital, Laguna Honda Hospital, AT&T Ballpark, University of
3 California-San Francisco, San Francisco Department of Public Health and the San Francisco
4 International Airport.

5 **SEC. 19N. 2 DEFINITIONS.**

6 (a) "Director" means the Director of Public Health or his or her designee.

7 (b) "Electronic Cigarette" or "E-cigarette" means any device with a heating element, a
8 battery, or an electronic circuit that provides nicotine or other vaporized liquids to the user in a
9 manner that simulates smoking tobacco.

10 (c) "Establishment" means any store, stand, booth, concession or other enterprise that engages
11 in the retail sales of tobacco products and/or electronic cigarettes.

12 **SEC. 19N.3 TOBACCO SALES PERMIT REQUIRED.**

13 (a) An establishment must have a valid tobacco sales permit obtained pursuant to Health Code
14 Section 1009.52 to sell electronic cigarettes.

15 (b) The Director may enforce this section pursuant to Articles 19 et seq. of the Health Code
16 including but not limited to Article 19H.

17 **SEC. 19N.4 PROHIBITING THE USE OF ELECTRONIC CIGARETTES WHEREVER**
18 **SMOKING OF TOBACCO PRODUCTS IS BANNED.**

19 (a) The use of electronic cigarettes is prohibited wherever smoking of tobacco products is
20 prohibited by law including Articles 19 et seq. of the Health Code.

21 (b) The Director may enforce this section pursuant to Articles 19 et seq. of the Health Code
22 including but not limited to the Articles prohibiting smoking in certain spaces or areas.

23 **SEC. 19N.5 PROHIBITING THE SALE OF ELECTRONIC CIGARETTES WHEREVER**
24 **THE SALE OF TOBACCO PRODUCTS IS PROHIBITED.**

1 a) The sale of electronic cigarettes is prohibited wherever the sale of tobacco products is
2 prohibited by law, including as prohibited in Articles 19 et seq. of the Health Code.

3 b) The Director may enforce this section pursuant to Articles 19 et seq. of the Health Code
4 including but not limited to Article 19J.

5 **SEC. 19N.6 CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
6 **WELFARE.**

7 In enacting and implementing this ordinance, the City is assuming an undertaking only to
8 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
9 obligation for breach of which it is liable in money damages to any person who claims that such breach
10 proximately caused injury.

11 **SEC. 19N.7 RULES AND REGULATIONS.**

12 The Director, after a noticed public hearing, may adopt rules and regulations to carry out the
13 provisions of this Article. Such rules and regulations shall take effect 15 days after the public hearing.
14 Violation of any such rule or regulation may be grounds for administrative or civil action against the
15 permittee pursuant to this Article.

16 **SEC. 19N.8 PREEMPTION.**

17 (a) Nothing in this Article shall be interpreted or applied so as to create any power, duty or
18 obligation in conflict with, or preempted by, any Federal or State law. Even if not preempted by
19 Federal or State law, the provisions of this Article shall not apply if the Federal or State law is more
20 restrictive.

21 //
22 //
23 //
24 //

1 (b) This Article shall not apply to any FDA-approved product marketed for therapeutic
2 purposes.

3 (c) This Article shall not affect any laws or regulations regarding medical cannabis.

4 **SEC. 19N.9 SEVERABILITY.**

5 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Article or
6 any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of
7 competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining
8 portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would
9 have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof
10 irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses,
11 or phrases be declared unconstitutional, or invalid, or ineffective.

12
13 Section 3. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By:


21 Aleeta M. Van Runkle
22 Deputy City Attorney

23
24
25 SUPERVISOR MAR
BOARD OF SUPERVISORS



City and County of San Francisco

Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 131208

Date Passed: March 25, 2014

Ordinance amending the Health Code to prohibit the use of electronic cigarettes where smoking is otherwise prohibited; require a tobacco permit for the sale of electronic cigarettes; prohibit the sale of electronic cigarettes where the sale of tobacco products is otherwise prohibited; and making environmental findings.

March 06, 2014 Rules Committee - RECOMMENDED

March 18, 2014 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

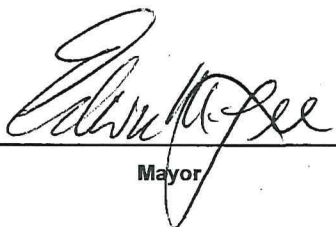
March 25, 2014 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 131208

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
3/25/2014 by the Board of Supervisors of the
City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor

3/27/14
Date Approved

Per Capita Cigarette Consumption (among U.S. adults)

The Atlantic, Nov. 13, 2014

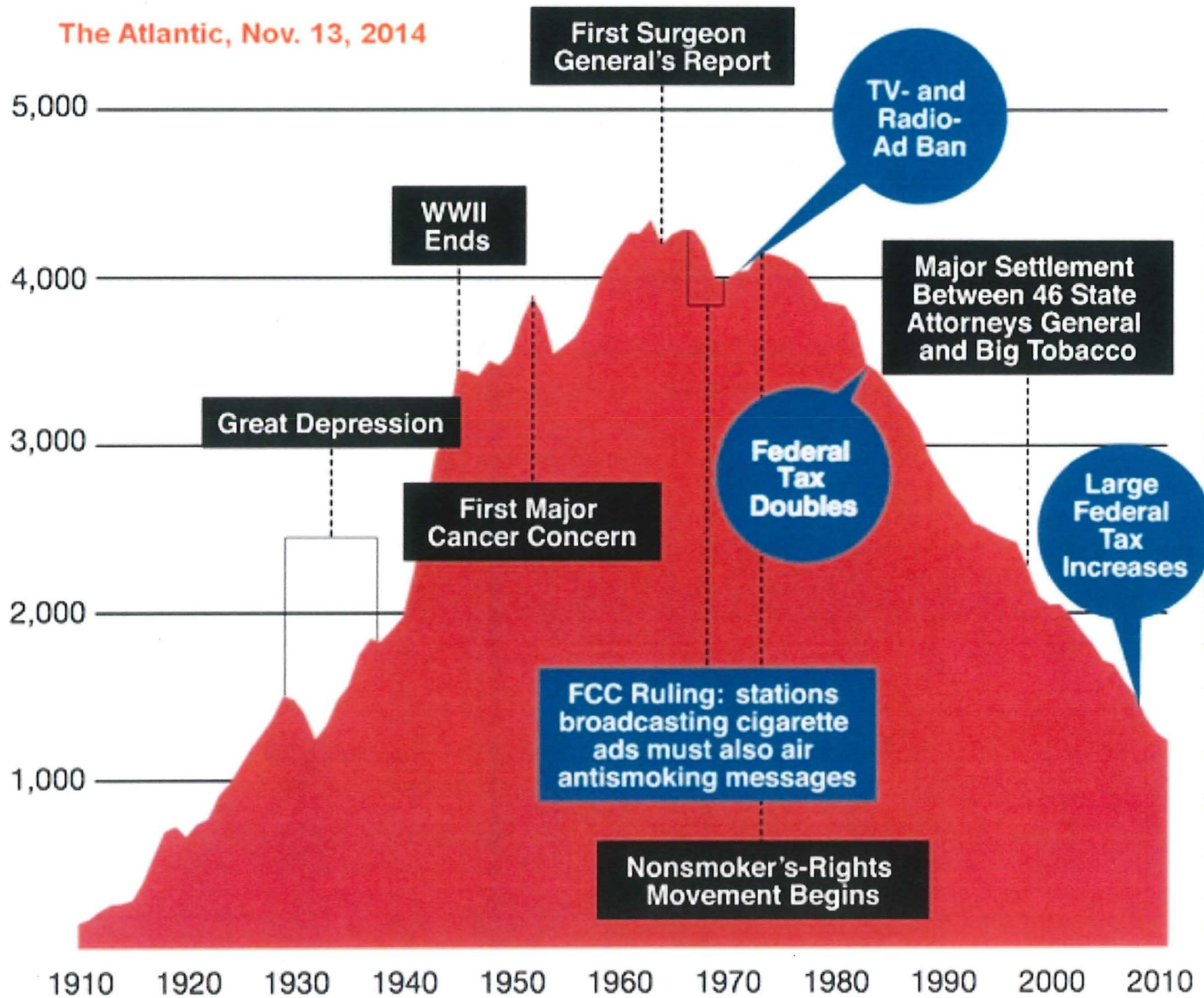
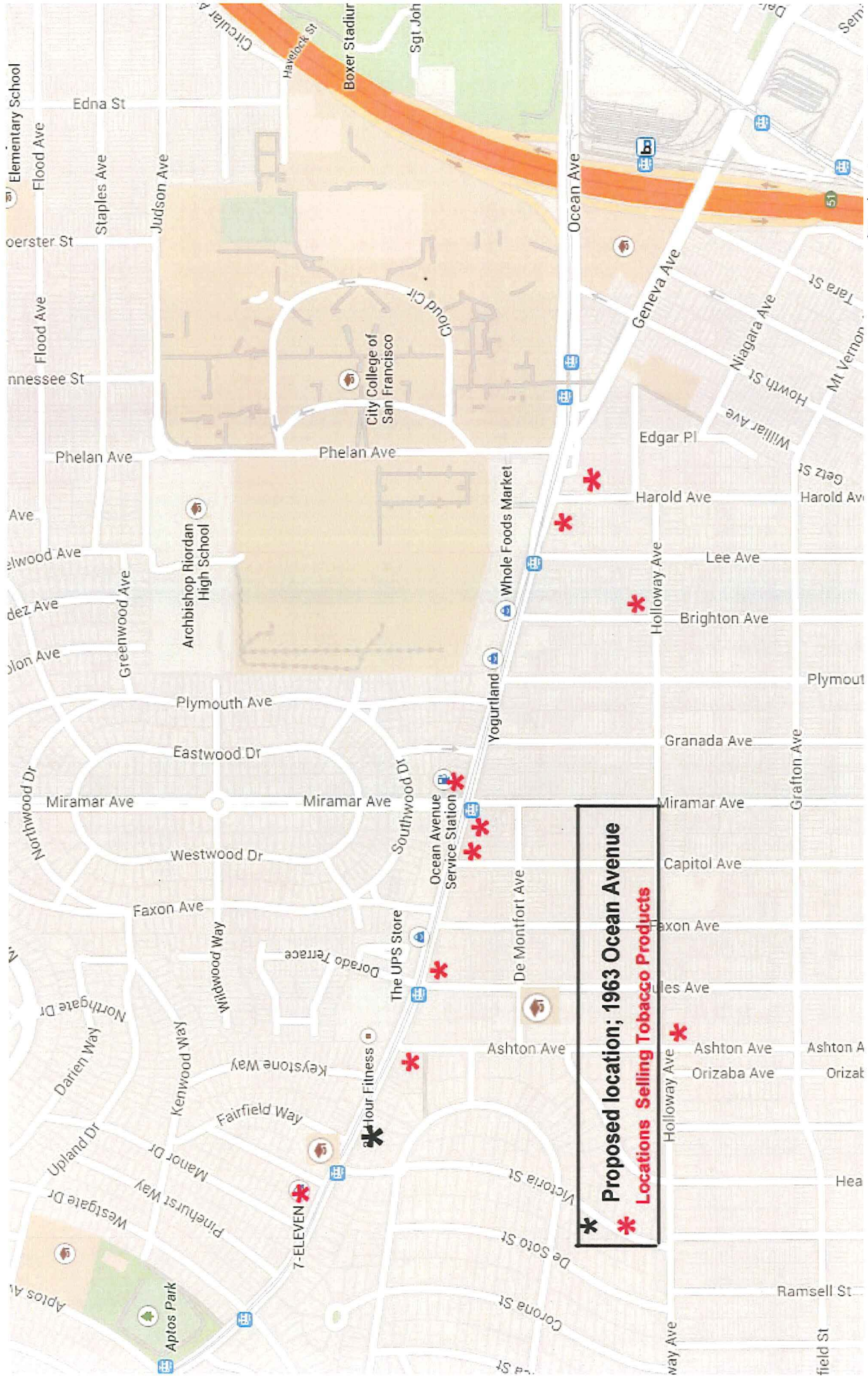


Exhibit D



Proposed location; 1963 Ocean Avenue
Locations Selling Tobacco Products

Exhibit E

Appeal of the decision of the Planning Commission Conditional Use Authorization by Motion No. 19271 (Case No. 2014.0206C), for property located at 1963 Ocean Avenue, Assessor's Block No 6915, Lot No. 020.

We disagree with the following "Findings" contained in the Final Motion ("FM") No. 19271 of the Planning Commission in approving, on November 6, 2014, the Conditional Use Authorization for the tobacco paraphernalia establishment at 1963 Ocean Avenue.

The appeal to disapprove the Planning Commission's authorization of the Conditional Use for the vape shop/steam stone hookah lounge (aka Happy Vape) at 1963 Ocean Avenue is based on the following:

1. The Planning Commission did not appropriately apply the criteria for a Conditional Use Authorization for a tobacco paraphernalia establishment selling electronic cigarettes. [Planning Code ("Code") 303 (n), Ordinance #030-14 & #224-08]
2. This was the **first required** Conditional Use Authorization hearing for a tobacco paraphernalia establishment including the sale of electronic cigarettes. [Planning Code 227(u); Ordinance #224-08 & #030-14]
3. The proposed business is not compatible with the character of the neighborhood, the community, or its demographics. [Planning Code 303(c)(1)]
4. Compliance with the General Plan [the objectives, policies, and guidelines found in the seven studies of Ocean Avenue] is not consistent. [Planning Code 101.1 Master Plan]
5. The proposed business will be detrimental with the health, safety, and welfare of the residents. [Planning Code 303 (c)(2)].
6. The ruling by the Planning Commissioners was not unanimous. (5 to 2)
7. 75% of the property owners/residents within the 300 foot area around 1963 Ocean Avenue signed to support the appeal of the Planning Commission's Authorization. 90% of the people in the neighborhood do not find the proposed business necessary or desirable. [Planning Code 303(c)(1)]
8. The concentration of tobacco paraphernalia in the Ocean Avenue NCT is sufficient. The neighbors have not expressed a need or desire for a store selling electronic cigarettes, vaporizers and related tobacco paraphernalia, nor for a steam stone hookah lounge.

Background:

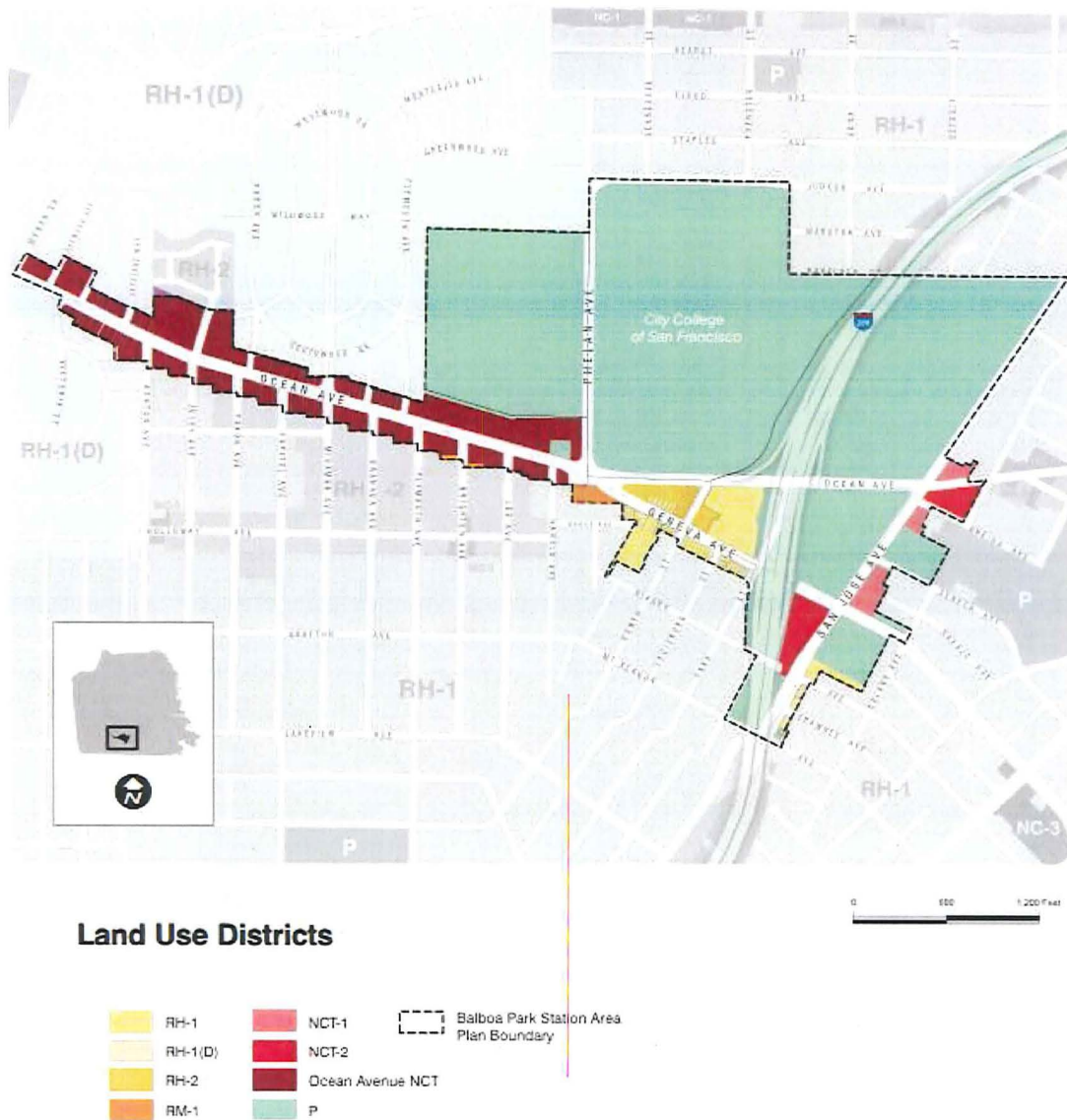
1963 Ocean Avenue is located at the western end of the Ocean Avenue NCT (Neighborhood Commercial Transit) District that extends from Phelan Avenue on the east to Manor Drive, a length of approximately ¾ mile. The site is within the **Balboa Park Station Plan Area. This plan states that the Ocean Avenue NCT is intended to provide convenience goods and services to the surrounding neighborhoods.**

1963 Ocean Avenue is located in District 7. The Ocean Avenue Area includes the residential neighborhoods of Ingleside Terraces, Balboa Terrace, Mount Davidson Manor, Westwood Park, Ingleside and Merced Heights in Districts 7 and 11.

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[Note: some URLs may need to be copied and pasted into a web browser.]

Balboa Area Plan Generalized Land Use Map — (p. 18 of the Land Use Index of the General Plan of the City and County of San Francisco, 2011) [http://www.sf-planning.org/ftp/general_plan/Land Use Index August 2011.pdf](http://www.sf-planning.org/ftp/general_plan/Land_Use_Index_August_2011.pdf)
The San Francisco General Plan Master Plan [101.1] http://www.sf-planning.org/ftp/general_plan/ includes the Balboa Park Station Area Plan.



Map from the **OEWD Invest in Neighborhoods Study (2012)**

<http://investsf.org/neighborhoods/ocean-avenue/> Map found on page 6 of the
UPDATED_Neighborhood Profile OCEAN AVENUE.pdf



Ocean Avenue has undergone extensive study and review by various city agencies and consultant groups. The goals of these studies are strengthening what exists and attracting positive changes for the area. All of the studies, dating from 2008 through 2014, conducted of the Ocean Avenue Corridor, focus on **improving Ocean Avenue for the long-term**. The studies resulted in the following reports:

Reports on Ocean Avenue Corridor:

- **Historic Context Statement Balboa Park Area Plan & Historic Resource Survey 2008**
<http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=557>
- **Balboa Park Station Plan 2008** Balboa_Park_Station_Area_Plan_v2.pdf
http://www.sf-planning.org/ftp/general_plan/Balboa_Park_Station.htm
a pdf version of the study document is found at
<http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=1983>
- **Ocean Avenue Management Plan 2010**
<http://www.oewd.org/modules/showdocument.aspx?documentid=160>
OceanAvenueManagementPlan.pdf
- **SF General Land Use Plan Land Use Index August 2011.pdf** – General introduction for entire city http://www.sf-planning.org/ftp/general_plan/index.htm and pdf version http://www.sf-planning.org/ftp/general_plan/Land_Use_Index_August_2011.pdf

Balboa Park Station Area Plan

http://www.sf-planning.org/ftp/general_plan/Balboa_Park_Station.htm

- **OEWD Invest in Neighborhoods Study 2012**
http://investsf.org/neighborhoods/ocean-avenue/UPDATED_Neighborhood_Profile_OCEAN_AVENUE.pdf
- **San Francisco Formula Retail Economic Analysis** prepared for the SF Planning Department by Strategic Economics June 2014 http://www.sf-planning.org/ftp/files/legislative_changes/form_retail/Final_Formula_Retail_Report_06-06-14.pdf
- **Kjelstrom Economic Development Final report** Sept 2014 Kjelstrom Economic Development Final Report 2014.10.31.pdf
http://www.sfog.us/ocean_ave/kjelstrom_20141031.pdf

The studies point to the need for development of a vibrant commercial street that serves the surrounding neighborhoods. The reports encourage pedestrian traffic, use of public transit, and businesses that provide the goods and services needed by the residents in the neighborhood.

We disagree with the following “Findings” contained in the Final Motion No. 19271 of the Planning Commission in approving, on November 6, 20014, the Conditional Use Authorization for a tobacco paraphernalia establishment at 1963 Ocean Avenue.

Issue #1: Incorrect application of Planning Code 303(n) and 227 (u). The ruling of the Planning Commission on November 6, 2014, to approve the Conditional Use Application for the proposed business at 1963 Ocean Avenue, **did not properly apply the criteria for a Conditional Use Authorization (Code 303) of a tobacco paraphernalia establishment (Code 227(u))** [Note FM states 227(v); however the correct current Planning Code is 227(u).]

Rationale: The Planning Commission did not correctly apply Planning Code 303. During the hearing and in the decision, the Planning Commissioners did not consider fully whether this proposed business met the criteria of “necessary or desirable to the neighborhood,” whether it would potentially have a negative impact on the surrounding neighborhood, and whether the use complies with the San Francisco General Plan and more specifically, the Balboa Park Station Area Plan.

Commissioner Richards (who voted against approval) pointed out that the 1900 block of Ocean Avenue is not the appropriate context for the proposed business, a vape retail store with a steam stone hookah lounge in the basement. It is not a business that will attract neighborhood foot traffic. Commissioner Antonini (who voted against approval) questioned the need for a hookah lounge as a method to quit smoking. The project sponsor stresses that his business aims to help people stop smoking (tobacco

cigarettes). Commissioner Antonini questioned why the Commission had listened to neighborhood voices against a Starbucks but, in this matter, did not consider the many concerns of neighbors about this type of business on this block, about its potential effects on the character of the neighborhood, and about the health and safety of this community.

The other five commissioners focused mainly on issues involving filling a vacant storefront on this block. They discussed the number of entrances, attractive displays, visibility from the street, signage, elevator access, hours of operation, etc. – building design and construction issues, not the reasons that made a Conditional Use Authorization a requirement for an establishment planning to sell tobacco paraphernalia. The issue was not about the design or construction of the building but whether the products and goods to be sold by this business and used within the building were necessary or desirable or compatible with the neighborhood. The matter before the Commission was not a Discretionary Review but rather a Conditional Use Authorization – a matter of different standards and criteria.

Neighborhood voices oppose this particular type of business for its incompatibility with the neighborhood and for its detrimental effects on the character of the community and particularly for the 1900 block of Ocean Avenue. This business offering alternative tobacco paraphernalia products is not what the neighbors find necessary or desirable or compatible – the criteria for a Conditional Use Authorization.

Issue #2: 1963 Ocean Avenue was the first required Conditional Use Authorization hearing before the Planning Commission for an electronic cigarette/vape store business. The Planning Commissioners did not carefully nor explicitly consider whether this business, the selling of tobacco paraphernalia, was necessary or desirable for the neighborhood, whether it would be detrimental to the health, safety, and welfare of the community.

The proposed business at 1963 Ocean Avenue required a Conditional Use Authorization for a Tobacco Paraphernalia Establishment [Planning Code, Section 227(u)].

227(u) Tobacco Paraphernalia Establishments, defined as retail uses where more than 10% of the square footage of occupied floor area, as defined in Section [102.10](#), or more than 10 linear feet of display area projected to the floor, whichever is less, is dedicated to the sale, distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to another. "Tobacco Paraphernalia" does not include lighters, matches, cigarette holders, any device used to store or preserve tobacco, tobacco, cigarettes, cigarette papers, cigars, or any other preparation of tobacco that is permitted by existing law. Medical Cannabis Dispensaries, as defined in

Section 3301(f) of the San Francisco Health Code, are not Tobacco Paraphernalia Establishments.”

San Francisco Ordinance No. 030-14 of March 2014, extended tobacco paraphernalia to include the sale and use of electronic cigarettes.

<http://www.sfbos.org/index.aspx?page=15826>

131208	0030-14	04/26/2014	Health Code - Restrictions on Sale and Use of Electronic Cigarettes
--------	---------	------------	---

Rationale for disagreement with decision: The issues of the health, safety, and welfare of the neighbors are the ones that made this tobacco paraphernalia establishment a required conditional use and the ones that cause this business to be detrimental to the neighborhood. In the hearing, **Commissioners raised questions that implied confusion** about this **first conditional use for a vape store**. The matter before the Commission was not a Discretionary Review, but rather a Conditional Use Authorization, a matter that should be treated by the criteria of necessary or desirable and compatible with the neighborhood and of not being detrimental to the health, safety, and welfare of the community.

Health issues, concern about the content of nicotine, carcinogens, and toxic chemicals found in the electronic cigarettes plus inconsistent manufacturing and other environmental issues, are cited in Ordinance # 030-14. These are the reasons for the inclusion of electronic cigarettes as tobacco paraphernalia and for the requirement of a Conditional Use Authorization hearing before the Planning Commission. Harm to the health of the citizens of San Francisco prompted the Board of Supervisors to require a Conditional Use Authorization and CUA hearing for tobacco paraphernalia including electronic cigarettes.

In its Final Motion (FM), the Planning Commission in presenting its “Finding” concerning the criteria for Planning Code 303 (FM #7, p.4) stated the following on FM page 6 (E.i.) with respect to the **concentration** of Tobacco Paraphernalia Establishments as defined in Section 227(v) [actually 227(u)]:

there is **“no other** Tobacco Paraphernalia Establishments within the Ocean Avenue NCT that have received Conditional Use authorization.” [emphasis added]

This argument is misleading since this is **the first Conditional Use Authorization hearing citywide** for a tobacco paraphernalia establishment. This business at **1963 Ocean Avenue is the first application** for a vape shop since the establishment of the CUA requirement by City Ordinance # 244-08, passed unanimously by the Board of Supervisors in October of 2008.

At the Planning Commission hearing on November 6th, Marcelle Boudreaux, the Planning Department representative, noted upon questioning by a

Commissioner that this project, 1963 Ocean Avenue, was the first business of this kind to require a CUA. She also noted that there were several other similar project applications in the pipeline. This case could and should be viewed as a test cast for this type of business establishment (vape shop and steam stone hookah lounge). Therefore, it is important to correctly apply the Conditional Use Authorization criteria to 1963 Ocean Avenue.

The health, safety, and welfare of the neighborhood should have received higher priority and evaluation by the Planning Commission. The health, safety, and welfare of the residents should have trumped filling a vacant storefront.

Issue #3: Incompatibility of the proposed Tobacco Paraphernalia Establishment [at 1963 Ocean Avenue] **with the neighborhood and its demographics.** {Planning Codes 737.1, 737.69 and 227(v)}; [FM E7, E.iii, p. 7]. Citing Planning Code Section 227(v) [actually 227(u)], the Finding states:

- iii. The proposed establishment is compatible with the existing character of the particular district for which it is proposed.

The proposal is a new commercial establishment, which proposes to utilize a vacant retail space for an electronic cigarette retail store and steam stone hookah lounge. The use will remain as retail establishment, and no changes are proposed to the fine-grained, pedestrian-oriented storefront. The establishment is compatible with the existing character of particular district for which it is proposed.

Rationale: The location of the proposed establishment is **not “...compatible** with the existing character of the particular district...” The Ocean Avenue NCT should serve the needs and character of the surrounding residential neighborhood.

According the demographics provided in the Invest in Neighborhoods, Ocean Avenue Neighborhood Profile, compiled in 2013 by the Office of Economic and Workforce Development, <http://investsf.org/wordpress/wp-content/uploads/2014/03/Neighborhood-Profile-OCEAN-AVENUE.pdf> [overview at <http://investsf.org/neighborhoods/ocean-avenue/>], the population of the Ocean Avenue neighborhood area is approximately 15,200. The over 5,000 households include a high percentage of Asians (47%), family households (66%) with children under 18, and people over 60. Please note: Each of these percentages is higher for the Ocean Avenue District than citywide.

Additionally, this Ocean Avenue district has higher percentages of single-family housing (RH-1 and RH-1(D) (84% v. 33% citywide), larger sized

family household averages (4.5 v. 3.1 citywide), and fewer renting households (27% v. 62% citywide).

There are 14 educational institutions, from elementary to college, in the vicinity. Many students from Aptos Middle School walk by the proposed business location on their way to and from school. The pedestrian traffic by these students plus by children living in the neighborhood is not compatible with the proposed establishment. Older students attending City College tend to ride the K Muni Metro to the eastern end of the Ocean Avenue NCT and patronize businesses at the eastern end of the commercial district. Other educational institutions in the vicinity include the Voice of Pentecost Academy (K-12, 130 feet from the proposed business), Commodore Sloat Elementary, Lick Wilmerding High School, Kumon Learning Center, the Stratford School, Archbishop Riordan High School, San Francisco State, and Mercy High School.

The San Francisco's General Plan includes the following goals and policies for Ocean Avenue in the Balboa Park Station Area Plan:

http://www.sf-planning.org/ftp/general_plan/index.htm

Goals:

- Improvement of the city as a place for living, by aiding in making it **more healthful, safe, pleasant, and satisfying**, with housing representing good standards **for all residents** and by providing adequate open spaces and appropriate community facilities.
- Coordination of the varied **pattern of land use** with public and semi-public service facilities required for efficient functioning of the city, and for the **convenience and well-being of its residents**, workers, and visitors.

Policies include: *That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods*

Issue #4: Compliance with the General Plan [the objectives, policies, and guidelines found in the seven studies of Ocean Avenue] is **not consistent**.

[FM#8, p. 7] Neighborhood Commerce, Objectives and Policies: Objective 1, Policies 1.1 to 1.3:

The proposed development will provide specialty goods and services to the neighborhood and will provide employment opportunities to those in the community. Further, the Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan.

Rationale: The proposed business **does not** provide specialty goods or services **desired** by the neighborhood. At least five official studies of the Ocean Avenue NCT include notations of requested and needed goods and services by neighbors and residents. None of these included a request for a vape shop, an

electronic cigarette retail store, or steam stone hookah lounge. The following desired businesses are excerpted from the studies and surveys:

- Balboa Park Station Plan, 2008 – every day goods and services without the need for the use of automobiles. The businesses should provide for a wide range of the goods needed by a large number of the residents rather than a product that appeals to a limited number of individuals.
- OEWD Invest in Neighborhoods, 2013 – need for home furnishings, general merchandise, clothing stores (everyday needs), books, used merchandise, full service restaurants, gift stores, lawn and garden supplies, shoes, jewelry, luggage and leather goods.
- Kjelstrom Economic Development Report, Sept 23-25, 2014 (p. 7). Meeting participants identified several targets: movie theater, bookstore, espresso bar, ice cream shop, stationery/card store, clothing stores (new and used), high-quality restaurants with great bars, garden shop/nursery, toy store, wine bar, musical instrument shop, and pet supplies/grooming.
- Residents have expressed desire for a greater diversity of restaurants (current ones are mainly Chinese/Asian), specialized grocery, gardening supplies, new and used book stores, clothing, galleries, music equipment, toys, bakery, and the like.
- Examples of retail that would be welcome on Ocean Avenue: Food products, appliances, electronics, furniture, sporting goods, lumber, clothing, fabrics, footwear, cosmetics, medicines, stationery, art, books, handicrafts, musical instruments, gifts, supplies for gifts, second hand goods

Issue #5: The Planning Commission did not properly apply Planning Code 303(c)(2).

(2) That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

Rationale: The proposed business is detrimental to the health, safety and welfare of the neighborhood. The Planning Commission did not place sufficient weight on the criteria of the required **Conditional Use Authorization for sale of tobacco paraphernalia**. The Planning Commission is well versed in matters of building design, building codes – matters of height, setback, materials, massing, etc. This Conditional Use for a tobacco paraphernalia establishment required the Commission to consider more particularly the health aspect of the items to be sold by this business within the building—an unusual consideration for the Commission, but essential for the determination of whether the proposed business use would be detrimental to the health, safety, and welfare of the residents.

The project sponsor speaks many times about “harm reduction,” of providing a “safer” alternative to tobacco cigarettes, of offering products and goods to

help people stop smoking tobacco cigarettes. However, **this business is not a smoking cessation clinic.** It is a commercial establishment that aims to profit through the sale of vaporizers, e-liquids, and other tobacco paraphernalia. Quantity of sales will benefit this business.

Electronic cigarettes were developed in the last ten years. The healthfulness and safety of these devices has not been definitely proven. Many scientists, doctors, and public health organizations have questioned the long-term effects of these battery-powered devices sold with glamorous advertising and used with candy-flavored liquids.

Ads for electronic cigarettes use the “Don’t Quit. Switch” approach, an old tactic of Big Tobacco, visually shown by the Campaign for Tobacco-Free Kids.

7. Their ads say, “Switch, Don’t Quit.”



Tobacco companies have long tried to discourage smokers from quitting by marketing cigarette changes as reducing health risk. Some e-cigarette ads carry a similar message.

http://www.tobaccofreekids.org/tobacco_unfiltered/post/2013_10_02_ecigarettes

It took many years and many deaths before people heeded the warnings about the dangers of tobacco smoking and secondhand smoke. Last year (2014) the current Surgeon General issued the 50th Anniversary Report. Valuable health effects have resulted from actions taken because of the warnings in the 1964 Surgeon General report. The 50th Anniversary report: “The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General, 2014” <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/> includes chapters with warnings about electronic cigarettes. The 50th Anniversary Consumer Guide “Let’s Make the Next Generation Tobacco-Free” stresses the dangers of nicotine addiction. <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/consumer-guide.pdf>

In its “E-cigarette Primer,”

<https://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/SmokefreeWorkplaceLaw/Documents/E-cigFactSheet.pdf> , the Oregon Public Health Department stated: “Smokeless does not mean harmless.” Nicotine, an ingredient of many electronic cigarettes, has been found to be more addictive than alcohol. According studies from the [University of Minnesota](http://www1.umn.edu/perio/tobacco/nicaddct.html) <http://www1.umn.edu/perio/tobacco/nicaddct.html>

- “Nicotine is:
 - 1000 X more potent than alcohol
 - 10-100 X more potent than barbiturates
 - 5-10 X more potent than cocaine or morphine”

The long-term dangers of electronic cigarettes (with or without nicotine) are unknown. Electronic cigarettes may be safer than tobacco cigarettes but they may addict those who have not previously smoked.

It is true that the FDA has not issued definitive results and rulings about electronic cigarettes. However, the FDA raised warnings as early as 2009 [<http://www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM173430.pdf>] and has called for intensive studies. Nicotine liquids are toxic. The attractive candy-colored and flavored liquids have poisoned children. It only takes about 30 to 60 milligrams of nicotine to send a child to the emergency room. Ingesting or getting the liquid nicotine on the skin can send anyone, child or adult, to the emergency room.

Exploding batteries have harmed children and adults. The U.S. Fire Administration, in October 2014, published a 13-page document titled “Electronic Cigarette Fires and Explosions” [https://www.usfa.fema.gov/downloads/pdf/publications/electronic_cigarettes.pdf] that details the dangers of fires and explosions caused by electronic cigarettes. Appendix 1 of this document is an extensive list of specific incidents of reported fires and explosions that occurred from 2009 through March 2014 that were caused by electronic cigarettes.

Public health organizations that have questioned the health and safety of these devices and of vaping include:

- American Lung Association – letter from Kimberly Amazeen in BOS packet File 131208, p. 63. Also <http://www.lung.org/press-room/press-releases/advocacy/FDA-ECig-Deeming-Reg-Statement.html> ; <http://www.lung.org/stop-smoking/tobacco-control-advocacy/federal/e-cigarettes.html>
- TEROC (California Tobacco Education Research Oversight Committee) – <http://www.cdph.ca.gov/services/boards/teroc/pages/TEROCLandingPage%28default%29.aspx>
- World Health Organization – <http://www.who.int/nmh/events/2014/background-e-cigarettes/en/>

- American Cancer Society – “Restrict the Sale of Electronic Cigarettes”
<http://www.cancer.org/myacs/eastern/areahighlights/cancernynj-news-ny-ecig-health-vote>
- California Youth Advocacy Network – about e-cigarettes
<http://cyanonline.org/e-cig-reading/>; about Hookah including steam stone <http://cyanonline.org/hookah/>
- Centers for Disease Control and Prevention – Key findings
<http://www.cdc.gov/tobacco/youth/e-cigarettes/>; concern especially about youth <http://www.cdc.gov/media/releases/2014/p0825-e-cigarettes.html>
- Campaign for Tobacco Free Kids – concern about poisoning cases
http://www.tobaccofreekids.org/tobacco_unfiltered/tag/e-cigarettes and evidence of E-cigarette companies copying Big Tobacco’s advertising playbook “7 Ways E-Cigarette Companies Are Copying Big Tobacco’s Playbook (or 7 reasons FDA should quickly regulate e-cigarettes)”
http://www.tobaccofreekids.org/tobacco_unfiltered/post/2013_10_02_ecigarettes
- Americans for Nonsmokers’ Rights –
<http://no-smoke.org/learnmore.php?id=645>

Others who have stated concerns and positions about the health and safety of electronic cigarettes:

- Senators Diane Feinstein, Nancy Pelosi, Richard Blumenthal, Jay Rockefeller <http://time.com/2896962/electronic-cigarette-executives-get-schooled-in-senate-hearing/>
- Congresswoman Jackie Speier, June 2014, introduced legislation to regulate e-cigarette products
http://speier.house.gov/index.php?option=com_content&view=article&id=1460:congresswomen-speier-introduces-smoke-act-to-regulate-e-cigarette-products&catid=20&Itemid=14
- Richard A. Carranza, Superintendent of the San Francisco Unified School District. Letter in March 6, 2014, BOS packet File #131208, p. 70
- TECH Times warned about the danger of e-cigarettes infecting computers with malware through the USB port during the charging of a battery. <http://www.techtimes.com/articles/20814/20141124/e-cigarettes-can-be-dangerous-for-your-computers-health-what-you-should-know.htm>

Scientific research takes time. Acting now against potential dangers is the wise approach. The Planning Commission did not properly apply the appropriate criteria in approving the Conditional Use application for a business with great potential health and safety harm to the neighborhood and particularly to the young, impressionable people in the area.

Issue #6: The Planning Commission approval of the Conditional Use was not unanimous. The vote was 5-2 with many questions raised and issues left unanswered. The Planning Commission disapproved a Conditional Use for a Starbucks because of neighborhood opposition. Big tobacco has the [patents](#) for extracting nicotine from tobacco leaves. Big tobacco funds the advertising making electronic cigarettes and vaping “cool” and attractive. One teen when questioned if she smoked replied, “No, I vape.” The Planning Commissioners unfortunately did apply the pertinent criteria of Planning Code Section 303 when approving this conditional use. They did not follow the criteria for a Conditional Use Authorization for a tobacco paraphernalia establishment.

Issue #7: Support of the appeal by residents: Signatures obtained to file this appeal represent more than **75% of the residential property owners/residents within 300 feet of the proposed business that the appellant was able to contact.** The individuals signing stated opposition to this type of business. They wished the focus to be on the long-term development of Ocean Avenue, and particularly of the 1900 block. They believed that filling a vacant storefront with “any” business, especially one that represents another alternative lifestyle, does not work toward the goal of long-term improvement of Ocean Avenue, the goal of the many studies noted in the Background section of this document.

Neighbors continue to state and believe that the proposed business, the vape store selling devices (e-cigarettes/vaporizers), vaping liquids/e-juices and batteries and operating a steam stone hookah lounge in the basement) is neither necessary nor desirable nor compatible with the neighborhood.

They noted that a large number of students from Aptos Middle School walk by this building on their way to and from school. The neighborhood parents do not want their children exposed to these products. Although the proposed business states that they will sell only to persons over 18, middle school age and high school students may be tempted to get older people to purchase for them.

Other opponents of this business state that if this proposed business does open, they will avoid the 1900 block of Ocean Avenue; thus defeating the purpose of filling a storefront vacancy. The proposed business will not increase foot traffic on Ocean Avenue by neighboring residents, one of the goals of the various Ocean Avenue studies.

Several people noted that it is getting to the point where traditional businesses that have the option of locating elsewhere do not choose to open in the 1900 block of Ocean Avenue. They question how this block reached this situation, in which undesirable businesses came to predominate in the middle of very affluent neighborhoods.

The eastern end of Ocean Avenue has dramatically improved with the new Whole Foods. The western portion of the Ocean Avenue NCT needs improvement for the

long-term. Residents have expressed delight with the opening of the new hardware store on Ocean Avenue, the first to open anywhere in the city for many years. After twenty years, the residents are happy to finally have a bank (Chase) and a grocery store (Whole Foods) and a new branch of the San Francisco Public Library. Most residents are hopeful that the Target Express will open in the long vacant large store located on Ocean at Dorado/Jules. They enjoy and support the Fog Lifter Café, Sophia's Pizzeria, Cut to Contrast barber, Ocean Cyclery, Serge-a-Lot (sewing), Yoga Flow, all in the 1900 block of Ocean.

Issue #8: Concentration of tobacco paraphernalia businesses in Ocean Avenue NCT. [FM #7. E.i.ii, p. 6]. There is no need for this type of business on Ocean Avenue. In the various surveys conducted, no Ocean Avenue neighbor expressed a need for this type of business.

The concentration of tobacco paraphernalia is more than sufficient. The map shows the locations selling tobacco products on Ocean Avenue and in the vicinity. Six schools are found within this mapped area. The western end of Ocean Avenue, the section closest to 1963 Ocean Avenue, has six businesses selling e-cigarettes and/or tobacco cigarettes.



There are vape shops selling similar products at 19th and Taraval and at Mission near Geneva, 1.5 miles in either direction.

Magic Dragon Smoke Shop at 35 Cambon Drive in Park Merced shopping center, which according to its website opened in 2010, sells water pipes, vapor pens,

vaporizers, e-liquids, hookah and tobacco. Magic Dragon Smoke Shop is about 1 mile away (driving or walking) or .8 mile as the crow flies.

Conclusions:

We should value the health of the city and its residents and not allow this new business to open. Opposing the opening of the vape shop would support the long-term goals of the Board of Supervisors to reduce smoking in the City and to encourage healthy living. It would support the objectives, policies, and guidelines in the seven studies of Ocean Avenue.

The proposed vape shop/steam stone hookah lounge at 1963 Ocean Avenue might appeal to and attract a few youths to the business, but Ocean Avenue, the NCT and the neighborhood, should not be responsible for encouraging young adults to start a new addiction—to “candy flavored” e-Cigarettes, vaporizers, and steam stone hookah with unknown **long-term health risks**. And this business is not a stop smoking clinic.

In June 2014, at a Congressional hearing, Senator Blumenthal of Connecticut said:

"I think we have seen this movie before...It is called big nicotine comes to children near you and you are using the same kinds of tactics and promotions and ads that were used by big tobacco and proved so effective"

TIME “Electronic Cigarette Executives Get Schooled in Senate Hearing,” June 18, 2014: <http://time.com/2896962/electronic-cigarette-executives-get-schooled-in-senate-hearing/>

The TIME article ends with these quotes:

At the end of her time to question, Boxer said: “Mr. Healy and Mr. Weiss, you can con yourself. But we don’t know if this product gets people off cigarettes yet, so don’t think you are doing some great mission. Don’t say you care about kids... Don’t be a part of this, because you’ll regret it.”

But the harshest words came from Senator Jay Rockefeller (D- West Virginia), who said to the executives: “I’m ashamed of you. I don’t know how you go to sleep at night. I don’t know what gets you to work in the morning except the **color green of dollars**. You are what **is** wrong with this country.”

“7 Ways E-Cigarette Companies are Copying Big Tobacco’s Playbook” published on The Campaign for Tobacco-Free Kids website in October 2013 visually demonstrates the phenomenon of using the same playbook:

http://www.tobaccofreekids.org/tobacco_unfiltered/post/2013_10_02_ecigarettes



The webpage concludes:

No wonder youth e-cigarette use is on the rise.

These developments underscore the need for the FDA to quickly regulate e-cigarettes and take steps to prevent their marketing and sale to kids.

The Surgeon General's 50th Anniversary Report (2014) recounts 50 years of progress in combating the health hazards of smoking but warns of the attraction of teens to the electronic cigarettes, the new form of nicotine delivery. It took a long time to undo the influence of advertising promoting tobacco cigarettes. Many people died and continue to die from lung cancer and the effects of secondhand smoke.

We trust that the Board of Supervisors will move forward by not allowing the opening of this proposed business that would sell products that contain nicotine and produce harmful fumes with unknown long term health effects. We trust that the Board of Supervisor will act for the long-term benefit of the residents of Ocean Avenue and the citizens of San Francisco and overturn the Planning Commission's decision.

We ask the Board of Supervisors to disapprove the decision of the Planning Commission by its Motion No. 19271 approving a Conditional Use Authorization identified as Planning Case No. 2014.0206C on property located at 1963 Ocean Avenue. We ask that the tobacco paraphernalia establishment (dba Happy Vape) not be allowed to open business at this location.

Robert Karis M.D.

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