



**REGULAR MEETING AGENDA
CITY OF MADERA
PLANNING COMMISSION**

**CITY HALL – COUNCIL CHAMBERS
TUESDAY
NOVEMBER 10, 2020
6:00 pm**

This meeting will be conducted pursuant to the provisions of the Governor’s Executive Order which suspends certain requirements of the Ralph M. Brown Act. Members of the public may participate in the meeting remotely through an electronic meeting in the following ways; via phone by dialing (669) 900-6833 enter ID: [99179804129#](tel:99179804129) followed by *9 on your phone when prompted to signal you would like to speak, or by computer at <https://www.zoom.us/j/99179804129>. Public comment will also be accepted via email at planningcommissionpubliccomment@madera.gov.

CALL TO ORDER

ROLL CALL

Commissioner Israel Cortes (Chairperson)
Commissioner Robert Gran Jr. (Vice Chairperson)
Commissioner Richard Broadhead
Commissioner Ryan Cerioni
Commissioner Ramon Lopez-Maciel
Commissioner Pamela Tyler
Commissioner Alex Salazar

INTRODUCTION OF STAFF

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

The first fifteen minutes of the meeting are reserved for members of the public to address the Commission on items which are within the subject matter jurisdiction of the Commission. Speakers shall be limited to three minutes. Speakers will be asked, but are not required, to identify themselves and state the subject of their comments. If the subject is an item on the Agenda, the Chairperson has the option of asking the speaker to hold the comment until the hearing is opened. Comments on items listed as a Public Hearing on the Agenda should be held until the hearing is opened. The Commission is prohibited by law from taking any action on matters discussed that are not on the Agenda and no adverse conclusions should be drawn if the Commission does not respond to public comment at this time.

MINUTES:

October 13, 2020

PUBLIC HEARING ITEMS:

1. SPR 2020-10 & CUP 2020-10 – Discount Cigarette Shop

A noticed public hearing to adopt a Resolution to adopt findings of categorical exemption pursuant to CEQA Guidelines, Section 15301 (Existing Facilities) and to approve SPR 2020-10 and CUP 2020-10 approving the establishment of a discount cigarette shop (Mad-Town Smoke Shop). The shop will sell cigarettes and tobacco accessories, including vaping products, as well as other merchandise like hats and t-shirts. The shop proposes to occupy a vacant tenant space (319 W. Olive Ave.) of approximately 1,617 sq. ft. in an existing commercial building. No construction is proposed, except for minor interior changes to improve the tenant space. This project is categorically exempt per California Environmental Quality Act (CEQA) Guidelines, Section 15301 (Existing Facilities).

NON-PUBLIC HEARING ITEMS: None

WORKSHOPS: None

ADMINISTRATIVE REPORTS:

COMMISSIONER REPORTS:

ADJOURNMENT:

The next regular meeting will be held on December 8, 2020.

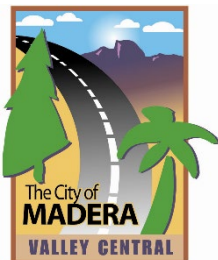
In compliance with the Americans with Disabilities Act, the meeting room is accessible to the physically disabled and the services of a translator can be made available. Requests for additional accommodations for the disabled, signers, assistive listening devices or translators needed to assist participation in the public meeting should be made at least seventy-two (72) hours before the meeting. If you need special assistance to participate in a City meeting or other services offered by this City, please contact the Planning Department office at (559) 661-5430. Those who are hearing impaired, may call 711 or 1-800-735-2929 for TTY Relay Services. Any and all persons interested in this matter may provide comments.

Any writing related to an agenda item for the open session of this meeting distributed to the Planning Commission less than 72 hours before this meeting is available for inspection at the City of Madera – Planning Department, 205 W. 4th Street, Madera, CA 93637 during normal business hours.

Pursuant to Section 65009 of the Government Code of the State of California, notice is hereby given that if any of the foregoing projects or matters is challenged in Court, such challenge may be limited to only those issues raised at the public hearing, or in written correspondence delivered to the Planning Commission at or prior to the public hearing.

All Planning Commission actions may be appealed to the City Council. The time in which an applicant may appeal a Planning Commission action varies from 10 to 30 days depending on the type of project. The appeal period begins the day after the Planning Commission public hearing. There is NO EXTENSION for an appeal period.

If you have any questions or comments regarding this hearing notice, you may call the Planning Department at (559) 661-5430. Si usted tiene preguntas, comentarios o necesita ayuda con interpretación, favor de llamar el Departamento de Planeamiento por lo menos 72 horas antes de esta junta (559) 661-5430.



CITY OF MADERA PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

Staff Report: Discount Cigarette Shop SPR 2020-10 and CUP 2020-10 Item # 1 – November 10, 2020

PROPOSAL: An application for a site plan review (SPR 2020-10) and conditional use permit (CUP 2020-10) to establish a discount cigarette shop (Mad-Town Smoke Shop). The shop will sell cigarettes and tobacco accessories, including vaping products, as well as other merchandise like hats and shirts. The shop proposes to occupy a vacant tenant space of approximately 1,617 square feet in an existing commercial building. No construction is proposed, except for minor interior change to improve the tenant space.

APPLICANT: Mukhtar Quhshi
Khaled Sharhan
9126 Road 24
Madera, CA 93637

OWNER: Shawn Bidsal
West Coast Investments Inc.
14039 Sherman Way Suite 2
Van Nuys, CA 91405

SITE ADDRESS: 319 W. Olive Ave

APN: 010-202-016

APPLICATIONS: SPR 2020-10
CUP 2020-10

CEQA: Exemption

LOCATION: The project site is a vacant tenant space (319 W. Olive Ave) located at the Bethard Square shopping center at the northwest corner of W. Olive Ave. and S. I St. within an existing commercial building.

STREET ACCESS: The project site has street access from W. Olive Ave and S. I St.

PROJECT SIZE: The tenant space is approximately 1,617 square feet

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C1 (Light Commercial)

SITE CHARACTERISTICS: The project will occupy a vacant tenant space (319 W. Olive Ave) located in an existing commercial building. The commercial building is part of the Bethard Square development at the northwest corner of W. Olive Ave and S. I St. The shopping center has other commercial and service uses within the center. Surrounding property uses to the east and south include an urgent care, a restaurant, and an auto parts store. Additionally, residential uses are located to the north and west of the shopping

center. The project site and surrounding area to the east and south is designated and zoned for commercial uses, while the parcels to the north and west are designated and zoned for residential uses.

ENVIRONMENTAL REVIEW: An exemption has been prepared consistent with Section 15301 (Existing Facilities) of California Environmental Quality Act (CEQA) Guidelines.

SUMMARY: The applicants, Mukhtar Quhshi and Khaled Sharhan, propose to install a discount cigarette shop (Mad-Town Smoke Shop) into an existing vacant tenant space. The project will include minimal interior changes to the space.

The proposed use is consistent with the current C1 (Light Commercial) zone district. After review of the proposed project, the cigarette shop is anticipated to be compatible with existing commercial uses in the shopping center and the surrounding uses. Conditions, as appropriate, have been recommended for the site plan review (SPR 2020-10) and the conditional use permit (CUP 2020-10) to ensure consistency with the Zoning Ordinance and General Plan.

APPLICABLE CITY CODES AND PROCEDURES

Site Plan Review

MMC § 10-3.4.0102 Site Plan Review Applicability

A site plan review is required for all projects which require a use permit, including a change of use where no on-site construction is proposed. If the Commission cannot make the appropriate findings, the development should be denied. Conditions may be attached to the approval of the site plan to ensure compatibility. Project design may be altered and on- or off-site improvements required in order to make the project compatible with nearby uses.

Conditional Use Permit

MMC § 10-3.1301 – MMC § 10.3.1311 Use Permits

Subject to the Planning Commission's approval of Determination of Use (DOU 2015-01), the sale of tobacco requires a conditional use permit. The City's Zoning Ordinance allows for the granting of a use permit by the Planning Commission subject to the Planning Commission being able to make findings that the establishment, maintenance or operation of the use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City. If the Commission cannot make the appropriate findings even after imposing appropriate conditions, the use permit should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. In addition, the application may be subject to further review, modification, or revocation by the Commission as necessary.

Development and Operational Standards

MMC § 10-3.801 - MMC § 10-3.805 Light Commercial Zones

MMC § 5-8.03 Self Service Displays Prohibited

The project site is subject to the development standards of the C1 zone district. The proposed use will be occupying an existing tenant space and there are no improvements proposed or required on-site for the establishment of the proposed use. Title 5, Chapter 8 (Ban on Self Service Tobacco Displays) will apply to the conditional use permit required for the sale of tobacco products.

ANALYSIS

Site Plan Review

The project is proposing to make minor interior changes to a commercial tenant space to accommodate a discount cigarette shop. The facility is located within an existing commercial strip development, with nearby residential uses.

The tenant space was developed for commercial use and has accommodated a variety of commercial uses during its existence. The site has sufficient utility service and will not put additional stress on the City of Madera's public infrastructure and utilities systems. The necessary water, electricity, and waste services associated with the commercial use are available on-site as it is located within an existing commercial strip development. Off-street parking is available in front of the building.

Conditional Use Permit

In September 2015, the Planning Commission concluded through the determination of use process that the sale of tobacco and tobacco related products and sundries would require the approval of a use permit. With this action (DOU 2015-01), the Commission noted its concerns that tobacco sales be located sensibly within the commercial areas of the City, mindful of surrounding land uses. The project site is located in a commercial strip development with some residential uses adjacent to the north and west. Given that all findings required by the Municipal Code Section 10-3.1307 for the tobacco CUP can be made, staff recommends approval of the proposed conditional use permit (CUP 2020-10).

Title 5, Chapter 8 of the Madera Municipal Code prohibits the self-service sale of tobacco products. The cigarette shop will be equipped with counters to ensure that all buyers are served by sellers, rather than having self-service tobacco products available. This is to prevent the increased incidence of shoplifting and underage smoking.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Staff have performed a preliminary environmental assessment and have determined that the project is exempt under Section 15301 of the State CEQA Guidelines because the project will occupy an existing building on an existing lot with existing services and utilities, and any modifications to the structure will only be minor interior changes involving negligible or no expansion of existing or former commercial use. Further, none of the exceptions under Section 15300.2 of the CEQA Guidelines are applicable to this project.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though approval of a cigarette shop is not specifically addressed in the vision or action plans, the overall project does indirectly support one of the four visions for the City: Good Jobs and Economic Opportunities. This principle recognizes the need to provide commercial opportunities within the City.

RECOMMENDATION

The information presented in this report provides support for the adoption of a resolution conditionally approving Site Plan Review 2020-10 and a resolution conditionally approving Conditional Use Permit 2020-10. It is recommended that the Commission consider the information in this report, as well as

testimony received at the public hearing, and make a determination on Site Plan Review 2020-10 and Conditional Use Permit 2020-10, subject to the findings and conditions of approval.

PLANNING COMMISSION ACTION

The Commission will be acting on the Categorical Exemption, Site Plan Review 2020-10 and Conditional Use Permit 2020-10 and determining to either:

- Adopt a resolution adopting a Finding of a Categorical Exemption pursuant to CEQA Guidelines Section 15301 for the project, and approving Site Plan Review 2020-10 as conditioned and Conditional Use Permit 2020-10 as conditioned (Motion 1); or
- Continue the hearing to December 8, 2020, with direction to staff to return with an updated resolution with appropriate findings modifying the conditions of approval for the following reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval) (Motion 2); or
- Move to continue the application for Site Plan Review 2020-10 and Conditional Use Permit 2020-10 to the December 8, 2020 Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.)(Motion 3).

Motion 1: Move to adopt a resolution of the Planning Commission of the City of Madera adopting a Finding of a Categorical Exemption pursuant to CEQA Guidelines Section 15301 (Existing Facilities), approving Site Plan Review 2020-10 and Conditional Use Permit 2020-10, based on and subject to the findings and conditions of approval as follows:

Findings to Approve a Site Plan Review

Finding a: The proposal is consistent with the General Plan and Zoning Ordinance.

The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The tenant space being occupied is located within an existing commercial building. While minor changes will be required to improve the tenant space prior to occupancy, no on-site improvements are proposed or required. Site Plan Review 2020-10 is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

Finding b: The proposal is consistent with any applicable specific plans.

The project site is not subject to any applicable specific plans.

Finding c: The proposed project includes facilities and improvements; vehicular and pedestrian ingress, egress, and internal circulation; and location of structures, services, walls, landscaping, and drainage that are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, there will be no adverse effects on surrounding property, light is deflected away from adjoining properties and public streets, and environmental impacts are reduced to acceptable levels.

Site Plan Review 2020-10 has been reviewed and is consistent with surrounding uses. The project includes the use of an existing building that is located within a developed shopping center with adequate improvements and parking already installed. The project will not generate significant amounts of noise, light, or traffic.

Finding d: The proposed project is consistent with established legislative policies relating to traffic safety, street dedications, street improvements, and environmental quality.

Site Plan Review 2020-10 requires no street improvements as it is located within an existing commercial center with adequate improvements and parking already installed. The project will not have a significant impact on traffic or the environment.

Findings to Approve a Conditional Use Permit

Finding a: The proposal is consistent with the General Plan and Zoning Ordinance.

The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The proposed use (cigarette shop) is conditionally permitted, based on the Planning Commission's approval of DOU 2015-01. Conditional Use Permit 2020-10, subject to the conditions of approval, is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

Finding b: The proposed use will be compatible with the surrounding properties.

The project site is suited for commercial sales. The project site is located within a larger commercial shopping center and is surrounded by other commercial uses to the east and south, with residential uses to the north and west. As conditioned, the sale of certain tobacco products for off-site consumption will be compatible with surrounding properties and is consistent with applicable requirements regulating such use.

Finding c: The establishment, maintenance, or operation of the use or building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the city.

As discussed above, the proposed use is compatible with surrounding properties and will not have a significant, adverse environmental impact. The Madera Police Department has reviewed the project and did not oppose the proposed use, and there is no evidence in the administrative record of the following:

- The commission of three or more violent felonies (crimes against the person) and/or narcotic or dangerous drug sales within the subject premises or in the area immediately adjacent thereto.
- The arrest of the owner and/or an employee for violations occurring within the subject premises, or in the area immediately adjacent thereto, which violations can be found to be reasonably related to the operation of the business.

- The sustaining by the subject premises of an administrative suspension or revocation or other such sanction as may be imposed by the California State Department of Alcoholic Beverage Control, including payment in lieu of such suspension or revocation.
- The failure by the owner or other person responsible for the operation of the premises to take reasonable steps to correct objectionable conditions after having been placed on notice by the official of the City that such conditions exist. Such official may include, but not be limited to the: Code Enforcement Officer, Police Chief, Fire Marshall or City Attorney. Objectionable conditions may include, but not be limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise. Such conduct shall be attributable to the subject premises whether occurring within the subject premises or in the area immediately adjacent thereto.

(OR)

Motion 2: Move to continue the public hearing on SPR 2020-10 and CUP 2020-10 to the December 8, 2020 with direction to staff to return with an updated resolution with appropriate findings modifying the conditions of approval for the following reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval)

(OR)

Motion 3: Move to continue the application for Site Plan Review 2020-10 and Conditional Use Permit 2020-10 to the December 8, 2020 Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.)

ATTACHMENTS

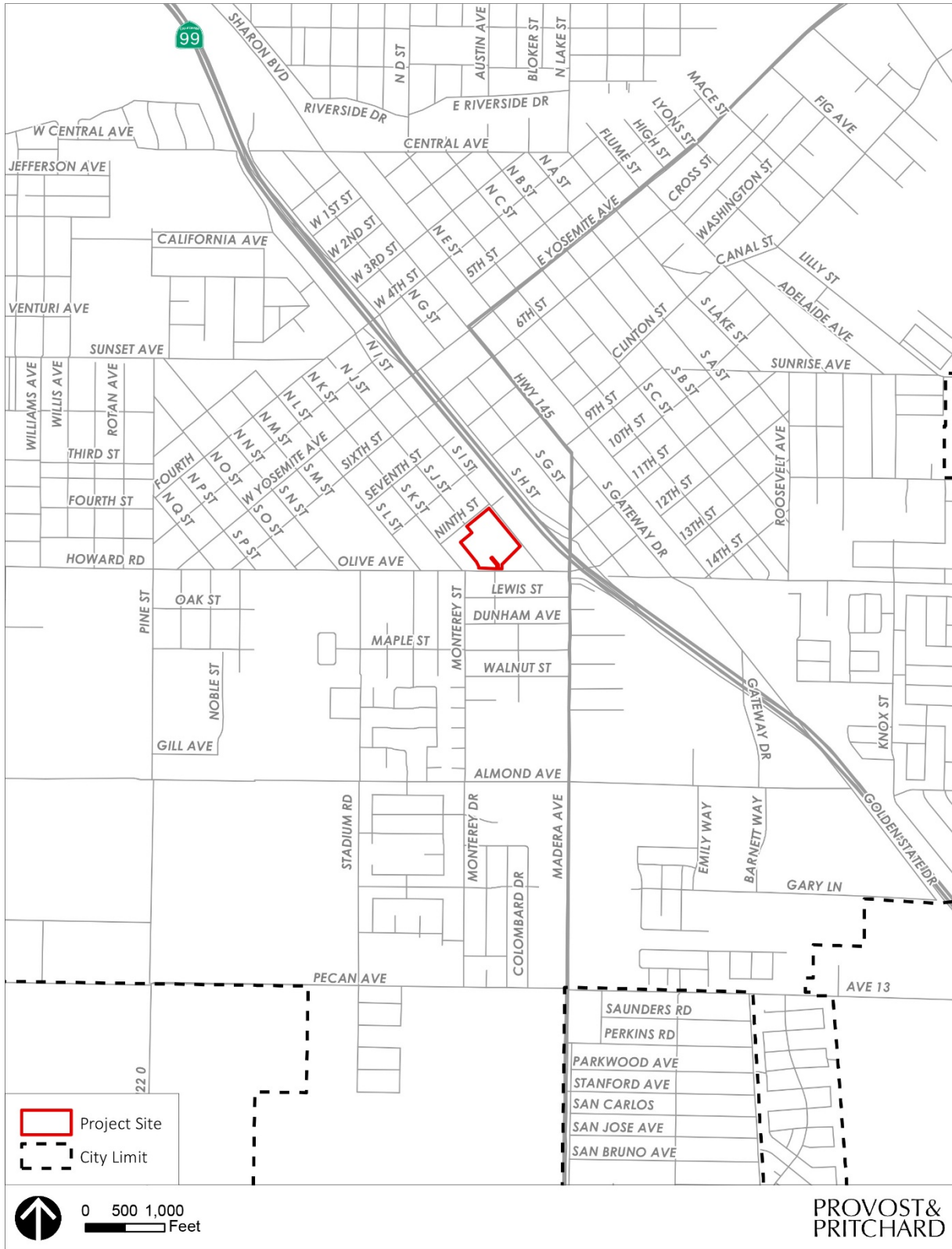
Attachment 1: Vicinity Map

Attachment 2: Aerial Photo

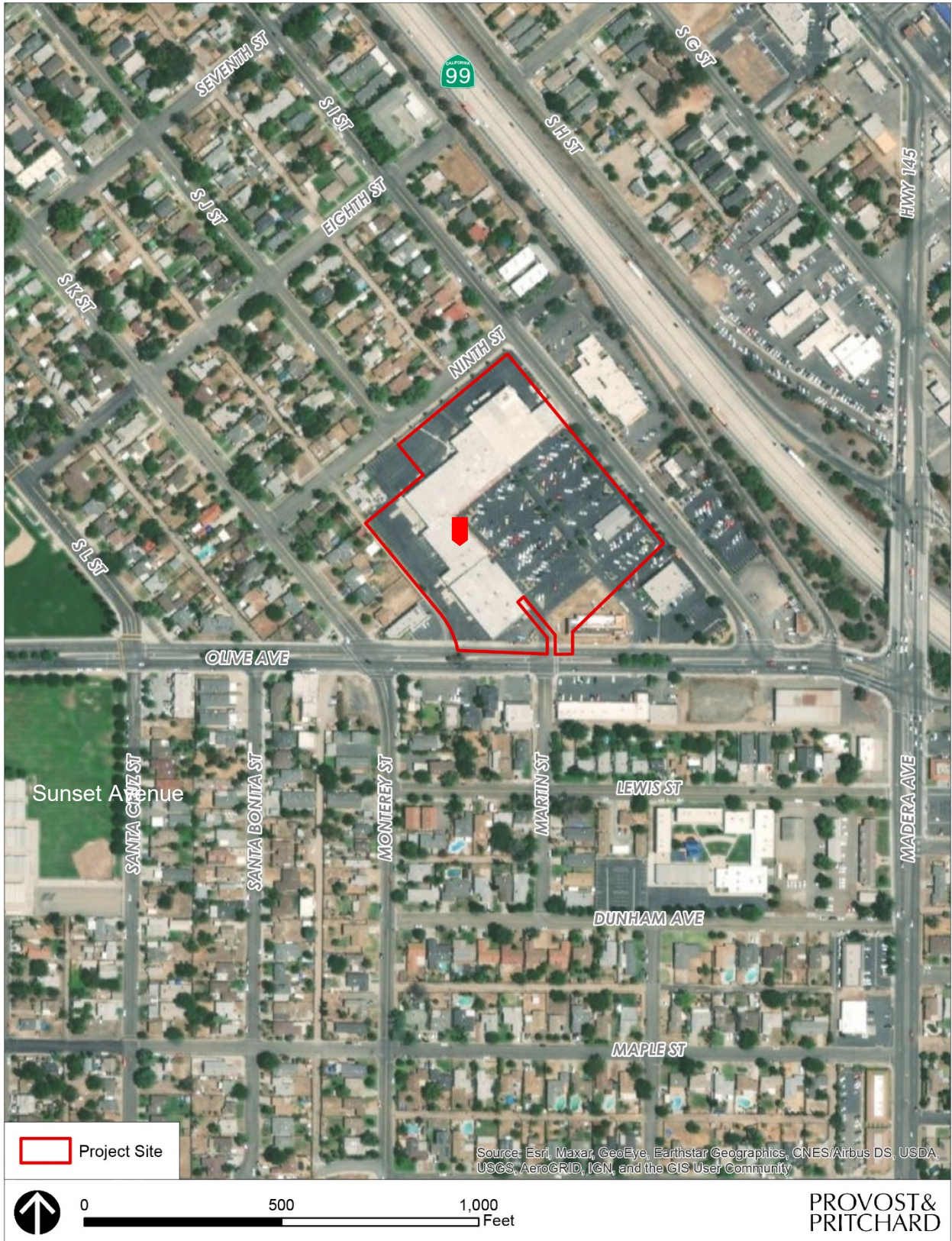
Attachment 3: Tenant Space Plan

Attachment 4: Planning Commission Resolution for Categorical Exemption, SPR 2020-10, and CUP 2020-10

Attachment 1: Vicinity Map



Attachment 2: Aerial Photo



**Attachment 4: Planning Commission Resolution for Categorical Exemption, SPR 2020-10 and
CUP 2020-10**

RESOLUTION NO. 1862

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
ADOPTING A CATEGORICAL EXEMPTION PURSUANT TO CEQA GUIDELINES
SECTION 15301 (EXISTING FACILITIES) AND APPROVING SITE PLAN REVIEW
2020-10 AND CONDITIONAL USE PERMIT 2020-10 (DISCOUNT CIGARETTE SHOP,
319 WEST OLIVE AVENUE)**

WHEREAS, Shawn Bidsal (“Owner”) owns an existing commercial building at 319 West Olive Avenue in Madera, California (“site”); and

WHEREAS, Mukhtar Quhshi and Khaled Sharhan (“Applicants”) are acting on behalf of the Owner (“site”); and

WHEREAS, the site contains an existing commercial building that is planned for and surrounded by commercial uses; and

WHEREAS, the Applicants are seeking a site plan review (SPR) to allow for a new use to be located within a tenant space within the existing commercial building on APN 010-202-016, as proposed by SPR 2020-10; and

WHEREAS, the Applicants are seeking a conditional use permit (CUP) to establish a discount cigarette shop, to be located within a tenant space within the existing commercial building on APN 010-202-016; and

WHEREAS, based on a preliminary environmental assessment, this project would be subject to a Class 1 (Existing Facilities) categorical exemption (CEQA Guidelines Section 15301) ;

WHEREAS, a Categorical Exemption has been prepared in accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et. seq.; and

WHEREAS, under the City’s Municipal Code, the Planning Commission is authorized to review and approve site plan reviews, conditional use permits and environmental assessments for associated projects on behalf of the City; and

WHEREAS, the City provided notice of the Planning Commission hearing as required by law; and

WHEREAS, the Planning Commission received and reviewed SPR 2020-10 and CUP 2020-10 at a duly noticed meeting on November 10, 2020; and

WHEREAS, a public hearing was held, the public was provided an opportunity to comment, and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, the Planning Commission now desires to adopt a Categorical Exemption for the project, and approve SPR 2020-10 and CUP 2020-10, with conditions.

NOW THEREFORE, be it resolved by the Planning Commission of the City of Madera as follows:

1. Recitals: The above recitals are true and correct and are incorporated herein.

2. CEQA: The Planning Commission finds and determines that the project is exempt under Section 15301 of the State CEQA Guidelines because the project will occupy an existing building on an existing lot with existing services and utilities, and any modifications to the structure will only be minor interior changes involving negligible or no expansion of existing or former commercial use. Further, none of the exceptions under Section 15300.2 of the CEQA Guidelines are applicable to this project.

3. Findings for SPR 2020-10: The Planning Commission finds and determines that there is substantial evidence in the administrative record to support the approval of SPR 2020-10, as conditioned. With conditions, the project is consistent with the requirements of the Municipal Code, including Section 10-3.4.0106. The Planning Commission further approves, accepts as its own, incorporates as if set forth in full herein, and makes each and every one of the findings, based on the evidence in the record, as follows:

a. The proposal is consistent with the General Plan and Municipal Code.

Basis for Finding: The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The tenant space being occupied is located within an existing commercial building. While minor changes will be required to improve the tenant space prior to occupancy, no on-site improvements are proposed or required. Site Plan Review 2020-10 is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

b. The proposal is consistent with any applicable specific plans.

Basis for Finding: The project site is not subject to any applicable specific plans.

c. The proposed project includes facilities and improvements; vehicular and pedestrian ingress, egress, and internal circulation; and location of structures, services, walls, landscaping, and drainage that are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, there will be no adverse effects on surrounding property, light is deflected away from adjoining properties and public streets, and environmental impacts are reduced to acceptable levels.

Basis for Finding: Site Plan Review 2020-10 has been reviewed and is consistent with surrounding uses. The project includes the use of an existing building that is located within a developed shopping center with adequate improvements and parking already installed. The project will not generate significant amounts of noise, light, or traffic.

d. The proposal is consistent with established legislative policies relating to traffic safety, street dedications, street improvements, and environmental quality.

Basis for Finding: Site Plan Review 2020-10 requires no street improvements as it is located within an existing commercial center with adequate improvements and parking already installed. The project will not have a significant impact on traffic or the environment.

With the conditions imposed, the project will not be detrimental or injurious to property and improvements in the neighborhood or general welfare of the City.

4. Findings for CUP 2020-10: The Planning Commission finds and determines that there is substantial evidence in the administrative record to support the approval of CUP 2020-10, as conditioned. With conditions, the project is consistent with the requirements of the Municipal Code, including Section 10-3.1307. The Planning Commission further approves, accepts as its own, incorporates as if set forth in full herein, and makes each and every one of the findings, based on the evidence in the record, as follows:

- a. The proposal is consistent with the General Plan and Zoning Ordinance.

Basis for Finding: The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The proposed use (cigarette shop) is conditionally permitted, based on Planning Commission adoption of Determination of Use (DOU) 2015-01. Conditional Use Permit 2020-10, subject to the conditions of approval, is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

- b. The proposed use will be compatible with the surrounding properties.

Basis for Finding: The project site is suited for commercial sales. The project site is located within a larger commercial shopping center and is surrounded by other commercial uses to the east and south, with residential uses to the north and west. As conditioned, the sale of certain tobacco products for off-site consumption will be compatible with surrounding properties and is consistent with applicable requirements regulating such use.

- c. The establishment, maintenance, or operation of the use or building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the city.

Basis for Finding: As discussed above, the proposed use is compatible with surrounding properties and will not have a significant, adverse environmental impact. The Madera Police Department has reviewed the project and did not oppose the proposed use, and there is no evidence in the administrative record of the following:

- The commission of three or more violent felonies (crimes against the person) and/or narcotic or dangerous drug sales within the subject premises or in the area immediately adjacent thereto.
- The arrest of the owner and/or an employee for violations occurring within the subject premises, or in the area immediately adjacent thereto, which violations can be found to be reasonably related to the operation of the business.
- The sustaining by the subject premises of an administrative suspension or revocation or other such sanction as may be imposed by the California State

Department of Alcoholic Beverage Control, including payment in lieu of such suspension or revocation.

- The failure by the owner or other person responsible for the operation of the premises to take reasonable steps to correct objectionable conditions after having been placed on notice by the official of the City that such conditions exist. Such official may include, but not be limited to the: Code Enforcement Officer, Police Chief, Fire Marshall or City Attorney. Objectionable conditions may include, but not be limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise. Such conduct shall be attributable to the subject premises whether occurring within the subject premises or in the area immediately adjacent thereto.

5. Approval of SPR 2020-10 and CUP 2020-10: Given that all findings can be made, the Planning Commission hereby approves SPR 2020-10 and CUP 2020-10 as conditioned as set forth in the Conditions of Approval attached as Exhibit "A."

6. Effective Date: This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 10th day of November 2020, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Israel Cortes
Planning Commission Chairperson

Attest:

Gary Conte
Planning Manager

Exhibit "A" – Conditions of Approval for SPR 2020-10 and CUP 2020-10

EXHIBIT "A"
SPR 2020-10 AND CUP 2020-10 (TOBACCO PRODUCTS)
CONDITIONS OF APPROVAL
November 4, 2020

Notice to Applicant

In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedications, reservations, or exactions for this project are subject to protest by the project applicant at the time of approval or conditional approval of the development or within ninety (90) calendar days after the date of imposition of fees, dedications, reservation, or exactions imposed on the development project. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

IMPORTANT: PLEASE READ CAREFULLY

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through site plan, conditional use permit review, and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would on the whole enhance the project and its relationship to the neighborhood and environment.

Discretionary conditions of approval may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings can be made.

All discretionary conditions of approval for SPR 2020-10 will ultimately be deemed mandatory unless appealed by the applicant to the City Council within ten (10) days after the decision by the Planning Commission. All discretionary conditions of approval for CUP 2020-10 will ultimately be deemed mandatory unless appealed by the applicant to the City Council within fifteen (15) days after the decision by the Planning Commission. In the event you wish to appeal the Planning Commission's decision or discretionary conditions of approval for either entitlement, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the zoning ordinance. This should include identification of the decision or action appealed and specific reasons why you believe the decision or action appealed should not be upheld.

Approval of this site plan review and conditional use permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.

Approval of this use permit and/or conditional use permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this use permit or site plan review, the zoning ordinance, and all City standards and specifications. This use permit and site plan review is granted, and the conditions imposed, based upon the application submittal provided by the applicant, including any operational statement. The application is material to

the issuance of this use permit and site plan review. Unless the conditions of approval specifically require operation inconsistent with the application, a new or revised use permit is required if the operation of this establishment changes or becomes inconsistent with the application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the use permit, site plan review, or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the site plan review process, use permit review process, or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this use permit or subsequent amendments or revisions. These conditions are conditions imposed solely upon the site plan review or use permit as delineated herein and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

These conditions are applicable to any person or entity making use of this use permit, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of this use permit.

Conditions of Approval

- Site Plan Review is subject to Conditions of Approval 1 through 16 and 25 through 28.
- Conditional Use Permit 2020-10 (Sale of Tobacco Products) is subject to Conditions of Approval 1 through 28.

General Conditions

1. Approval of this site plan review shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.
2. Approval of this site plan review may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this site plan review, the zoning ordinance, and all City standards and specifications. This site plan review is granted, and the conditions imposed, based upon the application submittal provided by the applicant, including any operational statement. The application is material to the issuance of this site plan review. Unless the conditions of approval specifically require operation inconsistent with the application, a new or revised site plan review is required if the operation is found to be out of conformance with the application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the permit or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the site plan review process or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this site plan review or subsequent amendments or revisions. These conditions are conditions imposed solely upon the site plan and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.
3. These conditions are applicable to any person or entity making use of this site plan and of this conditional use permit, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of

this site plan and conditional use permit. Furthermore, "project site" refers to the portion of APN 010-202-016 that is being rented, improved, and used by the applicant. The following conditions apply only to these portions of the subject site, unless specifically noted otherwise.

4. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specifically noted in the conditions or mandated by statutes.
5. The applicant shall submit to the City of Madera Planning Department a check in the amount necessary to file a Notice of Exemption at the Madera County Clerk. This amount shall equal the Madera County filing fee in effect at the time of filing. Such check shall be made payable to the Madera County Clerk and submitted no later than three (3) days following action on SPR 2020-10 and CUP 2020-10.
6. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the applicant's signature on the Acknowledgement and Acceptance of Conditions of Approval. Please note this site plan review approval (SPR 2020-10) will expire one (1) year from the effective date, unless a building permit is issued by the Building Official and construction is commenced and diligently pursued toward completion of the site or structures which were the subject of the site plan or the required action is taken to extend the approval before expiration date (Municipal Code Section 10-3.4.0114, Lapse of Site Plan Approval). Please also note that conditional use permit approval (CUP 2020-05) is conditioned upon the privileges granted being utilized within 12 months after the effective date thereof. Failure to utilize such permit within such 12-month period shall render the permit null and void unless a timely written request for extension is submitted to the Planning Commission prior to the expiration of this permit.
7. It shall be the responsibility of the property owner, operator, and/or management to ensure that any required permits, inspections, and approvals from any regulatory agency be obtained from the applicable agency prior to issuance of a building permit and/or the issuance of a certificate of completion, as determined appropriate by the City of Madera Planning Department.
8. Approval of this project is for the benefit of the applicant. The submittal of applications by the applicant for this project was a voluntary act on the part of the applicant not required by the City. Therefore, as a condition of approval of this project, the applicant agrees to defend, indemnify, and hold harmless the City of Madera and its agents, officers, consultants, independent contractors, and employees ("City") from any and all claims, actions, or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the project, including any challenges to associated environmental review, and for any and all costs, attorneys fees, and damages arising therefrom (collectively "claim").

The City shall promptly notify the applicant of any claim and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

Nothing in this condition shall obligate the City to defend any claim and the City shall not be required to pay or perform any settlement arising from any such claim not defended by the City, unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any claim, and if the City does decide to independently defend a claim, the applicant shall be responsible for City's attorneys' fees, expenses of litigation, and costs for that independent defense, including the costs of preparing any required administrative record.

Should the City decide to independently defend any claim, the applicant shall not be required to pay or perform any settlement arising from any such claim unless the applicant approves the settlement.

Planning Department

9. The project site shall be developed in conformance with the site plan as reviewed and approved under SPR 2020-10 and CUP 2020-10. Minor modifications to the site plan, which are necessary to meet regulatory, engineering, or similar constraints or requirements may be made at the discretion of the Planning Manager without an amendment to SPR 2020-10 or CUP 2020-10. However, should the Planning Manager determine that modifications are substantive, he/she may require that an amendment to SPR 2020-10 and/or to CUP 2020-10 be filed for review and approval through the applicable City process.
10. Any proposed future modifications to the site, including, but not limited to, the building structural exteriors, parking/loading areas, shall require an amendment to SPR 2020-10 and/or CUP 2020-10.
11. All on-site improvements shall be completed prior to final building inspection and shall be completed in conformance with SPR 2020-10 and CUP 2020-10 to the satisfaction of the City of Madera prior to issuance of a certificate of completion.
12. The project site shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by staff to be in violation of the conditions, the property owner, operator, and/or manager may be subject to corrective action.
13. No signs are approved as part of SPR 2020-10 or CUP 2020-10. Signs shall be reviewed and approved under separate permit in accordance with the Madera Municipal Code.
14. Vandalism and graffiti shall be corrected in accordance with the provisions of the Madera Municipal Code.
15. The property owner, operator, and/or manager shall operate the site in a manner that does not generate noise, odor, blight, or vibration that adversely affects adjacent properties.
16. The property owner, operator, and/or manager shall keep the property clear of all trash, rubbish, and debris at all times.

Conditional Use Permit 2020-10

17. Conditional Use Permit 2020-10 allows for the sale of cigarettes in either single packs or cartons of ten or fewer. Other tobacco-related products allowed for sale at the store shall be as follows:
 - a. Smokeless tobacco
 - b. Roll-your-own pouched/canned tobacco
 - c. Cigars and cigarillos (except for any flavored products such as, but not limited to, grape, watermelon, bubblegum and fruit punch flavored products)
 - d. Rolling papers
18. Conditional Use Permit 2020-10 prohibits the sale of the following tobacco and tobacco related products:
 - a. Vape products, including juices

- b. Hookah products, including hookah tobacco/charcoal
 - c. E-cigarettes
 - d. Pipes and pipe tobacco
19. Conditional Use Permit 2020-10 prohibits the sale of drug related paraphernalia such as bongs, pipes and other product meant for use with non-tobacco substances as determined by the Planning Manager.
20. All tobacco and tobacco-related products shall be secured behind a counter or other fixture, unavailable to the public except with the assistance of a store employee.
21. There shall be no exterior display of signage promoting or advertising the sale of cigarettes, tobacco and/or tobacco related products on the project site.
22. Property owner/applicant and/or benefactors of CUP 2020-10 shall post “No Smoking” signage to the extent required by law.
23. The property owner, operator, and/or manager, and/or benefactor of CUP 2020-10 shall comply with all federal, state and local laws. Material violations of any of those laws concerning the use(s) may be cause for revocation of said permit. Such conditions that constitute such violation include, but are not limited to:
- a. The commission of three or more violent felonies (crimes against the person) and/or narcotic or dangerous drug sales within the subject premises or in the area immediately adjacent thereto.
 - b. The arrest of the owner and/or an employee for violations occurring within the subject premises, or in the area immediately adjacent thereto, which violations can be found to be reasonably related to the operation of the business.
 - c. The sustaining by the subject premises of an administrative suspension or revocation or other such sanction as may be imposed by the California State Department of Alcoholic Beverage Control, including payment in lieu of such suspension or revocation.
 - d. The failure by the owner or other person responsible for the operation of the premises to take reasonable steps to correct objectionable conditions after having been placed on notice by the official of the City that such conditions exist. Such official may include, but not be limited to the: Code Enforcement Officer, Police Chief, Fire Marshall or City Attorney. Objectionable conditions may include, but not be limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise. Such conduct shall be attributable to the subject premises whether occurring within the subject premises or in the area immediately adjacent thereto.
24. CUP 2020-10 shall be subject to periodic reviews and inspections by the City to determine compliance with the conditions of approval and applicable codes. If, at any time, the use is determined by staff to be in violation of the conditions of approval, staff may schedule an item before the Planning Commission so that it may be determine whether to consider setting a hearing regarding revocation of the permit.

Building Department

25. A building permit is required for all construction on the site.

26. A business license is required and a business license inspection shall be conducted prior to operation.

Fire Department

27. The applicant shall provide a key for the existing Knox Box.
28. The applicant shall provide fire extinguishers per the California Fire Code.

-END OF CONDITIONS-