CITY OF MERCED
Planning & Permitting Division

STAFF REPORT:	**#12-09-Addendum**	**AGENDA ITEM:**	**4.2**
FROM:	Kim Espinosa, Planning Manager	**PLANNING COMMISSION** **MEETING DATE: June 20, 2012**	
PREPARED BY:	Julie Nelson, Planner		

SUBJECT: **Conditional Use Permit #1169**, initiated by Firaz Jaber, applicant for Encina Investment Group Mainplace, property owner. This application involves a request to allow a hookah lounge and dance club for ages 18 and over (no alcohol allowed) to locate at 435 W. Main Street, located approximately 125 feet east of Canal Street, within a Central Commercial (C-C) Zone. *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

1) Environmental Review #12-12 (Categorical Exemption)
2) Conditional Use Permit #1169

SUMMARY

This application is a request to locate a hookah lounge and dance club at 435 W. Main Street (Attachment A). According to Wikipedia, a hookah, also known as a waterpipe, is a single or multi-stemmed instrument for smoking flavored tobacco called Shisha in which the smoke is passed through a water basin (often glass based) before inhalation. The origin of the hookah is India, Pakistan and Persia, or at a transition point between the two. Photos of a hookah can be found at Attachment B.

The proposed hookah lounge and dance club would be for patrons 18-years old and older. The proposal includes an enclosed area where hookahs could be smoked (hookah room) without exposing the rest of the tenant space to the smoke (Attachment C). The lounge would also include a small dance floor, two seating areas, and an office and restrooms. The lounge would open at 4:00 p.m. and close at 2:00 a.m. Pre-packaged food and non-alcoholic drinks would be sold.

The site is located within a Central Commercial (C-C) zone. A hookah lounge and dance club (dance hall) is listed as a conditional use within this zone.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #12-12 (Categorical Exemption) and Conditional Use Permit #1169 (including the adoption of the Resolution at Attachment I) subject to the following conditions:

*1) The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachment C, except as modified by the conditions.

*2) All conditions contained in *Resolution #1249-Amended* ("Standard Conditional Use Permit Conditions"—except for Condition #16 which has been superseded by Code) shall apply.

*3) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.

*4) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.

*5) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

*6) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

*7) The business shall be operated in a manner that conforms to all requirements of Fire Prevention Guideline (FPG) #26.

*8) Ventilation for the hookah room shall be in compliance with the International Mechanical Code, the requirements of Fire Prevention Guideline #26 (Exhibit B of the Draft Planning Commission Resolution at Attachment I), and all other applicable laws.

*9) The business shall be operated in a manner that conforms to all requirements of Labor Code Section 6404.5 – Smoking in Places of Employment Prohibited - Exceptions.

*10) Prior to opening the nightclub, the owner shall submit a floor plan with clearly marked dimensions of each area available for dancing to the Inspection Services Department for evaluation of the allowable occupant load. The owner shall comply with all applicable requirements of the Building and Fire Codes for the occupant loads determined from this evaluation. All necessary building permits shall be obtained prior to any work being done to the building.

*11) Wall signs shall be as allowed at one square foot of signing for each lineal foot of building frontage. Sandwich board and A-frame-type signs are not allowed. All temporary banners shall be approved by the Planning Department prior to installation and shall comply with Merced Municipal Code Section 17.36.570.

*12) Only tobacco-based products shall be sold or smoked in the hookah room. No other substances shall be smoked, sold, or distributed, including but not limited to, marijuana.

13) The City reserves the right to periodically review the operation for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, lewd and/or disorderly conduct, and disturbing the peace result from the proposed land use, etc., the conditional use permit may be subject to review and revocation by the City of Merced per the procedures in the Merced Municipal Code.

14) The business owner shall contact the Merced County Environmental Health department and obtain all necessary approvals for this business prior to opening. In addition, the owner/operator shall ensure compliance with all laws enforced by the Merced County Environmental Health Department including compliance with Labor Code Section 6404.5 – Smoking in Places of Employment Prohibited – Exceptions.

15) No “adult entertainment” uses as defined in Merced Municipal Code (MMC) Section 20.90 shall be allowed on the premises.

16) All patrons shall be at least 18 years old or older.

17) Noise levels generated by the lounge shall be kept to a level not creating a public nuisance to the surrounding business establishments and/or immediate area. If noise-related complaints are received by the City of Merced, the conditional use permit may be subject to review and possible revocation by the Planning Commission per the procedures in the Merced Municipal Code.

18) To prevent noise from carrying throughout the area, and especially to the nearby residential uses, the doors shall be kept closed except as patrons enter and exit. The doors shall not be propped open during business hours.

19) The applicant shall provide 1 security guard for each entrance/exit, 1 security guard to patrol the outside area, and 1 security guard per each 50 people inside during the lounge hours. All security guards shall be hired from a company that has been approved by the Merced City Council and properly licensed through the City of Merced. All security guards are subject to approval of the Merced Police Department.

20) If the operation of the hookah lounge and dance club change and/or the business owner changes from the current owner(s), a new application must be brought back to staff with possible referral to the Planning Commission for consideration.

21) The business owner shall be responsible for ensuring the area around the business is kept clean and free of trash, debris, and graffiti.

22) If smoking is permitted outdoors, a smoking area shall be designated at the rear of the business. The business owner shall direct customers to this area. Receptacles shall be available for ashes and cigarette butts and all applicable laws shall be enforced (i.e., distance from doorways, etc.).

(*) Denotes non-discretionary conditions.

PROJECT DESCRIPTION

The applicant is requesting to open a hookah lounge and dance club at 435 W. Main Street. The business would provide an enclosed area for smoking hookahs, a small dance floor area, and two seating areas to allow customers to socialize (Attachment C). As shown on the floor plan at Attachment C, the hookah room is approximately 116 square feet. The proposed office area is the same size. The dance floor is approximately 300 square feet and the combined seating area makes up 1,011 square feet.

The business will open at 4:00 p.m. and close at 2:00 a.m. This business will not serve alcoholic beverages and will allow customers 18 years old or older to patronize the lounge and dance club. Pre-packaged food and drinks may be offered for sale.

The business owner plans to share the musical entertainment between this business and the recently approved nightclub at 427-429 W. Main Street. Speakers will be installed in the dance club to allow the music from the nightclub to be heard and danced to at this location.

Surrounding Uses
(Attachment A)

Surrounding Land	Existing Use of Land	City Zoning Designation	City General Plan Land Use Designation
North	Wired Café and Pacific Telephone (across the alley)	Central Commercial (C-C)	Regional/Community Commercial (RC)
South	Various Commercial Uses (across Main Street)	Central Commercial (C-C)	Regional/Community Commercial (RC)
East	Starbucks Coffee	Central Commercial (C-C)	Regional/Community Commercial (RC)
West	Coldstone Creamery	Central Commercial (C-C)	Regional/Community Commercial (RC)

BACKGROUND

This site was part of the Mainplace project that was constructed in 2000. The parcel on which this building is located (APN: 031-143-028) encompasses all the tenant spaces from Starbucks to the Sub Stop (425 - 439 W. Main Street) as well as the parking located behind the building (Attachment C). The space the applicant is proposing to occupy was most recently occupied by Care Medical.

Around 2004 or 2005, Planning Staff began getting inquiries from business owners interested in opening a hookah lounge/bar. Because this type of use was new to the Merced area, the City's Zoning Ordinance did not address the use. In 2006, a Zoning Ordinance Amendment was approved listing "hookah bars" as a conditional use in the Central Commercial (C-C) zone.

HISTORY AND CULTURE OF HOOKAH

The following information is being offered to help provide a better understanding of the history of hookah and the culture surrounding the use of hookah. This information was gathered from the internet.

The hookah first became popular in the primitive form of a coconut shell in India and it is one of the oldest and most popular traditions in Turkey. There is no discrimination when it comes to smoking the hookah, as men and women equally partake. Before reaching the rest of the world, hookah popularity spread to Iran, but it was in Turkey where design and tradition truly took form as a cultural characteristic, and has since remained relatively unchanged. Today, you can find hookahs in homes and restaurants around the world.

Smoking hookah is a social experience. It is typically done with a single or double hose hookah and sometimes more (refer to the photos at Attachment B). It has grown in popularity over the last several years in the United States and has become somewhat mainstream in many cities across the country.

There is no open flame used with smoking hookahs. The head, or bowl, of the hookah is generally made of clay or marble and holds coal which burns the tobacco. The bowl is loaded with tobacco then covered with a small piece of perforated aluminum foil or glass or metal screen. The lit coals are then placed on top which allows the tobacco to heat to the proper temperature. The jar at the bottom of the hookah is filled with water sufficient to submerge a few centimeters of the body tube, which is sealed tightly to it. Deeper water will only increase the inhalation force needed to use it. When one inhales through the hose, air is pulled through the charcoal and into the bowl holding the tobacco. The hot air, heated by the charcoal, vaporizes (not burns) the tobacco, thus producing smoke, which is passed down through the body tube that extends into the water in the jar. It bubbles up through the water, losing heat, and fills the top part of the jar, to which the hose is attached. When a smoker inhales from the hose, smoke passes into the lungs, and the change in pressure in the jar pulls more air through the charcoal, continuing the process.

The tobacco mixture used with hookahs is referred to as Shisha. Shisha is a mixture of tobacco and treacle (a syrup substance), honey or sugar, and distilled water with fruit flavors. Shisha is not your typical tobacco and is smoked for flavor. Some of the most popular flavors are apple, strawberry, pineapple, apricot, grape, rose, mint and cappuccino.

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

A) The proposed project complies with the General Plan designation of Regional/Community Commercial (RC) and the zoning designation of Central Commercial (C-C).

The proposed project will achieve the following General Plan land use policies:

Land Use Policy L-2.1 Encourage further development of appropriate commercial and industrial uses throughout the City.

Implementing Action 2.1.c Continue the City's Economic Development Activities.

Land Use Policy L-2.3 Promote the retention and expansion of existing industrial and commercial businesses.

Land Use Policy L-2.8 Encourage a mixture of uses and activities that will maintain the vitality of the downtown area.

In addition to the above General Plan Policy, this project is in keeping with the City's 2007 Downtown Strategy.

Downtown Strategy 4.5 Recruit fine dining, clubs, and outdoor dining.

Traffic/Circulation

B) The project is located on West Main Street, between K and Canal Streets. Main Street is a collector, but carries a relatively high volume of traffic. Canal Street is a collector road and K Street is designated as a local road.

The Institute of Transportation Engineers (ITE) Trip Generation Manual (8th Edition) does not list trip generation for a hookah lounge or dance club. Therefore, staff determined the most similar use would be a "drinking establishment." The peak hour trip generation (one hour between 4 and 6 p.m.) for a "drinking place" is 11.34 trips per 1,000 square feet of floor area. Using this rate, 45 peak hour trips would be generated by this use. Peak hour trips are typically 10% of the total average daily trips. Therefore, the Average Daily Trips (ADT's) for this use are estimated to be 450 trips per day. The addition of this use would not reduce the level of service (LOS) of this road below an LOS D, which is the recommended minimum LOS for a roadway within the City.

Parking

C) This site is located within the City's Downtown Parking District, which means no on-site parking is required. There are four City parking lots within a short walking distance of this site (Attachment D). In addition, there is a private parking lot behind the building that was constructed with the Mainplace project (Attachment E). This lot would most likely be used to serve employees.

Building Design

D) There are no proposed changes to the exterior of the building. There will be modifications to the interior building structure to allow new walls to be constructed for

the hookah room and office area. The ventilation for the building will need to be modified for the hookah room. These modifications will require that the smoke from this area is vented to the exterior of the building. The ventilation system will be required to meet all Fire and Mechanical Code requirements to ensure proper ventilation is provided (Conditions #7 and #8).

The floor plan is designed to have a seating area at the entrance and another doorway that leads into the main area that includes the hookah room and dance floor (Attachment C). This design will help reduce the amount of noise that can escape from the dance floor area. There is an exit door at the rear of the building that leads to the parking lot off the alley behind the building (Attachment E)

Fire Safety

E) Although no open flames are used in the smoking of hookahs, there are still dangers from fire associated with this type of business. The City of Merced Fire Department developed a Fire Prevention Guideline to assist business owners in complying with Fire Codes and to enhance their fire prevention efforts. Condition #7 requires the business to comply with the Fire Prevention Guidelines (FPG #26). These guidelines include requirements for ventilation, guidelines for preparing coals, and a requirement for the hookah to be securely mounted to a table among other safety measures. A copy of these guidelines can be found at Attachment F.

Site Design

F) There are no changes proposed to the site.

Neighborhood Impact/Interface

G) Public hearing notices were sent to all property owners within 300 feet of the site. To date, staff has not received any comments regarding this project. Although this area is zoned Central Commercial (C-C), there are residential uses in the area. Attachment D shows the sensitive uses (residential uses, schools, and churches) within a 100-, 600-, and 1,000-foot radius of the parcel where the project is located. There are no sensitive uses within a 100-foot radius of the parcel. There are a few residential uses located in the C-C zone and two churches within a 600-foot radius and additional residential uses (both commercially and residentially zoned) within a 1,000 foot radius.

The layout of the building is such that there are two doors separating the dance floor from the entrance (Attachment C). This will help reduce any noise that escapes from the building. Conditions #17 #18 require noise levels to be kept to a reasonable level and prohibits doors from being propped open.

Condition #13 allows the City to periodically review the use and if problems arise, the Conditional Use Permit could be revoked. Condition #19 also requires security guards to be present during business hours.

Signage

H) The site is subject to the Downtown Sign Ordinance and is allowed wall-mounted signs at a ratio of one square-foot of signing for each lineal foot of building frontage. The

building frontage is approximately 55 feet wide, which would allow a maximum of 55 square feet of wall-mounted signing.

Labor Code Section 6404.5

I) Assembly Bill (AB) 13 enacted Labor Code Section 6404.5 prohibiting smoking in places of employment (Attachment G). This bill went into effect January 1, 1995. Under the general provision of this section, "no employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment." However, there are certain exceptions to the general provision. There are specific exceptions for certain types of workplaces (refer to page 3 of Attachment G). In addition to these exceptions, any employer with five or fewer employees (full or part-time) may permit smoking where:

1. The smoking area is not accessible to minors.
2. All employees who enter the smoking area consent to permit smoking, and no one is required as part of their job to work in an area where smoking is permitted.
3. Air from the smoking area is exhausted directly outside.

Condition #9 requires the business to be operated in compliance with Labor Code Section 6404.5. City staff has advised the applicant of this requirement. The applicant has expressed that he will be able to comply with all the requirements set forth in the Labor Code. The Merced County Environmental Health Department is the enforcement agency for the no smoking ban within Merced County. Condition #14 requires compliance with all rules of the Merced County Environmental Health Department, including compliance with Labor Code Section 6404.5

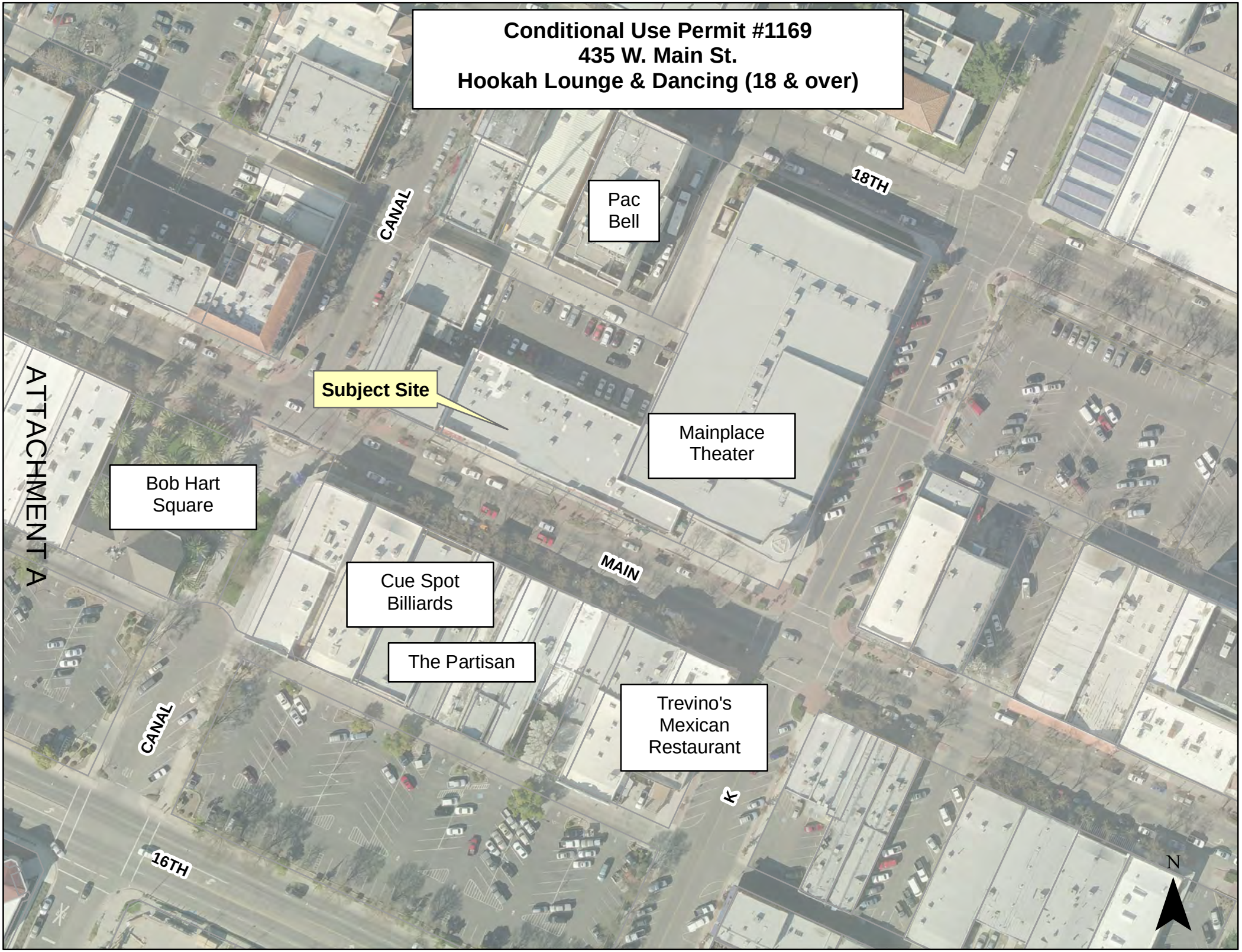
Environmental Clearance

J) The Planning staff has conducted an environmental review (Initial Study # 12-12) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment H).

Attachments:

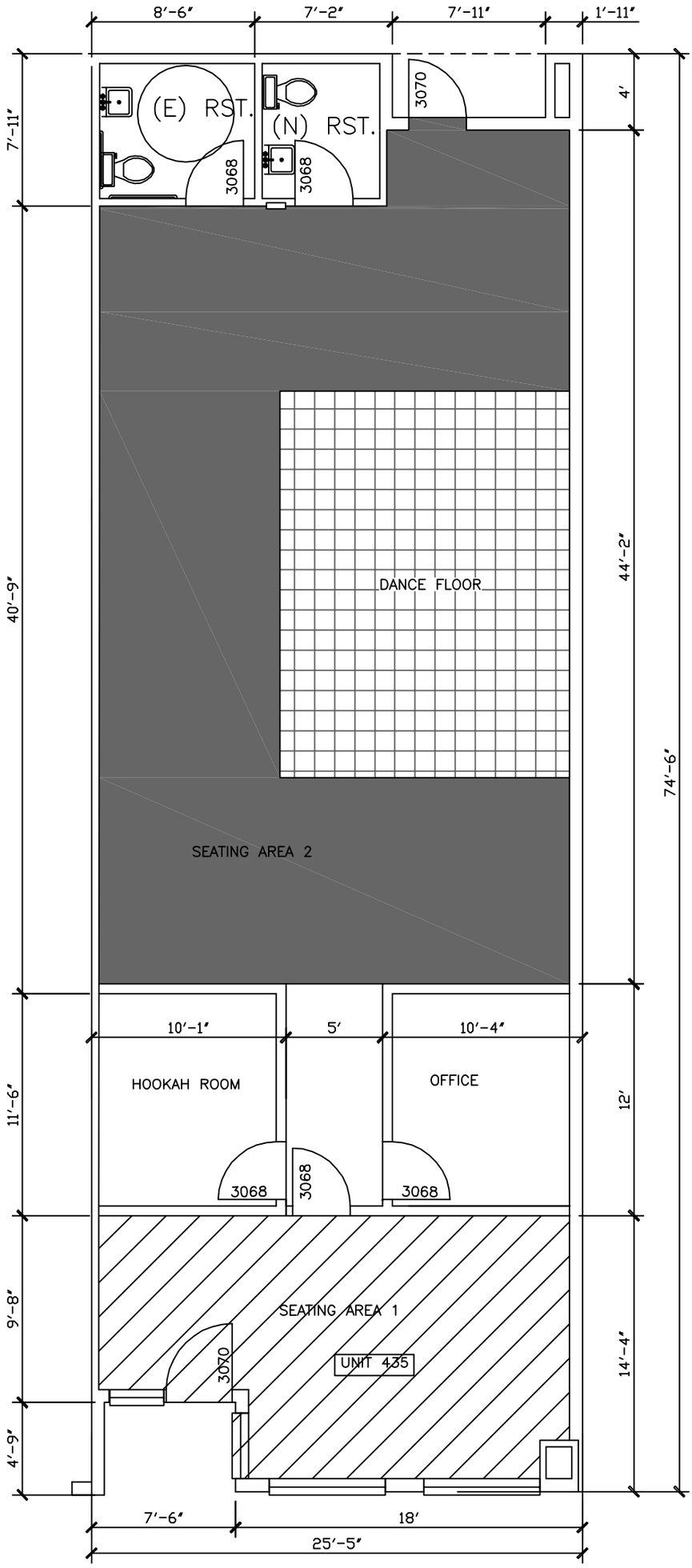
A) Location Map
B) Photos
C) Floor Plan
D) Downtown Parking District
E) Location Map #2
F) Fire Prevention Guidelines #26
G) AB 13 Fact Sheet
H) Categorical Exemption
I) Draft Planning Commission Resolution

Ref: *N:Shared/Planning/Staff Report/SR #12-09*



ATTACHMENT A

ATTACHMENT B



FLOOR PLAN

N T S

UNIT 435 : PROPOSED HOOKAH LOUNGE (NO BAR)
AREA : 1,863 SQFT.

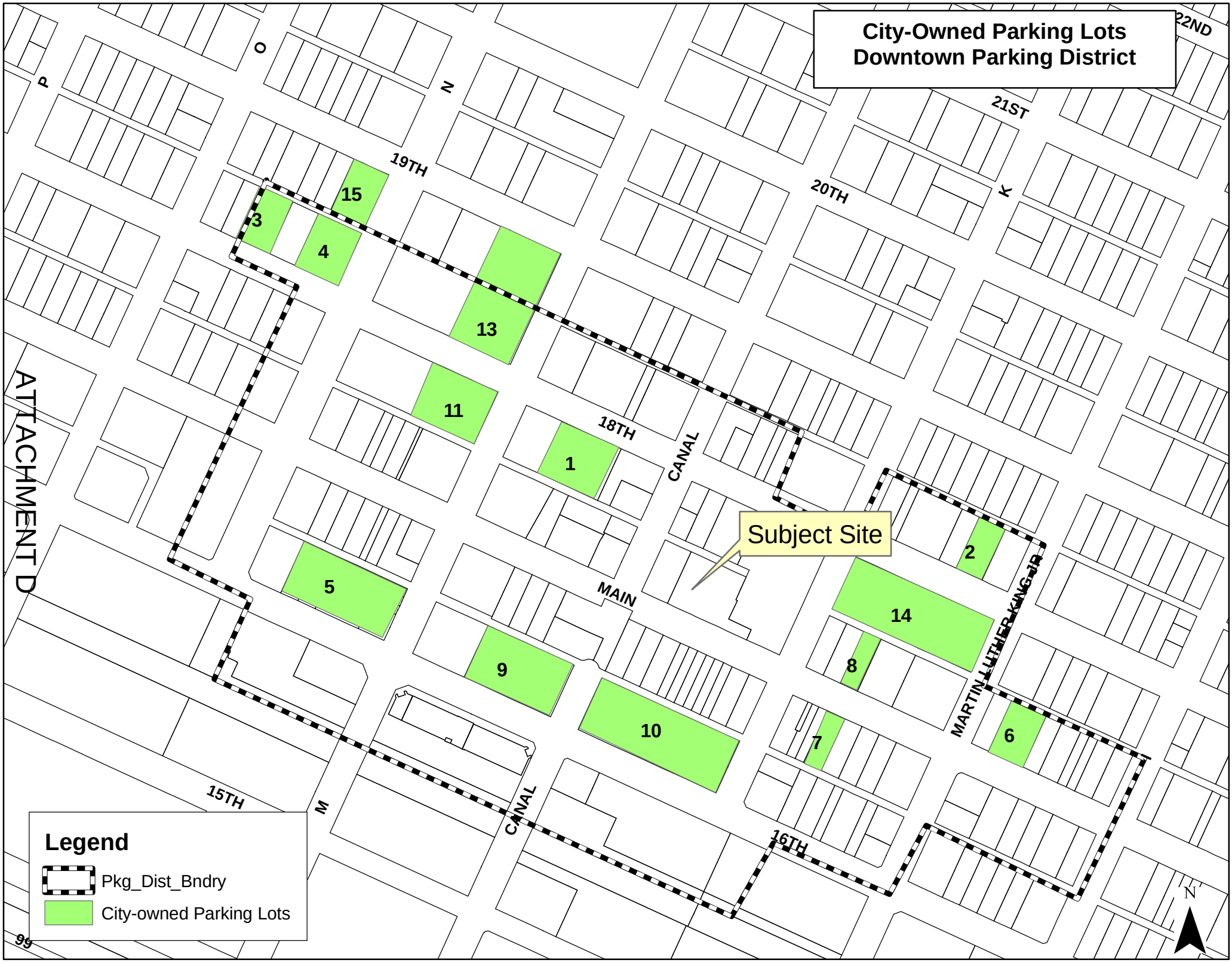
DANCE AREA: 300 S.F.

SEATING 1: 293 S.F.
SEATING 2: 718 S.F.
TOTAL SEATING: 1,011 S.F.

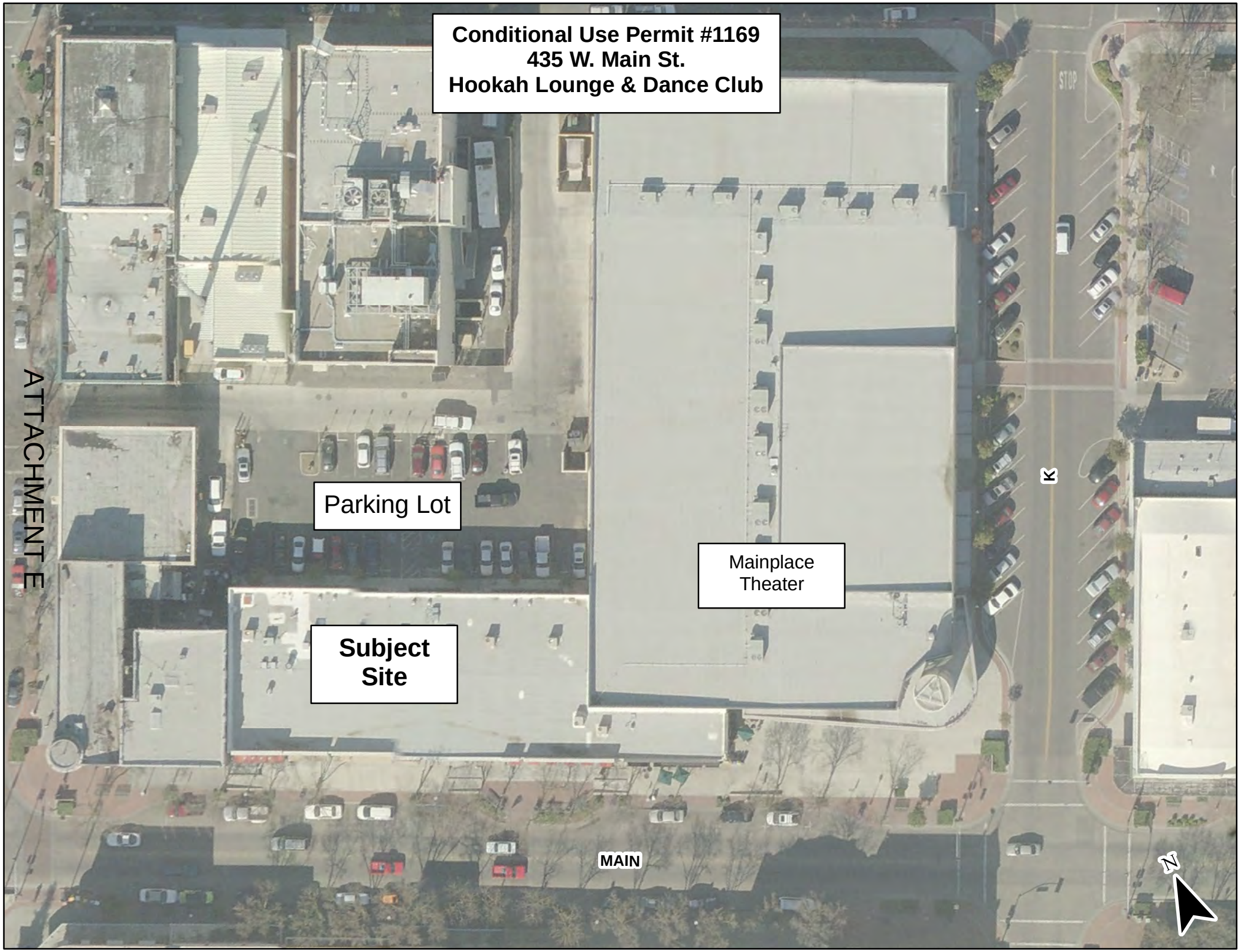
TOTAL SEATING AREA + DANCE: 1,311 S.F.

ATTACHMENT C

City-Owned Parking Lots
Downtown Parking District



ATTACHMENT D



ATTACHMENT E

FIRE PREVENTION GUIDELINE

Title: Smoking Lounges , Hookah Cafes & Lounges		
Number: FPG-26	**Effective Date:** 06/05/2012	**Revised Date:** 06/05/2012
Code References: California Fire Code (CFC), California Code of Regulations (CCR) Title 19, Merced Municipal Code (MMC), California Mechanical Code		
Note: *This guideline is a summary of Fire Department clarifications and interpretations of City and State Codes and nationally recognized standards in accordance with the currently adopted edition of the Fire Code. Information contained herein applies to typical circumstances and may not address all situations.*		

Scope

This Guideline has been developed to identify the minimum fire and life safety requirements for the safe operation of smoking lounges, including Hookah cafes or lounges.

Codes and Guidelines

This Guideline shall apply to buildings, new or existing, operating a smoking lounge or hookah café/lounge.

Permits Required

A building permit is required for the installation of mechanical ventilation system(s).

Specific Requirements

1. Adequate ventilation is required when heating coals. A mechanical ventilation system capable of 60 cfm per person outside air with adequate exhaust air provided in accordance with the California Mechanical Code shall be installed to provide adequate ventilation.

2. The mechanical ventilation system shall be running at all times while coals are being prepared.

3. Whenever hot coals are removed from the preparation area, they shall be placed in a ceramic, metal or other non-combustible container. Open mesh containers shall not be used.

4. Coal containers shall not be placed on combustible materials, such as tablecloths or furniture. All devices used to transfer coals from the preparation area to the hookah pipe or the container to the hookah pipe shall be of non-combustible materials.

5. Hookah pipes shall be securely fastened in place to prevent overturning. An approved clasp or hook may be used to secure the pipe to the table or other stationary object. A shield or other approved device shall be applied to the top of the pipe to prevent accidental contact of patrons to exposed coals. A protective device may be a cap constructed of aluminum foil so that the height is not less than two inches above the top of the coals.

6. Used coals shall not be discarded in a manner that could cause ignition of combustible materials. Used coals shall be removed and placed into a sealed metal or ceramic container with a lid (no openings other than the lid). The container shall be labeled “Hot Coals Only.” The container shall not be placed with ten feet of other combustible materials, including combustible storage, walls and partitions, on combustible floors or within two feet of the wall,

partition or building openings. Hot ashes shall be thoroughly cooled (at least 24 hours) before being discarded.

7. The occupant load of a business shall be determined by the City of Merced Inspection Services and/or Fire Department. If the occupant load is 50 or more, all requirements of the California Fire and Building Code shall apply for an assembly occupancy. Assembly occupancy requirements include multiple exits, illuminated exit signs, and panic hardware. If a building or suite is not classified as an assembly occupancy, a change of occupancy classification will be required through the City of Merced Inspection Services.

8. If the occupant load of the lounge is 50 or more, all combustible decorative materials shall be flame resistant. These materials include curtains, tablecloths and all materials hung from ceilings and/or walls. All textile and film materials shall be treated and maintained flame resistant. Certificates indicating the treatments applied, shall be kept at the place of business and be readily available to the City of Merced Fire Department personnel upon request. The certificate must state the flame retardant material, the method used for application and have the approval of the California State Fire Marshal. Flame retardant application services and certificates may be obtained from a licensed company. A list of licensed companies can be obtained at the Office of the State Fire Marshal website at osfm.fire.ca.gov or by contacting the Fire Prevention Bureau at 209-385-6830

9. Minimum 2A:10BC type rated fire extinguishers shall be installed in approved locations with one being installed adjacent to the coal preparation area.

AB-13 FACT SHEET - CALIFORNIA WORKPLACE SMOKING RESTRICTIONS

Prepared October 1997 by the Cal/OSHA Consultation Service

This fact sheet summarizes the provisions of Labor Code Section 6404.5 prohibiting smoking in places of employment. This summary information should not be relied upon as legal advice. A copy of Section 6404.5 is attached with this Fact Sheet.

Effective Date January 1, 1995

General Provision "No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment."

Enforcement This law will be enforced by local law enforcement agencies, including but not limited to, local health departments.

For workplaces covered by AB-13, Cal/OSHA is required to respond to complaints regarding smoking in places of employment only after the employer has been found guilty of three violations of this law within the previous year. Complaints received by Cal/OSHA regarding smoking in workplaces not covered by AB-13 smoking restrictions (see Workplace Exceptions below) will result in a letter directing the employer to investigate and correct the problem.

Workplace Exceptions See page 3 of this fact sheet for the complete list from AB-13.

In addition to workplaces specifically listed on page 3 of this fact sheet, any employer with five or fewer employees (full or part-time) may permit smoking where:

1. The smoking area is not accessible to minors.
2. All employees who enter the smoking area consent to permit smoking, and no one is required as part of their job to work in an area where smoking is permitted.
3. Air from the smoking area is exhausted directly outside.

Maximum Fines from Local Agencies
1st violation - $100
2nd violation - $200
3rd and subsequent violations - $500

Maximum Fines from Cal/OSHA After a 3rd violation within the previous year, Cal/OSHA is required to investigate complaints and may cite employers with fines up to $7,000 for violations classified as general or serious, and fines up to $70,000 for violations classified as willful serious. Violations can be classified as serious depending upon specific circumstances. For example, where the exposure to second hand smoke causes a serious asthma attack which could have been prevented the violation may be cited as serious.

Breakrooms Breakrooms are exempted from the smoking ban provided air from the room is exhausted directly to the outside by an exhaust fan and the rooms are in a nonwork area where employees are not required to be present as part of their work responsibilities other than custodial or maintenance work when the room is unoccupied.

ATTACHMENT G

Where they are provided for smokers, there must also be a sufficient number of breakrooms to accommodate nonsmokers. However, the law does not require employers to provide smoking areas or breakrooms for smokers, or to provide breakrooms for nonsmokers where they are not provided for smokers.

Adequate Compliance Measures (specified in AB-13)

1. Posting of clear and prominent signs stating "No Smoking" at entrances to buildings where smoking is prohibited throughout;
2. In buildings where smoking is permitted in designated areas, posting of a sign at the building entrance stating "Smoking is prohibited except in designated areas;" and
3. Requesting that nonemployees smoking in prohibited areas refrain from doing so unless such a request would involve a risk of physical harm to the employer or any employee.

Note: Employers are not required to physically eject smoking nonemployees from workplaces.

Supersedes Local Laws This law supersedes and pre-empts local laws, ordinances, and regulations with respect to smoking in enclosed places of employment. However, the law does not supersede local authority to regulate work environments exempted from coverage in the law and to require provision of breakrooms for smokers and nonsmokers. This law also does not prevent employers from enacting more restrictive smoking prohibitions in their workplaces.

Workplaces, or portions thereof, not covered by Labor Code Section 6404.5 (AB-13) smoking restrictions:[1]

- 65% of the guest rooms of hotels, motels, and similar transient lodging;
- Lobby areas of hotels, motels, and similar transient lodging designated for smoking (not to exceed 25% of the total lobby floor area or, if the lobby area is 2,000 square feet or less, not to exceed 50% of the total lobby floor area);
- Meeting and banquet rooms except while food or beverage functions are taking place (including set-up, service, and clean-up activities or when the room is being used for exhibit activities);
- Retail or wholesale tobacco shops and private smokers lounges;
- Truck cabs or truck tractors, if no nonsmoking employees are present;
- Warehouse facilities with more than 100,00 square feet of total floor space and 20 or fewer full-time employees working at the facility, but does not include any area within such a facility that is utilized as office space;
- Theatrical production sites, if smoking is an integral part of the story;
- Medical research or treatment sites, if smoking is integral to the research or treatment being conducted;
- Private residences, except for homes licensed as family day care homes, during the hours of operation and in those areas where children are present;
- Patient smoking areas in long-term health care facilities.
- Breakrooms designated by employers for smoking, under specified conditions (see page 2 of fact sheet); and
- Employers with five or fewer full or part-time employees, under specified conditions (see page 1 of fact sheet).

[1]An exemption for gaming clubs, bars, and taverns expires January 1, 1998.

LABOR CODE SECTION 6404.5 Smoking in Places of Employment Prohibited - Exceptions

(Source: www.leginfo.ca.gov 10/10/97)

6404.5.**(a)**The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a "place of employment" pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products.

(b) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment.

(c) For purposes of this section, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally if he or she has taken the following reasonable steps to prevent smoking by a nonemployee:

(1) Posted clear and prominent signs, as follows:

(A) Where smoking is prohibited throughout the building or structure, a sign stating "No smoking" shall be posted at each entrance to the building or structure.

(B) Where smoking is permitted in designated areas of the building or structure, a sign stating "Smoking is prohibited except in designated areas" shall be posted at each entrance to the building or structure.

(2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace.

For purposes of this subdivision, "reasonable steps" does not include (A) the physical ejection of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee.

(d) For purposes of this section, "place of employment" does not include any of the following:

(1) Sixty-five percent of the guest room accommodations in a hotel, motel, or similar transient lodging establishment.

(2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking by the establishment. Such an establishment may permit smoking in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, "lobby" means the common public area of such an

establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment's guests and members of the public typically congregate.

(3) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking is not permitted in such a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking in corridors and prefunction areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area on other than a passing basis.

(4) Retail or wholesale tobacco shops and private smokers lounges. For purposes of this paragraph:

(A)"Private smokers lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.

(B) Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

(5) Cabs of motor trucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no nonsmoking employees are present.

(6) Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than100,000 square feet of total floor space, and 20 or fewer full-time employees working at the facility, but does not include any area within such a facility that is utilized as office space.

(7) Gaming clubs, in which smoking is permitted by subdivision(f). For purposes of this paragraph, "gaming club" means any gaming club, as defined in Section 19802 of the Business and Professions Code, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under 18 years of age.

(8) Bars and taverns, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. "Bar or tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, "bar" or"tavern" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

(9) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.

(10) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.

(11) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present.

(12) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.

(13) Breakrooms designated by employers for smoking, provided that all of the following conditions are met:

(A) Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building.

(B) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

(C) The smoking room shall be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this paragraph, "work responsibilities" does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied.

(D) There are sufficient nonsmoking breakrooms to accommodate nonsmokers.

(14) Employers with a total of five or fewer employees, either full-time or part-time, may permit smoking where all of the following conditions are met:

(A) The smoking area is not accessible to minors.

(B) All employees who enter the smoking area consent to permit smoking. No one, as part of his or her work responsibilities, shall be required to work in an area where smoking is permitted. An employer who is determined by the division to have used coercion to obtain consent or who has required an employee to work in the smoking area shall be subject to the penalty provisions of Section 6427.

(C) Air from the smoking area shall be exhausted directly to the outside by an exhaust fan. Air from the smoking area shall not be recirculated to other parts of the building.

(D) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

This paragraph shall not be construed to (i) supersede or render inapplicable any condition or limitation on smoking areas made applicable to specific types of business establishments by any other paragraph of this subdivision or (ii) apply in lieu of any otherwise applicable

paragraph of this subdivision that has become inoperative.

(e) Paragraphs (13) and (14) of subdivision (d) shall not be construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.

(f)(1) Except as otherwise provided in this subdivision, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), until the earlier of the following:

(A) January 1, 1998.

(B) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.

(2) If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1998, the exemptions specified in paragraphs (7) and (8) of subdivision (d) shall be inoperative on and after January 1, 1998, until such a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(4) From January 1, 1997, to December 31, 1997, inclusive, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), subject to both of the following conditions:

(A) If practicable, the gaming club or bar or tavern shall establish a designated nonsmoking area.

(B) If feasible, no employee shall be required, in the performance of ordinary work responsibilities, to enter any area in which smoking is permitted.

(g) The smoking prohibition set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100 percent of) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(h) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment for any reason.

(i) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100 percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100 percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, any area not defined as a "place of employment" or in which the smoking is not regulated pursuant to subdivision (d) or (e), shall be subject to local regulation of smoking of tobacco products.

(j) Any violation of the prohibition set forth in subdivision (b) is an infraction subject to subdivision (d) of Section 17 of the Penal Code and, notwithstanding Section 19.8 of the Penal Code, is punishable by a fine not to exceed one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second violation within one year, and five hundred dollars ($500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies including, but not limited to, local health departments, as determined by the local governing body.

(k) Notwithstanding Section 6309, the division shall not be required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (j) of a third violation of subdivision (b) within the previous year.

(l) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision of application, and to this end the provisions of this act are severable.

Back to DIR Homepage

NOTICE OF EXEMPTION

To: ____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

_X_ County Clerk
County of Merced
2222 M Street
Merced, CA 95340

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

Project Title: CUP #1169

Project Applicant: Firaz Jaber, Encino Investment Group Mainplace, property owner

Project Location (Specific): 435 W Main St. **APN: 031-143-028**

Project Location - City: Merced **Project Location - County:** Merced

Description of Nature, Purpose, and Beneficiaries of Project:

The project involves interior modifications to allow a hookah lounge for 18 and over (no alcohol allowed) to locate at this site.

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: Firaz Jaber

Exempt Status: (check one)

___ Ministerial (Sec. 21080(b)(1); 15268);
___ Declared Emergency (Sec. 21080(b)(3); 15269(a));
___ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
_X_ Categorical Exemption. State Type and Section Number: Section 15301 (a)
___ Statutory Exemptions. State Code Number: _____.
___ General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: As defined under the above referenced Section, the proposed project consists of minor interior and exterior alterations only, such as partitions, electrical, and plumbing, which are considered to be exempt under the CEQA Guidelines per Section 15301 (a)

Lead Agency: City of Merced
Contact Person: Julie Nelson, Planner **Area Code/Telephone:**(209) 385-6858

Signature: _____ **Date:** 5-14-12 **Title:** Planner

_X_ Signed by Lead Agency

Date Received for Filing at OPR:_____
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

ATTACHMENT H

CITY OF MERCED
Planning Commission

Resolution #_____

WHEREAS, the Merced City Planning Commission at its regular meeting of June 20, 2012, held a public hearing and considered **Conditional Use Permit #1169,** initiated by Firaz Jaber, applicant for Encina Investment Group Mainplace, property owner. This application involves a request to allow a hookah lounge and dance club for ages 18 and over (no alcohol allowed) to locate at 435 W. Main Street, located approximately 125 feet east of Canal Street, within a Central Commercial (C-C) Zone; also known as Assessor's Parcel No. 031-143-028; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through J of Staff Report #12-09 - Addendum; and,

WHEREAS, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #12-12, and approve Conditional Use Permit #1169, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner _____, seconded by Commissioner _____, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)
ABSTAIN: Commissioner(s)

ATTACHMENT I

Adopted this 20th day of June 2012

_____
Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

_____
Secretary

Attachment:
Exhibit A – Conditions of Approval
Exhibit B – Fire Prevention Guideline #26

n:shared:planning:PC Resolutions:CUP#1169 Firaz Jaber Hookah Lounge & Dance Club

Conditions of Approval
Planning Commission Resolution #_____
Conditional Use Permit #1169

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachment C of Staff Report #12-09 - Addendum, except as modified by the conditions.

2. All conditions contained in *Resolution #1249-Amended* ("Standard Conditional Use Permit Conditions"—except for Condition #16 which has been superseded by Code) shall apply.

3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.

4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.

5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

7. The business shall be operated in a manner that conforms to all requirements of Fire Prevention Guideline (FPG) #26.

8. Ventilation for the hookah room shall be in compliance with the International Mechanical Code, the requirements of Fire Prevention Guideline #26 (Exhibit B of Planning Commission Resolution #3005), and all other applicable laws.

9. The business shall be operated in a manner that conforms to all requirements of Labor Code Section 6404.5 – Smoking in Places of Employment Prohibited - Exceptions.

10. Prior to opening the nightclub, the owner shall submit a floor plan with clearly marked dimensions of each area available for dancing to the Inspection Services Department for evaluation of the allowable occupant load. The owner shall comply with all applicable requirements of the Building and Fire Codes for the occupant loads determined from this evaluation. All necessary building permits shall be obtained prior to any work being done to the building.

11. Wall signs shall be as allowed at one square foot of signing for each lineal foot of building frontage. Sandwich board and A-frame-type signs are not allowed. All temporary banners shall be approved by the Planning Department prior to installation and shall comply with Merced Municipal Code Section 17.36.570.

12. Only tobacco-based products shall be sold or smoked in the hookah room. No other substances shall be smoked, sold, or distributed, including but not limited to, marijuana.

13. The City reserves the right to periodically review the operation for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, lewd and/or disorderly conduct, and disturbing the peace result from the proposed land use, etc., the conditional use permit may be subject to review and revocation by the City of Merced per the procedures in the Merced Municipal Code.

14. The business owner shall contact the Merced County Environmental Health department and obtain all necessary approvals for this business prior to opening. In addition, the owner/operator shall ensure compliance with all laws enforced by the Merced County Environmental Health Department including compliance with Labor Code Section 6404.5 – Smoking in Places of Employment Prohibited – Exceptions.

15. No "adult entertainment" uses as defined in Merced Municipal Code (MMC) Section 20.90 shall be allowed on the premises.

16. All patrons shall be at least 18 years old or older.

17. Noise levels generated by the lounge shall be kept to a level not creating a public nuisance to the surrounding business establishments and/or immediate area. If noise-related complaints are received by the City of Merced, the conditional use permit may be subject to review and possible revocation by the Planning Commission per the procedures in the Merced Municipal Code.

18. To prevent noise from carrying throughout the area, and especially to the nearby residential uses, the doors shall be kept closed except as patrons enter and exit. The doors shall not be propped open during business hours.

19. The applicant shall provide 1 security guard for each entrance/exit, 1 security guard to patrol the outside area, and 1 security guard per each 50 people inside during the lounge hours. All security guards shall be hired from a company that has been approved by the Merced City Council and properly licensed through the City of Merced. All security guards are subject to approval of the Merced Police Department.

20. If the operation of the hookah lounge and dance club change and/or the business owner changes from the current owner(s), a new application must be brought back to staff with possible referral to the Planning Commission for consideration.

21. The business owner shall be responsible for ensuring the area around the business is kept clean and free of trash, debris, and graffiti.

22. If smoking is permitted outdoors, a smoking area shall be designated at the rear of the business. The business owner shall direct customers to this area. Receptacles shall be available for ashes and cigarette butts and all applicable laws shall be enforced (i.e., distance from doorways, etc.).

FIRE PREVENTION GUIDELINE

Title: Smoking Lounges , Hookah Cafes & Lounges		
Number: FPG-26	**Effective Date:** 06/05/2012	**Revised Date:** 06/05/2012
Code References: California Fire Code (CFC), California Code of Regulations (CCR) Title 19, Merced Municipal Code (MMC), California Mechanical Code		
Note: *This guideline is a summary of Fire Department clarifications and interpretations of City and State Codes and nationally recognized standards in accordance with the currently adopted edition of the Fire Code. Information contained herein applies to typical circumstances and may not address all situations.*		

Scope

This Guideline has been developed to identify the minimum fire and life safety requirements for the safe operation of smoking lounges, including Hookah cafes or lounges.

Codes and Guidelines

This Guideline shall apply to buildings, new or existing, operating a smoking lounge or hookah café/lounge.

Permits Required

A building permit is required for the installation of mechanical ventilation system(s).

Specific Requirements

1. Adequate ventilation is required when heating coals. A mechanical ventilation system capable of 60 cfm per person outside air with adequate exhaust air provided in accordance with the California Mechanical Code shall be installed to provide adequate ventilation.

2. The mechanical ventilation system shall be running at all times while coals are being prepared.

3. Whenever hot coals are removed from the preparation area, they shall be placed in a ceramic, metal or other non-combustible container. Open mesh containers shall not be used.

4. Coal containers shall not be placed on combustible materials, such as tablecloths or furniture. All devices used to transfer coals from the preparation area to the hookah pipe or the container to the hookah pipe shall be of non-combustible materials.

5. Hookah pipes shall be securely fastened in place to prevent overturning. An approved clasp or hook may be used to secure the pipe to the table or other stationary object. A shield or other approved device shall be applied to the top of the pipe to prevent accidental contact of patrons to exposed coals. A protective device may be a cap constructed of aluminum foil so that the height is not less than two inches above the top of the coals.

6. Used coals shall not be discarded in a manner that could cause ignition of combustible materials. Used coals shall be removed and placed into a sealed metal or ceramic container with a lid (no openings other than the lid). The container shall be labeled “Hot Coals Only.” The container shall not be placed with ten feet of other combustible materials, including combustible storage, walls and partitions, on combustible floors or within two feet of the wall,

EXHIBIT B

partition or building openings. Hot ashes shall be thoroughly cooled (at least 24 hours) before being discarded.

7. The occupant load of a business shall be determined by the City of Merced Inspection Services and/or Fire Department. If the occupant load is 50 or more, all requirements of the California Fire and Building Code shall apply for an assembly occupancy. Assembly occupancy requirements include multiple exits, illuminated exit signs, and panic hardware. If a building or suite is not classified as an assembly occupancy, a change of occupancy classification will be required through the City of Merced Inspection Services.

8. If the occupant load of the lounge is 50 or more, all combustible decorative materials shall be flame resistant. These materials include curtains, tablecloths and all materials hung from ceilings and/or walls. All textile and film materials shall be treated and maintained flame resistant. Certificates indicating the treatments applied, shall be kept at the place of business and be readily available to the City of Merced Fire Department personnel upon request. The certificate must state the flame retardant material, the method used for application and have the approval of the California State Fire Marshal. Flame retardant application services and certificates may be obtained from a licensed company. A list of licensed companies can be obtained at the Office of the State Fire Marshal website at osfm.fire.ca.gov or by contacting the Fire Prevention Bureau at 209-385-6830

9. Minimum 2A:10BC type rated fire extinguishers shall be installed in approved locations with one being installed adjacent to the coal preparation area.