

Staff Summary Report



Hearing Officer Hearing Date: September 1, 2009

Agenda Item Number: 4

SUBJECT: This is a public hearing for a request by **H B TOBACCO – HUBBLY BUBBLY (PL080365)** located at 1400 South McClintock Drive, Suite No. 5 for one (1) use permit.

DOCUMENT NAME: 20090901dsng01

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for a request by **KING PLAZA - H B TOBACCO – HUBBLY BUBBLY V. I. P. ROOM (PL090297)** (Anis Ben Harzallah, applicant; King Plaza LLC, property owner) located at 1400 South McClintock Drive, Suite No. 5 in the CSS, Commercial Shopping and Services District for:

ZUP09119 Use permit to allow a hookah lounge/tobacco retailer.

PREPARED BY: Nick Graves, Planning Intern (480-350-8690)

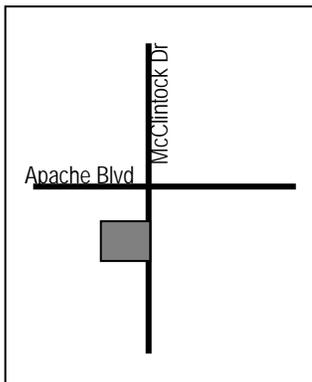
REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval subject to Conditions

ADDITIONAL INFO: The applicant is requesting a use permit to allow a Hookah lounge/tobacco retailer located at 1400 South McClintock Drive, Suite No. 5 in the CSS, Commercial Shopping & Services District. No public input has been received to date. Staff supports the request for a use permit as it meets the criteria for a use permit in the Zoning and Development Code.



PAGES:

1. List of Attachments
2. Comments
3. Reasons for Approval; Conditions of Approval
4. History & Facts; Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map
2. Aerial Photo
3. Letter of Intent
4. Site plan
5. Existing Floor Plan / Reflected Ceiling Plan
6. Floor Plan
7. Staff Photograph

COMMENTS:

The applicant, HB Tobacco is requesting a use permit to allow a hookah lounge/tobacco retailer at 1400 South McClintock Drive, Suite No. 5, in the CSS, Commercial Shopping & Services District. In October of 2008 the applicant received approval for a use permit to allow a hookah lounge in this same plaza. This request is to expand the use of the hookah lounge business by operating in a separate suite. The scope of the business in the new suite will be similar to the one already existing which includes a smoking lounge, sale of coffee, hot and cold beverages, and other tobacco-related products. The primary use will be as a hookah lounge. Hours of operation will be from 3pm to 2am, seven (7) days a week; they will have between 2-3 full time employees. Peak hours for hookah tend to be after dinner into the late evening.

The City of Tempe Zoning and Development Code tobacco retailer separation requirements, which took effect in June of 2007, prohibit a tobacco retailer (hookah lounge) from locating within 1,320 feet of a school. This proposal is not within 1,320 feet of a school, thus a tobacco retailer/hookah lounge can be allowed subject to an approved use permit.

The applicant will also be required to meet the 2003 International Mechanical Code that requires a "smoking lounge" to meet outside air and ventilation requirements. Mr. Harzallah has been made aware of this regulation and will be working with a mechanical engineer, and property owner in verifying HVAC requirements for Building Safety permits and clearances.

No public input has been received on this request. Staff supports the request for a use permit to allow a hookah lounge.

Use Permit

The Zoning and Development Code requires a use permit for a hookah lounge in the CSS, Commercial Shopping and Services District. Evaluating the use permit, the proposal appears to pass the use permit test listed below:

- a) Any significant increase in vehicular or pedestrian traffic in adjacent areas;
 - There will be no significant increase in vehicular or pedestrian traffic in adjacent areas.
- b) Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
 - This is a hookah lounge and will generate smoke; however all hookah smoking shall be contained within the establishment. Moreover, the hookah lounge has its own independent ventilation system. Therefore this use should not adversely impact neighboring businesses with the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare.
- c) Contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans, or General Plan;
 - The proposed development would not contribute to neighborhood deterioration or downgrade property values. This use permit request is consistent with the General Plan 2030's Land Use Element. The requested use permit will not be detrimental to the surrounding area, but will further the General Plan Land Use Element Goals and Strategies.
- d) Compatibility with existing surrounding structures and uses;
 - The proposed use appears to be compatible with surrounding uses.
- e) Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public;
 - The proposed use appears to have adequate control of disruptive behavior.

Conclusion

Staff recommends approval of the use permit subject to conditions.

REASONS FOR APPROVAL:

1. The business is a general commercial use, and is compatible with the other businesses on the property and within the area.
2. No apparent nuisance resulting from noise, smoke, odor, dust, vibration, or glare.
3. No apparent hazards to persons or property from possible explosion, contamination, fire or flood.
4. The proposed use appears to have adequate control of disruptive behavior.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITIONS OF APPROVAL:

1. The use permit is valid for HB Tobacco and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact the City of Tempe Crime Prevention Unit for a Security Plan within 30 days (October 1, 2009) of this approval. Contact Crime Prevention at (480) 858-6027.
11. Any outdoor patio shall require Development Plan Review approval.

HISTORY & FACTS:

- December 19, 2006 ZUP06088: Hearing Officer approved a use permit to allow a Tobacco Retailer for HB PLACE at 53 East Broadway Road.
- April 10, 2008 DSM08019: Zoning Administrators Decision to allow HB PLACE hookah lounge to apply for a use permit given they did not meet the 1,320 foot separation from a school.
- May 20, 2008 ZUP08068: Hearing Officer approved a Use Permit for HB PLACE to allow a Tobacco Retailer/Hookah Lounge at 53 East Broadway Road.
- July 8, 2008 UPA08003: The Development Review Commission denied the appeal for HB PLACE, thus upholding the Hearing Officer's approval at 53 East Broadway Road
- September 11, 2008 UPA08005: City Council approved the appeal for HB PLACE, UPA08003/ZUP08068, thus denying the use permit at 53 East Broadway Road.
- October 21, 2008 ZUP08155: The Hearing Officer approved a use permit to allow a hookah lounge/tobacco retailer located at 1400 South McClintock Drive, Suite No. 3.

DESCRIPTION:

Owner – King Plaza LLC
Applicant – Anis Ben Harzallah
Existing Zoning – CSS, Commercial Shopping & Services District
Parcel Size – 70,020 s.f. / 1.60 acres
Total Building Area – 20,325 s.f.
Tenant Area – 884 s.f.
Parking Required – 3 spaces
Parking Provided – 93 spaces

ZONING AND DEVELOPMENT

CODE REFERENCE:

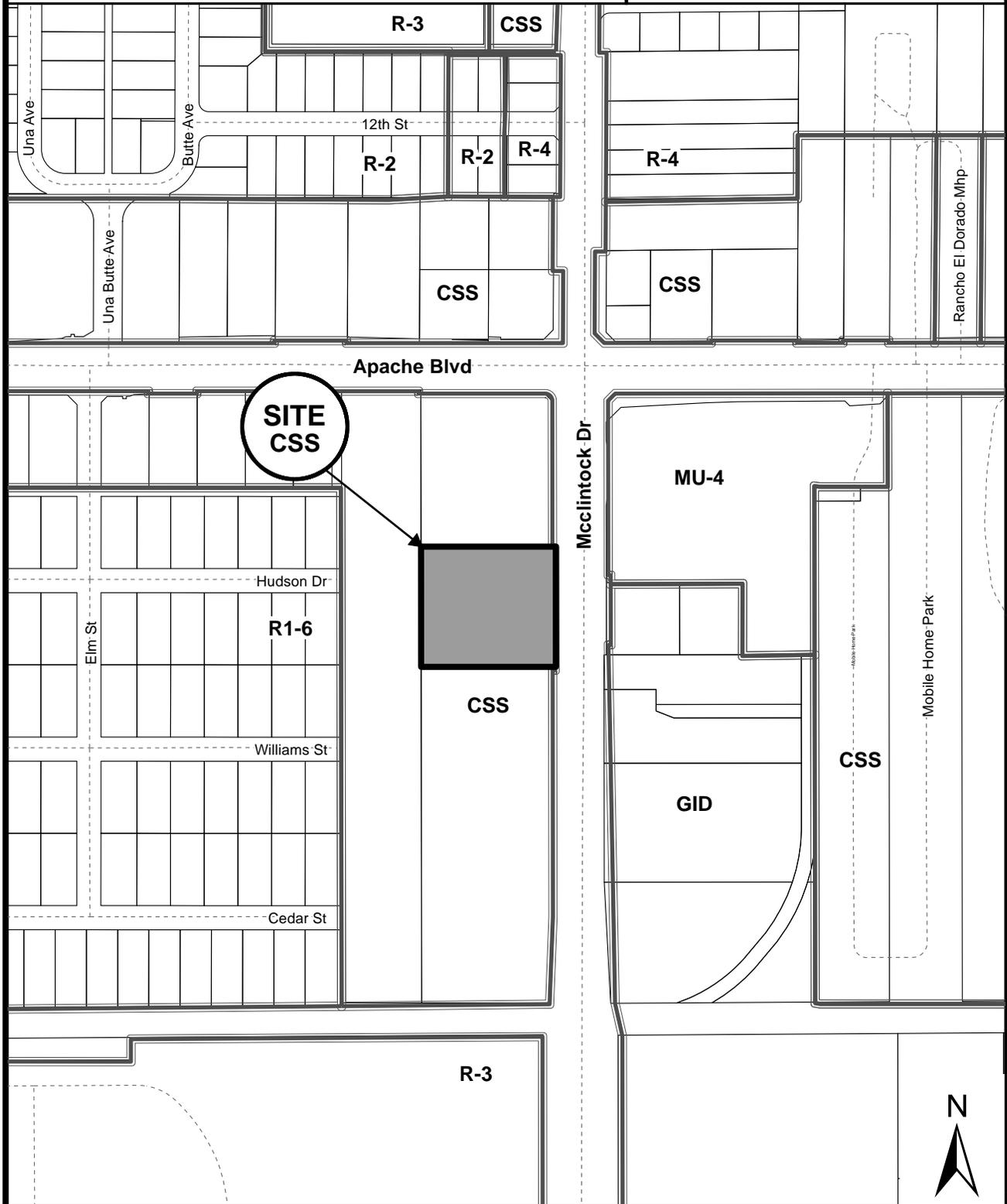
Part 3, Chapter 2, Section 3-202 – Permitted Uses in Commercial and Mixed-Use Districts

Part 6, Chapter 3, Section 6-308 – Use Permit

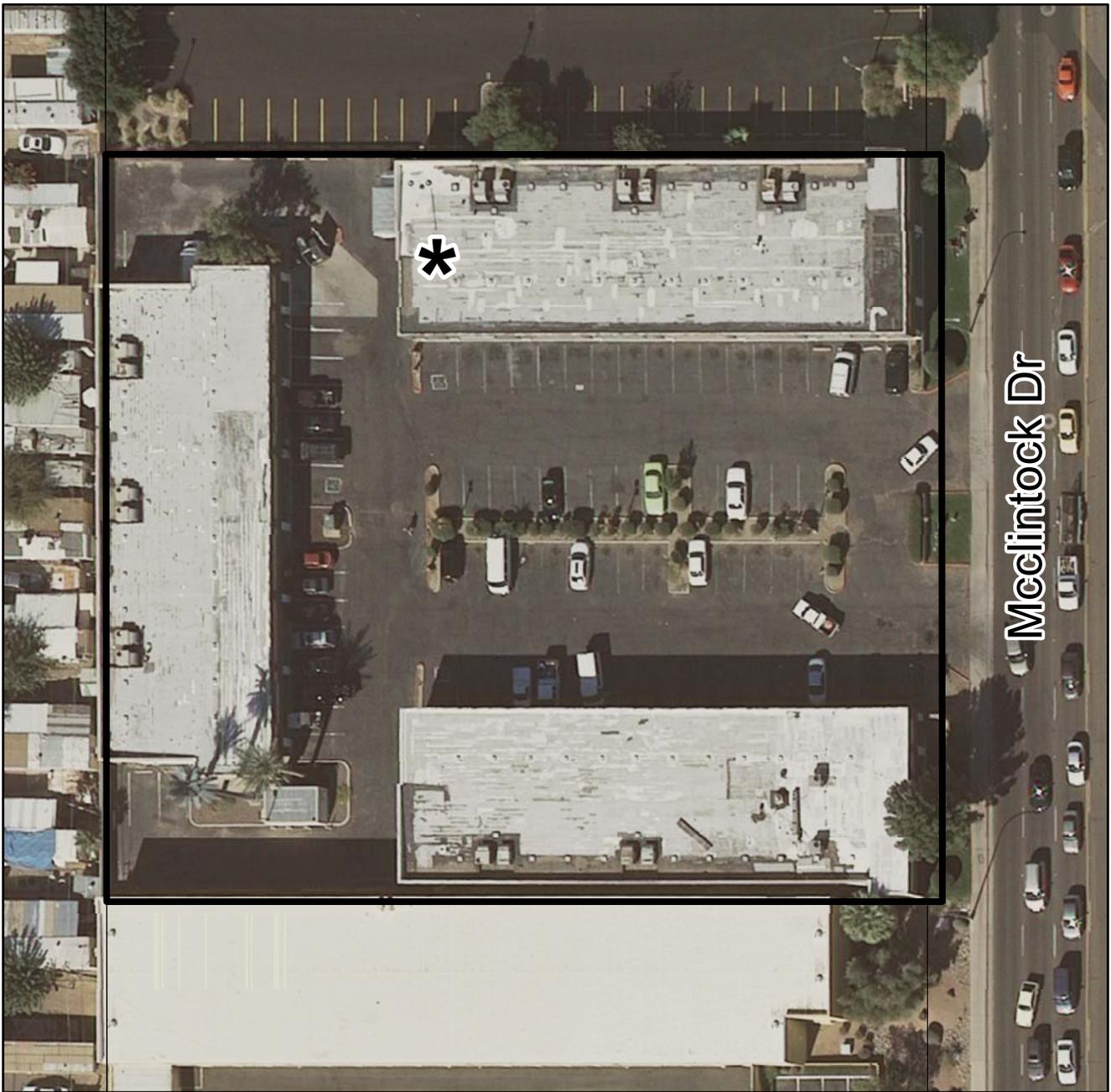
Part 6, Chapter 3, Section 6-313 – Security Plan

**KING PLAZA - H B TOBACCO -
HUBBLY BUBBLY - V.I.P. ROOM**

PL090297



Location Map



KING PLAZA - H B TOBACCO - HUBBLY BUBBLY - V.I.P. ROOM (PL090297)

8/7/09

TO: DEVELOPMENT SERVICES, PLANNING

FROM: ANIS BEN HARZALLAH

SUBJECT: VIP HOOKAH ROOM

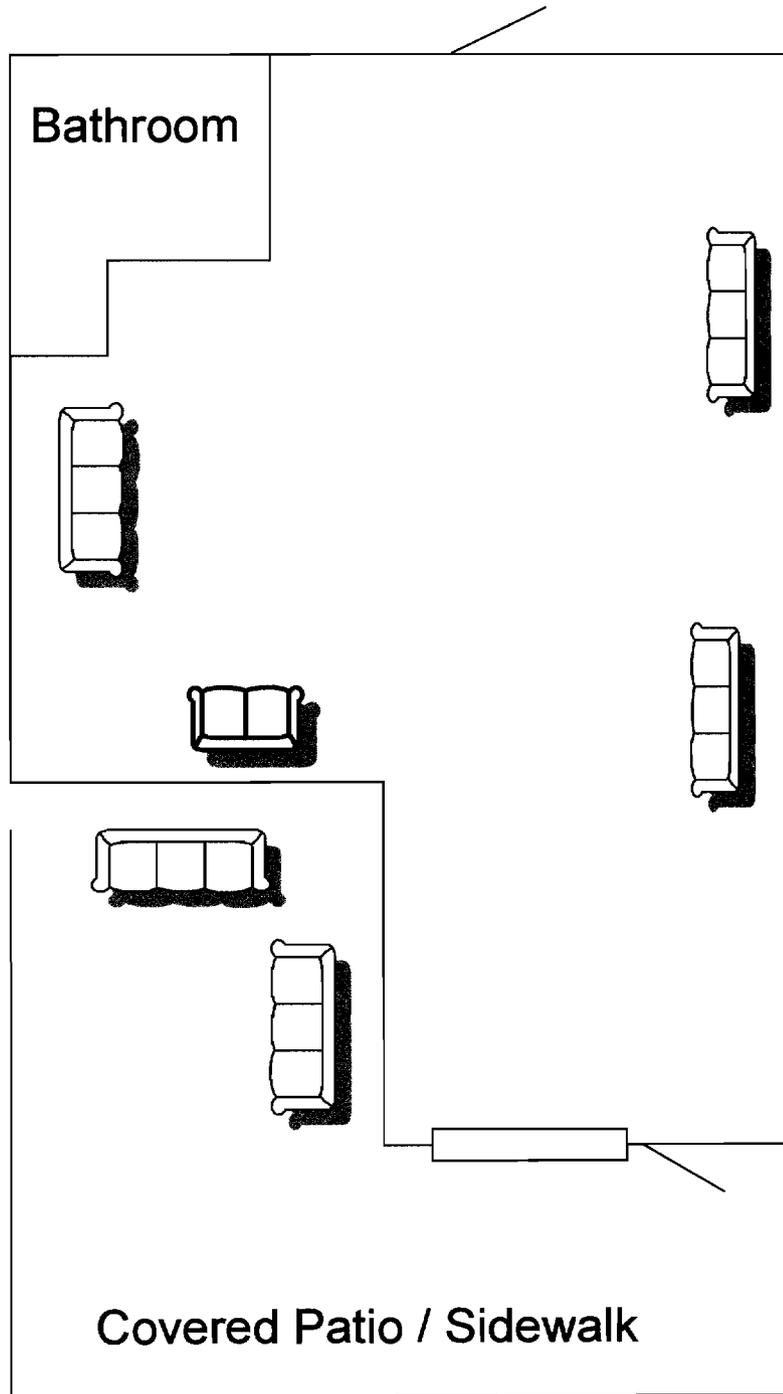
I CURRENTLY HAVE A FULLY PERMITTED, LEGAL, HOOKAH LOUNGE AT 1400 S. McCLINTOCK, ~~XXXXXX~~ I WOULD LIKE TO extend this HOOKAH LOUNGE TO Suite 5, immediately TO THE WEST, OPERATING AS a separate business / separate entrance. We are working with the Building / Safety to upgrade the ventilation : Electric - PLANS will Be submitted within 3-4 days.

Thank you for your help.

ANIS BEN HARZALLAH
2009

ANIS BEN HARZALLAH

Floor Plan
VIP Hookah Room
1400 S McClintock (King Plaza), suite 5, 1000+/-SF





**KING PLAZA – H B TOBACCO – HUBBLY
BUBBLY – V.I.P. ROOM**

1400 S MCCLINTOCK DR., SUITE NO. 5

PL090297

FRONT OF BUSINESS

