

**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 6/11/2019
Agenda Item: 7**

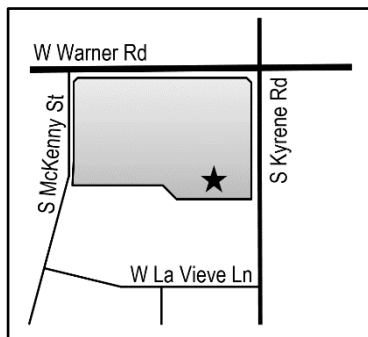
ACTION: Request a Use Permit to operate a tobacco retail store (vape shop) for **KURE**, located at 8830 South Kyrene Road, Suite No. 102. The applicant is Kure Corporation.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approve, subject to conditions

BACKGROUND INFORMATION: **KURE (PL190078)** operates a vape shop in Suite No. 102 of the Pecan Grove Festival Shopping Center, located on the southwest corner of West Warner Road and South Kyrene Road in the PCC-2, Planned Commercial Center General District, and within the SWOD, Southwest Tempe Overlay District. This Use Permit request is a result of a Code Compliance violation for operating a tobacco retail establishment without a Use Permit. The request includes the following:

ZUP190030 Use Permit to operate a tobacco retail store (vape shop).



Property Owner	Arizona Pecan Grove, LLC
Applicant	Keith Higgins, Kure Corporation
Code Compliance Inspector	Marvin White, Code Inspector II+
Zoning and Overlay Districts	PCC-2 (SWOD)
Suite Area	1,007 s.f.
Vehicle Parking	No Change in Demand
Bicycle Parking	No Change in Demand
Hours of Operation	10 a.m. to 10 p.m., M-Sa; 11 a.m. to 7 p.m., Su

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Lee Jimenez, Senior Planner (480) 350-8486

Department Director: Chad Weaver, Community Development Director

Legal review by: N/A

Prepared by: Lee Jimenez, Senior Planner

Reviewed by: Suparna Dasgupta, Principal Planner

COMMENTS

The previous operator, Valor Vapor, was purchased by Kure Corporation on August 1, 2018. On October 19, 2018, Kure Corporation applied for a sign permit to change the business sign from "Valor Vapor" to "Kure". It was at this time that the City notified the business owner that the sign permit could not be processed because the previous operator was never granted a Use Permit to operate a tobacco retail store (vape shop). Additionally, the applicant has noted that the previous operator, Valor Vapor, had been operating in the shopping center since December 5, 2013.

Chapter 22, Article II, Section 22-41(i) of the City Code defines *electronic smoking device* or *electronic cigarette* as any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

Part 7, Section 7-121 of the Zoning and Development Code (ZDC) defines a *tobacco retailer* as any person or business who primarily sells or offers for sale, tobacco, tobacco products, or tobacco paraphernalia, or who distributes samples of tobacco products or paraphernalia. These businesses include but are not limited to tobacco shops, cigar and pipe retailer, cigarette or electronic cigarette retailer, and smoke establishments. Additionally, Section 7-120 defines a *smoking establishment* as any business or location that is dedicated, in whole or in part to the use of tobacco or other substances emitting smoke, including but not limited to establishments also referred as cigar bars or lounges, hookah bars or lounges, and tobacco clubs or bars.

Pursuant to ZDC Section 3-423, Use Separation Requirements, tobacco retailers shall not be located on a lot within one thousand three hundred twenty (1,320) feet, measured by a straight line in any direction, from the lot line of a charter school, private school, or public school which provides elementary or secondary education. Staff assessed the surrounding area for schools and has determined that Kure conforms to the use separation requirements for a tobacco retailer.

PUBLIC INPUT

As of the publishing of this report, no public comment has been received by staff.

USE PERMIT

The proposed use requires a Use Permit to operate a tobacco retail store (vape shop) in the PCC-2 zoning district.

Section 6-308(E) Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic*; the vape shop is not expected to significantly increase vehicular or pedestrian traffic more than other retail and service uses permitted in this zoning district.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; vape shop operations are conducted within the premises and is not expected to cause nuisances generated from emissions greater than ambient conditions.
3. *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 vape shop is permitted with a Use Permit in the PCC-2 zoning district, conforms with tobacco retailing use separation requirements, and is consistent with the General Plan designated land use.
4. *Compatibility with existing surrounding structures and uses*; other than signage, the vape shop does not require any exterior modifications to operate, and the use is compatible with nearby retail and service uses.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; the operator notes that disruptive behavior is not tolerated inside or outside the premises by policy.

REASONS FOR APPROVAL:

Based on the information provided by the applicant and the above analysis, staff supports approval of the requested Use Permit. This request meets the required criteria and will conform to the conditions.

SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.

CONDITION(S) OF APPROVAL:

1. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the Use Permit becoming effective. If consumption of vape products is conducted in the premises, the owner/management is responsible to adhere to the city Adopted International Mechanical Code.
3. All required State, County and Municipal permits or licenses shall be obtained, or the Use Permit is void.
4. 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, which may result in termination of the Use Permit.
5. This use shall not violate the City of Tempe Smoke Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.

CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

- The Use Permit is valid for KURE and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval, but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through <http://www.tempe.gov/zoning> or purchase from Development Services.
- All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.
- Any intensification or expansion of use shall require a new Use Permit.
- All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.

HISTORY & FACTS:

April 25, 2019 Code Compliance Division issued a correction notice to KURE (CM190460), located at 8830 South Kyrene Road for operating a vape shop without a Use Permit.

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 3-202 Permitted Uses in Commercial and Mixed-Use Districts
Section 3-423 Use Separation Requirements
Section 6-308 Use Permit

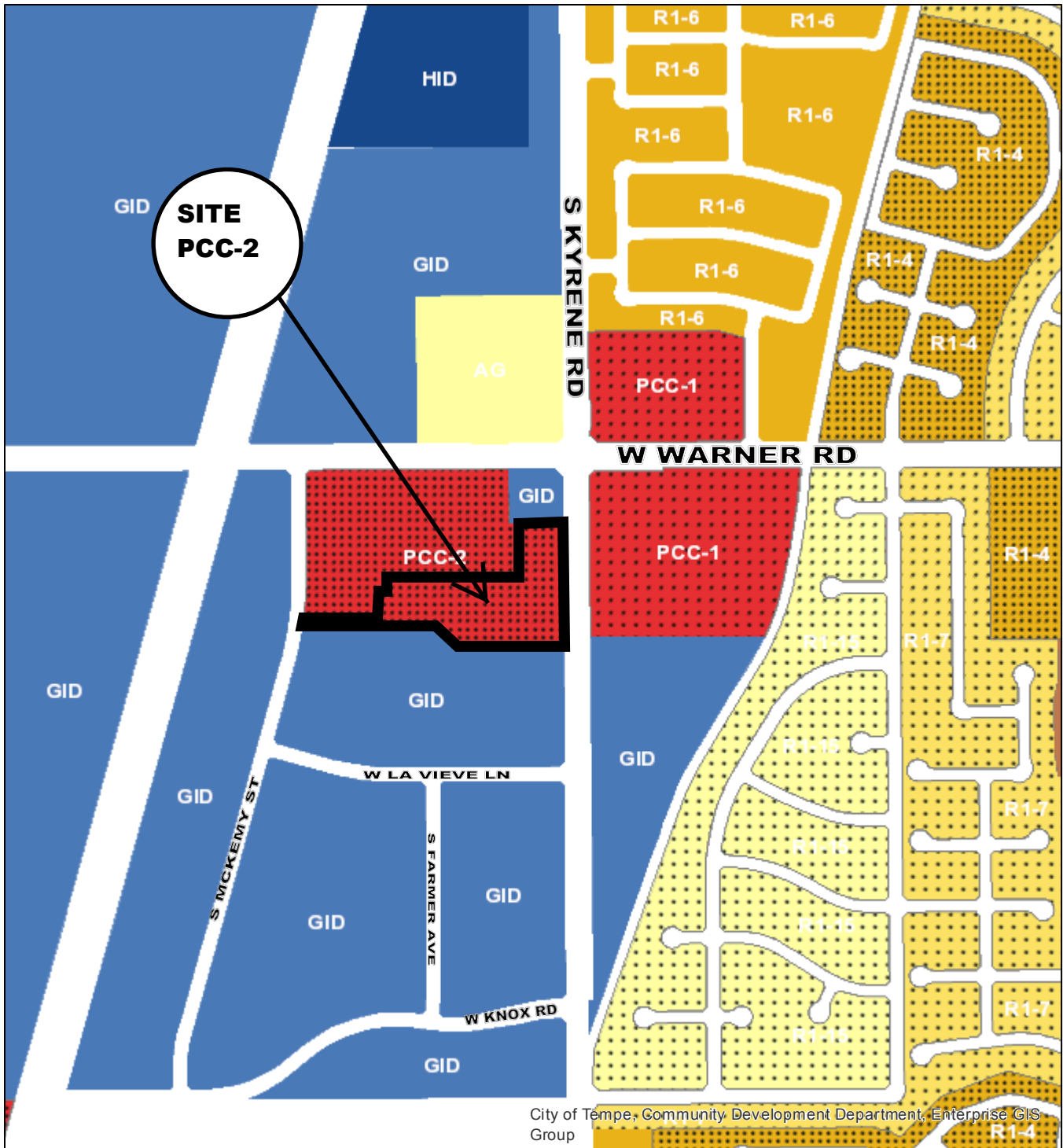


DEVELOPMENT PROJECT FILE











for
KURE
(PL190078)

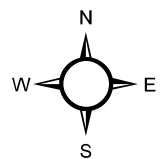
ATTACHMENTS:

- 1-5. Site Context (Location Map Aerial, and Site Photos)
- 6-8. Applicant's Letter of Explanation



City of Tempe, Community Development Department, Enterprise GIS Group

- | | |
|--|---|
|  General Industrial District (GID) |  Single-Family Residential (R1-15) |
|  Heavy Industrial District (HID) |  Single-Family Residential (R1-7) |
|  Planned Commercial Center Neighborhood (PCC-1) |  Single-Family Residential (R1-6) |
|  Planned Commercial Center General (PCC-2) |  Single-Family Residential (R1-4) |
|  Agricultural (AG) |  Multi-Family Residential (R-2) |

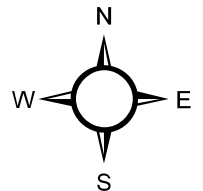


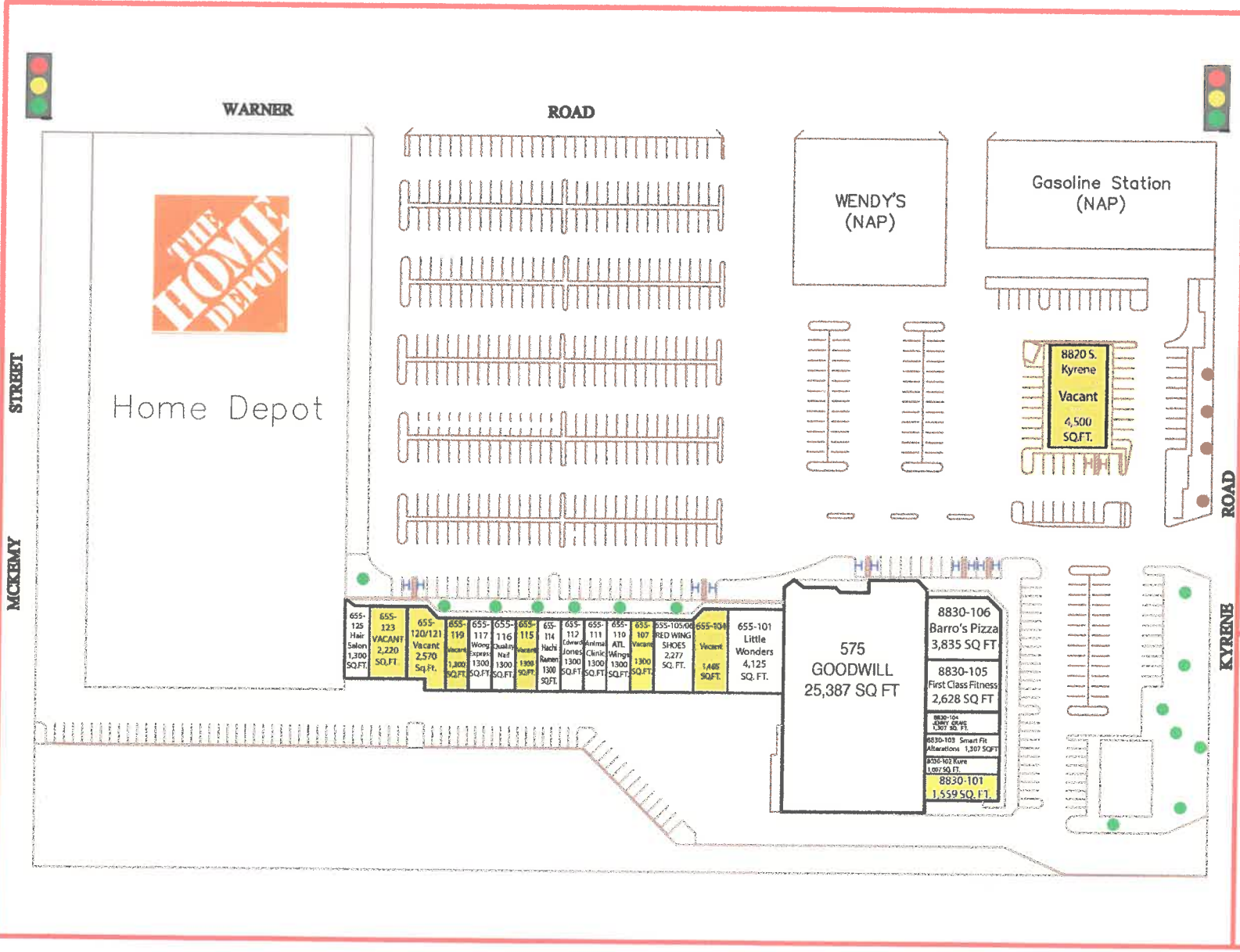
KURE

PL 190078



Aerial Map

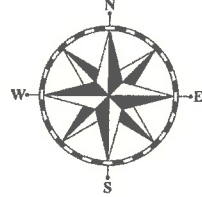




PECAN GROVE FESTIVAL

655 West Warner Road
Tempe, AZ 85284

Shopping Center GLA= 67,880 excluding pads
Parking Spaces= 370
Parking Ratio: 5.45 per 1,000 sf
Zoning District: PCC-2 Planned Commercial Center, Tempe

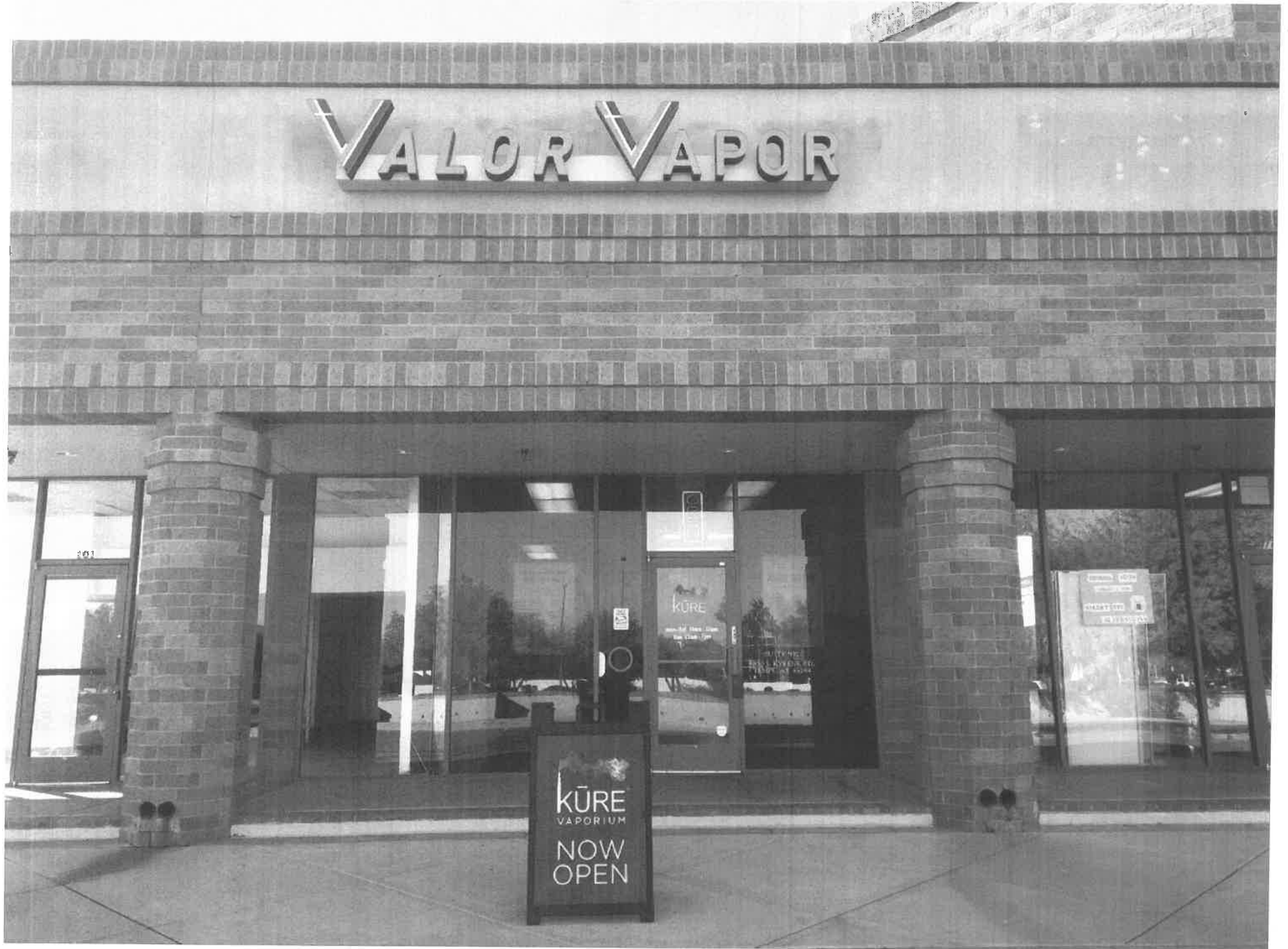


Disclaimer:
This a schematic plan only intended to show the general layout of the Shopping Center or part thereof. This plan is not to be scaled.

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ASSET MANAGEMENT

For more information, please call
(310) 451-4500
or
visit our website at
www.fortuna-management.com







Date: 11/28/18

To: Community Development Department – Planning Division

From: Kure Corporation
1440 Westinghouse Blvd.
Charlotte, NC 28273

RE: Use Permit for Kure Vaporium - 8830 S. Kyrene, Suite 102, Tempe, AZ 85284.

Dear Sirs;

Kure Corporation is a national retail vapor company with locations in NC, SC, CT and AZ. Kure purchased the AZ based Valor Vapor company's four locations (Tempe, Gilbert, Apache Junction & Phoenix) on August 1, 2018. We recently applied for a "Kure" building sign but during the application process we were notified by the City of Tempe that Valor Vapor (Tempe location that opened December 5th 2013) had not applied for a Use Permit, however, Valor Vapor applied for and was granted an exterior building sign. Kure currently operates six (6) stores in the metro Phoenix market, all of which (except the Tempe location) have "Kure" building signs installed.

Kure's Tempe Location Business Operations:

- ❖ Hours of operation are Monday – Saturday 10:00am – 10:00pm / Sunday – 11:00am – 7:00pm
- ❖ The store has four (4) employees
- ❖ The store serves approx. 30 loyal customers per day

The Tempe Kure store will conform to the standards of Zoning and Development Code Criteria Section 6-308E.

- a. We expect no increase in vehicular or pedestrian traffic to center or the adjacent areas.
- b. There will not be any emission of odor, dust gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
- c. There will be NO deterioration of the neighborhood or to the downgrading of property values.
- d. Kure stores are located in local strip centers and are compatible with the existing structure and tenant mix of each center. We are compatible with the structure and tenant mix at Pecan Grove Festival.



- e. Kure stores are first-class vapor retail stores. Disruptive behavior is not tolerated inside or outside of our stores.

Sincerely,

Name Keith Higgins

Title Director of Operations

Additional Information for Tempe Use Permit

- 1) The Tempe Kure store conform to the standards of the Zoning and Development Code Section 3-423 which states the following: Tobacco Retailers shall not be located within 1,320 feet, measured by a straight line in any direction, from the lot line of a charter school, private school, or public school, which provides elementary or secondary education.
- 2) Since opening in December of 2013 under the name Valor Vapor, this location has never received a complaint from a Tempe resident or business neighbor.
- 3) We have never sold nor been charged with any underage sales of Tobacco products to minors. We take proper Identification of customers at the highest level for our own standards as well as the well being of our industry as a whole.