

ORDINANCE NO. 13-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, AMENDING ZONING SECTIONS 13-6 (DEFINITIONS) AND 13-30 (CITYWIDE LAND USE MATRIX) OF TITLE 13 OF THE COSTA MESA MUNICIPAL CODE RELATING TO HOOKAH PARLORS

WHEREAS, the City of Costa Mesa has the authority, under its police power, to enact regulations for the public peace, morals, and welfare of the City; and

WHEREAS, the City Council of the City of Costa Mesa finds that hookah parlors have been shown to create problems related to loud music, drinking in public and large crowds milling outside of the site; and

WHEREAS, Section 6404.5 of the California Labor Code prohibits smoking of tobacco products in an enclosed space at a place of employment; and

WHEREAS, Labor Code Section 6404.5's definition of "place of employment" does not include retail or wholesale tobacco shops and private smokers' lounges. Many hookah parlor owners claim they are tobacco retailers and state law does not clearly repudiate this claim. This allows tobacco smoking inside establishments where people work, eat and drink; and

WHEREAS, pursuant to State law, tobacco shops and private smokers' lounges are not places of employment, and therefore the City of Costa Mesa has the authority pursuant to its police power, to prohibit hookah pipe smoking at such businesses; and

WHEREAS, the City Council finds that hookah use may represent a loophole around city and state laws banning smoking in public places; and

WHEREAS, the World Health Organization ("WHO") investigatory panel reported in 2005 that "waterpipe smokers and second-hand smokers [are] at risk for the same kinds of diseases as are cause by cigarette smoking, including cancer, heart disease, respiratory disease, and adverse effects during pregnancy, and sharing a hookah's mouthpiece poses a serious risk of transmission of communicable diseases;" and

WHEREAS, the WHO investigatory panel also found that a "typical 1-hour long waterpipe smoking session involves inhaling 100-200 times the volume of smoke inhaled with a single cigarette," and that the smoke, even after passing through water, "contains high levels of toxic compounds, including high levels of carbon monoxide, metals and cancer-causing chemicals";

WHEREAS, the WHO investigatory panel also found that sharing a hookah's mouthpiece poses a serious risk of transmission of communicable diseases, such as hepatitis and herpes;

WHEREAS, the City Council of the City of Costa Mesa finds that Hookah smoking is not a safe alternative to smoking tobacco, as smoking hookah pipes has been reported to cause oral, esophageal and lung cancer, as well as heart disease, chronic bronchitis and of course, nicotine addiction; and

WHEREAS, the City Council finds that hookah parlors have been associated with increases in noise, loitering, public drinking, and underage drinking; and

WHEREAS, the City Council finds that hookah parlors could exacerbate the inherently dangerous behavior of tobacco use around non-tobacco users; diminish the protection of children from exposure to smoking and tobacco while they increase the potential for minors to associate smoking and tobacco with a healthy lifestyle; and weaken the protection of the public from smoking and tobacco-related pollution. Hookah parlors additionally create unique problems of second hand smoke, because of the hot charcoal coals used to enhance the burning tobacco; and

WHEREAS, the City Council finds that hookah parlors if allowed in the City would have adverse secondary effects on surrounding properties, including but not limited to lowering property values and introducing incompatible land uses to existing neighborhoods; and

WHEREAS, the City Council finds that in response to the threat of unregulated hookah parlors several cities, including but not limited to the Cities of Anaheim, Santa Ana, Garden Grove, San Francisco and Dublin California, have adopted moratoriums or development restrictions. Other cities, such as New York and Calgary, Alberta, and the State of Washington, have simply banned them. Other countries, including the United Kingdom, France, Germany and Turkey, have banned hookah parlors;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The definition of the term "Hookah Parlor" in Section 13-6 (Definitions) of Title 13 (PLANNING, ZONING AND DEVELOPMENT) of the Costa Mesa Municipal Code is hereby added as follows:

"Hookah Parlor. Any facility or location whose business operation, whether as its primary use or as an ancillary use, includes the smoking of tobacco or other substances through one or more hookah pipes (also commonly referred to as a hookah, waterpipe, shisha or narghile), including but not limited to establishments known variously as hookah bars, hookah lounges or hookah cafés. A hookah parlor shall also include any business establishment with fewer than five (5) employees."

SECTION 2: “Hookah Parlor” shall be included in Section 13-30/Table 13-30 of Chapter 4 (Citywide Land Use Matrix) in Title 13 (PLANNING, ZONING AND DEVELOPMENT) of the Costa Mesa Municipal Code and shall prohibit Hookah Parlors in all Zoning Districts with the addition of a new row (83a) as shown in Attachment A.

SECTION 3: ENVIRONMENTAL DETERMINATION. The code amendment has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City’s environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (General Rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this ordinance amending the zoning code will have a significant effect on the environment.

SECTION 4: INCONSISTENCIES. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 5. SEVERABILITY. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

SECTION 6: PUBLICATION. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____ 2013.

TABLE 13-30 CITY OF COSTA MESA LAND USE MATRIX																					
LAND USES	Z O N E S																				
	R 1	R 2 M D	R 2 H D	R 3	A P	C L	C 1	C 2	C 1 S ¹	T C ¹	M G	M P	P D R L D ¹	P D R M D ¹	P D R H D ¹	P D R N C M ¹	P D C ¹	P D I ¹	I & R ¹	I & R S ¹	P
83. Hotels- - Excluding Motels listed separately	•	•	•	•	•	•	C	C	C	P	•	•	•	C	C	C	P	•	•	•	•
83a. Hookah Parlor	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
84. Landscape services (installation and maintenance)	•	•	•	•	•	M C	M C	P	P	•	P	P	•	•	•	•	•	P	•	•	•
85. Laundry, cleaning and garment services, including plants	•	•	•	•	•	P	P	P	P	P	P	P	•	P	P	P	P	P	•	•	•
86. Leather tanning and finishing	•	•	•	•	•	•	•	•	•	•	C	C	•	•	•	•	•	C	•	•	•
87. Limousine services	•	•	•	•	•	C	C	C	C	C	C	C	•	•	•	•	C	C	•	•	•
88. Liquor stores (subject to the requirements of CHAPTER IX, ARTICLE 16, LIQUOR STORES, CONVENIENCE STORES, AND MINI-MARKETS)	•	•	•	•	•	•	C ²	C ²	C ²	C ²	•	•	•	•	•	•	C ²	•	•	•	•
89. Lumber and building materials dealers, (wholesale)	•	•	•	•	•	•	•	•	•	•	P	P	•	•	•	•	•	P	•	•	•
90. Manufacturing: Light EXCEPT the following which are prohibited: • Manufacture of fertilizer • Manufacture of products involving the use of explosives • Manufacture of rubber (including tires), steel	•	•	•	•	•	•	•	•	•	•	P ²	P ²	•	•	•	•	•	P ²	•	•	•
91. Manufacturing of chemical products, paints, pharmaceuticals, and plastics	•	•	•	•	•	•	•	•	•	•	C ²	C ²	•	•	•	•	•	C ²	•	•	•

