



CITY COUNCIL AGENDA REPORT

MEETING DATE: NOVEMBER 5, 2013

ITEM NUMBER:

SUBJECT: CODE AMENDMENT CO-12-07: CONSIDERATION OF TWO PROPOSED ORDINANCES REGARDING HOOKAH PARLORS

DATE: OCTOBER 24, 2013

FROM: DEVELOPMENT SERVICES DEPARTMENT – PLANNING DIVISION

**FOR FURTHER INFORMATION CONTACT: GARY ARMSTRONG, AICP, Economic and Development Services Director / Deputy CEO,
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RECOMMENDED ACTION

Recommend that City Council approve and give first reading to either the prohibiting ordinance or the urgency ordinance regarding hookah parlors.

BACKGROUND

Proposed Prohibiting Ordinance and Urgency Ordinance

Two separate ordinances have been proposed for City Council review that would provide either permanent or temporary restrictions on new hookah parlors in Costa Mesa.

The prohibiting ordinance is related to proposed Zoning Code amendments that would define and regulate hookah parlors across all zoning districts. More specifically, the amendment is proposed to the following Code Sections in Title 13 of the Costa Mesa Municipal Code:

- Chapter 1, Article 2, Section 13-6, Definitions, under which a definition of a “Hookah Parlor” would be added.
- Chapter 4, Section/Table 13-30, Citywide Land Use Matrix, under which a hookah parlor use would be prohibited across all zoning districts. Legally established, existing hookah parlors would not be subject to the prohibition as drafted.

Alternatively, per direction from the Planning Commission, an urgency ordinance (moratorium) has also been proposed that would temporarily prohibit new hookah parlors for an initial period of 45 days while the City further studies the matter. The urgency ordinance must pass with a four-fifths vote of the City Council and may be extended at a duly noticed public hearing after the initial 45-day moratorium period. A re-cap of the

Commission's recommendation can be found in a below section of the staff report. The moratorium would be proposed in the form of an urgency ordinance.

Current Hookah Parlor Regulations

Hookah parlors (also commonly known as hookah lounges and hookah bars) are a relatively new land use within the City of Costa Mesa. Three legally established hookah parlors are currently located within the boundaries of Costa Mesa and have primarily opened within the last three to four years. One other documented hookah parlor opened without benefit of a business license or permit. Hookah parlors have not yet been formally defined or regulated within the Costa Mesa Municipal Code ("CMMC"). As outlined in Zoning Administrator Determination No. 11-1, hookah parlors have been subject to the same land use/zoning development standards in the CMMC as food/beverage establishments due to similar impacts such as noise and traffic generation, as well as parking impacts. Hookah parlors are currently permitted in zoning districts where eating and drinking establishments are permitted and are subject to the same operational characteristics such as hours of operation, entertainment provisions, and proximal considerations in relation to residential zoning.

Although California Labor Code Section 6404.5 prohibits smoking of tobacco products in an enclosed space at a place of employment, the 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. A number of local California jurisdictions have already taken steps to close this state-level legal loophole by enacting local ordinances that prohibit hookah parlors primarily due to health effects. A short list of local California jurisdictions that have already adopted hookah parlor regulatory development restrictions and moratoriums include the Cities of Anaheim, Santa Ana, Garden Grove, San Francisco and Dublin in addition to other states and countries including the United Kingdom, France, Germany, Turkey and the State of Washington.

Prior Public Hearing

On October 14, 2013, the Planning Commission considered the draft prohibiting ordinance. The Commission did not recommend approval of the draft prohibiting ordinance, but rather, recommended that the City Council adopt a moratorium on all new hookah parlors while City staff explores options other than a prohibiting ordinance. The Planning Commission expressed interest in the City of Anaheim hookah parlor ordinance that allows hookah parlors in certain zoning districts if located outside buffers from uses such as residential and institutional uses.

The Planning Commission also expressed an interest in a moratorium to further explore regulatory options for other similar uses such as cigar lounges and e-vaping lounges and to further study the enforcement issues that have continually persisted at existing hookah

parlor locations. A discussion of the enforcement issues has been included in the below Analysis section.

Copies of the Planning Commission staff report and minutes from the October 28, 2013 can be found here:

Staff Report:

<http://www.costamesaca.gov/ftp/planningcommission/agenda/2013/2013-10-14/PH-4.pdf>

Planning Commission Minutes:

<http://costamesaca.gov/modules/showdocument.aspx?documentid=12734>

ANALYSIS

Two ordinances have been prepared for the City Council's consideration. The first proposed ordinance would permanently amend Title 13 of the CMMC to formally legislate hookah parlor provisions into the CMMC. Under Chapter 1, Article 2, Section 13-6 a definition of a hookah parlor would be established 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.

Additionally, under Chapter 4, Section/Table 13-30, a hookah parlor would be prohibited in the Citywide Land Use Matrix in all zoning districts. Existing hookah parlors that were legally established via benefit of a City-issued business license prior to the passage of the prohibiting ordinance would not be included.

Alternatively, the second ordinance option would be an urgency ordinance and would prohibit new hookah parlors for the duration of a moratorium, which is initially proposed for a period of 45 days. Like the prohibiting ordinance, the urgency ordinance would also define a hookah parlor, but within the urgency ordinance only.

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. The prohibition on hookah parlors would serve a two-fold purpose: 1) to discontinue and prohibit a public health threat; and 2) to discontinue and prohibit a use that has proven not to be harmonious with existing land uses in Costa Mesa due to repeated and numerous calls for service, as well as repeated and continuing code enforcement issues at the existing hookah parlors sites in Costa Mesa. Furthermore, the urgency ordinance would allow the City to temporarily discontinue a potential public health threat while the City further contemplates other regulatory options beyond a prohibition.

Public Health Considerations

City staff has met with Orange County Health Care Agency regarding the public health concerns surrounding hookah parlors. A number of different studies were cited and discussed with City staff including a 2005 study from the World Health Organization (“WHO”). The study from WHO concluded that “waterpipe smokers and second-hand smokers [are] at risk for the same kinds of diseases as are caused 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.” Furthermore, the study concluded 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.” In sum, hookah smoking poses the same health risks as other forms of tobacco use that have already been prohibited in public enclosed spaces, and furthermore, is not a safe alternative to other forms of tobacco use by users and to second-hand recipients.

Public Safety and Enforcement Considerations

The City has experienced an increased number of calls for service related to activity in and around existing hookah parlors since the parlors first opened. Such observed activity has included, in part, the following: noise, loitering, public drinking, and underage drinking. The calls for service for each existing hookah parlor have been reported by the Police Department since 2010 and are outlined in the below table.:

<u>Total Calls for Service Since 2010</u>		
<u>Location</u>	<u>Calls for Service</u>	<u>Arrests/Citations Resulting from Calls for Service</u>
698 W 19 th Street (Sultana Hookah)	236*	8
440 Fair Drive #A (Harbor Hookah)	11	4
3033 Bristol Street #F (Bubblyz)	5	0

*Calls for service at 698 W 19th Street have dropped from 145 in 2010 to three in 2013.

Furthermore, the existing hookah parlors have repeatedly and continuously violated City operation codes. Of the many CMMC infractions, code enforcement violations have included unpermitted extended hours of operation, unpermitted live entertainment, unpermitted alcohol service, and unpermitted outdoor activities such as outdoor heating of coals and outdoor seating. The unprotected and often unattended charcoal grills pose a burn threat and potential fire hazard to the public.

Additionally, a total of eight hookah parlor-related Code Enforcement cases have been processed or continue to be on-going cases. Two of the cases have been forwarded to

the City Attorney's Office after continued periods of non-compliance with the CMMC. A break-down of the current outstanding violations is as follows:

698 West 19th Street – Sultana

Case opened November 5, 2012

Four citations issued for noncompliance with Planning approvals – open past 11 pm

None of the citations have been contested

Cases forwarded to the City Attorney's office for further action

440 Fair Drive #A – Harbor Hookah

Case opened March 20, 2012

Six citations issued for noncompliance with Planning approvals – open past 11 pm

One citation contested; hearing officer upheld the citation on August 6, 2013

3033 Bristol Street #F - Bublyz

Case opened March 3, 2012

Four citations issued for noncompliance with Planning approvals – open past 11 pm

None of the citations have been contested

Cases forwarded to the City Attorney's office for further action

PUBLIC NOTICE

Code-required public notice was provided via the following methods:

1. Publication of a display ad in the local newspaper (Daily Pilot).
2. Notice of the public hearing was mailed to the following:
 - a. Existing hookah parlor owners.
 - b. Costa Mesa Chamber of Commerce.
 - c. Orange County Health Care Agency.

ENVIRONMENTAL DETERMINATION

The project 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 CEQA because there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

ALTERNATIVES CONSIDERED

City Council may consider the following alternatives:

1. Give first reading to the urgency ordinance (moratorium) as recommended by Planning Commission.

2. Give first reading to the prohibiting ordinance as drafted.
3. Give first reading to either of ordinances, with any modifications.
4. Retain the City's existing zoning provisions and receive and file the report.

FISCAL REVIEW

The proposed ordinance and moratorium are not likely to have any direct fiscal impact.

LEGAL REVIEW

The City Attorney has reviewed this report and its attachments and has been approved as to the form by the City Attorney's Office.

CONCLUSION

As noted earlier, the proposed amendments will provide regulatory framework for a land use that appears to be a public health concern, as well as a cause of undesirable land use-related externalities. The prohibiting ordinance would provide for a permanent land use control that would prohibit new hookah parlors within the City, while the urgency ordinance would provide for a moratorium on new hookah parlors for an initial period of 45 days when other regulatory solutions are explored beyond a hookah parlor moratorium. The proposed code amendments will make modifications to the City's Zoning Code which are recommended by City Staff and the City Attorney and the ordinance will become effective immediately upon adoption by City Council.

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Economic & Development Services
Director Deputy CEO

THOMAS DUARTE
City Attorney

Attachment: [1. Draft Ordinance](#)
[2. Draft Urgency Ordinance \(Moratorium\)](#)

cc: Chief Executive Officer
Assistant Chief Executive Officer
Public Services Director
City Attorney

Transportation Services Manager
City Engineer
City Clerk (9)
Staff (7)
File (2)

Existing Hookah Parlor Owners
Costa Mesa Chamber of Commerce
Orange County Health Care Agency