

ORDINANCE NO. 13-07

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA FOR A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF NEW HOOKAH PARLORS FOR A PERIOD OF 45 DAYS PENDING A STUDY OF ZONING REGULATIONS THAT ARE NEEDED TO ALLEVIATE A CURRENT AND ACTUAL THREAT TO THE PUBLIC HEALTH AND SAFETY

WHEREAS, in order for the immediate protection of the public health, safety and welfare; and pursuant to Government Code Section 65858, a moratorium is hereby placed on the establishment of hookah parlors in the City of Costa Mesa.

WHEREAS, the City of Costa Mesa has not adopted a moratorium on the establishment or operation of hookah parlors prior to this urgency ordinance.

WHEREAS, Government Code Section 65858 provides for the adoption, as an urgency measure, interim ordinances for certain expressed purposes and by a vote of four-fifths (4/5) majority of the voting City Council members.

WHEREAS, this moratorium shall remain in effect for forty-five (45) days and may be extended, after notice and public hearing, for an additional ten (10) months and fifteen (15) days.

WHEREAS, this urgency ordinance is based on the following facts:

1. That 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
2. That 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
3. That 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"; and

13. 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; and
14. That the California State Planning and Zoning Law Section 65858 allows cities to adopt an interim zoning ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan or zoning proposal which is in the process of being considered by the Planning Agency, Planning Commission, or legislative body; and
15. That the City Council discussed and directed staff to explore regulatory options other than a prohibition for hookah parlors at its regular, legally-noticed public meeting on November 5, 2013; and
16. That the City Council has considered the adoption of this urgency ordinance at a regular, legally-noticed public meeting on November 5, 2013, and hereby finds pursuant to California Government Code Section 65858, that a current and immediate threat to the public health, peace, safety and general welfare exists which necessitates the immediate enactment of this Ordinance for the immediate preservation of the public health, peace, safety and general welfare, based upon facts set forth in this Ordinance and the facts presented to the Council; and
17. A moratorium will provide the City with time to study, draft and adopt regulations, consistent with state and federal laws, to regulate the location and operation of, or prohibition of, hookah parlors; and
18. A moratorium will provide the City with the ability to prevent new hookah parlors from opening, or enjoin any unpermitted hookah parlors, while the City studies, drafts and adopts new regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN BY AT LEAST A FOUR-FIFTHS VOTE HEREBY ADOPTS THIS INTERIM ZONING AND URGENCY MEASURE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 AS FOLLOWS:

SECTION 1: After the effective date of this ordinance, the City shall prohibit the issuance of permits or licenses for all new hookah parlors within the boundaries of the City of Costa Mesa. For the purposes of this ordinance, the following definitions shall apply:

"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."

"Establishment" shall mean, as of the effective date of this moratorium, the opening or commencement of any such business as a new business; the conversion of an existing business to a hookah parlor; the relocation of any such business; or the expansion (physical or otherwise) of any such business.

Notwithstanding the provisions of the Costa Mesa Municipal Code, all land use permit applications, which have been received, but decisions have not been rendered by the City as of November 5, 2013, are hereby prohibited within the City of Costa Mesa for an initial period of 45 days from the effective date of this ordinance by City Council pursuant to California Government Code Section 65858.

SECTION 2: URGENCY CLAUSE. The City Council finds and declares that this ordinance is required for the immediate protection of the public health, safety, and welfare as previously stated of this ordinance, and that this ordinance shall become effective immediately upon its adoption and will continue in full force and effect until the end of 45 days from its effective date, unless its effectiveness is extended in accordance with Government Code Section 65858.

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.

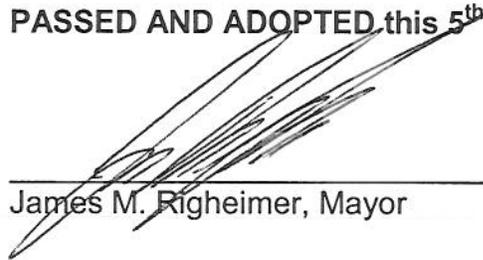
SECTION 4: INCONSISTENCIES. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

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.

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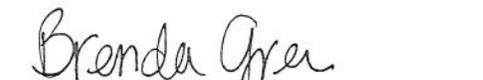
SECTION 6: PUBLICATION. This Ordinance shall take effect and be in full force immediately from and after adoption, and prior to the expiration of fifteen (15) days from its passage shall be published once in the Daily Pilot, a newspaper of general circulation, printed and published in the City of Costa Mesa and a certified copy of the text shall be posted in the City Clerk's office.

PASSED AND ADOPTED this 5th day of November 2013.



James M. Righeimer, Mayor

ATTEST:



Brenda Green, City Clerk

APPROVED AS TO FORM:



Thomas Duarte, City Attorney

