

ORDINANCE NO. 13-

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 NOT TO EXCEED 10 MONTHS AND 15 DAYS PENDING A STUDY OF ZONING REGULATIONS THAT ARE NEEDED TO ALLEVIATE A CURRENT AND ACTUAL THREAT TO THE PUBLIC HEALTH AND SAFETY RELATING TO HOOKAH PARLORS

WHEREAS, pursuant to Section 65858 of the California Government Code, on November 5, 2013, the City Council of the City of Costa Mesa voted 4-0 to adopt Interim Urgency Ordinance No. 13-07 for a temporary moratorium on the establishment or expansion of hookah parlors within the City of Costa Mesa 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, safety and welfare; and

WHEREAS, the City has issued a written report describing the measures taken to alleviate the conditions which led to the adoption of the aforementioned Interim Urgency Ordinance on November 5, 2013, which date was at least ten (10) days prior to the adoption of the extension of the interim urgency ordinance, in compliance with State law; and

WHEREAS, based on the foregoing, the City Council finds that there continues to be a current and immediate threat to the public health, safety and welfare by any hookah parlor that opens or expands during the time the City is studying zoning regulations therefore; and

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; and

WHEREAS, the moratorium shall be extended for ten (10) months and fifteen (15) days and may be extended, after notice and public hearing, for an additional twelve (12) months.

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
4. That 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;
5. That hookah smoking may not be 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
6. That hookah parlors have been shown to create problems related to loud music, drinking in public, noise, loitering, underage drinking and large crowds milling outside of the site; and
7. 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 have been found to create unique problems of second hand smoke, because of the hot charcoal coals used to enhance the burning tobacco; and
8. That hookah parlors if allowed in the City may have adverse secondary effects on surrounding properties, including but not limited to lowering property values and introducing incompatible land uses to existing neighborhoods;
9. That Section 6404.5 of the California Labor Code prohibits smoking of tobacco products in an enclosed space at a place of employment; and
10. That 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

11. That under 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
12. That currently the City has four operating hookah parlors and based on the above, it is in the City's best interest to prevent additional hookah parlors from opening while the City Council is studying the issue; 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, for an initial period of 45 days; and
16. That the City Council has considered the adoption of this urgency ordinance extension at a regular, legally-noticed public meeting on December 3, 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 extension of this Ordinance for a period not to exceed 10 months and 15 days 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 extension 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 extension 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 establishment of all new hookah parlors, which shall include expansion of existing 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, were prohibited within the City of Costa Mesa for the initial period of 45 days. Additionally, such applications shall not be processed for further a period not to exceed 10 months and 15 days from the date of adoption 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 for a period not to exceed 10 months and 15 days from the date of adoption of this ordinance 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.

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 _____ day of _____ 2013.

Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

