



CITY COUNCIL AGENDA REPORT

MEETING DATE: NOVEMBER 5, 2013

ITEM NUMBER:

PH-4

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, 714-754-5182 - gary.armstrong@costamesaca.gov

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.:

Total Calls for Service Since 2010		
Location	Calls for Service	Arrests/Citations Resulting from Calls for Service
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

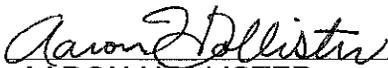
The proposed ordinance and moratorium are not likely to have any direct fiscal impact.

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

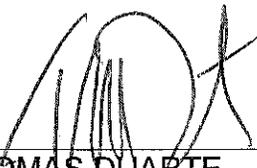
As noted earlier, the proposed amendments will provide regulatory framework for a land use that appears to be a public health concern, as well as a cause of undesirable land use-related externalities. The prohibiting ordinance would provide for a permanent land use control that would prohibit new hookah 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.



AARON HOLLISTER
Associate Planner



GARY ARMSTRONG, AICP
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

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	•	•	•

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 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

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; 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.

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.

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.

Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

