ATTACHMENT 1

ORDINANCE NO. 15-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, FOR A MUNICIPAL CODE AMENDMENT CO-15-02, AMENDING TITLE 8, CHAPTER V RELATED TO VAPING IN PUBLIC FACILITIES AND TITLE 13 RELATED TO REGULATIONS FOR SMOKING AND VAPING USES

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

WHEREAS, smoking lounges have the potential to create adverse impacts to surrounding properties and uses, including, but not limited to, increased noise, loitering, odors, public nuisances, and disturbances of the peace;

WHEREAS, the popularity of smoking lounges have grown in recent years and continues to grow across the nation;

WHEREAS, there is currently minimal federal and state regulation or control of the use and content of electronic cigarettes and vaping products;

WHEREAS, electronic cigarettes are designed to resemble traditional cigarettes, and the use of electronic cigarettes in locations where the use of other types of cigarettes are prohibited may cause confusion and uncertainty and make the enforcement of bans on smoking more difficult;

WHEREAS, the sale or distribution of electronic cigarettes and vaping products to minors is prohibited in California;

WHEREAS, smoking lounges, hookah parlors, and vape lounges (electronic cigarette lounges) are not formally defined or regulated within the Costa Mesa Zoning Code;

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;

WHEREAS, pursuant to Section 65858 of the California Government Code, on December 3, 2013, the City Council of the City of Costa Mesa voted 5-0 to adopt Interim Urgency Ordinance No. 13-09 extending the temporary moratorium on the establishment or expansion of hookah parlors within the City of Costa Mesa for a period of ten (10) months and fifteen (15) days;

WHEREAS, pursuant to Section 65858 of the California Government Code, on October 7, 2014, the City Council of the City of Costa Mesa voted 5-0 to adopt Interim Urgency Ordinance No. 14-12 extending the temporary moratorium on the establishment or expansion of hookah parlors within the City of Costa Mesa for a period of twelve (12) months;

WHEREAS, on February 12, 2015, the Planning Commission of the City of Costa Mesa held a discussion to provide feedback regarding potential regulatory options for vaping, smoking and hookah establishments, and the Planning Commission directed staff to prepare a draft ordinance with the proposed Zoning Code amendments;

WHEREAS, on July 27, 2015, the Planning Commission of the City of Costa Mesa held a duly-noticed public hearing and considered the staff report, recommendations by staff and the City Attorney, and public testimony regarding amendments to Title 8, Chapter V and Title 13 (Zoning Code) of the Costa Mesa Municipal Code, and voted to forward the proposed ordinance to the City Council with a recommendation in favor of its adoption;

WHEREAS, on September 1, 2015, City Council of the City of Costa Mesa held a duly-noticed public hearing and considered the staff report, recommendations by staff and the City Attorney, and public testimony regarding amendments to Title 8, Chapter V and Title 13 (Zoning Code) of the Costa Mesa Municipal Code.

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

SECTION 1: Title 8, Chapter V of the Costa Mesa Municipal Code is hereby amended as follows:

A. Title 8, Chapter V, Section 8-131 – Purpose and findings, is hereby amended as follows:

   The City Council finds that the smoking of tobacco, electronic cigarettes, or any other weed, plant, or substance is a positive danger to health and a material annoyance to those who are present in confined and unconfined spaces, and in order to serve public health, safety and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco, electronic cigarettes, or any other weed, plant or substance, in public facilities owned or operated by the City of Costa Mesa as stated and required in this chapter.

B. Title 8, Chapter V, Section 8-132 – Definitions, (e) is hereby amended as follows:

   Smoke or *smoking* means and includes any of the following:

   (1) The consumption of tobacco products, electronic cigarettes, and related products by burning, inhalation, vaporization, or other forms of ingestion.

(2) The holding or carrying of a lighted or electronically-charged smoking device; or
(3) Emitting or exhaling the smoke or vapor directly from a cigar, cigarette, pipe, electronic cigarette or any other lighted smoking device or substance.

SECTION 2: Title 13 of the Costa Mesa Municipal Code is hereby amended as follows:

A. Title 13, Chapter I, Article 2, Section 13-6, Definitions, is hereby amended to include the following new definitions within an alphabetized series of definitions:

"[...]

Cigar Bar. See Smoking Lounge."

"[...]

Electronic Cigarette. An electronic and/or battery-operated device used to provide an inhalable dose of nicotine by delivering a vaporized solution. The term includes any such device manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. The term does not include any medical inhaler prescribed by a licensed doctor.";

"[...]

Hookah Lounge. See Smoking Lounge.";

"[...]

Smoking Lounge. Any facility or location whose business operation, whether as a primary use or an ancillary use, is characterized by the sale, offering, and/or preparation of smoking of tobacco, cigars, hookah, electronic cigarettes, or similar products, including but not limited to establishments known variously as hookah parlors, vaping lounges, or cigar bars.";

"[...]

Smoking/Vaping Retailer. A smoke shop, electronic cigarette retailer, vapor cigarette retailer, or any other retail business that sells tobacco, electronic cigarettes, and related products primarily for off-site consumption. Smoking/vaping retailers shall not include food or beverage service, outdoor seating, or an indoor seating area greater than 100 square feet in area.";

"[...]

Vape Lounge. See Smoking Lounge.";

"[...]

Vape Shop. See Smoking/Vaping Retailer."

B. Title 13, Chapter IV, Table 13-30, Citywide Land Use Matrix, is hereby amended to add Rows 135a and 135b within an existing series of land uses, as shown in Exhibit A.

C. Title 13, Chapter VI, Article 2, Table 13-89, Nonresidential Parking Standards, is hereby amended to add a row within an existing series of parking ratios, as follows:

"

USE	PARKING RATIO PER GROSS FLOOR AREA (except as noted otherwise)
Smoking Lounges	17 spaces per 1,000 square feet

"

D. Title 13, Chapter IX, Special Land Use Regulations, is hereby amended to add a new Article (Article 19. Smoking & Vaping Uses) as follows:

"ARTICLE 19. SMOKING & VAPING USES

Section 13-200.80. PURPOSE

The City Council finds that smoking and vaping uses have been associated with increases in noise, loitering, odors, public nuisances, and disturbances of the peace. The City Council also finds that smoking and vaping uses expose minors to secondhand byproducts and increase the potential for minors to associate smoking and vaping with a normative or healthy lifestyle. The purpose of this article is to mitigate the negative impacts associated with smoking and vaping uses in order to serve the public health, safety, and welfare of residents and businesses within the city.

Section 13-200.81. PERMITTED AND CONDITIONALLY PERMITTED USES

(a) Smoking lounges and smoking/vaping retailers are subject to the review and approval procedures shown in Table 13-30 City of Costa Mesa Land Use Matrix and the operational and development standards contained in this article.

(b) Establishment of a smoking/vaping retail business within one thousand (1,000 feet) of a public or private primary or secondary educational school facility is strictly prohibited.

(1) Notwithstanding the foregoing, the existing smoking/vaping retailers located at 891 W. Baker Street, Suite B-11 and 1175 Baker Street, Suite 10-D are legally nonconforming uses in accordance with Title 13, Chapter X of the Costa Mesa Municipal Code.

(c) Establishment of a smoking lounge business in the C1-S, PDC, and MP zones within one thousand five hundred (1,500) feet from another approved smoking lounge is strictly prohibited.

(1) Notwithstanding the foregoing, the existing smoking lounges located at 2470 Newport Boulevard and 698 W. 19th Street are legally nonconforming uses in accordance with Title 13, Chapter X of the Costa Mesa Municipal Code. As legally nonconforming, the existing use may operate between the hours of 12 p.m. (noon) to 11 p.m. daily {within 500 feet of a residential zone}.

Section 13-200.82. MEASUREMENT OF DISTANCE

The distance shall be measured in a straight line, without regard to the boundaries of the city and to intervening structures, from the closest property line of the lot of a smoking or vaping business establishment to the other specified property.

Section 13-200.83. SMOKING LOUNGES – OPERATIONAL AND DEVELOPMENT STANDARDS

The following operational and development standards shall apply to all smoking lounges in the city and shall be included in conditions imposed upon granting of any Conditional Use Permit for such business, unless the standards are specifically modified through the issuance of a Conditional Use Permit:

(a) The business shall be owner-operated or otherwise exempt from the prohibition of smoking in the workplace set forth in California Labor Code Section 6404.5.

(b) The establishment shall operate in compliance with all applicable Federal, State, County, and local laws, rules, regulations, and ordinances relating to the protection of health, safety, and welfare.

(c) *Minors Prohibited.* No persons under eighteen (18) years of age shall be permitted within any area of the business premises where smoking is allowed. Owners and operators of the establishment shall require identification to verify the age of customers.

(d) *Employees.* Employees shall be at least eighteen (18) years of age. The applicant shall provide the name, address, telephone number, social security and driver's license number of each person employed by the business, whether full-time or part-time, including, but not limited to any independent contractors, and fully describe their job duties or work responsibilities prior to final inspection or issuance of temporary or final certificate of occupancy and on an annual basis.

(e) *Hours of Operation.* The business shall not operate between the hours of 11:00 p.m. and 8:00 a.m. All customers, patrons and visitors shall be excluded from the business between these hours. Extended business hours may be considered

through a Conditional Use Permit based on the business operations, location, and proximity to residences and other sensitive uses.

(f) *Indoor Operation Only*. All business-related activities shall be conducted wholly within a building. Outdoor seating, operating outdoor barbeques or braziers, and/or lighting coals outdoors shall not be permitted.

(g) *Parking*. Parking shall be provided at 17 spaces per 1,000 square feet of gross floor area.

(h) *Occupancy*. The number of individuals inside the premises shall not exceed the lesser of: (i) The occupancy limit established by the Fire Department and/or Building Official; or (ii) An occupancy limit established as a condition of the permit.

(i) *Admission Charges Prohibited*. No admittance fee, cover charge or requirement of any charge or minimum payment as a condition of entry shall be permitted.

(j) *Entertainment Prohibited*. No entertainment, as defined by Title 9, Chapter II, Article 11 of the Costa Mesa Municipal Code, shall be permitted within the business.

(k) *Security*. Uniformed security guard(s) shall be provided, as deemed necessary by the Chief of Police or his/her designee.

(l) *Alcoholic Beverages Prohibited*. No alcoholic beverages shall be sold or consumed on the business premises. The business shall not knowingly allow any person in possession of an open container of alcohol, or, consuming, using or under the influence of, any alcoholic beverage to enter or remain upon the premises of the business.

(m) *Visibility*. No window coverings, advertising devices, or signage shall prevent visibility of the interior of the establishment from outside the premises during operating hours. Any proposed window tint shall be approved in advance by the Chief of Police or his/her designee.

(n) *Illumination*. The interior of the business shall be maintained with adequate illumination to make the conduct of patrons within the premises readily discernable to persons of normal visual acuity.

(o) *Ventilation Required*. Adequate ventilation shall be provided in accordance with all requirements imposed by the Building Official and Fire Department, or as otherwise required by state or federal laws. At a minimum, the ventilation system shall also assure that smoke from the establishment is incapable of migrating into adjacent tenant buildings/suites or outdoors. Smoking lounges that include the indoor heating of coals shall install a mechanical exhaust hood system to provide required ventilation.

(p) *Noise*. Any amplified noise generated by the business shall be subject to the noise limitations specified in Title 13, Chapter XIII (Noise Control) of CMMC. In addition, the business shall not willfully make or continue, or cause to be made or continued, any excessive or unreasonable noise, which disturbs the peace or quiet of any property within the city or which causes discomfort or annoyance to any reasonable person of normal sensitivities residing in the area."

SECTION 3: EXISTING, LEGAL NONCONFORMING SMOKING AND VAPING USES. The existing smoking lounges located at 2470 Newport Boulevard and 698 W. 19th Street and existing smoking/vaping retailers located at 891 W. Baker Street, Suite B-11 and 1175 Baker Street, Suite 10-D are considered legal nonconforming uses subject to, but not limited to, the following:

a. If the business is discontinued or abandoned for 6 consecutive months (or for 18 nonconsecutive months during a three year period), it shall be considered discontinued and cannot be established.
b. Structural alterations such as building additions or expansion of the lease area shall not be approved. Ordinary maintenance is allowed.
c. No changes to the hours of operation beyond 11 p.m. shall be permitted.
d. No changes to the size of the current business shall be permitted.

SECTION 4: 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 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 Municipal Code will have a significant effect on the environment.

SECTION 5: 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 or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

SECTION 6: 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 7: 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 _____ 2015.

_____

Mayor of the City of Costa Mesa

ATTEST:

_____

City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

_____

City Attorney

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

I, ----------, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above foregoing Ordinance No. 15-10 as introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2015, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the ____ day of _____, 2015, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ___ day of _____, 2015.

_____
City Clerk
City Council of the City of Costa Mesa

Exhibit A

TABLE 13-30 CITY OF COSTA MESA LAND USE MATRIX																					
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LAND USES	**R1**	**R2MD**	**R2HD**	**R3**	**AP**	**CL**	**C1**	**C2**	**C1S**[1]	**TC**[1]	**MG**	**MP**	**PDRLD**[1]	**PDRMD**[1]	**PDRHD**[1]	**PDRNCM**[1]	**PDC**[1]	**PDI**[1]	**I&R**[1]	**I&RS**[1]	**P**
135a. Smoking Lounge (Subject to CHAPTER IX, ARTICLE 19, SMOKING & VAPING USES)	•	•	•	•	•	•	•	•	C[2]	•	•	P[2]	•	•	•	•	C[2]	•	•	•	•
135b. Smoking/Vaping Retailer (Subject to Chapter IX, ARTICLE 19, SMOKING & VAPING USES)	•	•	•	•	•	P[2]	P[2]	P[2]	P[2]	P[2]	•	•	•	P[2]	P[2]	P[2]	P[2]	P[2]	•	•	•

[2] This use is subject to the requirements of the referenced Municipal Code article or section.