



PLANNING COMMISSION

AGENDA REPORT

MEETING DATE: OCTOBER 14, 2013

ITEM NUMBER: PH 4

SUBJECT: CODE AMENDMENT CO-12-07: AN AMENDMENT TO TITLE 13, CHAPTER 1, SECTION 13-6, AND TITLE 13, CHAPTER 4, SECTION 13-30 OF THE COSTA MESA MUNICIPAL CODE RELATED TO HOOKAH PARLORS

DATE: OCTOBER 3, 2013

FROM: PLANNING DEPARTMENT/DEVELOPMENT SERVICES DIVISION

PRESENTATION BY: AARON HOLLISTER, ASSOCIATE PLANNER

FOR FURTHER INFORMATION CONTACT: AARON HOLLISTER (714) 754-5136
aaron.hollister@costamesaca.gov

DESCRIPTION

Code Amendment CO-12-07 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.

RECOMMENDATION

Recommend that City Council approve and give first reading to the ordinance.

BACKGROUND

Hookah parlors (also commonly known as hookah lounges and hookah bars) are a relatively new land use within the City of Costa Mesa. Four hookah parlors are currently located within the boundaries of Costa Mesa and have primarily opened within the last three to four years. 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.

ANALYSIS

The proposed ordinance would 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.

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. According to Police Department records, the Police Department has responded to 243 combined calls for service since 2010 at the existing hookah parlor locations in Costa Mesa. 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.

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. 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.

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.

LEGAL REVIEW

The draft ordinance has been reviewed by the City Attorney's office.

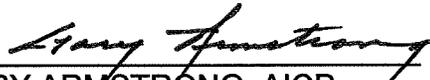
ALTERNATIVES

If the proposed ordinance is not recommended for adoption by the Planning Commission, the proposed ordinance could still be considered and adopted by the City Council. If a hookah ordinance is not ultimately adopted by City Council, hookah parlors would continue with no formal regulation under the CMMC.

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 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. If the Commission recommends that City Council approve and give first reading to the ordinance, it will be tentatively scheduled for the November 5, 2013, City Council meeting.


AARON HOLLISTER
Associate Planner


GARY ARMSTRONG, AICP
Economic and Development Services
Director

Distribution: Director of Economic & Development/Deputy CEO
Senior Deputy City Attorney
Public Services Director
City Engineer
Transportation Services Manager
Fire Protection Analyst
Staff (4)
File (2)

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

Attachment: 1. Draft Ordinance

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, possession of illegal weapons, 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.

Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

TABLE 13-30
CITY OF COSTA MESA LAND USE MATRIX

LAND USES	ZONES																						
	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	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
83a. Hookah Parlor	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
84. Landscape services (installation and maintenance)	•	•	•	•	•	M C	P	P	P	•	P	P	•	•	•	•	•	P	•	•	•	•	
85. Laundry, cleaning and garment services, including plants	•	•	•	•	•	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	•	•	•	•	
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	•	•	•	•	