



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: FEBRUARY 23, 2015

ITEM NUMBER: NB-1

**SUBJECT: PROPOSED AMENDMENT TO THE CITY'S MUNICIPAL CODE REGARDING VAPING, SMOKING, AND HOOKAH ESTABLISHMENTS**

**DATE: FEBRUARY 18, 2015**

**FROM: PLANNING DIVISION / DEVELOPMENT SERVICES DEPARTMENT**

**PRESENTATION BY: STEPHANIE ROXAS, ASSOCIATE PLANNER**

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## **PROJECT DESCRIPTION**

Preliminary feedback for a pending City-initiated draft ordinance to regulate vaping, smoking, and hookah establishments in Costa Mesa.

## **RECOMMENDATION**

Provide feedback on the proposed regulations pertaining to vaping, smoking, and hookah establishments.

## **BACKGROUND**

### ***Moratorium Adopted by Council***

The City has received complaints regarding the operations of hookah lounges. On November 5, 2013, the City Council adopted Urgency Ordinance No. 13-07 approving an initial 45-day moratorium on hookah lounges prohibiting the establishment of new hookah lounges within City limits. On December 3, 2013, the City Council adopted Urgency Ordinance No. 13-09, extending the moratorium for an additional 10 months and 15 days. Subsequently, on October 7, 2014 the City Council adopted Urgency Ordinance No. 14-12 approving a twelve month extension of the moratorium to allow for further study of regulatory options for hookah lounges. The moratorium will expire on October 7, 2015.

### ***Planning Commission Feedback in May 2014***

The primary purpose of the City's moratorium was to allow additional time for staff and the Planning Commission to consider potential Code amendments that would mitigate the negative effects associated with hookah lounges. This work effort was extended to electronic cigarettes, or "e-cigarettes," due to the increasing number of establishments in the City related to the sale and use of electronic cigarettes. Currently, electronic cigarettes are not regulated by the Food and Drug Administration or the City's Zoning Code. Consequently, rather than limiting the proposed new Code regulations to hookah lounges, staff evaluated potential Code amendments that would extend to all smoking lounges (hookah, e-cigarettes, and cigars). Lounge uses, regardless of the products served, share similarities in business operations and have the potential to impact the public health, safety and general welfare when not adequately regulated.

On May 5, 2014, staff presented a report to the Planning Commission at a public hearing recommending amendments to the Code. The proposed amendments included a comprehensive definition to include the various types of smoking lounges located within City limits, zoning districts in which smoking lounges would be legally permitted, operating requirements, and an amortization period (12 months) for legal non-conforming businesses.

At the meeting, the Planning Commission expressed initial concerns regarding staff's recommendation. First, there was a concern with reducing the number of zoning districts that allowed these uses from five zones to a single zone; thereby requiring most businesses to relocate. Second, the proposed ordinance would have allowed the establishment of smoking lounges by right. The Planning Commission felt that the City should reserve the ability to provide a higher threshold of review during the entitlement process. For instance, the review process should take into consideration operating standards and other regulations that address the proximity of smoking lounges to residential areas and other potentially sensitive uses (e.g. schools and churches).

The Planning Commission also requested additional data regarding the existing number of smoking lounge uses and expressed concern that the amortization period would unintentionally cause disruption or permanent closure of a portion of these businesses. The

Planning Commission requested a solution that would enable businesses to operate legally within City limits but would impose sufficient regulations to review each application and require certain parameters for its operation. Based on the noted discussion and public testimonies, the Planning Commission removed the item from the calendar and directed staff to conduct further research to address the concerns outlined above. Subsequently, on October 7, 2014, the City Council extended the moratorium on new hookah lounges for an additional twelve months.

**ANALYSIS**

Over the past several months, staff has continued to analyze and evaluate regulatory options that would address the Planning Commission’s comments. To provide the Planning Commission with background on the scope and magnitude of the issue, staff compiled a comprehensive inventory of the existing smoking retail shops and lounges in the City (Attachment 1) through the use of records available with the Finance Department, internet research, and field observations. The inventory includes information related to zoning of each establishment, hours of operation, business activities (retail vs. lounge), distance from residential, and the number of Code Enforcement cases.

Based on the discussion at the May 5, 2014 Planning Commission meeting, staff categorized the primary concerns into five broad issues (summarized below) and developed a series of recommendations to address each issue. Staff is seeking input from the Planning Commission on the following proposed regulations prior to drafting an ordinance.

Issue/Concern	Proposed Regulation
<b>Issue #1:</b> There are no specific regulations for hookah, vaping, & smoking lounges. They have been categorized under “food & beverage” establishments.	1. Create new definitions for smoking lounge/ smoking club. 2. Identify parking requirement for smoking lounges.
<b>Issue #2:</b> The Zoning Code lacks regulations to control “nuisance” type impacts of these lounges.	3. Prohibit smoking lounges within 500-foot of a residential zone or 1,500 feet of a school, churches, libraries, public park or another lounge. 4. Allow smoking lounges outside the radius with approval of a CUP.
<b>Issue #3:</b> Smoking, vaping, and hookah lounges may be incompatible with residential areas, schools, and public parks.	5. Prohibit vaping in public parks and public facilities.
<b>Issue #4:</b> Keep existing businesses which are operating in compliance with applicable laws.	6. Require Conditional Use Permit for existing, legally established businesses within 6-months of adoption of Ordinance.

**Issue #5:** Better regulation of signage/ advertising of products associated with vaping, smoking, and hookah (other than the name of the business).

7. Establish conditions of approval regulating window signage of product advertisements.

1. Create definitions for vaping, smoking, and hookah lounges.

Due to the lack of a definition, smoking establishments are treated like restaurants, and accordingly they are permitted by right in a wide range of areas throughout the City. The proposed change recognizes smoking establishments as a separate and distinct use. Defining smoking establishments in the Code would help facilitate the creation of operational requirements, parking standards, and other conditions that would better ensure the business operations do not negatively impact nearby residents or other businesses. In addition, staff recommends distinguishing between smoking retail shops and lounges. In the past, establishments have opened in the City indicating on their business license applications that they are retail uses only, but eventually established lounges without City approval. The proposed definitions would specifically define what constitutes smoking “retail” and “lounge” uses (i.e., retail use may not serve food or beverage and may not include lounge seating).

Preliminarily, staff recommends permitting smoking retail shops by right in commercial zones, consistent with the regulations for general retail uses. Staff recommends permitting smoking lounges in commercial and industrial zones with a Conditional Use Permit (discussed in detail below).

2. Create parking standard for smoking lounges.

Smoking lounges are currently parked at the same standard as food establishments. In the City’s recent experience, smoking lounges may create a greater demand for parking. Staff will follow up with other jurisdictions and propose a parking standard either comparable or higher than restaurant uses. The new parking standards would limit smoking lounges to areas where a large parking surplus exists in order to address parking complaints received related to existing lounges.

3. Create distance criteria to address concentration and proximity to sensitive uses.

Establishing location standards would ensure that new smoking lounges are not located next to a sensitive use, such as residential areas, schools, or churches. The proposed distance separation requirements would mitigate the potential impact that these businesses may have on the surrounding area. Preliminarily, staff recommends prohibiting smoking lounges within 500 feet of a residential zone and within 1,500 feet of a school, church, library, City park, or another smoking lounge.

4. Permit smoking lounges outside the radius with a Conditional Use Permit.

In addition to meeting the location standards outlined above, staff recommends requiring proposed smoking lounges to obtain a Conditional Use Permit (CUP) subject to Planning Commission approval. The CUP will include standard conditions of approval, such as prohibiting outdoor seating, prohibiting alcohol beverages, building occupancy

standards, and conditions related to specific operations of an establishment. Moreover, the conditions of approval would provide the City with more regulatory authority to address issues should they arise, including the ability to revoke a permit.

5. Prohibit electronic cigarettes at public parks.

Costa Mesa Municipal Code, Title 8 - Health and Sanitation, Chapter V regulates smoking in public facilities. "Smoke" or "smoking" is defined as follows:

- The consumption of tobacco products by burning, inhalation, or other forms of ingestion.
- The holding or carrying of a lighted smoking device; or
- Emitting or exhaling the smoke directly from a cigar, cigarette, pipe or any other lighted smoking device or substance.

The Code currently prohibits smoking in public facilities and within and around all parks. As a concern for the general health and safety of the community, staff discussed the proliferation of electronic cigarettes both generally and at high school campuses with representatives from the Newport Mesa School District and the Orange County Health Care Agency. Staff's conclusion from these discussions is that electronic cigarettes may have potential health risks to the general public and, accordingly, should be included under the City's prohibition of smoking in public parks and facilities. This recommendation would likely require further consideration and research by the City Attorney's Office.

6. Establish zoning approval process for existing businesses.

One of the concerns expressed by the Planning Commission was that the previously proposed ordinance limited smoking lounges to one zoning district. To address this concern, staff proposes to allow continued operation of smoking lounges at their existing locations, provided that these businesses obtain a Conditional Use Permit subject to Planning Commission approval. During the CUP application process, the City will consider the history of Code violations and nuisance complaints associated with the existing business. Staff recommends waiving the application fee for existing businesses and requiring them to obtain the CUP within twelve months of the ordinance adoption.

7. Establish conditions of approval regulating window signage of product advertisements.

Currently, the Sign Code permits businesses in commercial zones to display temporary window signage totaling up to 20% of the storefront's window area. As part of the CUP process, the Planning Commission may include conditions of approval to reduce the amount of product advertisements and signage that may be displayed in windows.

**CONCLUSION**

At the last public hearing in May of 2014 on this issue, the Planning Commission raised a number of concerns and directed staff to conduct further research and engage in other outreach activities. To address the primary issues raised at the Planning Commission meeting, staff developed a list of seven (7) preliminary recommendations that would provide

for the comprehensive regulation of new and existing vaping, smoking and hookah establishments in the City. At this time, staff is seeking the Planning Commission's direction on any, or all, of the proposed regulations presented in this report.

  
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Attachments: 1. Existing Smoking Establishment Inventory

Distribution: Director of Economic & Development Services/Deputy CEO  
Assistant Development Services Director  
Senior Deputy City Attorney  
Public Services Director  
City Engineer  
Transportation Services Manager  
Fire Protection Analyst  
Staff (6)  
File (2)

# **ATTACHMENT 1**

## **Existing Smoking Establishment Inventory**

## Existing Smoking Establishments in Costa Mesa

	Business Name	Address	Product Type	Business Type	Hours	Zone	Apprx. Distance from Residential	Business License?	Code Violations?
1)	Vapor Labs	2200 Harbor Blvd, Suite E-160	E-Cigarettes	Retail	11am-8pm	C1-S	130 ft.	Yes	0
2)	Vaping Industries	333 E 17th Street, Suite 21A	E-Cigarettes	Retail (some bar stool seating)	10am-9pm	C1	100 ft.	Yes	0
3)	Mesa Vape	891 W Baker Street, Suite B-11	E-Cigarettes	Retail	9am-9pm	CL	690 ft.	Yes	0
4)	Break Time Vape	1500 Adams Ave, Suite 104B	E-Cigarettes	Retail (some bar stool & sofa seating)	10am-10pm	C1	217 ft.	Yes	0
5)	VaP Vaporizers	3033 Bristol Street, Suite J	E-Cigarettes	Retail (some bar stool seating)	11am-10pm	C1	250 ft.	Yes	1 - Illegal lounge area
6)	Local Vape	1525 Mesa Verde Drive E, Suite 114	E-Cigarettes	Retail	9am-10pm	C1	311 ft.	Yes	0
7)	Vapor Shot	1776 Newport Blvd (*Inside Triangles Gameroom Gallery)	E-Cigarettes	Retail	10am-10pm	C2	430 ft.	Yes (Pending)	0
8)	Vapor Solutions	1779 Newport Blvd (2nd Floor)	E-Cigarettes	Retail (bar stool seating)	11am-10pm	C2	145 ft.	Yes	1 - Unpermitted banner
9)	Purple Haze	1779 Newport Blvd (1st Floor)	All Types	Retail	10am-10pm	C2	145 ft.	Yes	0
10)	Flawless Vapes & Supplies	1834 Newport Blvd, Suite E	E-Cigarettes	Retail (bar stool & sofa seating)	10am-10pm	C2	240 ft.	Yes	0
11)	Vaporhood	777 W 19th Street, Suite W	E-Cigarettes	Retail	5:30pm-8pm	C1	288 ft.	Yes	0
12)	ICM Vape	1673 Irvine Ave	E-Cigarettes	Retail	10am-10pm	C1	98 ft.	Yes	0
13)	Grasshopper Vaporizers	2156 Newport Blvd, Suite A (*Need to verify if still operating)	E-Cigarettes	?	?	C1	100 ft.	Yes	0
14)	Smart Cloud Vapor	330 Rochester St, Suite B (*Need to verify if still operating)	E-Cigarettes	?	?	R2-MD	In residential	Yes	0
15)	Empire Tobacco	1175 Baker Street, Suite 10-D	All Types	Retail	10am-7:30pm	C2	288 ft.	Yes	0
16)	Up in Smoke Smoke Shop	270 Bristol Street, Suite 101	All Types	Retail	10am-9pm	C1	345 ft.	Yes	0
17)	Up in Smoke	2750 Harbor Blvd, Suite A10	All Types	Retail	9am-10pm	C1	90 ft.	Yes	0
18)	9M Smoke Shop	522 W 19th Street	All Types	Retail	10am-12am	C2	160 ft.	Yes	0

19)	Dollar Mart Plus & Smoke Shop	516 W 19th Street	All Types	Retail	?	C2	52 ft.	Yes	0
20)	Shamrock Smoke Shop	2957 Harbor Blvd	All Types	Retail	10am-8pm	C1	535 ft.	Yes	0
21)	The Tinder Box	3333 Bear St, Suite 136 (Inside Crystal Court)	Cigars	Retail	10am-9pm	PDC	466 ft.	Yes	0
22)	Orange County Cigars LLC	2470 Newport Blvd	Cigars	Lounge	12pm-10pm (W-F) 3pm-10pm (Sa Su)	C1	235 ft.	Yes	1 - Business license
23)	Coastline Hookah Lounge (formerly "Sultana Hookah")	698 W 19th Street	Hookah	Lounge	5pm-12am (Su-Th) 5-pm-2am (F Sa)	C1	145 ft.	Yes	2 - Excessive window signage and hookah lounge operating past 11pm