



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: JULY 27, 2015

ITEM NUMBER:

PH-2

SUBJECT: CODE AMENDMENT CO-15-02: AN AMENDMENT TO TITLE 8 AND TITLE 13 OF THE COSTA MESA MUNICIPAL CODE RELATED TO SMOKING IN PUBLIC FACILITIES AND THE REGULATION OF SMOKING LOUNGE USES

DATE: JULY 20, 2015

FROM: PLANNING DIVISION / DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: STEPHANIE ROXAS, ASSOCIATE PLANNER

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PROJECT DESCRIPTION

The Costa Mesa Planning Commission will hold a public hearing to consider Code Amendment CO-15-02 amending Costa Mesa Municipal Code Title 8, Chapter 8 related to smoking in public facilities and Title 13, Chapters I, IV, and IX related to definitions, land use matrix, and special land use regulations for smoking lounge uses.

RECOMMENDATION

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

BACKGROUND

Moratorium Adopted by Council

Due to numerous 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. During this time, the City also experienced an increase in the number of e-cigarette retail establishments, so this work effort was also extended to electronic cigarettes, or "e-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 (including 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 12, 2014, staff presented a report to the Planning Commission at a public hearing recommending amendments to the Zoning Code related to smoking lounges. The Planning Commission expressed concerns regarding certain aspects of the proposed ordinance, including limiting smoking lounges to one zoning district and requiring existing businesses to come into compliance with the new laws within 12 months (thereby requiring businesses to relocate). Based on the noted discussion and public testimonies, the Planning Commission removed the item from the calendar and directed staff to conduct further research and address the concerns outlined above. Links to the May 12, 2014 staff report and Planning Commission meeting minutes are provided below:

Staff Report:

<http://www.costamesaca.gov/ftp/planningcommission/agenda/2014/2014-05-12/PH-4.pdf>

Meeting Minutes:

<http://www.costamesaca.gov/modules/showdocument.aspx?documentid=14526>

On October 7, 2014, the City Council extended the moratorium on new hookah lounges for an additional twelve months.

Planning Commission Feedback in February 2015

On February 23, 2015, staff presented an update to the Planning Commission on a pending ordinance that would regulate smoking, vaping, and hookah establishments. Concerns raised previously by the Planning Commission were consolidated into several broad categories, and staff developed a list of proposed regulations that could address each concern. The Planning Commission concurred with the recommendations and directed staff to develop an ordinance. Links to the February 23, 2015 staff report and Planning Commission meeting minutes are provided below:

Staff Report:

<http://www.costamesaca.gov/ftp/planningcommission/agenda/2015/2015-02-23/NB-1.pdf>

Meeting Minutes:

<http://www.costamesaca.gov/modules/showdocument.aspx?documentid=17464>

ANALYSIS

The draft ordinance is provided as Attachment 1, and it primarily focuses on the regulation of new smoking lounge uses, including hookah parlors, vaping lounges, and cigar bars. As summarized below, each proposed regulation was developed in response to a specific issue/concern raised by the Planning Commission or City Council.

Issue	Proposed Regulation
1. Smoking lounges are not currently regulated by the Zoning Code.	1. Add a definition and create zoning regulations specifically pertaining to smoking lounges.
2. In the past, retail stores have expanded their business to include lounge uses without prior City approval.	2. Add a definition for "tobacco retailers" to preclude the establishment of lounge uses as part of a retail store.
3. The City's current ban on smoking in parks and facilities does not including electronic cigarettes.	3. Prohibit vaping in specified public places by modifying the current prohibition of smoking in public facilities (Title 8, Chapter V).
4. Existing businesses would become nonconforming by the proposed ordinance.	4. Consider the existing two, legally-established smoking lounges as legal nonconforming uses, which may be subject to discontinuation or closure in the future under specific circumstances.
5. Smoking lounges may be incompatible with residential areas and public uses.	5. Create standards to allow several zoning districts where new smoking lounges may be permitted by right or conditionally permitted. Restrictions include:

	<ul style="list-style-type: none"> a) Limit smoking lounges to large commercial zones and industrial areas. b) Require smoking lounges to be separated by 1,500 ft. from similar uses to prevent overconcentration. c) Require smoking lounges to be located 500 ft. away from sensitive uses (schools and parks).
<p>6. The Zoning Code does not have regulations to address “nuisance” type impacts from smoking lounges.</p>	<p>6. Create operational and development standards to address various potential issues, including but not limited to:</p> <ul style="list-style-type: none"> ○ Noise ○ Public Safety ○ Building Safety ○ Parking

The proposed regulations from the table are detailed in the following report. The seven proposed regulations represent broader categories that encompass various provisions within the ordinance. In developing the draft ordinance, staff researched other cities, evaluated regulatory options, and identified best practices in the regulation of smoking lounges.

Attachment 2 summarizes how other Orange County cities regulate smoking lounge uses. A reference list for the draft ordinance is provided as Attachment 3, which details where the language in the ordinance originated from, including the cities of Anaheim, Westminster, and Santa Ana.

1. Add a definition and create zoning regulations specifically pertaining to smoking lounges.

Smoking lounge uses are not defined by the Zoning Code. Currently, smoking lounges are treated like restaurants and regulated accordingly. The proposed change recognizes smoking lounges as a separate and distinct use. In addition to adding this use to the Citywide Land Use Matrix, staff proposes to create a section in the Special Land Use Regulations chapter of the Zoning Code to create additional zoning standards specifically for smoking lounges (detailed in subsection #6 of this report).

2. Add a definition for “tobacco retailers” to preclude the establishment of lounge uses as part of a retail store.

The proposed Code amendment would distinguish between tobacco retail shops and smoking 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.

To develop a definition, staff visited the majority of the tobacco retail shops in the City to understand their business operations. The presence of food/beverage service and a large lounge seating area would typically result in a higher volume of customers and traffic that is greater than a retail shop. The proposed definition below would establish specific parameters to distinguish between retail and lounge uses.

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

3. Prohibit vaping in specified public places by modifying the current prohibition of smoking in public facilities (Title 8, Chapter V).

The Costa Mesa Municipal Code (Title 8 - Health and Sanitation, Chapter V) currently prohibits smoking in public facilities and within and around all parks. Because these provisions predated the technology of electronic cigarettes, this smoking prohibition does not refer to electronic cigarettes. However, electronic cigarettes are designed to resemble conventional cigarettes with unknown risk factors potentially causing confusion and uncertainty with the enforcement of this regulation. By making a minor change to the definitions in Title 8 of the Code, the existing prohibition would also prohibit vaping and electronic cigarettes in parks and public facilities. The proposed changes to the definition are red-lined below:

Smoke or smoking means and includes any of the following:

- 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 or vapor directly from a cigar, cigarette, pipe, electronic cigarette or any other lighted smoking device or substance.

For the Planning Commission's reference, the entire Code chapter is provided as Attachment 4 with the proposed ordinance changes denoted in red.

4. Consider the existing two, legally-established smoking lounges as legal nonconforming uses, which may be subject to discontinuation or closure in the future under specific circumstances.

There are two businesses that are directly abutting residential uses; however, under the current zoning requirements the City requires these businesses to close by 11 p.m.

- i. Orange County Cigars – 2470 Newport Boulevard
 - Hours of Operation: 3:00-10:00 p.m. weekdays, 12:00-10:00 p.m. weekends
 - Size of Lounge Area: Approximately 1,000 sq. ft.
- ii. Coastline Hookah Lounge (formerly Sultana Hookah) – 698 W. 19th Street
 - o Hours of Operation: Permitted to operate until 11 p.m. (In the past, the City has received complaints of the business being open past 11 p.m.)
 - Size of Lounge Area: Approximately 1,000 sq. ft.

Over the series of public meetings, the Planning Commission expressed concern with the proposed ordinance's effect on existing businesses, and the Commission indicated they would not be supportive of any regulations that would displace existing, law-abiding businesses. To address this concern, the proposed ordinance allows these two smoking lounges to continue operating at their existing locations as legal nonconforming uses. In this case, the legal nonconforming status signifies that:

- 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.
- Structural alterations such as building additions or expansion of the lease area shall not be approved. Ordinary maintenance is allowed.
- No changes to the hours of operation beyond 11 p.m. shall be permitted.
- No changes to the size of the current lounge area shall be permitted.

Any business operations at these locations past 11 p.m. are considered violations of the current Zoning Code, and the business is, therefore, subject to civil citations and penalties.

5. Create standards to allow several zoning districts where new smoking lounges may be permitted by right or conditionally permitted.

a) Zoning:

As previously noted, the Zoning Code does not address smoking lounges. Currently, smoking lounges are treated like restaurants and are permitted by right in a wide range of areas throughout the City. The Planning Commission expressed interest in locating smoking lounges away from residential neighborhoods. Consequently, under the proposed Code amendment, new smoking lounges would be permissible by right or by approval of a conditional use permit in three zoning districts, which are summarized in the table:

Zoning District	Examples of Locations	Proposed Regulation
C1-S – Shopping Center	<ul style="list-style-type: none"> • Harbor Center (2300 Harbor) • K-Mart Center (2200 Harbor) • 17th Street Village (241 & 267 E. 17th Street) 	CUP / Public Hearing Required
PDC – Planned Development Commercial	<ul style="list-style-type: none"> • The Triangle (1870 Harbor) • Costa Mesa Courtyards (1835 Newport) • Mesa Verde Shopping Center (2701 Harbor) 	CUP / Public Hearing Required
MP – Industrial Park	<ul style="list-style-type: none"> • Industrial properties along Redhill Ave, Airway Ave, Pullman St, and Fischer Ave 	Permitted, subject to compliance with standards

Attachment 5 is a map exhibit identifying these zones in the City. The C1-S and PDC districts include large commercial lots typically containing multiple building structures that could buffer potential noise. The MP district includes large industrial properties

generally located near the airport with few surrounding residential uses. The proposed zoning standards provides some opportunity for new smoking lounges to establish through a streamlined process, with reserving the ability for the Planning Commission to review new applications in commercial areas on a case-by-case basis.

b) Concentration:

To prevent the establishment of new smoking lounges in a concentrated area, the proposed ordinance also requires smoking lounges to be separated by a minimum distance of 1,500 feet. For example, this regulation would not allow two smoking lounges within the same commercial center.

c) Sensitive Uses:

To minimize potential impacts to public uses, the proposed ordinance also requires smoking lounges to be located a minimum of 500 feet away from public schools and public parks. If a smoking lounge was proposed in one of the permissible zoning districts, but was located within 500 feet from a public school or park, the proposed ordinance would not permit the proposed use in that location.

6. Create operational and development standards to address various potential issues.

As noted above, the proposed ordinance includes the creation of a new section in the Zoning Code containing special land use regulations for smoking lounges. This new section would include operational and development standards applicable to all smoking lounges (new and existing), and the standards would be included as conditions of approval. However, to provide flexibility and give the Planning Commission discretion to consider unique circumstances, applicants may request modifications to the standards through the Conditional Use Permit process. The proposed operational and development standards are intended to address specific areas of concern, which are summarized below. To develop the list of proposed standards, staff reviewed similar ordinances from other cities, including Anaheim, Westminster, and Santa Ana.

Areas of Concern	Proposed standards include:
Noise	<ul style="list-style-type: none"> ○ Business cannot be open past 11:00 p.m. ○ Outdoor business activities are prohibited. ○ Live entertainment is prohibited. ○ Businesses are subject to compliance with the City's Noise Control standards and enforcement actions.
Public Safety	<ul style="list-style-type: none"> ○ Employees and customers must be over the age of 18. ○ Alcoholic beverages are prohibited. ○ The City has the discretion to require security guards. ○ The interior of the business must be visible (i.e. no window coverings) and adequately illuminated.
Building and Fire Safety	<ul style="list-style-type: none"> ○ Business must comply with maximum building occupancy. ○ Adequate ventilation must be provided.
Parking	<ul style="list-style-type: none"> ○ New smoking lounges must provide parking at a ratio of 17

	spaces per 1,000 sq. ft. of floor area. ○ Existing smoking lounges would not be required to comply with the parking ratio if the business can demonstrate sufficient on-site parking exists to accommodate their use.
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In addition, the Food and Drug Administration is currently proposing legislation that would regulate electronic cigarettes. Accordingly, the ordinance includes a standard requiring all businesses to operate in compliance with all applicable Federal, State, County, and local laws, in the event laws relative to electronic cigarettes change in the future.

ADDITIONAL OUTREACH

The City reached out to other agencies, City departments, and local groups to provide an opportunity to review the draft ordinance and provide staff with comments and input. Outreach included, but was not limited to, the Orange County Health Care Agency (OCHCA), Newport Mesa School District, Costa Mesa Police Department, and American Lung Association in California. In addition, the OCHCA provided several fact sheets for the Planning Commission’s consideration regarding the health effects of second hand smoke, hookah, and electronic cigarettes (see Attachment 6). A representative from the Public Health Services, Health Promotion Division of OCHCA will provide a brief presentation to the Planning Commission on the health aspects of smoking and vaping.

Staff also reached out to existing smoking lounges and tobacco retailers in the City via phone calls, emails, and site visits to inform them of the pending Code changes. The outreach provided businesses with an opportunity to ask questions and express any concerns to staff regarding the proposed ordinance.

PUBLIC NOTICE

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, public notification has been completed no less than 10 days prior to the date of the public hearing via the following methods:

- 1) Newspaper publication. A public notice, the size of 1/8 of a page, was published once in the Daily Pilot newspaper.
- 2) Notice of the public hearing was mailed to existing smoking lounges and tobacco retailers in the City (see Attachment 7).

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 because there is no possibility that the passage of this ordinance amending the Municipal Code will have a significant effect on the environment.

ALTERNATIVES

1. *Continue the meeting to address additional changes to the draft Ordinance.* The deadline for Council to adopt an ordinance, under the current moratorium, is October 2015.
2. *Direct staff to modify the ordinance and forward to City Council for consideration.* If the ordinance is not ultimately adopted by the City Council, smoking lounges may continue to be established with no formal regulations in the Zoning Code. Furthermore, individuals may continue to use electronic cigarettes in public parks, and the existing moratorium on new hookah lounges would need to be extended.

LEGAL REVIEW

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

CONCLUSION

Over the last two years, the City Council and Planning Commission have expressed a desire to formally regulate smoking lounges to minimize its negative impacts, including increased levels of noise, loitering, odors, public nuisances, disturbances of the peace, and the creation of unsafe conditions and situations. Staff researched other cities to evaluate regulatory options and identify best practices in the regulation of smoking lounges. Furthermore, staff developed the proposed ordinance in response to specific issues and areas of concern raised by the City Council and Planning Commission at prior meetings. Code Amendment CO-15-02 would provide for the comprehensive regulation of new and existing smoking lounges and tobacco retailers to ensure businesses are operated in a manner that is compatible with surrounding uses and properties.

Staff recommends that the Planning Commission give a recommendation to the City Council to approve and give first reading to the ordinance



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- Attachments:
1. Draft Ordinance
 2. City Survey – Summary of smoking lounge regulations
 3. Reference list for draft ordinance citing other cities
 4. CMMC Title 8, Chapter V with proposed changes red-lined
 5. Map of zoning districts allowing new smoking lounges
 6. Letter from Orange County Health Care Agency (OCHCA)
 7. List of existing smoking lounges and tobacco retailers

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

ORDINANCE NO. 15-__

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

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 smoking-related 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; and

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 (Month) (Day), 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, Section 8-132(e) of the Costa Mesa Municipal Code is hereby amended as follows:

- (e) *Smoke* or *smoking* means and includes any of the following:
 - (1) The consumption of tobacco and related products by burning, inhalation, or other forms of ingestion.
 - (2) The holding or carrying of a lighted 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.”

“[...]”

Hookah Lounge. See Smoking Lounge.”;

“[...]

Smoking Lounge. Any facility or location whose business operation, whether as its primary use or as an ancillary use, is denoted by the on-premises smoking of tobacco, cigars, hookah, electronic cigarettes, or similar products, including but not limited to establishments known variously as hookah parlors, vape lounges, or cigar bars.”;

“[...]

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

“[...]

Vape Lounge. See Smoking Lounge.”;

“[...]

Vape Shop. See Tobacco Retailer.”

B. Title 13, Chapter IV, Table 13-30, Citywide Land Use Matrix, is hereby amended to add Row 135a 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 Lounges) as follows:

“ARTICLE 19. SMOKING LOUNGES

Section 13-200.80. PURPOSE

The City Council finds that smoking lounges have been associated with increases in noise, loitering, odors, public nuisances, and disturbances of the peace. The purpose of this article is to mitigate the negative impacts associated with smoking lounges 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 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) The following restrictions shall also apply to the establishment of smoking lounges:
 - (1) Not located within five hundred (500) feet from any public school or public park.
 - (2) Not located within one thousand five hundred (1,500) feet from another approved smoking lounge.
- (c) There are two existing smoking lounges that have been established before the effective date of the ordinance and that are permitted to operate between the hours of 12 p.m. (noon) to 11 p.m. daily within 500 feet of a residential zone. These businesses are located at 2470 Newport Boulevard and 698 W. 19th Street and shall be considered legal nonconforming uses subject to Title 13, Chapter X, Nonconforming Uses, Developments, and Lots, of the Costa Mesa Municipal Code.

Section 13-200.82. MEASUREMENT OF DISTANCE

The distance between any two (2) smoking lounge businesses 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 nonresidential lot in which the business is located. The distance between a smoking lounge and any public school or public park shall also 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 nonresidential lot in which the business is located to the nearest property line of a public school or public park.

Section 13-200.83. 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 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 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 or suites. 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 LOUNGES. The two existing smoking lounges located at 2470 Newport Boulevard and 698 W. 19th Street 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 lounge area 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:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

Exhibit A

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
135a. Smoking Lounges (Subject to CHAPTER IX, ARTICLE 19, SMOKING LOUNGES)	•	•	•	•	•	•	•	•	C ²	•	•	P ²	•	•	•	•	C ²	•	•	•	•

Survey of Orange County Cities

SMOKING LOUNGE REGULATIONS		
City	Permitted?	Summary
Santa Ana	No	Smoking lounges are not permitted. Smoke/vape shops are permitted subject to issuance of an annual tobacco license.
Newport Beach	No	Smoking lounges are not permitted. Smoke/vape shops are permitted, provided that smoking is not allowed inside the establishment.
Huntington Beach	Yes	Smoking lounges are considered retail. Regulated as a retail use.
Westminster	Yes	Private smokers lounge uses allowed with a business permit. Smoke/vape shops are permitted subject to issuance of an annual tobacco license and compliance with location and operational standards.
Fountain Valley	Yes	Requires Planning Commission approval of a Conditional Use Permit (CUP). No special land use regulations for smoking lounges.
Anaheim	Yes	Smoking lounges require a smoking lounge permit issued by Planning staff. Lounge uses are subject to standards regulating business layout, operations, parking, hours, etc. Deviations from the standards may be requested through a CUP. Existing smoking lounges established prior to ordinance adoption in 2006 are exempt from standards.
Seal Beach	No	Smoking lounges prohibited in all zones. Smoke/vape shops are conditionally permitted in commercial zones subject to Planning Commission approval of a CUP.
Laguna Beach	Yes	Requires Planning Commission approval of a CUP. No special land use regulations for smoking lounges.
Orange	No	Smoking lounges are not permitted.
Buena Park	Yes	Smoking lounges are considered retail and are permitted by right in commercial zones. Business owners must complete form stating they will abide by State laws.
Irvine	No	Smoking lounges are not permitted as a principal use. Tobacco retail uses are permitted, provided that smoking is not allowed inside the establishment.
Mission Viejo	No	Not listed in the Land Use Matrix. However, Code allows uses not listed in the Land Use Matrix to be reviewed through a CUP.
Lake Forest	Yes	Smoking lounges are conditionally permitted in commercial zones with Planning Commission approval of a Use Permit.
Laguna Niguel	No	Smoking lounges are not permitted.
San Clemente	No	Smoking lounges are not permitted.

ORDINANCE NO. 15-__

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

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 smoking-related 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; and

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 (Month) (Day), 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, Section 8-132(e) of the Costa Mesa Municipal Code is hereby amended as follows:

- (e) *Smoke* or *smoking* means and includes any of the following:
 - (1) The consumption of tobacco and related products by burning, inhalation, or other forms of ingestion.
 - (2) The holding or carrying of a lighted 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.”

“[...]”

Hookah Lounge. See Smoking Lounge.”;

“[...]

Smoking Lounge. Any facility or location whose business operation, whether as its primary use or as an ancillary use, is denoted by the on-premises smoking of tobacco, cigars, hookah, electronic cigarettes, or similar products, including but not limited to establishments known variously as hookah parlors, vape lounges, or cigar bars.”; (COMBINED SANTA ANA & ANAHEIM'S DEFINITIONS)

“[...]

Tobacco Retailer. A smoke shop, electronic cigarette retailer, vapor cigarette retailer, or any other retail business that sells tobacco and related products primarily for off-site consumption. Tobacco retailers shall not include food or beverage service, outdoor seating, or an indoor lounge seating area greater than 100 square feet in area.”; (MODIFIED FROM WESTMINSTER'S DEFINITION)

“[...]

Vape Lounge. See Smoking Lounge.”;

“[...]

Vape Shop. See Tobacco Retailer.”

- B. Title 13, Chapter IV, Table 13-30, Citywide Land Use Matrix, is hereby amended to add Row 135a 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 (ANAHEIM)

“

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

“ARTICLE 19. SMOKING LOUNGES

Section 13-200.80. PURPOSE

The City Council finds that smoking lounges have been associated with increases in noise, loitering, odors, public nuisances, and disturbances of the peace. The purpose of

this article is to mitigate the negative impacts associated with smoking lounges in order to serve the public health, safety, and welfare of residents and businesses within the city. (COMBINED SANTA ANA & WESTMINSTER'S PURPOSES)

Section 13-200.81. PERMITTED AND CONDITIONALLY PERMITTED USES

- (a) Smoking lounges 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) The following restrictions shall also apply to the establishment of smoking lounges:
 - (1) Not located within five hundred (500) feet from any public school or public park. (WESTMINSTER'S STANDARD FOR TOBACCO RETAILERS)
 - (2) Not located within one thousand five hundred (1,500) feet from another approved smoking lounge. (WESTMINSTER'S STANDARD FOR TOBACCO RETAILERS)
- (c) There are two existing smoking lounges that have been established before the effective date of the ordinance and that are permitted to operate between the hours of 12 p.m. (noon) to 11 p.m. daily within 500 feet of a residential zone. These businesses are located at 2470 Newport Boulevard and 698 W. 19th Street and shall be considered legal nonconforming uses subject to Title 13, Chapter X, Nonconforming Uses, Developments, and Lots, of the Costa Mesa Municipal Code. (ANAHEIM INCLUDES A SIMILAR PROVISION FOR LEGAL NONCONFORMING BUSINESSES)

Section 13-200.82. MEASUREMENT OF DISTANCE

The distance between any two (2) smoking lounge businesses 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 nonresidential lot in which the business is located. The distance between a smoking lounge and any public school or public park shall also 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 nonresidential lot in which the business is located to the nearest property line of a public school or public park. (BASED ON COSTA MESA MUNICIPAL CODE SEXUALLY-ORIENTED BUSINESSES ORDINANCE)

Section 13-200.83. 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. (ANAHEIM)
- (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. (MODIFIED STANDARDS FROM ANAHEIM)
- (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 annual basis. (ANAHEIM)
- (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. (ADDED FOR NOISE & PUBLIC SAFETY PURPOSES)
- (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. (ANAHEIM)
- (g) *Parking.* Parking shall be provided at 17 spaces per 1,000 square feet of gross floor area. (ANAHEIM)
- (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. (ANAHEIM)
- (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. (ANAHEIM)
- (j) *Entertainment Prohibited.* No entertainment, as defined by Title 9, Chapter II, Article 11 of 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. (ANAHEIM)
- (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. (COMBINED STANDARDS FROM ANAHEIM & WESTMINSTER)
- (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. (COMBINED STANDARDS FROM ANAHEIM & WESTMINSTER)
- (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. (ANAHEIM)
- (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 or suites. Smoking lounges that include the indoor heating of coals shall install a mechanical exhaust hood system to provide required ventilation. (MODIFIED STANDARDS FROM ANAHEIM)
- (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. (ADDED FOR NOISE & PUBLIC SAFETY PURPOSES) ”

SECTION 3: EXISTING, LEGAL NONCONFORMING SMOKING LOUNGES. The two existing smoking lounges located at 2470 Newport Boulevard and 698 W. 19th Street 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 lounge area shall be permitted.

e. No changes to the size of the current lounge area shall be permitted.
(ANAHEIM INCLUDES A SIMILAR PROVISION FOR LEGAL NONCONFORMING BUSINESSES)

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.

COSTA MESA MUNICIPAL CODE
Title 8 – Health and Sanitation

CHAPTER V. - SMOKING IN PUBLIC FACILITIES

Sec. 8-131. - Purpose and findings.

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.

Sec. 8-132. - Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- (a) City-owned sports facilities means any area of cleared enclosed land, as well as any facilities adjacent to it, used primarily for sporting events, which is owned and/or run by the city, and shall include, but is not limited to, the Jack Hammett Sports Complex at 2750 Fairview Road, the TeWinkle Athletic Complex at 970 Arlington Drive, the Luke Davis Field at 570 W. 18th Street, Downtown Aquatic Center at 1860 Anaheim Avenue. "City-owned sports facilities" shall not include sports fields owned by the Newport Mesa Unified School District.
- (b) City-owned community gardens means a plot of cultivated ground, which is owned and/or run by the city and is made available to the citizens in whole or in part to the growing of herbs, fruits, flowers, or vegetables for household use, and includes but is not limited to, the Hamilton Community Garden at 523 Hamilton Street, and the Del Mar Community Garden at 170 Del Mar Avenue.
- (c) Public facility means and includes any of the following, which is owned, leased or operated by the City of Costa Mesa, a California municipal corporation, but does not include facilities used as multifamily residential buildings:
 - (1) Any building, structure or room within a building enclosed by a roof and four (4) walls with appropriate openings for ingress and egress.
 - (2) Any motor vehicle enclosed by a roof with appropriate openings for ingress and egress.
- (d) Park shall have the same meaning as section 12-1 of the Costa Mesa Municipal Code.
- (e) Smoke or smoking means and includes any of the following:
 - (1) The consumption of tobacco products by burning, inhalation, or other forms of ingestion.

- (2) The holding or carrying of a lighted 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.

Sec. 8-133. - Smoking prohibited.

Smoking is prohibited and is unlawful within all areas posted as a no smoking area by the city by signs of sufficient number and posted in such locations as to be readily seen by persons within such area, including but not limited to:

- (a) Public facilities as defined in section 8-132(c).
- (b) Within any park.
- (c) Within fifty (50) feet of any park perimeter, provided that if any such perimeter encroaches on private property, this section's prohibition shall not apply to the private property. This prohibition shall also not apply to persons and vehicles in route along the public streets and sidewalks.
- (d) Within the parking lot and enclosed fenced areas of all city-owned sports facilities, grounds or structures.
- (e) Within the parking lot and enclosed fenced areas of city-owned community gardens.

Sec. 8-134. - Disposal of waste.

It shall be unlawful to dispose of any part of any tobacco product including, but not limited to, cigars and cigarettes or any other combustible substance, in any place where smoking is prohibited.

Sec. 8-135. - Administration.

The no smoking regulations established by this chapter shall be administered by any city employee authorized to enforce violations of this Code or state laws.

Sec. 8-135.1. - Violations and penalties.

- (a) Any violation of section 8-133 shall be punishable in accordance with the provisions set out in section 1-33 of this Code.
- (b) Ejection. Any person who violates section 8-133 shall be subject to ejection from the park by any city employee authorized to enforce violations of this Code or state laws.
- (c) Three or more violations of section 8-133 by the same individual within any twelve-month period within the same park, sports facility or community garden is declared to be a public nuisance and may be abated by the city through civil proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances, including but not limited to, the remedies provided for in section 1-33 of this Code. Any such individual may be ordered to stay away from the public facility,

sports facility or community garden where the violations occurred for up to twelve (12) months following the most recent violation.

(Ord. No. 11-12, § 1, 11-15-11)

FOOTNOTE(S):

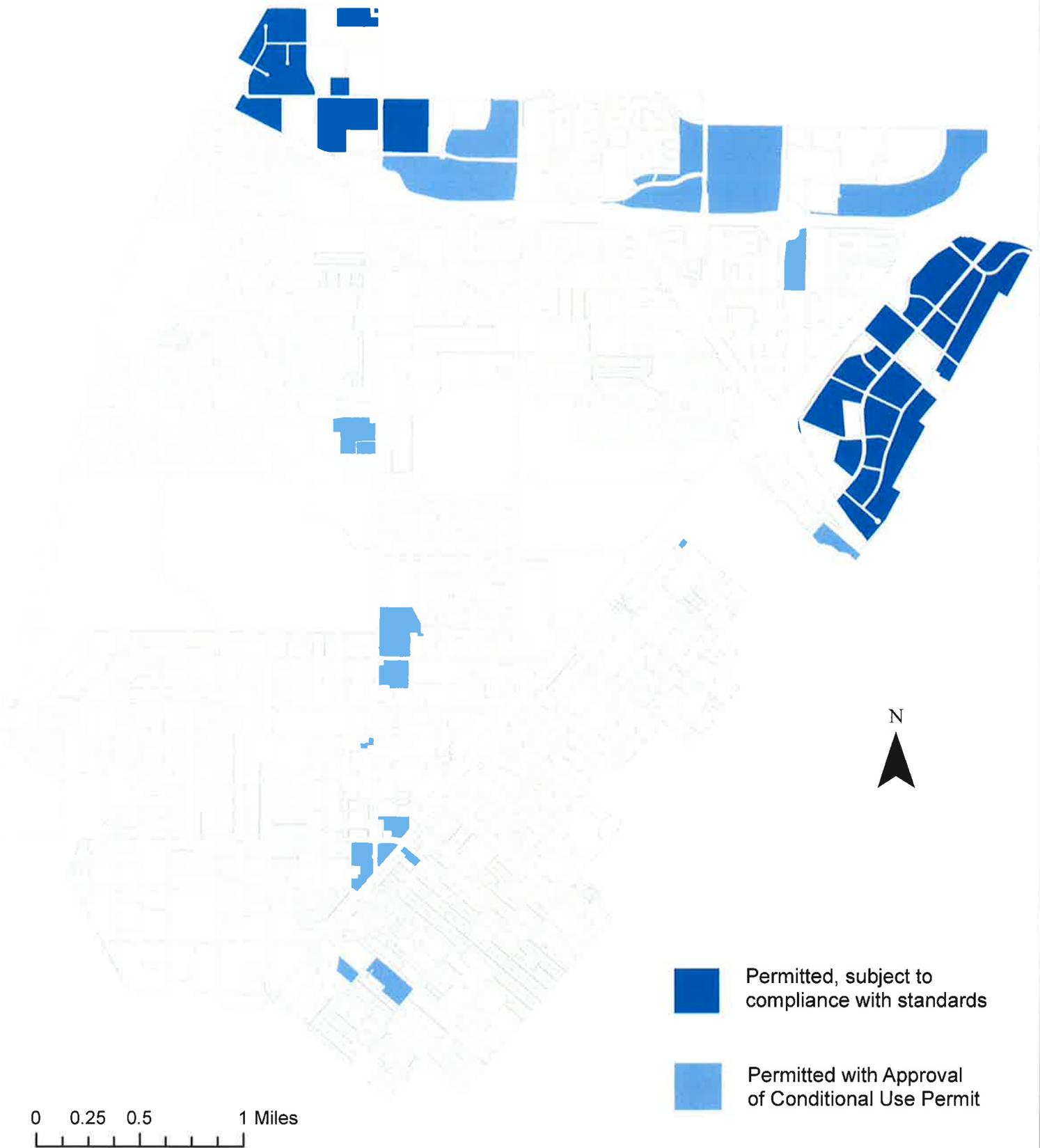
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Editor's note— Ord. No. 11-12, § 1, adopted November 15, 2011, amended Ch. V in its entirety to read as herein set out. Former Ch. V, §§ 8-131—8-135, pertained to similar subject matter, and derived from Ord. No. 91-16, § 1, 6-17-91.

Cross reference— Fire code amendments re no smoking, § 7-35.

Permissible Zones for New Smoking Lounges

Attachment 5





**PUBLIC HEALTH SERVICES
HEALTH PROMOTION**

Attachment 6

RICHARD SANCHEZ, MPH
ASSISTANT DIRECTOR

DAVID M. SOULELES, MPH
DEPUTY AGENCY DIRECTOR

DONNA S. FLEMING, DrPA, MSW, LCSW
CHIEF OF OPERATIONS

AMY BUCH, MA
DIVISION MANAGER

12 CIVIC CENTER PLAZA, SUITE 127
SANTA ANA, CA 92701

TELEPHONE: (714) 834-5728
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E-MAIL: abuch@ochca.com

April 9, 2015

Claire Flynn
Assistant Community Development Services Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Ms. Flynn:

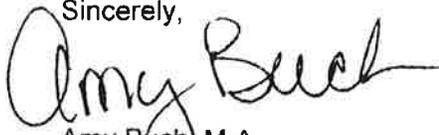
We, at the Orange County Health Care Agency, appreciate the steps that the City of Costa Mesa has taken to promote the health of Costa Mesa residents. We know that the Planning Commission is exploring ways to reduce exposure to environmental tobacco smoke from hookah and other tobacco products as well as the aerosol from electronic nicotine delivery systems (ENDS). Attached, you will find for your consideration the following fact sheets:

- Vital Signs: Second Hand Smoke an Unequal Danger: Centers for Disease Control and Prevention February 2015
- Hookah Tobacco is Unsafe: California Department of Public Health January 2011
- Protect Your Family from E-Cigarettes The Facts You Need to Know: California Department of Public Health June 2014

These fact sheets are provided to give you more information about the health effects from second hand smoke, hookah and ENDS.

Orange County, California has one of the lowest smoking rates in the United States with an adult smoking rate of 12% and a youth smoking rate of 9.8%. Furthermore, according to the recent California Healthy Kids Survey results, 7% of 7th graders, 12% of 9th graders and 16% of 11th graders have used an ENDS in the past month. Community partners, such as the City of Costa Mesa, are essential to providing an environment where all Orange County residents can lead healthy lives.

Sincerely,


Amy Buch M.A.
Division Manager

Secondhand Smoke: An Unequal Danger



58 million

1 in 4 nonsmokers (58 million people) in the US are still exposed to secondhand smoke (SHS).

2 in 5



About 2 in every 5 children (including 7 in 10 black children) are exposed to SHS.



1 in 3

More than 1 in 3 nonsmokers who live in rental housing are exposed to SHS.

No level of secondhand smoke (SHS) exposure is safe. SHS exposure occurs when nonsmokers breathe in smoke exhaled by smokers or from burning tobacco products. It kills more than 400 infants and 41,000 adult nonsmokers* every year. Exposure to SHS among US nonsmokers has declined, but progress has not been the same for everyone. SHS exposure is more common among children ages 3 to 11 years, blacks, people living below the poverty level, and those who rent housing.

State and city officials can help protect children and adult nonsmokers from SHS in the places they live, visit, and work by using proven methods to eliminate smoking in:

- ◇ Indoor areas of all public places such as restaurants, bars, casinos, and other private worksites.
- ◇ Multiunit housing such as apartments, condominiums, and government funded housing.

*Infant deaths due to secondhand smoke-related Sudden Infant Death Syndrome. Deaths among nonsmoking adults due to secondhand smoke-related lung cancer and heart disease.

→ See page 4
Want to learn more? Visit

www.cdc.gov/vitalsigns

Problem

*58 million nonsmokers
in the US are still exposed
to secondhand smoke.*

Who is most at risk?

SHS exposure dropped by half from 1 in 2 nonsmokers in 1999-2000 to 1 in 4 nonsmokers in 2011-2012, but exposure **remains especially high** for certain groups.

- ◊ **2 in 5 children (about 15 million) ages 3 to 11 are exposed** to SHS.
- ◊ **Nearly half of black nonsmokers are exposed to SHS, including 7 in 10 black children.**
- ◊ **More than 2 in 5 nonsmokers who live below the poverty level are exposed to SHS.**
- ◊ **More than 1 in 3 nonsmokers who live in rental housing are exposed to SHS.**

Homes are a major source of exposure.

Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to SHS. Half of the US population is covered by state or local smokefree laws that do not allow indoor smoking in worksites and public places, including restaurants and bars. Most people have adopted smokefree rules in their home. Still, exposure in the home remains a significant problem.

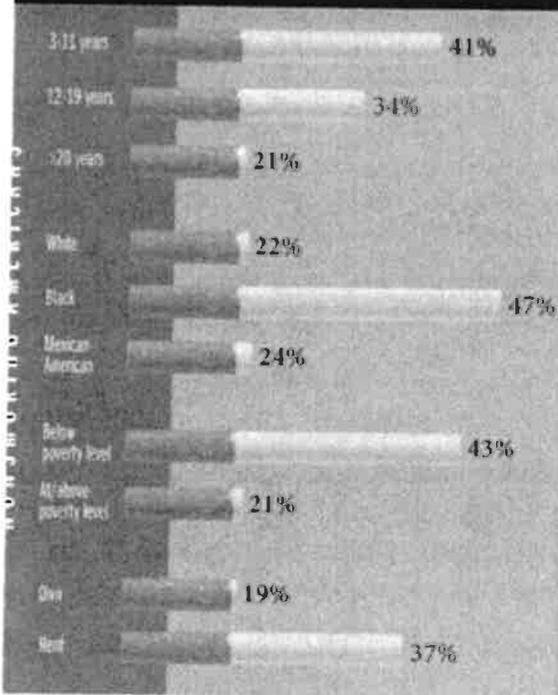
- ◊ The home is the primary source of SHS exposure for children.
- ◊ About 80 million (1 in 4) Americans live in multiunit housing and can be exposed to unwanted SHS in their homes. SHS from units or common areas where smoking occurs can seep into smokefree units.
- ◊ Many who live in public housing are especially affected by SHS, including children, the elderly, and people with disabilities.



Secondhand smoke and the **harmful** chemicals in it are known causes of **Sudden Infant Death Syndrome, RESPIRATORY INFECTIONS, ear infections,** and **asthma attacks** in infants and children.

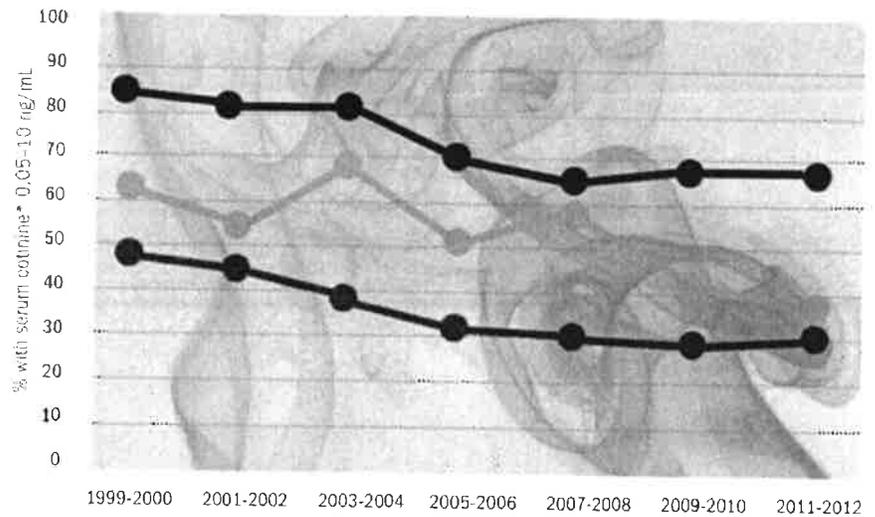
They are also known causes of **HEART DISEASE, stroke,** and **lung cancer** in adult nonsmokers.

Some groups have higher exposure to secondhand smoke and its harmful effects



SOURCE: National Health and Nutrition Examination Survey Data 1999-2012.

Exposure to secondhand smoke differs among children ages 3-11 by race/ethnicity



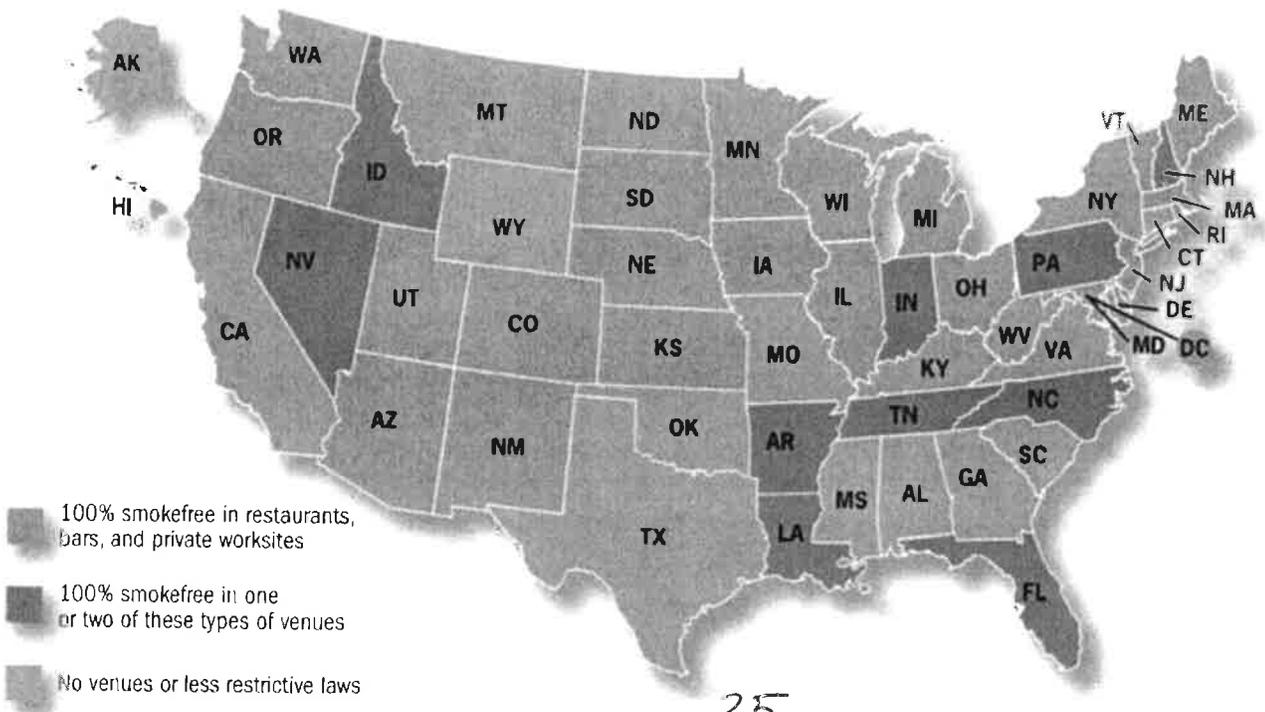
- Non-Hispanic black children
- Non-Hispanic white children
- Mexican-American children

*Data come from measuring cotinine, which is a marker of secondhand smoke exposure found in the blood.

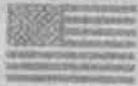
SOURCE: National Health and Nutrition Examination Survey Data 1999-2012.

Statewide Smokefree Laws

Statewide smokefree indoor air laws for restaurants, bars, and private worksites vary from state to state.



What Can Be Done



Federal government is

- ◊ **Monitoring SHS exposure**, educating the public about the dangers of SHS, conducting research, funding programs that work to reduce tobacco use and exposure to SHS in public places, and regulating tobacco products.
- ◊ **Funding and promoting tobacco education campaigns**, such as CDC's *Tips From Former Smokers* (www.cdc.gov/tips), that teach people how smoking and SHS exposure can harm them.
- ◊ **Encouraging smokefree policies in subsidized and public housing.**
- ◊ **Creating tobacco- and smoke-free environments for employees, customers, and partners.**



States and communities can

- ◊ **Work to prohibit smoking** in all indoor public places and worksites, including restaurants, bars, and casinos.
- ◊ **Support efforts** to prohibit smoking in multiunit housing.
- ◊ **Fund comprehensive tobacco prevention and control programs** at CDC-recommended levels to reach underserved populations, including those with the greatest burden of SHS exposure.

www.cdc.gov/vitalsigns/tobacco

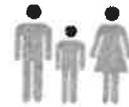
www.cdc.gov/mmwr

For more information, please contact
Telephone: 1-800-CDC-INFO (232-4636)
TTY: 1-888-232-6348
Web: www.cdc.gov
Centers for Disease Control and Prevention
1600 Clifton Road NE, Atlanta, GA 30333
Publication date: 2/03/2015

Doctors, nurses, and other health care providers can



- ◊ Ask their patients whether they use tobacco products, encourage those who do to quit, and provide help with quitting.
- ◊ Encourage their nonsmoking patients to avoid exposure to SHS where they work, live, and gather.
- ◊ Talk with their patients about the dangers of SHS.



Everyone can

- ◊ Call 1-800-QUIT-NOW or go to www.smokefree.gov for free help, if they or someone they know smokes and wants to quit.
- ◊ Make their homes and vehicles 100% smokefree. Opening a window or using fans or air fresheners does not protect nonsmokers from the dangers of SHS.
- ◊ Not allow anyone to smoke around children and avoid all public places where smoking is allowed.
- ◊ Talk to children about why they shouldn't smoke or be around SHS.

(Visit www.cdc.gov/tobacco/data_statistics/sgr/2012/)



HOOKAH TOBACCO IS UNSAFE

What Are Hookahs?

- Hookahs are glass or metal waterpipes that originated in India. They are shaped somewhat like a bottle and have long, flexible hoses with tips that people put into their mouths to inhale tobacco smoke. In most hookahs, hot charcoal is placed on top of tobacco in a bowl to heat it.¹ The tobacco, or shisha, is typically flavored, and contains the same chemicals found in all tobacco, including nicotine.²
- In recent years, there has been tremendous growth in the number of hookah bars and lounges in California.^{3,4,5} Hookah smoking is **increasingly popular among underage youth and young adults**, exposing them to both tobacco use and secondhand smoke.⁶ Many of these young people do not think that hookah smoke is as harmful and addictive as cigarette smoke.⁷

Why Are Hookahs Harmful?

- Smoking hookah for 45-60 minutes can be equivalent to smoking 100 or more cigarettes.⁸
- Secondhand hookah smoke contains the same cancer-causing chemicals found in secondhand smoke from cigarettes.
- In addition, the charcoal used in the tobacco heating process produces the toxin carbon monoxide.⁹
- In 2005, the World Health Organization (WHO) issued an Advisory Note about hookah use, stating that people who smoke hookah pipes or who are exposed to secondhand hookah smoke are at risk for the same diseases that are caused by smoking cigarettes, including:
 - Cancer
 - Heart disease
 - Respiratory disease
 - Adverse effects during pregnancy
- The WHO Advisory Note also warned that sharing a waterpipe mouthpiece poses a serious risk of transmission of communicable diseases, including tuberculosis and hepatitis.¹⁰
- The proliferation of hookah bars and lounges in California is leading to a growing public acceptance of smoking. This threatens to setback twenty years of progress in reducing tobacco-related death and disease.

How Can Hookah Bars and Lounges Allow Indoor Smoking?

- While smoking inside restaurants and bars has been banned since 1998 in California, the Smoke-Free Workplace law (Labor Code Section 6404.5) includes twelve exemptions that allow smoking in certain indoor workplaces.
- Hookah bars and lounges typically claim they operate as tobacco shops and private smokers' lounges, which are among the businesses that can allow indoor smoking under exemptions in California's Smoke-Free Workplace law.
 - The California Smoke-free Workplace law defines a tobacco shop as a business establishment whose "main purpose" is to sell tobacco products. Unfortunately, the definition of "main purpose" is unclear.



- For example, some hookah bars and lounges have obtained licenses to sell alcohol, serve food and nonalcoholic beverages, and provide entertainment –operating more like a bar or restaurant where smoking inside is prohibited under state law. The assertion that the “main purpose” of these businesses is the sale of tobacco is questionable.
- Other hookah bars and lounges assert that the business is owner-operated and has no employees and is therefore exempt from the state labor law.
- It is unfair that hookah bars and lounges are trying to take advantage of ambiguities in the law to allow indoor smoking, while other similar businesses (bars and restaurants) are following the law.
- The ambiguity and contradictions in state law make enforcement by cities and counties throughout California difficult. Investigating claims that hookah bars and lounges are violating the state Smoke-Free Workplace law can be time-consuming and challenging because of these seemingly contradictory interpretations of business classifications and permitting and licensing requirements and standards.

All California workers deserve to be protected from secondhand smoke. All businesses should be on a level playing field, required to abide by the same rules when it comes to protecting California's workers from secondhand smoke exposure. It's time to close the loophole on hookah bars and lounges.

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 HOW DO I PROTECT MY FAMILY AND FRIENDS?

Nicotine is a poison. Never leave e-cigarettes or e-liquids where children can get them. Immediately call the California Poison Control System at 1-800-222-1222 if any e-liquid is swallowed, gets on the skin or in the eyes.

Never allow the use of e-cigarettes in your home. They pollute the air and are harmful to you and your family.

Pregnant and breastfeeding women, children and teens should never use e-cigarettes or be exposed to the aerosol due to the harm nicotine may cause to brain development.

Support policies that do not allow e-cigarettes to be used indoors and where children are present.

If you use e-cigarettes or other tobacco products, call for free help with quitting: 1-800-NO BUTTS (1-800-662-8887).

For more information, visit
www.cdph.ca.gov/programs/tobacco



Funded by the Centers for Disease Control and Prevention
under Grant # 2U58DP002007-06, 2014.

PROTECT YOUR FAMILY FROM E-CIGARETTES

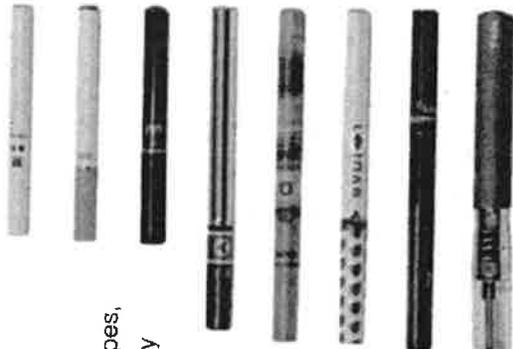
The Facts You Need to Know



THE FACTS YOU NEED TO KNOW

WHAT ARE E-CIGARETTES?

E-cigarettes are devices that use a battery to heat a liquid nicotine solution ("e-liquid"). The heated e-liquid creates an aerosol that is breathed into the lungs.



E-cigarettes go by other names such as e-cigs, e-hookahs, hookah pens, vapes, vape pens or mods. They come in many shapes and sizes. Some can only be used once, while others can be refilled. Others have a tank which may hold large amounts of e-liquid containing nicotine, flavorings, and other chemicals.

E-cigarettes are also used to smoke illegal substances like marijuana and hash oil.

WHY ARE THEY DANGEROUS?

E-cigarettes contain nicotine and chemicals that can cause cancer, birth defects or other health problems.

E-cigarettes and e-liquids come in fruit and candy flavors that appeal to children who may taste or drink the e-liquid.

E-liquids are poisonous if swallowed, and are harmful if the liquid gets on skin or in the eyes. The e-cigarette batteries are also poisonous if swallowed.



AREN'T THEY SAFER THAN TOBACCO CIGARETTES?

E-cigarettes contain harmful chemicals, but not as many as regular cigarettes.

E-cigarettes produce an aerosol, not water vapor. The aerosol is a mixture of chemicals and small particles that can hurt the lungs just like cigarette smoke.

E-cigarettes are just as addictive as regular cigarettes.

People can become addicted to nicotine from using e-cigarettes and then may start using regular cigarettes.



DO E-CIGARETTES HELP SMOKERS QUIT?

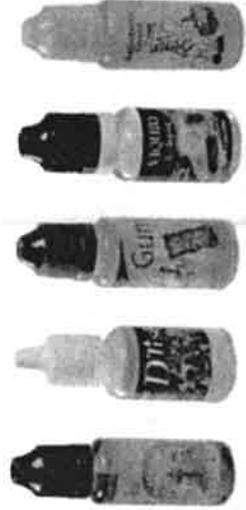
Studies show that e-cigarettes do not help people quit smoking cigarettes. Instead, many people end up using both products.

Over-the-counter and prescription medicines are widely available and very effective at helping people quit smoking cigarettes.



ARE THEY SAFE TO SMOKE INDOORS?

No. E-cigarettes pollute the air with tiny particles that get trapped in the lungs. Just like regular cigarettes, the pollution from e-cigarettes may hurt others.



Attachment 7

Existing Businesses in Costa Mesa

	Business Name	Address	Products Sold	Hours	Zone
SMOKING LOUNGES					
1)	Orange County Cigars LLC	2470 Newport Blvd	Cigars	12pm-10pm (W-F) 3pm-10pm (Sa Su)	C1
2)	Coastline Hookah Lounge (formerly "Sultana Hookah")	698 W 19th Street	Hookah	Permitted to open until 11pm	C1
TOBACCO RETAILERS					
1)	Vapor Labs	2200 Harbor Blvd, Suite E-160	E-Cigarettes	11am-8pm	C1-S
2)	Vaping Industries	333 E 17th Street, Suite 21A	E-Cigarettes	10am-9pm	C1
3)	Mesa Vape	891 W Baker Street, Suite B-11	E-Cigarettes	9am-9pm	CL
4)	Break Time Vape	1500 Adams Ave, Suite 104B	E-Cigarettes	10am-10pm	C1
5)	VaP Vaporizers	3033 Bristol Street, Suite J	E-Cigarettes	11am-10pm	C1
6)	Local Vape	1525 Mesa Verde Drive E, Suite 114	E-Cigarettes	9am-10pm	C1
7)	Vapor Shot	1776 Newport Blvd (Inside Triangles Gallery)	E-Cigarettes	10am-10pm	C2
8)	Vapor Solutions	1779 Newport Blvd (2nd Floor)	E-Cigarettes	11am-10pm	C2
9)	Flawless Vapes & Supplies	1834 Newport Blvd, Suite E	E-Cigarettes	10am-10pm	C2
10)	The Tinder Box	3333 Bear St, Suite 136 (Inside South Coast)	Cigars	10am-9pm	PDC
11)	Purple Haze	1779 Newport Blvd (1st Floor)	All Types	10am-10pm	C2
12)	Empire Tobacco	1175 Baker Street, Suite 10-D	All Types	10am-7:30pm	C2
13)	Up in Smoke Smoke Shop	270 Bristol Street, Suite 101	All Types	10am-9pm	C1
14)	Up in Smoke	2750 Harbor Blvd, Suite A10	All Types	9am-10pm	C1
15)	9M Smoke Shop	522 W 19th Street	All Types	10am-12am	C2
16)	Dollar Mart Plus & Smoke Shop	516 W 19th Street	All Types	?	C2
17)	Shamrock Smoke Shop	2957 Harbor Blvd	All Types	10am-8pm	C1

PH-2



LUNGFORCE.ORG

AMERICAN LUNG ASSOCIATION IN CALIFORNIA
333 HEGENBERGER ROAD, SUITE 450, OAKLAND, CA 94621
phone: 510.638.5864 | fax: 510.638.8984

July 24, 2015

**STATE OFFICE/
GREATER BAY AREA**
333 Hegenberger Road
Suite 450
Oakland, CA 94621
510-638-5864

BAKERSFIELD
2025 Westwind Drive
Suite C
Bakersfield, CA 93301
661-847-4700

CHICO
25 Jan Court
Chico, CA 95928
916-554-5864

FRESNO
1782 E. Bullard Avenue
Suite 103
Fresno, CA 93710
559-222-4800

LOS ANGELES
3325 Wilshire Blvd.
Suite 900
Los Angeles, CA 90010
213-384-5864

ORANGE COUNTY
513 E. 1st Street
Suite B
Tustin, CA 92780
714-835-5864

SACRAMENTO
1531 I Street
Suite 201
Sacramento, CA 95814
916-554-5864

SAN BERNARDINO
441 Mac Kay Drive
San Bernardino, CA 92408
909-884-5864

SAN DIEGO
2750 Fourth Avenue
San Diego, CA 92103
619-297-3901

Claire Flynn
Assistant Community Development Services Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Ms. Flynn:

The American Lung Association in California is the leading public health organization fighting to reduce and prevent the harmful effects of tobacco use. With a mission of saving lives and improving the health of Californians and their lungs, the Lung Association support the Costa Mesa's strong commitment to protect the public health by prohibiting the use of electronic cigarettes where smoking is prohibited and limiting the locations of smoking lounges, including vapor and hookah lounges.

The Lung Association is concerned that very little is known about the health effects of electronic cigarettes and of the vapors they release, or what the health consequences of them might be. Two initial studies have found formaldehyde, benzene and tobacco-specific nitrosamines (a cancer-causing chemical) coming from the secondhand emissions from e-cigarettes. While we have a lot more to learn about these products, it's clear that there is much to be concerned about and there's a lot more than just 'water vapor' in these products. In addition, it is important to note that e-cigarettes have not been approved by the U.S. Food and Drug Administration (FDA) to be safe and effective in helping smokers quit cigarettes. More recently, the California Department of Public Health and the state health officer issued a Health Advisory and report warning Californians of the toxicity of e-cigarettes.

And finally, it's worth highlighting that the e-cigarette industry appears to be using the same playbook as the cigarette companies did a generation ago. We are deeply concerned that these products are starting kids on a lifetime addiction to nicotine. According to one researcher, there are more than 250 e-cigarette brands for sale today, over half of which offered fruit or candy-flavors. We've seen candy flavors including Captain Crunch, gummy bear, cotton candy, Atomic Fireball and fruit loops.

It is critical for communities to remain on the cutting edge in protecting their residents, especially their young people, from new and emerging tobacco products. Maintaining your current Tobacco Retailer Licensing policy language will do just that.

Sincerely,

Kimberly Amazeen
Vice President, Public Policy & Advocacy

Visit lung.org/california

Watch youtube.com/californialung

Like facebook.com/alacalifornia

Follow twitter.com/californialung

Letter of Opposition To Inclusion Of Electronic Cigarettes in Costa Mesa's Amended Smoking Ordinances.

Dear Council Members,

My name is Mark Burton and I am a fifth generation Southern Californian resident. In July of 2012 I had a heart attack. Among the primary causes for the attack was my 30-year, two packs of cigarettes a day habit. After my heart attack, I knew I had to quit. I had tried all of the big pharmaceutical company products including the patches, nicotine gum, Wellbutrin and Chantix; in other words, I had tried everything that the American Heart Association, American Cancer Association and American Lung Association recommended. Nothing had worked and the drugs had had significant side affects on me. I decided to give personal vaporizers, also known as E-cigarettes or "Ecigs" a chance. It was magic. Once I started on them, I never looked back. My health has improved substantially, to the point that I now work out four to five times as week including power walking/sprinting without having problems breathing traditionally associated with smoking.

I became very passionate about the personal vaporizer products and learned about the industry. My firm, a merchant bank (investment bank with a private equity fund inside of it) found the industry interesting as well and appointed me to head up consulting and financial services for our then new vaporizer practice group. In addition to helping these companies become more sustainable, I also joined the Smoke Free Alternatives Trade Association (SFATA), the largest trade organization in the world for vapor companies, as the Co-President for the Southern California Chapter. I do this as a volunteer and receive no compensation for my efforts as I see the amazing potential for this new technology on so many levels. One critical factor for me in joining SFATA is the fact that it has no members who are owned or controlled by "Big Tobacco."

Today, you are considering amending your smoking ordinances to include Ecigs in its zoning and usage prohibitions. I would urge you as council members to take into consideration the potential negative consequences of over-regulation, particularly of imposing restrictions upon the sale/usage and consumer access to these products when Costa Mesa is one of the Meccas of the vapor industry.

Costa Mesa is the home to numerous vapor product manufacturers, distributors and retailers. The city has amongst the most vapor related businesses in the nation. As such, these companies provide a wide range of benefits to the Costa Mesa. These include both direct and indirect jobs (most vapor industry jobs including retail pay more than the current minimum wage), a strong tax base and strengthen the city's reputation as a friendly place for small to mid-sized closely held and/or family owned businesses.

Received
City of Costa Mesa
Development Services Department

JUL 27 2015

There are numerous implications of the proposed zoning ordinances that would have a negative impact upon these vapor businesses and in turn upon the city itself.

Perhaps the most troubling would be the potential to ban the use of vapor products inside of vapor retailers and manufacturing facilities. Taking the retail locations first; if vapor retailers are not allowed to provide their clientele with the ability to try the devices and E-liquids, their clients will not purchase from them. The customer need only go a few blocks outside of Costa Mesa to be able to try products and make educated purchasing decisions. The only people who will be in Vapor stores are those who are interested in making the switch from cigarettes or who are ongoing customers and have either reduced or completely ended their use of traditional cigarettes. There is no logical basis for this provision of the amendment unless one's goal is to close down retail businesses in Costa Mesa.

If the council members visited vapor dedicated stores both in Costa Mesa and in the surrounding areas, you will find that all of the responsible ones have existing signs stating that no one under the age of 18 is allowed to purchase any item, try any product or even be in the store. In fact, all the stores I know, will request a minor to leave the premises immediately. Additionally, SFATA has rolled out it's "Age to Vape" program that has every retailer member of our organization placing a sign in the store similar to those found in liquor stores advising people of how old they need to be to vape.

Further, research and development of new flavors is a critical component to the success of E-liquid manufacturers. Forbidding vaping within their facilities would eliminate their ability to formulate new products and therefore would end their ability to provide smokers and ex-smokers with flavors that help them achieve their goals. This in turn would inevitably lead consumers to go elsewhere, or continue smoking, and thus to business failure. Clearly, no business will accept this fate and these firms will leave Costa Mesa for other cities resulting in an increase in unemployment and a decrease in the city's tax revenues.

Given that the proposed amendments would have far reaching consequences for residents of the City of Costa Mesa, including both smokers and ex-smokers who have switched to vaping and find it beneficial, employees who rely on these businesses for their living, along with entrepreneurs who invested their money into building a business around both a technology they believe in and in a city they believe progressive enough to support them, it would only be appropriate for the City Council to learn more about the vapor industry and engage vapor consumers, business owners and organizations in a dialog before making a decision that will have significant effect upon all of the stakeholders in the vaping industry.

The report to the Council raises a number of different concerns. Among them is a statement that the Federal Food and Drug Administration (FDA) has not regulated E-cigs. This statement is in fact, only partially true. The FDA is in the midst of promulgating those regulations at this very moment. It is expected that their regulations will be published and implementation of those regulations will begin within the next few months. In addition, the California legislature will be considering a number of different bills related to the vapor industry in August. Given that both the federal and state governments are currently working regulatory schemes, any action by the City Council would be premature before seeing what the FDA and state of California decide to do.

Another concern noted in to the council is that enforcement is difficult for law enforcement due to their prospective inability to tell the difference between smoke and vapor. While on its face this looks to be a semi-legitimate argument, the exact same comparison can be made between vodka and water. I think we would all agree that it would be silly to ban water due to visual similarities. I would further note that vapor does not smell anything like smoke and the vapor dissipates very quickly leaving behind no ambient odor. Additionally, most vapor products that fall into the open tank system classification have little to no resemblance to a traditional cigarette. It should be noted that no Big Tobacco companies currently have products in this segment of the vapor industry.

At this time, I would ask that the City Council members take more time to learn about the industry and the technology and to meet with myself and other stakeholders in the vapor industry. The proposed amendments to the smoking laws that you are considering will have an affect on smokers looking for an alternative, vapors looking to continue being ex-smokers, the owners of small businesses that have put their life's savings into their business along with the employees of those stores.

Thank you for your time and consideration.

Mark Burton, JD CMAA