

City of Hesperia

STAFF REPORT



Green Sheet item information received after the posting of the agenda.

DATE: March 7, 2017

TO: Mayor and Council Members

FROM: Nils Bentsen , City Manager

BY: Mike Blay, Director of Development Services
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SUBJECT: Consideration of Ordinance No. 2017-05 adopting an Urgency Interim Ordinance Pursuant to California Government Code Section 65858 imposing a moratorium on certain problematic uses

RECOMMENDED ACTION

That the City Council adopt the interim urgency ordinance, as an urgency measure pursuant to California Government Code Section 65858, imposing a forty-five (45) day moratorium, to take effect immediately upon adoption, on the installation and establishment of the following problematic uses:

1. Gold exchange and pawnshop businesses;
2. Hydroponic stores;
3. Hookah lounges, smoking lounges, vape shops and smoke shops; and
4. Businesses that allow for the sale of drug paraphernalia.
5. Money service businesses.

BACKGROUND

In recent years, the City of Hesperia has experienced deteriorating commercial neighborhoods, as well as increased public safety costs, which negatively impact the quality of life within Hesperia and compromises Hesperia's ability to provide services and attract new businesses. The City finds the negative impacts are adversely affecting the commercial lease rates and therefore are attracting less desirable and more problematic businesses in the City. The City finds that these problematic businesses include: 1. gold exchange and pawnshop businesses; 2. hydroponic stores; 3. hookah lounges, vape shops and smoke shops; and 4. businesses that allow for the sale of drug paraphernalia; and 5. money service businesses (herein collectively referred to as "problematic uses"). Money service businesses include, but are not limited to, payday loan, check cashing and car title loan businesses. In addition, in 2015, the City of Victorville adopted an ordinance prohibiting new establishments of these types of businesses. As such, Hesperia has experienced additional requests to locate these businesses in the City.

Based on the reasons listed below, these problematic uses pose a current and immediate threat to the general health, safety and welfare of Hesperia and its residents and recommended that the City Council amend the Hesperia Municipal Code to regulate and/or prohibit these problematic uses.

ISSUES/ANALYSIS

Problematic Uses of Gold Exchange and Pawnshop Businesses

Gold exchange and pawnshop businesses are associated with a higher volume of police calls than other businesses in Hesperia and are indirectly linked to other crimes by being in the business of exchanging goods for money and/or their tendency to keep large amounts of cash on-site. Gold exchange and pawnshop businesses enhance and expedite the ability of criminals to receive cash in exchange for stolen goods because they provide a location and a means to dispose of stolen property.

Problematic Uses of Hydroponic Stores

Hydroponic stores are directly linked to crime and illegal activity by being in the business of supporting the use and cultivation of marijuana, a Schedule 1 narcotic as defined by the United States Controlled Substances Act. These stores typically provide all the necessary supplies and general information used to cultivate marijuana. Stand-alone hydroponic stores became prevalent in urbanized areas only after California medical marijuana laws were passed. As hydroponic stores are typically associated with marijuana cultivation, they contribute to an increased amount of illegal narcotics within Hesperia.

Problematic Uses of Hookah Lounges, Vape Shops and Smoke Shops

Hesperia has a larger population percentage of minors (36%) as compared to the state average (25%) and therefore has a higher number of minors at risk of exposure to tobacco products and services. The U.S. Food and Drug Administration (FDA) does not currently regulate electronic smoking devices and the potential health risks of vaping are not yet fully understood by the general population, especially youth.

Under California law, it is currently illegal to sell an electronic cigarette device to a minor; however, this law does not prohibit minors from purchasing e-liquids that are sold separately from the electronic smoking device, including both nicotine-based liquids and non-nicotine liquids. Since vape shops increasingly sell e-liquids (including candy and fruit varieties) separately from the electronic smoking devices, it is necessary for the City to regulate or prohibit these establishments. Hookah lounges, vape shops and smoke shops create a social environment where people can gather to vape and smoke; sometimes, these businesses will also have TVs, a DJ, or food and drink. The use of electronic smoking devices and other smoking devices indoors undermines existing clean indoor air laws and exposes customers and employees to potentially hazardous chemicals, such as formaldehyde, acetaldehyde, lead, nickel, and chromium. In addition, over 8 percent of all tobacco retailers statewide were witnessed unlawfully selling to minors in 2012, and tobacco stores (defined as businesses in which at least 80 percent of merchandise was tobacco products) sold to minors at a much higher rate than the statewide average, as high as 20.5 percent according to the 2012 report by the State Health Officer's Report on Tobacco Use and Promotion in California by the California Department of Public Health. Finally, many cigarette, tobacco, vape and smoke shops sell items that are commonly known to be drug paraphernalia, including bongs and pipes used to smoke methamphetamine and other illicit drugs, and claim that such items are intended for tobacco use.

Problematic Uses of the Sale of Drug Paraphernalia

California law prohibits the sale of "drug paraphernalia," nevertheless many retailers sell items that are commonly known to be "drug paraphernalia," including bongs and pipes used to smoke methamphetamine and other illicit drugs, claiming that such items are intended for tobacco use. The City has seen a proliferation and concentration of retailers who sell drug paraphernalia in recent years.

Negative Effects of Money Service Businesses

Allowing money service businesses in certain zoning areas may create or exacerbate undue concentrations of businesses in the City offering short-term, high interest loans near or adjacent to residential areas. This is a concern because these businesses generally make a profit by taking advantage of residents who are low income and in need of money quickly. A borrower will agree to a short-term loan with a high interest rate, using his/her car title, or other personal asset, as collateral. Oftentimes, because the interest rate on the loans is so high, the borrower is not able to make timely loan payments. Once the borrower defaults, he/she is then forced to surrender the car or other personal asset to repay the loan.

The number of check cashing businesses has increased sharply in the past years throughout the State of California and in the City of Hesperia. Such increases have had a negative impact on low-income minority communities which appear to be the targets of check cashing or cashier businesses. A study by the Urban Law and Public Policy Institute revealed that 57% of African-Americans and 49% of Hispanics live within one (1) mile of a check cashing business. In addition 42% of households with incomes of less than \$25,000 live within one (1) mile of check cashing business in California. A study by the Progressive Policy Institute revealed that a traditional bank account is the first step toward giving low-income Americans access to mainstream tools for wealth creation now taken for granted by the middle-class. A statewide survey in California indicated that 28% of consumers without a traditional checking account cash their checks primarily at a check cashing institutions. According to the Federal Trade Commission and Consumer Reports, because of the high fees paid for these short-term loans and check cashing services, borrowers can become locked in a cycle of borrowing in which they may pay the equivalent of more than 900% annual percentage rate interest on their loan. In California, the fee for a payday loan can be up to \$17.50 for every \$100 borrowed, up to the maximum of \$300. The annual percentage rate for such a transaction is: 911% for a one-week loan; 456% for a two-week loan and 212% for a one-month loan.

The City, like many other cities in California, has found that limiting the establishment of money service businesses has helped prevent residents from impulsively committing to these loans by decreasing accessibility to these businesses. The City has found that the money service businesses constitute a threat to public safety and increase the economic and financial vulnerability of Hesperia residents.

Adoption of the Interim Urgency Ordinance

Pursuant to Government Code Section 65858, a city may adopt an interim ordinance, prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time, for the immediate preservation of the general health, safety or welfare, provided the ordinance contains a declaration of the facts constituting the urgency, and is passed by not less than a four-fifths

(4/5) vote of the City Council. The following problematic uses pose a current and immediate threat to the general health, safety or welfare of Hesperia: 1. gold exchange and pawnshop businesses; 2. hydroponic stores; 3. hookah lounges, smoking lounges, vape shops and smoke shops; 4. businesses that allow for the sale of drug paraphernalia and 5. money service businesses. With adoption of this Ordinance, the City will impose a forty-five (45) day moratorium on these problematic uses to study the effects of these problematic uses and a review of the regulatory mechanisms available until such time as a permanent Code Amendment is in full force and effect. For the reasons set forth herein above, the City should consider adoption of the forty-five (45) day moratorium which is necessary for preserving the general health, safety and/or welfare and to avoid a current, immediate and direct threat to the health, safety and/or welfare of the community.

FISCAL IMPACT

None.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

Ordinance No. 2017-05