

ORDINANCE NO. 2017-05

AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 IMPOSING A MORATORIUM ON CERTAIN PROBLEMATIC USES

WHEREAS, on January 5, 1998, the City Council of the City of Hesperia adopted Ordinance No. 250, thereby adopting the Hesperia Municipal Code; and

WHEREAS, On September 2, 2008, the City Council of the City of Hesperia adopted Ordinance No. 2008-12, thereby adopting the Main Street and Freeway Corridor Specific Plan; and

WHEREAS, in recent years the City of Hesperia has experienced deteriorating commercial neighborhoods and 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; and

WHEREAS, the negative impacts are adversely affecting the commercial lease rates and therefore are attracting less desirable and more problematic businesses in the City; and

WHEREAS, these problematic businesses include (i) gold exchange and pawnshop businesses; (ii) hydroponic stores; (iii) hookah lounges, smoking lounges, vape shops and smoke shops; (iv) businesses that allow for the sale of drug paraphernalia; and (v) money service businesses (collectively referred to as "problematic uses"). Money service businesses include, but are not limited to, payday loan, check cashing and car title loan businesses. These problematic businesses pose a current and immediate threat to the general health, safety and welfare of Hesperia and its residents based on the following findings set forth below; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, for the aforementioned reasons, gold exchange and pawnshop businesses pose an immediate threat to the general health, safety and welfare of the residents of Hesperia; and

WHEREAS, imposing a forty-five (45) day moratorium on gold exchange and pawnshop businesses will allow the City to initiate a study of the effects of gold exchange and pawnshop businesses in Hesperia and a review of the regulatory mechanisms available to regulate gold exchange and pawnshop businesses, including changes to the Municipal Code and the Main Street and Freeway Corridor Specific Plan, to protect the general health, safety, and/or welfare from the negative effects of gold exchange and pawnshop businesses; and

WHEREAS, until such time that the City concludes its review and possibly adopts new regulatory controls, the installation of gold exchange and pawnshop businesses and their

resulting negative effects will continue to pose a current and immediate threat to the general health, safety and/or welfare; and

WHEREAS, hydroponic stores are directly linked to crime and illegal activity by being in the business of supporting the use and cultivation of a Schedule 1 narcotic as defined by the United States Controlled Substances Act; and

WHEREAS, hydroponic stores typically provide all mediums, supplies, and general information used to cultivate marijuana; and

WHEREAS, stand-alone hydroponic stores became prevalent in urbanized areas only after California medical marijuana laws were passed; and

WHEREAS, hydroponic stores are typically associated with marijuana cultivation and may contribute to an increased amount of illegal narcotics within Hesperia; and

WHEREAS, for the aforementioned reasons, hydroponic stores pose an immediate threat to the general health, safety and welfare of the residents of Hesperia; and

WHEREAS, imposing a forty-five (45) day moratorium on hydroponic stores will allow the City to initiate a study of the effects of hydroponic stores in Hesperia and a review of the regulatory mechanisms available to regulate hydroponic stores, including changes to the Municipal Code and the Main Street and Freeway Corridor Specific Plan, to protect the general health, safety, and/or welfare from the negative effects of hydroponic stores; and

WHEREAS, until such time that the City concludes its review and possibly adopts new regulatory controls, the installation of hydroponic stores and their resulting negative effects will continue to pose a current and immediate threat to the general health, safety and/or welfare; and

WHEREAS, Hesperia has a larger population percentage of minors (36%) as compared to the state average (25%) and therefore has a higher number at risk of exposure to tobacco products and services; and

WHEREAS, 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; and

WHEREAS, 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; and since vape shops increasingly sell e-liquids (including candy and fruit varieties) separately from the electronic smoking devices, the City wishes to regulate or prohibit these establishments; and

WHEREAS, hookah lounges, smoking lounges, vape shops and smoke shops create a social environment where people can comfortably 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, for the aforementioned reasons, hookah lounges, smoking lounges, vape shops and smoke shops pose an immediate threat to the general health, safety and welfare of the residents of Hesperia; and

WHEREAS, imposing a forty-five (45) day moratorium on hookah lounges, vape shops and smoke shops will allow the City to initiate a study of the effects of these businesses in Hesperia and a review of the regulatory mechanisms available to regulate them, including changes to the Municipal Code and the Main Street and Freeway Corridor Specific Plan, to protect the general health, safety, and/or welfare from the negative effects of hookah lounges, vape shops and smoke shops; and

WHEREAS, until such time that the City concludes its review and possibly adopts new regulatory controls, the installation of hookah lounges, smoking lounges, vape shops and smoke shops and their resulting negative effects will continue to pose a current and immediate threat to the general health, safety and/or welfare; and

WHEREAS, state law prohibits sales of "drug paraphernalia" by anyone who knows or should know it will be used in connection with illegal drugs; and

WHEREAS, many retailers nevertheless 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; and

WHEREAS, in recent years, the City has seen a proliferation and concentration of retailers who sell drug paraphernalia in Hesperia; and

WHEREAS, for the aforementioned reasons, the sale of drug paraphernalia poses an immediate threat to the general health, safety and welfare of the residents of Hesperia; and

WHEREAS, imposing a forty-five (45) day moratorium on the sale of drug paraphernalia will allow the City to initiate a study of the effects of the sale of drug paraphernalia in Hesperia and a review of the regulatory mechanisms available to regulate it, including changes to the Municipal Code and the Main Street and Freeway Corridor Specific Plan, to protect the general health, safety, and/or welfare from the negative effects of the sale of drug paraphernalia; and

WHEREAS, until such time that the City concludes its review and possibly adopts new regulatory controls, the sale of drug paraphernalia and its resulting negative effects will continue to pose a current and immediate threat to the general health, safety and/or welfare; and

WHEREAS, in prior years, the City has not explicitly regulated nor differentiated money service businesses from financial institutions in the Development Code, thus allowing money services businesses to operate wherever financial institutions were permitted in the City; and

WHEREAS, the City finds that the rapid growth of money service businesses over the past years has resulted in the displacement and availability of full service banking institutions and resulted in greater economic and financial vulnerability of Hesperia residents; and

WHEREAS, the City finds that the proliferation of money service businesses has led to a current and an imminent threat to the public health, safety and welfare of the City of Hesperia, its businesses and residents; and

WHEREAS, Staff would like to initiate studies to determine: 1.) the impact money service businesses have on the City of Hesperia; 2.) whether limiting money service businesses to specific zones would protect the health, safety or welfare of residents; and 3.) whether to create a proposed zoning code update that would implement the results of the studies; and

WHEREAS, 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; and

WHEREAS, the City now desires to impose a forty-five (45) day moratorium on the following problematic uses: (i) gold exchange and pawnshop businesses; (ii) hydroponic stores; (iii) hookah lounges, smoking lounges, vape shops and smoke shops; (iv) the sale of drug paraphernalia; and (v) money service businesses to initiate a study of the effects of these problematic uses and a review of the regulatory mechanisms available to regulate them; and

WHEREAS, for the reasons set forth above, the forty-five (45) day moratorium ("Moratorium") is declared by the City Council to be 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; and

WHEREAS, on March 7, 2017, the City Council of the City of Hesperia conducted a hearing on the Application and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HESPERIA DOES ORDAIN AS FOLLOWS:

SECTION 1. DEFINITIONS

For purposes of this interim urgency ordinance ("Interim Ordinance"), the following definitions shall apply:

(1) "Electronic smoking product and/or device" (also known as "electronic cigarette," "a-cigarette," "electronic nicotine delivery system," "e-cigar," "a- cigarillo," "e-pipe," "e-hookah," "hookah pen," "vape pen" etc.) shall mean a battery operated device used to inhale a vaporized liquid solution that frequently, though not always, contains nicotine.

(2) "Drug Paraphernalia" has the meaning set forth in California Health & Safety Code Section 11014.5, as that Section may be amended from time to time.

(3) "Hydroponic store" shall mean any business whose primary sales consist of product and apparatus used for growing plants without soil or in a non-soil medium such as water or other nutrient rich solutions; with or without an inert medium (i.e. gravel, perlite, etc.), and/or controlled conditions of light, temperature, and humidity. For the purpose of this Title, hydroponic stores also include businesses whose sales include grow lights (i.e. plant lights), artificial light sources, and other supplies typically used for hydroponics as the primary use. Hydroponics stores are also synonymous with aerponics, aquaculture, fogponics, etc.

(4) "Pawnshop" any business whose primary operations include lending money on the security of pledged goods left in pawn, or in the business of purchasing tangible personal property to be left in pawn on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time. This definition shall also include businesses that purchase tangible personal property such as precious metals with the intent to resell items in bulk and/or deconstructed, establishments known variously as gold buying, gold exchange, etc., as determined by Planning Department.

(5) "Smoking lounge" a business establishment that is dedicated, in whole or in part, to the smoking of tobacco or other legal substances and vaporizing, including, but not limited to, establishments known variously as cigar lounges, hookah cafes, hookah lounges, tobacco clubs, tobacco bars, vape, vapor cafes, vapor lounges, etc. (collectively referred to as "smoking lounge(s)").

(6) "Smoke shop" shall mean an establishment that either devotes more than 10 percent of its total floor area to tobacco products, including paraphernalia, or devotes more than a 2 foot depth by 4 foot length section of a single shelf space for display for sale of tobacco paraphernalia.

(7) "Tobacco paraphernalia" shall mean any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in California Health and Safety Code Section 11054 et seq. Items or devices classified as tobacco paraphernalia include but are not limited to the following: pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches shall be excluded from the definition of tobacco paraphernalia.

(8) "Tobacco product" product shall mean any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. For the purposes of this chapter, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a

tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

(9) "Money service business" consists of a business whose primary function is to provide cash to patrons in exchange for personal and business checks and money orders and to perform similar financial transactions for a service fee or commission. This term also applies to a business that offers a short-term loan in which the borrower's car title, or other personal asset, is used as collateral. Money service businesses include, but are not limited to, payday loan, check cashing and car title loan businesses. "Money service business" does not include a state or federally chartered bank, savings association, credit union or industrial loan company. This term also does not apply to a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cash checks or issues money orders for a minimum flat fee not exceeding two dollars (\$2.00) per transaction as a service to its customer that is incidental to its main purpose or business.

(10) "Financial Institution" consists of an establishment, facility or institution, such as a bank and credit union, involved in financial transactions, including the custody, deposit, investment, loan, exchange, or issuance of money. A financial institution is also registered with and regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission

SECTION 3. PURPOSE AND INTENT

The purpose of this Interim Ordinance is to provide for the health, safety and welfare of the City and its residents by exercising the police power provided for in the California Constitution that underlies the City's zoning powers, so that the problematic uses in the City are compatible with existing and future uses. To accomplish this, the City Council intends to impose the Moratorium on the installation and establishment of any and all problematic uses and/or the issuance of any permits or licenses for the installation and establishment of the problematic uses in order to provide City Staff, the City Council, and Hesperia residents sufficient time to consider a comprehensive ordinance regulating such problematic uses.

SECTION 4. EVIDENCE

The City Council has considered all of the evidence submitted into the administrative record, which includes, but is not limited to, the following:

- (a) The City's General Plan, including updates;
- (b) The current Hesperia Municipal Code and the Main Street and Freeway Corridor Specific Plan;
- (c) The Staff Report prepared and presented for consideration by the City Council at its meeting of March 7, 2017; and
- (d) The public comments, both written and oral, received and/or submitted at, or prior to the City Council's consideration of this Interim Ordinance.

SECTION 5. FINDINGS

The City Council hereby specifically finds that all of the facts set forth in this Ordinance are true and correct. The City Council hereby finds and determines that:

Pursuant to the Hesperia Municipal Code and the Main Street and Freeway Corridor Specific Plan, the problematic uses have been permitted in Hesperia; and

(a) In recent years, Hesperia has experienced the negative impacts of problematic businesses which are adversely affecting the commercial lease rates and therefore are attracting less desirable and more problematic businesses in the City; including: (i) gold exchange and pawnshop businesses; (ii) hydroponic stores; (iii) hookah lounges, smoking lounges, vape shops and smoke shops; (iv) businesses that allow for the sale of drug paraphernalia; and (v) money service businesses (hereinafter collectively referred to as "problematic uses"). Money service businesses include, but are not limited to, payday loan, check cashing and car title loan businesses; and

(b) The rapid growth of these problematic uses in Hesperia over the past years has resulted in an increase in police calls, crime, illegal activity and drug use; and has, thus, led to an imminent threat to the public peace, health safety and welfare of Hesperia, its businesses and residents; and

(c) The City now deems it desirable to collect data and study the effects that the problematic uses have in the community to ensure that they are compatible with existing and future uses in designated areas; and

(d) The City now desires to impose a forty-five (45) day moratorium on problematic uses to initiate a study of the effects of these problematic uses and a review of the regulatory mechanisms available to regulate them.

SECTION 6. CONCLUSIONS

Based on the evidence presented to the City Council at the March 7, 2017 meeting and the foregoing findings, the City Council concludes the following:

(a) That it is necessary to temporarily suspend of the approval of any permits for any problematic uses to allow time for the City to consider, study, and enact regulations for such permitted uses, as such uses may be in conflict with the development standards and implementation regulations that the City will ultimately impose after the City has considered and studied this issue, which will be accomplished within a reasonable time.

(b) That a temporary moratorium will provide the City with time to consider, study, draft, and adopt regulations pertaining to the problematic uses in a manner consistent with the Hesperia General Plan, the Main Street and Freeway Corridor Specific Plan, and the Hesperia Municipal Code, compatible with surrounding neighborhoods, and in the best interests of the residents of the City.

SECTION 7. TEMPORARY MORATORIUM

Within all areas situated in the City of Hesperia, State of California, including, but not limited to, all public rights of way and each and every zone and zoning district, the installation and establishment of any and all problematic uses, as defined herein, shall be prohibited. No license or permit shall be issued for the installation or establishment of such problematic uses, notwithstanding other existing zoning provisions and regulations of Hesperia.

The Moratorium is not intended to affect the processing and review of permit applications for problematic uses. The City will still process and review applications. However, the

Moratorium prohibits the issuance of any permits or licenses for or related to the problematic uses. The City shall continue to process and review such permit applications for the problematic uses.

SECTION 8. APPLICABILITY

The provisions of this Interim Ordinance will apply to all of the following problematic uses: (i) gold exchange and pawnshop businesses; (ii) hydroponic stores; (iii) internet cafes; (iv) hookah lounges, smoking lounges, vape shops and smoke shops; (v) the sale of drug paraphernalia; and (vi) money service businesses.

SECTION 9. AUTHORITY

This Interim Ordinance is adopted as an urgency measure pursuant to Government Code Section 65858 to protect the general safety, health and welfare by prohibiting land uses which may be in conflict with contemplated general plan and zoning proposal which City Staff intend to consider and study within a reasonable time.

The City Council hereby concludes, based on the findings listed in the Recitals herein above, that there is a current and immediate threat to the general health, safety and welfare resulting from the approval of business licenses, use permits, variances, building permits, or any other applicable land use or zoning entitlement or approval, for the problematic uses, and that such approvals and any further introduction of them into the City would result in a threat to the general health, safety and welfare.

For the aforementioned reasons, the City must further collect data and study the effects that the problematic uses have in the community to ensure that they are compatible with existing and future uses in designated areas.

SECTION 10. URGENT NEED

Based on the foregoing recitals, which are hereby incorporated, and findings which are all deemed true and correct, this Interim Ordinance is urgently needed for the immediate preservation of the public safety, health, and welfare. This Interim Ordinance shall take effect immediately upon adoption by a four-fifths (4/5) vote of the City Council.

SECTION 11. COUNCIL DIRECTION

The City Council hereby directs City Staff to consider and study possible means of regulating the problematic uses.

SECTION 12. WRITTEN REPORT REQUIRED

The written report required by Government Code Section 65858(d) shall be prepared by City Staff and issued prior to the expiration of the Interim Ordinance.

SECTION 13. CEQA EXEMPTION

The City Council finds that, regarding the California Environmental Quality Act (CEQA), there is no possibility that the adoption of this ordinance may have a significant adverse effect on the environment [14 CCR 15061(b)(3)] because the Interim Ordinance will reduce the possibility of

such effects by limiting the range and intensity of new uses possible in the areas it covers and restricting new uses to those of a type which are more compatible with the established character of those areas.

SECTION 14. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this Interim Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

SECTION 15. SUPERSEDING OF CONFLICTING PROVISIONS

The provisions of this Interim Ordinance hereby supersede the provisions of the Hesperia Municipal Code and the Main Street and Freeway Corridor Specific Plan that are in conflict with the Interim Ordinance.

SECTION 16. EFFECTIVE DATE AND EXPIRATION

This Interim Ordinance shall take effect immediately upon its passage. It shall be of no further force and effect forty-five (45) days from its date of adoption unless extended following a public hearing, as provided in Government Code Section 65858. This forty-five (45) day period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted in three (3) public places within the City of Hesperia pursuant to the provisions of Resolution No. 2007-101.

ADOPTED AND APPROVED on this 7th day of March 2017.

Paul Russ, Mayor

ATTEST:

Melinda Sayre-Castro
City Clerk