

ORDINANCE NO. 2017-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, ADOPTING A DEVELOPMENT CODE AMENDMENT PROHIBITING AND REGULATING CERTAIN LAND USES, ALSO KNOWN AS THE COMMERCIAL COMMUNITY ENHANCEMENT ORDINANCE (DCA17-00002)

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, the Commercial Community Enhancement Ordinance (CCEO) applies City-wide, including areas of the Main Street and Freeway Corridor Specific Plan;

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 City Council finds that prohibiting and regulating certain land uses will assist in creating a safer community by eliminating the ability of certain harmful businesses to locate in Hesperia, thus deterring the patrons of these businesses from loitering in retail areas which may occur due to the nature and operations of certain land uses; and

WHEREAS, the City Council finds that prohibiting and regulating certain businesses in commercial neighborhoods will create a safer community by improving the perception people and business owners have about Hesperia; and

WHEREAS, the City Council finds that prohibiting and regulating certain uses in commercial neighborhoods will create a safer community by attracting quality businesses to Hesperia, therefore improving the strength and vitality of retail neighborhoods; and

WHEREAS, the City Council finds that prohibiting and regulating certain uses will create an attractive, cleaner community by keeping undesirable businesses out of commercial areas and attracting desirable businesses and owners to commercial neighborhoods; and

WHEREAS, the City Council finds that prohibiting and regulating certain businesses in commercial neighborhoods will increase lease rates and increase per capita sales revenue by attracting quality new businesses with higher volume sales and higher business success rates; and

WHEREAS, with respect to Gold Exchange, Money Service Business and Pawn Shops, the City Council hereby finds and declares that:

- The pawn shop definition is derived from definitions provided by the California Financial Code Section 21000 and the California Business and Professions Code Section 21626 as applicable; and
- Gold exchange, money service businesses, 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

- Money service, gold exchange, and pawnshop businesses take advantage of lower income individuals with less options for banking and/or loan services; and
- Money service, gold exchange, and pawnshop businesses are indirectly associated with crime due to the nature of the business in which an exchange of goods and/or checks for cash occurs on-site; and
- 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
- Hesperia currently has eight money service businesses to serve a population of approximately 93,226; and
- prohibiting money service, gold exchange, and pawnshop businesses from operating in Hesperia will protect the general health, safety and welfare of the residents; and

WHEREAS, with respect to Hydroponics Stores, the City Council hereby finds and declares that:

- 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
- Hydroponic stores typically provide all mediums, supplies, and general information used to cultivate marijuana; and
- stand-alone hydroponic stores became prevalent in urbanized areas only after California Medical marijuana laws were passed; and
- Hydroponic stores are typically associated with marijuana cultivation and may contribute to an increased amount of illegal narcotics within Hesperia; and
- Prohibiting hydroponic stores from operating in Hesperia will protect the general health, safety and welfare of the residents; and

WHEREAS, with respect to Tobacco Uses, the City Council hereby finds and declares that:

- Based in part on the information contained in this section, the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the Hesperia; and
- Approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation's leading cause of preventable death according to the U.S. Department of Health and Human Services; and
- 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness according to the U.S. Department of Health and Human Services; and
- A November 2011 Policy Brief by Healthy High Desert mentioned that tobacco use continues to be a significant health risk factor in the High Desert with 20% of adults and 15% of high school seniors smoking cigarettes. In addition, one in five high school students uses marijuana; and
- The California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the facts that:

- The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code§ 118950); and
- State law prohibits the sale or furnishing of cigarettes, tobacco products, and tobacco paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code§ 308); and
- State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than 0.60 ounces of tobacco (Cal. Pen. Code § 308.3); and
- State law prohibits the sale or furnishing of electronic cigarettes to minors (Cal. Health & Safety Code§ 119405); and
- State law explicitly permits cities and counties to enact local tobacco retail ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3); and
- California courts have affirmed the power of Hesperia to regulate business activity to discourage violations of law. (See, e.g., Cohen v. Board of Supervisors, 40 Cal. 3d 277 (1985); Bravo Vending v. City of Rancho Mirage, 16 Cal. App. 4th 383 (1993); Prime Gas, Inc. v. City of Sacramento, 184 Cal. App. 4th 697 (2010)); and
- despite the State's efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the facts that:
- In California, 36.8 percent of high school students have smoked a whole cigarette by 14 years of age according to a 2012 report from the California Department of Public Health; and
- In California, 64 percent of adult smokers started by the age of 18 according to a 2012 report from the California Department of Public Health; and
- Among middle school students who were current cigarette users in 2004, 70.6 percent were not asked to show proof of age when they purchased or attempted to purchase cigarettes from a store, and 66.4 percent were not refused purchase because of their age based on a study published by the U.S. Department of Health and Human Services in 2005; and
- California retailers continue to sell tobacco to underage consumers, evidenced by the following:
- 7.6 percent of all tobacco retailers were witnessed unlawfully selling to minors in 2013 according to the California Department of Public Health; and
- 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
- The Institute of Medicine recommends restricting the number and location of tobacco outlets to discourage tobacco use and to reduce tobacco-related disease; and
- Retailers that have state licenses to sell alcohol are accustomed to complying with state law licensing requirements and laws requiring age verification because they face fines, license suspension, and license revocation if they sell alcohol to persons under age 21; and
- Retailers that have a state license to sell alcohol for consumption off the premises must be approved through a state application process. Factors examined upon such applications, including whether there is an overconcentration of retailers in an area and whether a retailer is too close to residences or areas frequented by youth are also relevant to whether a retailer should be granted the right to sell tobacco; and

- Efforts to decrease perceptions of smoking as a socially acceptable behavior in bars, nightclubs and other establishments where smoking is permitted may help reduce smoking among young adults according to the American Journal of Public Health; and
- Exemptions from smoke free air laws have facilitated the emergence of niche tobacco markets, such as hookah bars and tobacco shops; and
- Separating places where smoking is permitted from places where tobacco is sold is necessary to promote the health of our residents by reducing impulsive smoking and social pressure to smoke; and

WHEREAS, with respect to Smoke/Vape Shops and Smoking/Hookah Lounges, the City Council incorporates the tobacco recitals hereinabove and further finds and determines that:

- The need to prohibit new smoke/vape shops and smoking/hookah lounges based on those recitals and the recitals within this Section in order to protect for the health, safety and welfare of the residents of Hesperia; and
- There exists a lack of state and federal control on E-cigarettes and other tobacco and tobacco related products; and
- 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
- 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 Council wishes to prohibit these establishments; and
- Hookah 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 negatively impacts neighboring businesses; and
- Numerous California cities have adopted moratorium ordinances to prevent new vape shops from entering the market and more than 70 cities and counties in California have regulations pertaining specifically to the sale of electronic smoking devices; and
- 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
- 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, with respect to Drug Paraphernalia, the City Council hereby finds and declares that:

- State law prohibits sales of "drug paraphernalia"; and
- 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
- Several California cities require compliance with state drug paraphernalia laws as a condition of obtaining and maintaining a local business license; and

WHEREAS, with respect to Massage Establishments, the City Council hereby finds and declares that adopting a distance limitation and requiring all massage technicians to carry CAMTC certification is necessary due to the potential for illegal activity associated with those uses and for the protection of the health, safety and welfare of the citizens of Hesperia; and

WHEREAS, this Commercial Community Enhancement Ordinance will assist in implementing the Goals and Policies of the Land Use and Safety Elements of the General Plan by protecting existing development from incompatible land uses, ensuring the integrity of each land use district, enhancing the appearance of the Hesperia community; and ensure adequate police protection capabilities by reducing the impacts on law enforcement personnel; and

WHEREAS, the proposed Development Code amendment is exempt from the California Environmental Quality Act (CEQA) per Section 15061(b)(3), where it can be seen with certainty that there is no significant effect on the environment. The proposed Development Code Amendment is also exempt from the requirements of the California Environmental Quality Act by Section 16.12.415(B)(10) of the City's CEQA Guidelines, as Development Code Amendments are exempt if they do not propose to increase the density or intensity allowed in the General Plan; and

WHEREAS, on April 13, 2017, the Planning Commission of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Development Code Amendment and concluded said hearing on that date; and

WHEREAS, on May 16, 2017, the City Council of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Development Code Amendment and concluded said hearing on that date; and

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

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

Section 1. The City Council hereby specifically finds that all of the facts set forth in this Resolution are true and correct.

Section 2. Based upon substantial evidence presented to the Commission, including written and oral staff reports, the Commission specifically finds that the proposed Resolution is consistent with the goals and objectives of the adopted General Plan.

Section 3. Based on the findings and conclusions set forth in this Resolution, this Commission hereby recommends adoption of Development Code Amendment DCA17-00002, adopting the Commercial Community Enhancement Ordinance as shown on Exhibit "A."

Section 4. This ordinance shall take effect 30 days from the date of adoption. Notwithstanding this ordinance, existing, legally established businesses affected by this ordinance are permitted to relocate within the City (except to locations along Bear Valley Road, Ranchero Road and Main Street) until November 6, 2017; provided such businesses obtain all permits and approvals required for the new location (which were required prior to adoption of this ordinance). As of the effective date of this ordinance, Urgency Ordinance No. 2017-07 is repealed and of no further force or effect.

Section 5. 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 6th day of June 2017.

Paul Russ, Mayor

ATTEST:

Melinda Sayre
City Clerk