

# City of Hesperia

## STAFF REPORT



**DATE:** May 16, 2017

**TO:** Mayor and Council Members

**FROM:** Nils Bentsen , City Manager **SECOND READING AND ADOPTION**

**BY:** Mike Blay, Director of Development Services  
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**SUBJECT:** Development Code Amendment DCA17-00002 adopting the Commercial Community Enhancement Ordinance (CCEO); Applicant: City of Hesperia; Area affected: City-wide

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### RECOMMENDED ACTION

The Planning Commission recommends that the City Council introduce and place on first reading Ordinance No. 2017-10 approving DCA17-00002, the Commercial Community Enhancement Ordinance (CCEO).

The Ordinance includes modifications that were made by the Council during first reading on May 16, 2017. No massage establishment may be located within two thousand (2000) feet from a school. Existing, legally established businesses affected by this Ordinance are permitted to relocate within the City until November 6, 2017, except to locations on Bear Valley Road, Main Street, and Ranchero Road.

### 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 the City and compromises the City's ability to provide services and attract new businesses. On March 7, 2017, the City Council adopted an urgency interim ordinance imposing a 45 day moratorium on certain type of businesses including: 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. Money services businesses include, but are not limited to, payday loan, check cashing and car title loan businesses. Staff will be requesting that the City Council adopt a 10 month and 15 day extension at the April 18, 2017 meeting.

In 2015, the City of Victorville adopted an ordinance prohibiting new establishments of these types of businesses largely based on testimony by public safety officials and calls for service. Victorville's analysis showed that although permitted in many parts of the high desert, they are considered problematic around the country, especially when concentrated along commercial corridors. A number of problematic businesses operate in the High Desert, and the analysis showed that cities outside of the area already prohibit and/or limit these businesses. Since Victorville adopted their Ordinance, Hesperia has experienced additional requests to locate these businesses in the City.

## ISSUES/ANALYSIS

On April 13, 2017, the Planning Commission voted 4-0 (with one Commissioner absent) recommending that City Council approve the Commercial Community Enhancement Ordinance. The Commission questioned if there was a target number of certain problematic businesses that the City would like to have. Staff stated that there is no right number and that the recommendation to prohibit was related to their propensity to cause crime and other problems. The Commission questioned if the City could cap the number of problematic businesses, and if a good operator of an existing store could open a new store. The City Attorney clarified that they Commission can recommend a cap on the number of businesses. As written, no new businesses could be allowed, even if the existing businesses wanted to open a similar store or move to a different location. Commissioner questioned if the Ordinance was creating a new standard for existing businesses and a standard for new businesses. In most cases, no new stores would be allowed; therefore, there would not be a new standard for new businesses, as they would be prohibited. Only new massage facilities and stores selling tobacco or tobacco paraphernalia would be subject to new standards. If a store wishes to sell tobacco and related products, they could do so only with a limited display area. Under state law the City is unable to prohibit massage facilities or personnel that are state certified. Commissioners questioned if the Ordinance was on solid ground by prohibiting certain businesses. The City Attorney stated that cities are able to ban certain types of businesses, as has been the case with medical marijuana dispensaries. The Commission questioned how the City is able to distinguish between drug paraphernalia and tobacco paraphernalia when they are legal products and can be sold at regular stores. Staff clarified that the City is not prohibiting tobacco paraphernalia, the regulations are only limiting where they can be sold and the display size area.

The negative impacts of certain problematic businesses are adversely affecting the commercial lease rates and therefore are attracting less desirable and more problematic businesses in the City. The City finds that based on the reasons listed below, these uses pose a 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 such uses.

**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.

**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. The proposed Amendments prohibit hydroponic stores, unless accessory to a home improvement store.

**Hookah Lounges, Vape Shops and Smoke Shops:** Hesperia has a larger population percentage of minors (30%-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 provide 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 eight 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.

**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.

**Commercial Community Enhancement Ordinance (CCEO):** The proposed Ordinance prohibits the establishment of new gold exchange businesses (unless accessory to a jewelry store); hydroponic shops (unless accessory to a home improvement store); money service businesses; pawn shops; smoking lounges; and smoke shops. The sale of tobacco products and paraphernalia must be associated with a business that sells alcohol. Display areas for tobacco products are limited to 10% of the floor area for per business, and display areas for paraphernalia shall not exceed a 2 foot in depth by 4 foot in length section of a single shelf space.

**Massage Facilities:** The CCEO amends Chapter 5.20 pertaining to massage facilities. The City has been experiencing illegal activity as it pertains to prostitution and unlicensed massage services. Therefore, every person performing massage services for compensation shall obtain and maintain a valid state massage certification from the State Massage Therapy Council. In addition, no new massage establishment may be located within three thousand (3,000) feet of another massage establishment or within six hundred (600) feet of an elementary, secondary or high school. In 2008, the California Massage Therapy Council (CAMTC) was established to administer a certification process for massage professional. CAMTC is responsible for verifying the authenticity of a massage professional by verifying educational requirements and conducting background checks. CAMTC takes certain disciplinary action, including suspending or revoking a certificate, if the certificate holder has been arrested, charged with crimes or falsifies information. The Amendments will no longer provide massage professionals the option of undergoing the background check process and meeting the education criteria established by the City's Municipal Code, instead all massage professionals must possess CAMTC certification in Hesperia.

**Environmental:** Approval of the Development Code Amendment is exempt from the requirements of the California Environmental Quality Act 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.

**Conclusion:** Staff supports the Commercial Community Enhancement Ordinance, as it aids in improving the quality of life of residents of Hesperia by creating an attractive, cleaner and safer community. The Ordinance will improve Hesperia's ability to provide services by reducing service calls to problematic businesses and attract quality new businesses with higher volume sales and higher business success rates. The Ordinance is consistent with the Land Use and Safety Elements of the General Plan, and is necessary to protect the general health, safety and/or welfare of the community.

#### **FISCAL IMPACT**

None.

#### **ALTERNATIVE(S)**

1. Provide alternative direction to staff.

#### **ATTACHMENT(S)**

1. Ordinance No. 2017-10
2. Ordinance Exhibit 'A'