

**CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 689-2013**

**AN URGENCY ORDINANCE OF THE CITY OF CLOVERDALE EXTENDING A TEMPORARY
MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF SMOKE SHOPS AND
SMOKING LOUNGES**

Section 1. Findings.

WHEREAS, at its September 11, 2013 regular meeting, pursuant to California Government Code section 65858, the City Council of the City of Cloverdale adopted Urgency Ordinance No. 687-2013 imposing a 45-day moratorium on the establishment and operation of Smoke Shops and Smoking Lounges; and

WHEREAS, Ordinance No. 687-2013 will, unless extended, expire by its own terms on October 27, 2013; and

WHEREAS, this Urgency Ordinance incorporates by reference all the findings provided in Urgency Ordinance No. 687-2013 and its accompanying staff report; and

WHEREAS, Government Code section 65858 authorizes the extension of the moratorium, after a noticed public hearing, to prohibit uses of land which may conflict with a contemplated general plan, specific plan or zoning proposal which the legislative body, planning commission or planning department is considering or studying or intends to study within a reasonable period of time; and

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Cloverdale may make and enforce, within its limits, all local police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City has received, and anticipates additional requests, for the construction, establishment, and operation of Smoking Shops and Smoking Lounges (as defined in this Ordinance) within the City. However, the Cloverdale Municipal Code does not contain provisions that specifically regulate the construction, operation, and establishment of Smoking Shops and Smoking Lounges in the City and are therefore inadequate and need review, study, and revision. The current Code fails to thoroughly address the impacts related to the location and manner of construction, establishment, and operation of Smoking Shops and Smoking Lounges in relation to public health, safety, and welfare concerns, including, but not limited to, the impacts they may have on surrounding uses and the community; and

WHEREAS, City staff expects that more applications for Smoking Shops and Smoking Lounges will be received. Without a moratorium, the City would need to make its decisions on any business license or permit based on the City's current codes; and

WHEREAS, the City Council is concerned that the establishment and operation of Smoking Shops and Smoking Lounges without adequate regulation will result in an increased threat to public health and safety; and

WHEREAS, without the extension of this moratorium, multiple applicants could quickly receive entitlements which would allow additional Smoking Shops and Smoking Lounges that could pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code is in need of updating to protect the public against potential health, safety, and welfare dangers caused by Smoking Shops and Smoking Lounges. The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the construction, placement, and operation of Smoking Shops and Smoking Lounges; and

WHEREAS, in order to address both community concerns regarding the establishment of Smoking Shops and Smoking Lounges, it is necessary for the City to study the potential impact such facilities may have on the public health, safety and welfare and to study possible adoption of amendments to the City's Municipal Code and Zoning Code; and

WHEREAS, because the City has not adopted rules and regulations specifically applicable to the establishment and operation of Smoking Shops and Smoking Lounges, the lack of such controls may lead to the proliferation of such businesses and the inability of the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent to and near such businesses, and the clients of such establishments. The City Council finds that there is a threat to the public health, safety and welfare of the community if Smoking Shops and Smoking Lounges locate within the City without proper regulations in place; and

WHEREAS, California Government Code section 65858, Subdivision (a) provides: that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure 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 is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that shall be of no further force and effect 45 days from the date of adoption, and may be extended a maximum of two times and have a maximum total duration of 2 years; and

WHEREAS, California Government Code section 65858, Subdivision (c), provides: that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety or welfare; and

WHEREAS, the City Council desires to: (1) address the community concerns regarding the establishment and operation of Smoking Shops and Smoking Lounges; (2) study the potential impacts that Smoking Shops and Smoking Lounges may have on the public health, safety and welfare; (3) study and determine what local regulations may be appropriate or necessary for Smoking Shops and Smoking Lounges; (4) study and determine the appropriate zoning and location

for Smoking Shops and Smoking Lounges; and (5) determine appropriate controls for the protection of public health, safety and welfare; and

WHEREAS, Staff shall commence steps to conduct a study of the potential impacts of Smoking Shops and Smoking Lounges, and possible amendments to the City's Municipal and Zoning Code, for clear, consistent and uniform regulations related to the establishment, location and operation of such businesses.

Section 2. Moratorium Extended.

A. Scope

In accordance with the authority granted to the City of Cloverdale under Article XI, Section 7 of the California Constitution and California Government Code section 65858, the moratorium imposed by Ordinance No. 687-2013, which provides that no permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, business permit, building permit, conditional use permit, or zoning text amendment shall be approved or issued for the establishment or operation of Smoke Shops and Smoking Lounges in the City of Cloverdale, shall hereby be extended for a period of ten (10) months and fifteen (15) days from and after the date that Ordinance 687-2013 would have otherwise expired, October 27, 2013. Additionally, the express prohibition against Smoke Shops and Smoking Lounges in all areas and zoning districts of the City contained in Ordinance No. 687-2013 is also hereby extended for a period of ten (10) months and fifteen (15) days from and after the date that Ordinance 687-2013 would have otherwise expired, October 27, 2013.

B. Definitions

1. For purposes of this ordinance, "Smoke shop" is defined as a retail establishment that devotes 15% or more of its total floor space to products intended or designed for use in ingesting, inhaling or otherwise introducing tobacco or controlled substances into the human body, including but not limited to tobacco products, smoking oils and extracts, electronic cigarettes which contain nicotine and emit smoke or vapor, smoking accessories, including but not limited to rolling papers, rolling machines, herb grinders, scales, glass pipes, hookah pipes, bong, bubbler or other paraphernalia. Herbal and nicotine containing products which do not generate smoke and incense used solely for olfactory purposes and not containing tobacco or nicotine are not included in this definition.

2. For purposes of this ordinance "Smoking lounge" means a business establishment that is dedicated, in whole or in part, to the smoking of tobacco or other substances, including but not limited to establishments known variously as cigar lounges, hookah cafes, tobacco clubs, tobacco bars, etc. (Collectively referred to as "smoking lounge(s).")

3. For purposes of this ordinance, "Smoke" means the gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, but excluding incense or similar products inhaled solely for olfactory purpose so long as the products do not contain nicotine or tobacco. The term "Smoke" includes but is not limited to tobacco smoke, electronic cigarette vapors and marijuana smoke. The term "Smoke" does not include the product of combustion of incense or similar products which do not contain tobacco or nicotine, when used solely for olfactory purposes.

C. Statutory Findings and Purpose

This Ordinance, which extends the effective period of Ordinance No. 687-2013, is declared to be an interim ordinance adopted as an urgency measure pursuant to Government Code section 65858 and is for the immediate and long-term preservation of the public peace, health, and welfare. This Ordinance is deemed necessary based on the findings of the City Council of the City of Cloverdale as set forth herein.

Section 3. Public Nuisance.

The establishment, maintenance or operation of Smoke Shops and Smoking Lounges, as defined herein within the City limits of the City of Cloverdale, are a public nuisance. Violations of this Ordinance may be enforced by any applicable law, including but not limited to, injunctions, administrative citations, or criminal penalties.

Section 4. CEQA.

Pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this Ordinance is exempt from CEQA based on the following:

(1) This Ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This Ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power, and in accordance with Government Code section 65858, to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.

(3) This Ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

Section 5. Severability.

If any provision of this Ordinance, or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Cloverdale hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 6. Effective Date and Duration.

This Ordinance shall become effective immediately upon passage and adoption by at least four-fifths vote of the City Council, and shall be in effect for ten (10) months and fifteen (15) days from and after the date that Ordinance No. 687-2013 would have expired, October 27, 2013, unless further extended by the City in accordance with California Government Code section 65858.

ADOPTED, this 23rd day of October 2013 by the following roll call vote: (4 ayes - 1 noes)

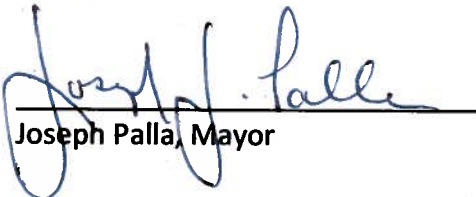
AYES: Mayor Palla, Vice Mayor Russell, Councilmember Cox, Councilmember Maacks

NOES: Councilmember Brigham

ABSENT:

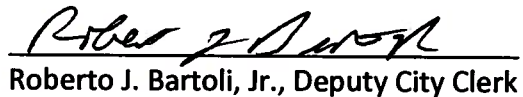
ABSTENTIONS:

APPROVED:



Joseph Palla, Mayor

ATTESTED:



Roberto J. Bartoli, Jr., Deputy City Clerk



**City Council/Successor Agency
Agenda Item Summary**

Agenda Item: 12
Meeting Date: October 23, 2013

Agenda Section Public Hearing	Staff Contact Karen Massey, Asst. City Mgr./Comm. Dev. Dir.
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Agenda Item Title

Adoption of An Urgency Ordinance of the City of Cloverdale Extending a Temporary Moratorium on the Establishment and Operation of Smoke Shops and Smoking Lounges, to Become Effective Immediately

Summary

Adoption of this Ordinance will extend, by 10 months and 15 days, the temporary moratorium on the establishment and operation of Smoke Shops and Smoking Lounges previously adopted by the City Council on September 11, 2013 via Ordinance 687-2013. This moratorium is needed in order to: (1) further address concerns regarding the establishment and operation of Smoke Shops and Smoking Lounges; (2) further study the potential impacts that these types of businesses may have on the public health, safety and welfare; (3) further study and determine what local regulations may be appropriate or necessary for Smoke Shops and Smoking Lounges; (4) further study and determine the appropriate zoning and location for these types of businesses; and (5) determine appropriate measures to ensure the protection of public health, safety and welfare.

The 45-day temporary moratorium expires on October 27, 2013. Since the potential threats to public health, safety, and welfare identified by the Council in Urgency Ordinance 687-2013 still exist, and in order to allow the City sufficient time to complete the above stated activities, Staff recommends that the Council extend the moratorium for the period allowed under Government Code section 65858 of 10 months and 15 days. The moratorium may be repealed prior to its expiration as soon as an ordinance is presented to Council, adopted and effective. Extension of the moratorium requires at least a four-fifths vote of the Council.

Background

At its September 11, 2013 meeting, the Council adopted Urgency Ordinance No. 687-2013 establishing a 45-day moratorium on the establishment and operation of Smoke Shops and Smoking Lounges. The purpose of the moratorium was to give City staff time to analyze, consider and possibly adopt updated zoning regulations to best address new imminent threats to public safety, health, and welfare resulting from these businesses. Since the adoption of Ordinance No. 687-2013, City staff has begun reviewing and analyzing possible approaches to new zoning provisions related to these types of businesses and anticipates bringing the item to Planning Commission for discussion on November 6th.

As previously reported at the September 11, 2013 meeting, a Smoke Shop was recently established in the City. Since adoption of the initial moratorium on September 11th, the City has recently received inquiries related to an electronic cigarette retail store in the Downtown core or Furber Shopping Plaza and anticipates additional requests for the development, establishment, and operation of Smoke Shops and Smoking Lounges within the City will be forthcoming. The City has received a number of comments related to the recently established smoke shop and the importance of locating these types of businesses away from sensitive receptors, such as schools.

Analysis

The City Council has recently expressed support for a number of local and state-wide initiatives aimed at increasing health awareness and healthy living in our community. It is well recognized that the sale of tobacco products and the use of tobacco products is a serious health issue. Retail outlets engaged in the sale of smoking paraphernalia may also promote illegal consumption and purchase of drugs by children and minors by increasing their exposure to smoking paraphernalia that may be used for other drugs. For these

reasons, the siting and location of certain land uses can have bearing on the general health and well-being of our community and as such it is important from time to time for the City Council to consider specific uses that have the potential to negatively impact the community.

The City's current Zoning Ordinance does not specifically contemplate uses that are primarily based in the sale or on-site use of tobacco, drug or related products often referred to as tobacco shops, smoke shops, smoking lounges, head shops or hookah bars. Since this type of use is not specifically contemplated, the Code does not adequately address performance or locational criteria for this type of use. Instead, under the current Zoning Ordinance, a smoke shop/smoking lounge would be considered a Pedestrian Oriented Retail Use and is permitted by right (or with plot plan approval depending upon the size of the business) in the Downtown Core, Downtown Support, and General Commercial Zoning Districts and with a Conditional Use Permit in the Service Commercial Zoning District. Pedestrian Oriented Retail uses, including a smoke shop or smoking lounge, are not allowed in the Transit Oriented Development and Office/Multi-Family Zoning Districts.

A number of other jurisdictions in Sonoma County specifically regulate these types of uses, as follows:

- The City of Rohnert Park prohibits head shops based in the sale of paraphernalia related to the consumption of cannabis, other recreational drugs and/or new age herbs as well as hookah bars where the smoking of tobacco related products occurs on-site.
- The City of Healdsburg allows tobacco and pipe shops by right in the Plaza Retail, Downtown Commercial, and Service Commercial Zoning Districts.
- The City of Santa Rosa allows tobacco or smoke shops in General Commercial, Community Shopping Center and Downtown Commercial Zoning Districts subject to issuance of a Minor Conditional Use Permit.
- The Town of Windsor allows tobacco and smoke shops in Community Commercial, Service Commercial, and Gateway Commercial Zoning Districts, but not Town Center Commercial, subject to issuance of a Minor Conditional Use Permit and specific regulations establishing their required distance from a school, residential areas, and other locations. This use is not allowed in Windsor's Commercial Town Center district.

Currently, Cloverdale does not have specific language in its Zoning Ordinance that regulates this type of use. Staff has prepared for consideration and possible adoption by the City Council an interim ordinance pursuant to California Government Code Section 65858 that would establish a temporary City-wide moratorium on the establishment and operation of smoke shops and smoking lounges in the City. Adoption of the ordinance would provide the City time to review and consider the potential new Zoning standards regulating these types of businesses in the community in order to ensure the protection of the public health, safety and welfare and to ensure that the locations for these types of businesses are established in a manner that is consistent with the standards, goals and policies of the City's General Plan.

California Government Code Section 65858, subdivision (a) authorizes city legislative bodies to adopt as an urgency measure 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 is considering or studying or intends to study within a reasonable time. Under Section 65858, adoption of such urgency measures requires a four-fifths vote of the legislative body. Urgency measures adopted under Section 65858 expire 45 days from the date of adoption, although they may be extended a maximum of two times and have a maximum total duration of 2 years. Section 65858, subdivision (c) provides that legislative bodies may not adopt or extend interim ordinances under the section unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety or welfare.

The attached ordinance contains findings required by law for adoption of such an ordinance. If adopted by a 4/5 vote of the Council, the ordinance would take immediate effect, and remain in effect for 10 months and

15 days. Concurrently, Staff has begun the process of researching similar regulations in other jurisdictions in Sonoma County and would bring the item forward to the Planning Commission for review on November 6th.

This report and its attachments constitute the written report required by Government Code section 65858(d).

Options

1. Consider and adopt an Urgency Ordinance extending a temporary moratorium on the establishment and operation of Smoke Shops and Smoking Lounges in the City.
 2. Provide Staff with other direction and feedback.
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Budget/Financial Impact

Adoption of the ordinance would result in avoiding costs of enforcement and other costs related to secondary impacts of smoke shops and smoking lounges while the City Council considers legislation concerning these uses in the City. There are no specific provisions that impact the budget in excess of current budget provisions; work directed to this project does impact the staff time available for other projects.

Subcommittee Recommendation

None.

Recommended Council Action

Adopt Urgency Ordinance No. 689-2013 extending a temporary moratorium on the establishment and operation of Smoke Shops and Smoking Lounges, pending the review and possible adoption of zoning regulations applicable to these types of establishments.

Attachments:

1. Draft Urgency Ordinance No. 689-2013, extending the temporary moratorium on the establishment and operation of Smoke Shops and Smoking Lounges
 2. Urgency Ordinance No. 687-2013
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cc: 2012585.1