

**CITY OF CLOVERDALE  
CITY COUNCIL  
ORDINANCE NO. 687-2013**

**AN URGENCY ORDINANCE OF THE CITY OF CLOVERDALE MAKING FINDINGS AND ESTABLISHING A  
TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF SMOKE SHOPS AND  
SMOKING LOUNGES, TO BECOME EFFECTIVE IMMEDIATELY**

**WHEREAS**, the City of Cloverdale ("City") has an overriding interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods. Without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with negative consequences to property, social and environmental values; and

**WHEREAS**, smoke shops and smoking lounges sell and permit the use of tobacco and nicotine-containing products that emit smoke or vapors; and

**WHEREAS**, tobacco and nicotine-containing products that emit smoke or vapors are known to cause serious health issues; and

**WHEREAS**, the City's Municipal Code and Zoning Ordinance do not specifically regulate the location or operation of smoke shops or smoking lounges; and

**WHEREAS**, the proliferation of establishments that permit the smoking of tobacco or other substances; that sell or display smoking, drug and/or tobacco paraphernalia, and other items promoting the use of tobacco products; that promote or encourage the use of illegal drugs or controlled substances as defined in Health & Safety Code section 11007; and/or that characterize paraphernalia which can be used for consumption of illegal drugs or controlled substances as intended for use with tobacco products, may adversely affect the City's ability to attract and retain businesses and shoppers to areas of the City necessary for its economic growth and vitality; and

**WHEREAS**, permitting the sale of smoking, drug and/or tobacco paraphernalia without appropriate regulation may adversely affect the City's economic vitality, may promote the consumption and purchase of controlled substances by minors by increasing their exposure to tobacco and drug paraphernalia, may result in high concentration of controlled substance-related uses in certain neighborhoods, may result in a threat to public health, safety, and welfare and may not be compatible with existing and potential uses of similarly zoned businesses; and

**WHEREAS**, it is urgent and essential to the general health, safety, and welfare of the community and its citizens and the promotion of proper land use, to immediately prohibit for a limited time the issuance of building, zoning, occupancy, and all other permits and licenses for the establishment and expansion of smoke shops and smoking lounges, to allow time to study the issue

so that appropriate land use controls can be developed; and

**WHEREAS**, the City Council expressly finds and declares that this ordinance is necessary for protecting the public safety, health, and welfare and urgent action is needed to consider: (1) the potential negative effects of smoke shops and smoking lounges on public health, welfare and safety, as detailed herein; (2) potential proliferation of smoke shops and smoking lounges; (3) ambiguities in the City's Zoning Ordinance; (4) the City's need to study the zoning, health and safety, and economic development impacts of said business; and

**WHEREAS**, the City Council finds and determines that the public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by the proposed moratorium; and

**WHEREAS**, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; 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 such measures shall be of no 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**, in accordance with California Government Code Section 65858, subdivision (c), which provides that such interim ordinances that have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing (as defined in California Government Code Section 65858, subdivisions (g) and (h)) may not be extended except upon written findings adopted by the legislative body as specified in the subdivision, the City Council hereby finds that the moratorium established pursuant to this ordinance will not have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing; and that, therefore, the findings specified in Section 65858, subdivision (c), need not be made; and

**WHEREAS**, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is not subject to CEQA, or is categorically exempt from 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) below, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

(1) This ordinance is not a project within the meaning of Section 15378 of the California Code of Regulations, Title 14, Chapter 3 (“CEQA Guidelines”), because it merely preserves the status quo for development uses in certain zoning districts in the City of Cloverdale pending review of the City Zoning Code and potential adoption of new legislation relating to said uses, and therefore has no potential for resulting in physical change in the environment, directly or indirectly.

(2) Alternatively, 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) Alternatively, this ordinance is categorically exempt from CEQA under Section 15050(c)(2) of the CEQA Guidelines because it preserves the physical status quo in the City and will not result in a direct or reasonably foreseeable indirect physical change in the environment.

**NOW THEREFORE**, the City Council of the City of Cloverdale does ordain as follows:

**Section 1. Recitals Made Findings.** The above recitals are hereby declared to be true and correct and findings of the City Council of the City of Cloverdale.

**Section 2. Moratorium Imposed.**

A. Scope.

In accordance with the authority granted the City of Cloverdale under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this ordinance, no permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a smoke shop or smoking lounge in the City of Cloverdale. This moratorium shall not apply to the renewal of a business license for an existing business of these types in the City provided the renewal seeks to maintain the business in its existing location without expansion of the use.

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, bongs, 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 is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the following findings of the City Council of the City of Cloverdale:

1. The purpose of this Ordinance is to protect the public safety, health and welfare from a current and immediate threat posed by the establishment of new and expansion of existing smoke shops and smoking lounges. The facts constituting the urgency are: Smoke shops and smoking lounges sell tobacco products and the use of tobacco products is a serious health issue. Smoke shops also sell smoking paraphernalia which may promote the illegal consumption and purchase of drugs by children and minors by increasing their exposure to smoking paraphernalia that may be used for other drugs. The City of Cloverdale does not currently have standards in the Cloverdale Municipal Code related to the location, operation and concentration of smoke shops and smoking lounges within the City.

2. Absent the adoption of this urgency ordinance, the establishment and operation of smoke shops and smoking lounges in the City would result in the harmful secondary effects detailed herein.

3. The City Council finds that these uses as currently regulated are not specifically prohibited or regulated in areas adjacent to schools, public parks, or public libraries. Thus, as applications for business license are submitted to the City, there is no determination as to whether such

potential uses are consistent with the purpose and intent of the City's Zoning Code and General Plan.

4. The City Council finds that, in general, these types of businesses, as presently regulated in other cities, have resulted in serious harmful effects, including but not limited to loitering, drug sales, littering, aesthetically unappealing premises, lowering of surrounding property values, increase of public nuisances, and an increase of other criminal activity.

5. The City Council finds that smoke shops and smoking lounges promote the illegal consumption and purchase of illegal drugs by children and minors by increasing their exposure to tobacco paraphernalia that may be used for other drugs, contribute to high concentrations of controlled substance-related uses in certain neighborhoods, and adversely affect the City's economic vitality.

6. The City has concluded that the best method of protecting the public safety, health, and welfare is to adopt regulations concerning the operation of smoke shops and smoking lounges, and/or businesses offering related services.

7. The City finds that absent the adoption of this urgency ordinance, the City could be required to approve the establishment of the above mentioned type of businesses, which in turn would result in an increase in the identified harmful effects.

8. The City Council finds that it is necessary to ensure that these types of businesses are properly located and regulated within the City, both to protect 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.

9. The City Council finds it necessary and desirable to have the Community Development Department review and consider the possible adoption of new zoning standards regulating these types of businesses in the City in order 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.

10. In light of the harmful secondary effects associated with the establishment of smoke shops and smoking lounges in the City of Cloverdale, and the current and immediate threat such secondary effects pose to the public health, safety and welfare, it is necessary, in accordance with Government Code Section 65858, to impose a moratorium on the issuance of entitlements for and the establishment of new and/or expanded smoke shops and smoking lounges in the City to provide time for the City Council to further evaluate and consider possible adoption of legislation, guidelines and/or polices as required to avert the potential impacts of smoke shop and smoking lounge uses in the City.

### **Section 3. 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 4. Effective Date and Duration.**

This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall be in effect for 45 days there from unless extended by the City in accordance with California Government Code Section 65858.

ADOPTED, this 11 day of September, 2013, by the following vote:

Motion was made by Councilmember Cox and seconded by Vice Mayor Russell; the vote was 4 ayes – 1 noe

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

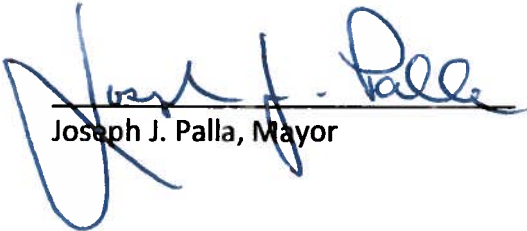
NOES: Councilmember Brigham

ABSENT: 0

ABSTENTIONS: 0

APPROVED:

ATTESTED:

  
\_\_\_\_\_  
Joseph J. Palla, Mayor

  
\_\_\_\_\_  
Roberto J. Bartoli, Jr., Deputy City Clerk



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

Agenda Item:	7
Meeting Date:	September 11, 2013

<b>Agenda Section</b> New Business	<b>Staff Contact</b> 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 Making Findings and Establishing a Temporary Moratorium on the Establishment and Operation of Smoke Shops and Smoking Lounges, to Become Effective Immediately

**Purpose**

Consideration and possible adoption by the City Council of 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 Staff time to review and consider the possible adoption of new Zoning standards regulating these types of businesses in the City 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.

**Summary**

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.

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- 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 interim ordinance. If adopted by a 4/5 vote of the Council, the ordinance would take immediate effect, and remain in effect for 45 days. If the Council intends to extend the ordinance, it will be necessary to provide notice, prepare a report, and adopt an ordinance extending the moratorium prior to the expiration of the initial 45-day period. Concurrently, Staff would begin the process of researching similar regulations in other jurisdictions in Sonoma County and bring the item forward to the Planning Commission for review and recommendation by the City Council.

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### **Options**

1. Consider and adopt an interim ordinance that would establish a temporary City-wide 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.

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### **Subcommittee Recommendation**

None.

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### **Recommended Council Action**

By motion, waive the full reading and adopt the ordinance by title only. A 4/5 vote of the Council is required for adoption.

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**Attachments:**

1. Urgency Ordinance

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cc: 2012585.1

Motion by C.M. Cox  
Sec. V.M. Russell

4 ayes  
1 noe (Brigham)