

**Approvals:**City Manager [Signature]Dept. Head [Signature]Attorney [Signature]Finance [Signature]

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: July 7, 2015

Department: Community Development
Prepared By: Cecilia Gallardo-Daly, Community Development Director

Subject: *INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA UNDER GOVERNMENT CODE SECTION 65858 IMPOSING A TEMPORARY MORATORIUM ON THE PERMITTING OR ESTABLISHMENT IN COMMERCIAL ZONES OF ALCOHOL OR OTHER DRUG ABUSE PROGRAMS TO ALLOW TIME FOR CONSIDERATION OF APPROPRIATE AMENDMENTS TO THE CITY MUNICIPAL CODE.*

Fiscal Impact: Approval of this item will not result in net city cost (discretionary general funding).

Summary: Staff recommends that Council adopt the Interim Urgency Ordinance along with the relevant findings, and approve a Notice of Exemption, imposing a moratorium on the establishment or expansion or City approval of alcohol or other drug abuse program uses in commercial zones.

Background: Over the last decade, many communities in the State of California have seen a significant increase in the number of alcohol or other drug abuse programs. Recently, a number of City of San Clemente citizens and businesses have expressed concern over the proliferation of alcohol or other drug abuse program uses in commercially zoned districts in the City. Business owners and operators have raised concerns about the adverse impacts on their businesses, and residents have raised concerns about impacts on their nearby neighborhoods, including nuisance and potential for criminal activity, overcrowding, parking, noise, and a decrease in business that would result from clusters of these types of facilities in close proximity to each other.

The City's Municipal Code does not expressly allow for alcohol or other drug abuse program uses in commercial zones. Rather, from time to time the City has treated these uses as "medical," the closest analog in the existing Code. But present definitions of "medical" uses vary among commercial zones, and the City does yet have a consistent approach to evaluating and permitting alcohol or other drug abuse programs. To complicate things further, alcohol or other drug abuse programs often do not fit well under the existing definition of medical uses, and the programs have unique adverse impacts, distinct from those of strictly medical uses.

Therefore, amendments to the Municipal Code are necessary to ensure that alcohol or other drug abuse programs are reasonably regulated so that they blend in with, and do not take over, commercial areas and to ensure that regulation of these important uses is consistent across the City's commercial zones. The State has regulatory authority over many types of alcohol or other drug abuse programs (see Health and Safety Code section 11842.5). The City may nevertheless reasonably regulate these

uses in commercial zones as far as regulation is not prohibited by state or federal law. The City recognizes that there are state and federal regulations relating to housing for disabled persons that must be considered when regulating these uses in residential areas, but this ordinance focuses on non-residential uses in commercial zones, so fair-housing laws do not directly apply here.

To temporarily prevent the continued expansion of alcohol or other drug abuse program uses that might harm the character of San Clemente commercial and residential areas, the attached interim urgency ordinance will place a 45-day moratorium — effective immediately — on the establishment of new alcohol or other drug abuse programs and facilities.

After the 45-day moratorium, the City Council may, after notice and hearing, extend the urgency ordinance for an initial period of time up to 10 months and 15 days. Thereafter, after another public hearing, an additional one-year extension is permitted. Government Code section 65858 permits an interim urgency ordinance to be adopted for a 45-day period without following the notice and hearing requirements normally required for adoption of a zoning ordinance.

The adoption of this interim urgency ordinance will provide an opportunity for the City to assess the concerns that business owners and operators and residents have brought forward concerning these types of uses in commercially zoned districts, analyze the impacts created by these types of uses, develop regulations that are tailored to their impacts, protect the community, and comply with federal and state laws.

Discussion: The adoption of this interim urgency ordinance will provide an opportunity for the City to assess the concerns that business owners and residents have brought forward concerning these types of uses in commercial zoning districts, analyze the impacts created by these types of uses, develop regulations that are tailored to the impacts, protect the community, and comply with federal and state fair-housing laws.

Recommended

Action: Staff Recommends that the City Council adopt an Interim Urgency Ordinance of The City Council of The City of San Clemente, California Under Government Code Section 65858 Imposing a Temporary Moratorium On the Permitting or Establishment In Commercial Zones of Alcohol or Other Drug Abuse Programs to Allow Time for Consideration of Appropriate Amendments to The City Municipal Code; adopt the findings related thereto; and adopt a Notice of Exemption with regard to the moratorium.

Attachments: 1) Interim Urgency Ordinance of The City Council of The City of San Clemente, California Under Government Code Section 65858 Imposing a Temporary Moratorium On the Permitting or Establishment In Commercial Zones of Alcohol or Other Drug Abuse Programs to Allow Time for Consideration of Appropriate Amendments to The City Municipal Code.

Notification: No notification is required under Government Code Section 65858.

ORDINANCE NO. ___

**INTERIM URGENCY ORDINANCE OF THE CITY OF SAN CLEMENTE
IMPOSING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND
PERMITTING OF ALCOHOL OR OTHER DRUG ABUSE PROGRAMS IN
COMMERCIAL ZONES TO ALLOW TIME FOR CONSIDERATION OF
APPROPRIATE AMENDMENTS TO THE CITY MUNICIPAL CODE**

WHEREAS, it is anticipated that the City will receive a number of applications to construct facilities for or otherwise establish or expand alcohol or other drug abuse programs;

WHEREAS, existing zoning regulations do not adequately address alcohol or other drug abuse programs;

WHEREAS, this interim urgency ordinance is necessary to provide the City staff time to study and assess various approaches to regulating the subject land uses and to present recommendations to the City Council. Recommendations may include amendments to the City's Municipal Code addressing the establishment and expansion of alcohol or other drug abuse programs and compliance with state law, including appropriate review procedures;

WHEREAS, other public entities have reported adverse primary and secondary effects from these types of commercial uses, including loitering, noise, litter, and other nuisances, and the City has received complaints from residents and local businesses about the adverse impacts of existing alcohol or other drug abuse programs in the City, impacts that pose an immediate threat to the public health, safety, and welfare in San Clemente;

WHEREAS, consequently, there is a current and immediate threat to the public health, safety and welfare if permits or entitlements for alcohol or other drug abuse programs are issued;

WHEREAS, moreover, the City's Code currently treats alcohol or other drug abuse programs inconsistently across commercial zones: no commercial zone expressly allows for these programs, so until now they have been loosely treated as "medical" uses (in spite of the programs having significant and unique impacts), and "medical" uses are defined differently in different commercial zones;

WHEREAS, the City needs to study these uses and how to best tailor regulations to their character and impacts in a way that is consistent across commercial zones;

WHEREAS, any permits or entitlements for alcohol or other drug abuse programs that could issue while the study is pending might result in land uses and developments that conflict with amendments to the Municipal Code that may be adopted as a result of the study;

WHEREAS, the adoption and immediate enactment of this ordinance is necessary for the preservation of the public health, safety, and welfare to prevent establishment of new uses and the expansion or modification of existing uses at locations that might conflict with and be inconsistent with the intended amendment to the Zoning Code;

WHEREAS, minimizing incompatibility of land uses promotes orderly development, which is necessary to encourage quality neighborhoods and commercial areas; and

WHEREAS, this is a matter of importance to the entire City of San Clemente and is not directed at any particular property.

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

Section 1. The recitals above are each incorporated by reference and adopted as findings of the City Council.

Section 2. For purposes of this ordinance, the following terms and definitions are used:

(a) *Alcohol or other drug abuse program* is defined in California Health and Safety Code section 11842.5.

(b) *Fair housing laws* means the Federal Fair Housing Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act, as each statute may be amended from time to time, and each statute's implementing regulations.

(c) *Integral program* means any combination of two or more alcohol or other drug abuse programs, which may or may not be located on the same or contiguous parcels of land, that are under the control and management of the same owner, operator, management company, or licensee, or any affiliate of any of them, and are integrated components of one operation. These alcohol or other drug abuse programs are considered one program for purposes of applying federal, state, and local laws to its operation. Examples of integral programs include, but are not limited to, the provision of intake or evaluation services in one facility and recovery programming, treatment, meals, or any other service or services to program participants in another facility or facilities or by assigning staff or a consultant or consultants to provide services to the same program participants in more than one licensed or unlicensed facility.

(d) *Operator* means a company, business, or individual who provides alcohol or other drug abuse program services, e.g., providing intake or evaluation of individuals for an alcohol or other drug abuse program, providing meals, counseling, transportation, or scheduled activities. Operator does not include a property owner or property manager that exclusively handles real estate

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contracting, property management and leasing of the property and that does not otherwise meet the definition of operator.

(e) *Planning division* means the planning division of the Community Development Department of the City of San Clemente.

Section 3. The City Council hereby enacts this interim urgency ordinance under section 65858, subdivision (a), of the California Government Code, which allows the City to adopt an interim urgency ordinance by not less than a four-fifths vote, to protect the public safety, health, and welfare by prohibiting any use that may be in conflict with a zoning proposal that the City Council, Planning Commission, or Community Development Department of the City is considering or studying or intends to study within a reasonable time.

Section 4. Notwithstanding anything to the contrary in existing City law, including but not limited to the Municipal Code and the City General Plan, this ordinance establishes a 45-day moratorium on: the approval, issuance, or transfer of any use permit, variance, building permit, business license, or other applicable entitlement for the establishment or operation of an alcohol or other drug abuse program in the commercial zones of the City, as well as the expansion or modification of existing establishments in those zones.

Section 5. Nevertheless, the City may continue to accept and process applications for uses prohibited by this moratorium if so required by state law. Any application received and processed during the moratorium shall be processed at the applicant's sole cost and risk with the understanding that no permit for an alcohol or other drug abuse program may issue while this moratorium or any extension of it is in effect.

Section 6. The City recognizes that fair housing laws must be considered when regulating some of these uses in residential areas, but this ordinance focuses on non-residential uses in commercial zones, so the fair housing laws do not apply here.

Section 7. The City Council hereby directs the Planning Division to study and review potential amendments to the City's Zoning Code related to alcohol or other drug abuse programs to re-establish appropriate regulations that are compatible with intent of the City's commercial zones. The study should include, among other things,

- (a) issues relating to secondhand smoke;
- (b) what other jurisdictions are doing to properly regulate these uses;
- (c) how to address integral programs;
- (d) how to better coordinate with the State in terms of licensing and monitoring licensee compliance;

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(e) how to best protect the interests of people who are served by alcohol or other drug abuse programs in the City from violations of building and fire safety and from unqualified and predatory operators;

(f) the permissible scope of the City's business-license requirements in light of state and federal law; and

(g) the value in giving equal treatment to alcohol or other drug abuse programs in all commercial zones.

Section 8. The City Council finds that this ordinance is not subject to the California Environmental Quality Act under California Code of Regulations, Title 14, Section 15060, subdivision (c)(2), because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment nor under subdivision (c)(3) because the activity has no potential for resulting in physical change to the environment, directly or indirectly and so is not a project.

Section 9. If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 10. This ordinance is declared an urgency measure necessary for the immediate protection and preservation of the public peace, health, safety, and welfare for the reasons stated in Section 3 above, and it takes effect immediately on adoption by the City Council, by at least a four-fifths vote, and signing by the City Clerk. The moratorium remains in effect for 45 days from the date of adoption unless the City Council extends it under Government Code section 65858. Ten days before this interim urgency ordinance or an extension of it expires, the City Council shall issue a written report describing the measures that the City has taken to address the conditions that led to the adoption of this ordinance.

[Signatures on following page]

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APPROVED AND ADOPTED this ___ day of July, 2015.

ATTEST:

Joanne Baade, City Clerk
City of San Clemente

Chris Hamm, Mayor
City of San Clemente

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Urgency Ordinance No. ____, the reading in full thereof unanimously waived, was duly passed and adopted at a regular meeting of the City Council held on the __ day of July, 2015, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this __ day of July, 2015.

Joanne Baade, City Clerk
City of San Clemente

APPROVED AS TO FORM:

Scott C. Smith, City Attorney
City of San Clemente

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