

ORDINANCE #2015 03

**AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON, ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 APPROVING A 45 DAY MORATORIUM ON DEVELOPMENT, ESTABLISHMENT AND OPERATION OF NEW SMALL-FORMAT AND LARGE - SCALE TOBACCO RETAILERS AND ALL NEW E- CIGARETTE RETAILERS, ELECTRONIC CIGARETTE LOUNGES, VAPOR BARS, AND HOOKAH BARS WITHIN THE CITY OF AMERICAN CANYON PENDING REVIEW AND POSSIBLE AMENDMENT OF ZONING REGULATIONS APPLICABLE TO SUCH BUSINESSES**

**WHEREAS**, the City of American Canyon ("City") seeks to ensure that the City's zoning laws are consistent with the goals, policies, and standards set forth in the City General Plan; and

**WHEREAS**, the potential for Small-Format and Large - Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of American Canyon present unique challenges for local government, in that the American Canyon Municipal Code does not currently define or regulate said uses, and tobacco and electronic cigarette retailers have been permitted as "retail" uses. In the absence of specific standards and zoning regulations pertaining to tobacco retailers, electronic cigarettes retailers, vapor bars/lounges and hookah bars/lounges, it is difficult to regulate these establishments, and, as such, these uses require a commitment of police and code enforcement resources that is typically greater than other regulated retail establishments; and

**WHEREAS**, the establishment and operation of new small- format tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges or hookah bars/lounges in the City before the City can adopt regulations presents a current and immediate threat to the public health, safety and welfare. The negative health impacts related to tobacco use have been known for some time, and studies show an increase in the use of electronic cigarettes by youth. Although the long -term health effects of using electronic cigarettes are still unknown, initial studies have found carcinogens and toxic chemicals in the electronic cigarette vapors, including ingredients used to make anti-freeze. With respect to the moratorium on new small-format and large-scale tobacco retailers, studies have shown that sales of tobacco and tobacco-related products to youth are typically not occurring at the larger retailers with only ancillary tobacco sales; and

**WHEREAS**, because tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges can create undesirable effects on surrounding commercial establishments, residential areas, and on those who participate in such activities, time is needed to allow staff to analyze the potential impacts of such establishments in American Canyon and determine what modifications to the Zoning Ordinance regulations would be appropriate; and

**WHEREAS**, the City's Zoning Ordinance is silent about tobacco retailers, vapor bars/lounges, electronic cigarette lounges, electronic cigarette retailers and hookah bars/lounges and, as such, does not address the impacts related to the location and manner of development, establishment, and operation of these establishments in relation to public health, safety, and welfare concerns, including, but not limited to, the impacts these businesses may have on surrounding uses and sensitive receptors, such as children, the infirm and the elderly; and

**WHEREAS**, until such time as the City institutes specific land use controls over tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges,

the community is at risk that said businesses could be established, operated, modified or expanded prior to the adoption of measures necessary for the protection of public health, safety and welfare; and

**WHEREAS**, because the long-term effects of electronic cigarettes is still unknown, the issuance or approval of any building permit, planning permit, business license, or other permit or license, for tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges prior to the City's completion of its review of the need for modifications to the Zoning Ordinance would result in a current and immediate threat to the public health, safety and welfare; and

**WHEREAS**, the City is exploring regulations concerning the placement, establishment, and operation of Development, Establishment and Operation of new Small-Format and Large - Scale Tobacco Retailers and all new E- Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars and similar uses within the City; and

**WHEREAS**, the March 17, 2015 agenda report that discusses the urgency ordinance extension constitutes the written report required by Government Code Section 65858(d).

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

**SECTION 1: Moratorium**. In order to protect the public health, safety and welfare and pursuant to the provisions of Government Code section 65858, a moratorium is hereby placed on the following:

a. The establishment, expansion, or relocation of new Small-Format and Large - Scale Tobacco Retailers and all new E- Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars or businesses offering related or similar services, and the issuance of a land use permit or entitlement or permit of any kind allowing the establishment, expansion, or relocation of Small-Format and Large - Scale Tobacco Retailers and all new E- Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars or business offering related services.

b. For the Purposes of this Ordinance, "of Small-Format Tobacco Retailer" shall mean any room, store, building, or other place less than 10,000 square feet in which fifty percent or more of the transactions involve the sale of any combination of the following products: tobacco products, electronic cigarettes, and devices capable of providing an inhalable dose of nicotine.

c. For the Purposes of this Ordinance, "Large - Scale Tobacco Retailer" is a store equal or greater than 10,000 square feet that devotes more than five (5) percent of their floor areas to the sale, display, sale and storage of any combination of the following products: tobacco products, electronic cigarettes, and devices capable of providing an inhalable dose of nicotine.

d. For the Purposes of this Ordinance, "Electronic Cigarette" is a device that is capable of providing an inhalable dose of nicotine. Electronic Cigarette does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

e. For the Purposes of this Ordinance, "Vapor bar" or "vapor lounge" (also referred to as "smoking device bar" or "electronic smoking device lounge") means any facility, building, structure or location where customers use an electronic smoking

device or other apparatus to deliver an inhaled dose of nicotine or other substance within the establishment.

f. For Purposes of this Ordinance, a “Hookah Bar” or “Hookah Lounge” means any facility, building, structure or location, where customers share tobacco or a similar smoking product from an individual or communal hookah placed throughout the establishment.

## **SECTION 2. Declaration of Urgency**

a. The purpose of this Ordinance is to protect the public safety, health and welfare from the current and immediate threats posed by the establishment of new Small-Format and Large - Scale Tobacco Retailers and all new E- Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and/or Hookah Bars.

b. Article XI, Section 7 of the California Constitution authorizes cities to adopt local police, sanitary, and other ordinances not in conflict with general laws.

c. The City Council finds that, the negative health impacts related to tobacco use have been known for some time, and studies show an increase in the use of electronic cigarettes by youth. Although the long -term health effects of using electronic cigarettes are still unknown, initial studies have found carcinogens and toxic chemicals in the electronic cigarette vapors, including ingredients used to make anti – freeze with or without nicotine. With respect to the moratorium on new small-format and large-scale tobacco retailers, studies have shown that sales of tobacco and tobacco - related products to youth are typically not occurring at the larger retailers with only ancillary (less than 5%) floor space dedicated to tobacco sales.

d. The City Council has concluded that the best method of protecting the public safety, health, and welfare is to explore regulations concerning the placement, establishment, and possible operation of Small-Format and Large - Scale Tobacco Retailers and all new E- Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City.

**SECTION 3. Community Development Department.** The Community Development Director is directed to provide a written report to the City Council at least ten days prior to the expiration of this ordinance, describing the study conducted of the local conditions that led to the adoption of this ordinance.

**SECTION 4. Effective Date.** This ordinance shall become effective immediately upon the date of its adoption pursuant to Government Code section 65858.

**SECTION 5. Expiration.** This moratorium shall be of no further force or effect upon the expiration of forty-five (45) days from the date of adoption, unless extended in accordance with the provisions Government Code section 65858.

**SECTION 6. Severability.** If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and adopted this Ordinance and each section,

sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**SECTION 7. Compliance with California Environmental Quality Act.** The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations because it has no potential for resulting in physical change to the environment, directly or indirectly, as it prevents changes in the environment pending the completion of the contemplated possible review of City zoning regulations.

**PASSED, APPROVED AND ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 17<sup>th</sup> day of March, 2015, by the following vote:

**MAYOR GARCIA:**

**VICE MAYOR LEARY:**

**COUNCIL MEMBER BENNETT:**

**COUNCIL MEMBER JOSEPH:**


**COUNCIL MEMBER RAMOS:**

Yes  
Yes  
Yes  
Yes  
Yes



**Leon Garcia, Mayor**

**ATTEST:**



**Cherri Walton, Deputy City Clerk**

**APPROVED AS TO FORM:**



**William D. Ross, City Attorney**