ORDINANCE NO. 1075

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, TEMPORARILY PROHIBITING THE APPROVAL OF ANY ZONING PERMIT, USE PERMIT, BUILDING PERMIT, OCCUPANCY PERMIT, OR OTHER ENTITLEMENT FOR ELECTRONIC CIGARETTE RETAILERS, DRUG PARAPHERNALIA RETAILERS AND HEAD SHOPS WITHIN CITY LIMITS

THE CITY COUNCIL OF THE CITY OF PICO RIVERA DOES ORDAIN AS FOLLOWS:

SECTION 1. Pending the completion of a study and/or the adoption of new zoning regulations, the approval or issuance of any zoning permits, use permits, building permits or occupancy permits or other entitlements for electronic-cigarettes (e-cigarettes) retailers, drug paraphernalia retailers, and head shop and smoke shop shall be prohibited.

SECTION 2. The City Council directs staff to immediately commence studies and hearings pertaining to the proper criteria, conditions of approval and regulations for the orderly, planned and coordinated development and future use of e-cigarettes, and to report its initial findings so the City Council can issue an interim written report pursuant to Government Code section 65858(d).

SECTION 3. The City Council directs staff to immediately commence studies and hearings, if necessary, pertaining to the updating of the City’s Municipal Code for consistency with the California Health and Safety Code Section 11014.5 regarding use and sale of drug paraphernalia and to more specifically prohibit head shops and smoke shops and to include other current mechanisms used as drug paraphernalia not currently defined in the state code.

SECTION 4. This Ordinance is an Interim Zoning Ordinance enacted pursuant to Sections 36934 and 65858 of the Government Code of the State of California, and in accordance therewith, shall be of no further force and effect forty-five (45) days after the adoption of this Ordinance unless after notice pursuant to Section 65090, and public hearing, the City Council shall extend this Ordinance in accordance with the terms and provisions of Section 65858 of the Government Code. The City Council hereby finds, determines and declares that the immediate preservation of the public peace, health, safety and welfare necessitates the enactment of this Ordinance as an urgency ordinance and that the approval of zoning permits, use permits, building permits, occupancy permits, or any other applicable entitlement for use which is required in order to comply with the City’s Municipal Code would result in that threat to public health, safety, or welfare. The City Council further finds there is a current and immediate threat to the public health, safety and welfare necessitating the adoption of this Ordinance as an Interim Zoning Ordinance under Section 65858. Said findings are as follows:

1. The City of Pico Rivera currently does not have established laws, rules or
regulations to adequately control e-cigarettes, drug paraphernalia retailers, or head shops and smoke shops and the possible effects on the health of persons and the environment.

2. The City of Pico Rivera is experiencing a flurry of inquiries of e-cigarette businesses and e-cigarette sales which if approved would frustrate the purpose of further study.

3. The City of Pico Rivera Municipal Code is not consistent with the California Health and Safety Code Section 11014.5 which prohibits drug paraphernalia and by including drug paraphernalia to the moratorium will further strengthen state law in the City.

4. The City of Pico Rivera wishes to include head shops and other current mechanisms used for drugs; including paraphernalia that may not be intended for drug use but that can be used for such purposes.

5. It is necessary to adopt this interim ordinance as an urgency measure in order to prevent the establishment of e-cigarettes, drug paraphernalia and head shops which would defeat the purpose of a study and any resulting ordinance.

6. If an urgency interim zoning ordinance is not adopted immediately the permitting of e-cigarettes, drug paraphernalia and head shops may be contested in a court of law and permitted which would be contrary to the orderly, planned and coordinated development and future use of properties within the City of Pico Rivera because there are currently no specific zoning regulations, zoning permits, business permits or other special regulations regulating the establishment, location and operation of e-cigarette retailers, drug paraphernalia retailers and head shops.

SECTION 5. In order to protect the public health, safety and welfare it is necessary to enact this Ordinance as an urgency measure to go into effect immediately upon its adoption, and that to enact this Ordinance after giving notice, holding public hearings and two readings thereof, and thereafter to await thirty days for said Ordinance to become effective, will be detrimental to the public health, safety and welfare, in that during the interim period further such e-cigarette, head shop and drug paraphernalia may be established without the benefit of proper criteria and regulations. It is therefore necessary that this Ordinance go into effect immediately upon adoption.

SECTION 6. For purposes of this ordinance an "e-cigarette" retailer shall mean a business with any combination of the following characteristics as described by the United States Food and Drug Administration and California Health & Safety Code section 119405:

a. products designed to deliver nicotine or other substances to a user in the form of a vapor or vaporized solution
b. composed of a rechargeable, battery-operated heating element
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c. replaceable cartridge that may contain nicotine or other chemicals
d. atomizer that, when heated, converts the contents of the cartridge into a vapor that can be inhaled by the user
e. products are often made to look like such products as cigarettes, cigars, and pipes
f. products are often made to look like everyday items such as pens and USB memory sticks, for people who wish to use the product without others noticing

SECTION 7. For purposes of this ordinance “drug paraphernalia” shall be consistent with the California Health and Safety Code Section 11014.5 and shall mean a business that sells (wholesale or retail), trades, loans, or barters any of the following:

a. Kits designed for use or marketed for use in planning, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived
b. Kits designed for use or marketed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.
c. Isomerization devices designed for use or marketed for use in increasing the potency of any species of plant which is a controlled substance.
d. Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.
e. Scales and balances designed for use or marketed for use in weighing or measuring controlled substances.
f. Containers and other objects designed for use or marketed for use in storing or concealing controlled substances.
g. Hypodermic syringes, needs and other objects designed for use or marketed for use in parenterally injecting controlled substances into the human body.
h. Objects designed for use or marketed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

a. Carburetion tubes and devices.
b. Smoking and carburetion masks.
c. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
d. Miniature cocaine spoons, and cocaine vials.
e. Chamber pipes.
f. Carburetor pipes.
g. Electric pipes
h. Air-driven pipes.
i. Chillums.
j. Bongs.
k. Ice Pipes or chillers.
SECTION 8. For purposes of this ordinance “Head Shop or Smoke Shop” shall mean a business that sells (wholesale or retail), trades, loans, or barter drug-related paraphernalia or any item whether useful for non-drug related purposes or not, which is displayed, grouped with other items, advertised, or promoted in a manner to reasonably suggest its usefulness in the growing, harvesting, processing manufacturing, preserving, inhaling, injecting or ingesting of marijuana, hashish, cocaine, any controlled substance, new age herbs, or other recreational drugs.

SECTION 9. The City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that the provisions of this Ordinance are severable, and if, for any reason, any sentence, paragraph or section of this ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 10. No person shall violate any provision, or fail to comply with any of the requirements of this ordinance, and any person violating any provision, or failing to comply with any provision of this ordinance shall be subject to any and all penalties as set forth under the Pico Rivera Municipal Code. The definitions for land use violations as set forth under the Pico Rivera Municipal Code shall apply to violations of the provisions of this ordinance.

SECTION 11. The proposed action is considered to be exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the proposed action consists of the adoption of a zoning moratorium ordinance which does not have the potential for causing a significant effect on the environment.

SECTION 12. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published or posted as prescribed by law. This Ordinance shall take effect immediately upon its adoption. This Ordinance shall be effective for a period of 45 days unless extended pursuant to California Government Code Section 65858.

[Signatures on following page]
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APPROVED AND ADOPTED this 28th day of May, 2013 by members of the City Council of the City of Pico Rivera, voting as follows:

Gustavo V. Camacho, Mayor

ATTEST:

Anna M. Jerome, Deputy City Clerk

APPROVED AS TO FORM:

Arnold M. Alvarez-Glaesman, City Attorney

AYES: Archuleta, Armenta, Salcido, Tercero, Camacho
NOES: None
ABSENT: None
ABSTAIN: None