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Long Beach, California

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City Attorney

October 17, 2000

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HONORABLE MAYOR AND CITY COUNCILMEMBERS
City of Long Beach,
California

RE: Smoking Ordinance

Pursuant to the City Council's request of April 25, 2000 enclosed please find the proposed amendment to the Long Beach Municipal Code concerning the City's smoking ordinance the following changes have been made to the City's smoking ordinance to make it consistent with State law.

8.68.020 (I) and (L) - gaming clubs, bars and taverns are added to the definition of "public place" and "workplace."

8.68.090 (A) and (B) - deletes the exception for bars.

8.68.110 (C)(3) - the breakroom definition is amended to be consistent with State law provisions.

8.68.110 (C)(4) - is deleted (bar exception).

8.68.190 - the fine for violations the City's ordinance is amended to be consistent with State law.

8.68.200 - patrons are added to be protected from retaliation.

Very truly yours,

ROBERT E. SHANNON, City Attorney

By


DANIEL S. MURPHY, Principal Deputy

DSM:cw
Enclosure
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1 Chapter.

2 8.68.020 Definitions.

3 The following words and phrases, whenever used in
4 this Chapter, shall be constructed as defined in this
5 Section:

6 A. "Bar" means an area which is devoted to
7 serving of alcoholic beverages and in which the service
8 of food is only incidental to the consumption of such
9 beverages. Bar shall also include a nightclub or
10 cabaret where entertainment and/or dancing are provided
11 in addition to the consumption of alcoholic beverages
12 or food.

13 B. "Child care facility" means any location or
14 portion thereof where children other than those of the
15 owner, operator or proprietor are cared for or
16 supervised in exchange for anything of value.

17 C. "City facility" means any enclosed structure
18 wherever owned or used by the City of Long Beach for
19 its operations or activities.

20 D. "City vehicle" means any vehicle owned and
21 operated by the city for public purposes.

22 E. "Employee" means any person who is employed by
23 any employer for direct or indirect monetary wages or
24 profit.

25 F. "Employer" means any person who employs the
26 services of any person other than himself or herself.

27 G. "Enclosed" means closed in by a roof and four
28 (4) walls with appropriate openings for ingress and

1 egress but does not include areas commonly described as
2 public lobbies.

3 H. "Motion Picture Theater" means any theater
4 engaged in the business of exhibiting motion pictures.

5 I. "Public Place" means any enclosed area to
6 which the public is invited or in which the public is
7 permitted, including, but not limited to, retail
8 stores, retail service establishments, retail food
9 production and marketing establishments, restaurants,
10 theaters, auditorium, gymnasiums, waiting rooms,
11 reception areas, educational facilities, health
12 facilities, public transportation facilities, bowling
13 alleys, bingo parlors, hair salons, laundromats, gaming
14 clubs, bars, taverns, hotel and motel lobbies. A
15 private residence is not a "public place", except that
16 the enclosed common areas of apartment or condominium
17 structures, if any, shall be considered "public places"
18 for purposes of Section 8.68.060.

19 J. "Service Line" means an indoor line or area in
20 which persons await service of any kind, regardless of
21 whether or not such service involves the exchange of
22 money. Such service shall include, but is not limited
23 to, sales, providing information, directions, or advice
24 and transfers of money or goods.

25 K. "Smoking" means the combustion of any cigar,
26 cigarette, pipe, or any similar article, using any form
27 of tobacco or other combustible substance in any form.

28 L. "Workplace" means any enclosed area of a

1 structure or portion thereof occupied by any entity and
2 frequented by employees during the normal course of
3 their employment where clerical, professional,
4 manufacturing, business services or other normal and
5 customary activities of the entity are performed or
6 where other work is done at that location. Workplace
7 includes, but is not limited to, spaces in office
8 building, medical office waiting rooms, libraries,
9 museums, gaming clubs, bars, taverns, employee lounges,
10 conference rooms and employee cafeterias. A private
11 home is not a workplace, except where such home is used
12 as a child care facility as defined in Section
13 8.68.020 (B) .

14 8.68.030 Smoking prohibited - elevators.

15 Smoking is prohibited and is unlawful within
16 elevators in buildings generally used by and open to
17 the public, including elevators in office, hotel and
18 multifamily buildings.

19 8.68.040 Smoking prohibited - hospitals and health care
20 facilities.

21 A. In public areas of health care facilities and
22 hospitals, as defined in Section 1250 of the California
23 Health and Safety Code.

24 B. "Staff and Visitor Smoking Prohibited" signs
25 shall be conspicuously posted in public areas of health
26 care facilities.

27 C. Smoking is prohibited in all child care
28 facilities as defined in Section 8.68.020 (B) .

1 8.68.050 Smoking prohibited - public meeting rooms.

2 Smoking is prohibited and is unlawful in public
3 meeting rooms, hearing rooms, conference rooms,
4 chambers and places of public assembly in which public
5 business is conducted, when the public business
6 requires or permits direct participation or observation
7 by the general public.

8 8.68.060 Smoking prohibited - enclosed public places.

9 A. Smoking is prohibited and is unlawful in every
10 enclosed public place as defined in Section
11 8.68.020 (I). Every owner, manager or operator of such
12 facility shall post signs conspicuously in the premises
13 stating that smoking is prohibited within the public
14 place as defined in Section 8.68.020 and in the case of
15 motion picture theaters, such information shall be
16 shown upon the screen for at least five (5) seconds
17 before showing feature motion pictures.

18 8.68.070 Smoking prohibited - public restrooms.

19 Smoking is prohibited and is unlawful in public
20 restrooms.

21 8.68.080 Smoking prohibited - indoor service lines.

22 Smoking is prohibited and is unlawful in indoor
23 service lines in which more than one (1) person is
24 giving or receiving services of any kind.

25 8.68.090 Smoking prohibited - eating establishments and
26 bars.

27 A. Smoking is prohibited and is unlawful in every
28 publicly or privately owned enclosed coffee shop,

1 cafeteria, short-order cafe, luncheonette, sandwich
2 shop, soda fountain, restaurant, gaming club, bar,
3 tavern, or other eating establishment serving food.

4 B. Establishments, as defined in Subsection A
5 above, which maintain an outdoor seating area shall
6 maintain a contiguous no smoking area of not less than
7 two-thirds (2/3) of both the outdoor seating capacity
8 or the outdoor floor space in which customers are being
9 served.

10 8.68.100 Smoking prohibited - retail food production and
11 marketing establishments.

12 Smoking is prohibited and unlawful in any retail
13 food marketing establishments including grocery stores
14 and supermarkets.

15 8.68.110 Regulation of smoking in the workplace.

16 A. Smoking is prohibited in all work places in
17 the City of Long Beach as defined in Section
18 8.68.020 (L).

19 B. Smoking is prohibited in conference and
20 meeting rooms, classrooms, auditoriums, restrooms,
21 medical facilities, hallways, elevators, cafeteria,
22 lunchrooms, employee lounges, designated eating areas
23 and common areas.

24 C. This Section is not intended to regulate
25 smoking in the following places and under the following
26 conditions:

27 1. A private home which may serve as a
28 workplace except when used as a child care facility as

1 defined in Section 8.68.020(B).

2 2. Any property owned, leased or used by
3 governmental agencies other than the City of Long
4 Beach.

5 3. Break-rooms designated by employers for
6 smoking provided that the following conditions are met:

7 a. Air from the smoking room shall be
8 exhausted directly to the outside. Air from the
9 smoking room shall not be recirculated to other parts
10 of the building. Windows which open to the outside
11 shall not be deemed to comply with this provision;

12 b. The employer shall comply with any
13 ventilation standard or other standard utilizing
14 appropriate technology, adopted by the occupational
15 safety and health standards board, or the federal EPA,
16 whichever is stronger;

17 c. The smoking room shall be located in
18 a non-work area where no one, as part of his or her job
19 duties, is required to enter. Job responsibilities do
20 not include any custodial or maintenance work carried
21 out when the room is unoccupied; and

22 d. There are sufficient nonsmoking
23 break-rooms to accommodate nonsmoking employees.

24 D. The provisions of Sections 8.68.090 and
25 8.68.100 shall govern the public access areas of such
26 facilities; however, such employers shall otherwise
27 comply with provisions of this Section 8.68.110.

28 8.68.120 Posting of signs required.

1 A. Except where other signs are required,
2 whenever in this code smoking is prohibited,
3 conspicuous signs shall be posted so stating,
4 containing all capital lettering not less than one (1)
5 inch in height on a contrasting background. It is the
6 duty of the owner, operator, manager, or other persons
7 having control of such room, building, or other place
8 where smoking is prohibited, to post such signs or to
9 cause such signs to be posted.

10 B. A warning sign must be posted at each sales
11 counter and on each vending machine where tobacco
12 products are sold. This warning sign must be posted in
13 a place that can be clearly seen by the public, and the
14 size and format of the warning sign shall comply with
15 California Code of Regulations, Title 17.

16 8.68.130 Structural modifications not required.

17 A. It shall be the responsibility of employers to
18 provide smoke-free areas for nonsmokers within existing
19 facilities to the maximum extent possible, but
20 employers are not required to incur any expense to make
21 structural or other physical modifications in providing
22 these areas.

23 B. Nothing in this Chapter shall require the
24 owner, operator, or manager of any theater, auditorium,
25 health care facility, or any building, facility,
26 structure, or business, to incur any expense to make
27 structural or other physical modifications to any area
28 or workplace.

1 C. Nothing in this Section shall relieve any
2 person from the duty to post signs on adopt policies as
3 required by this Chapter.

4 8.68.140 Administration and enforcement.

5 A. The no smoking ordinance established by this
6 Chapter shall be administered by the Department of
7 Health and Human Services.

8 B. Any person may register a complaint for an
9 alleged non-compliance with this Chapter with the
10 Department of Health and Human Services.

11 8.68.150 Exemptions.

12 Any owner or manager of a business or other
13 establishment subject to this Chapter may apply to the
14 City Health Officer for an exemption or modification to
15 any provision of this Chapter due to unusual
16 circumstances or conditions.

17 A. Such exemption shall be granted only if the
18 City Health Officer finds from the evidence presented
19 by the applicant for exemption at a public hearing that
20 the applicant cannot comply with the provisions of this
21 Chapter for which an exemption is requested without
22 incurring expenses for structural or other physical
23 modifications, other than posting signs, to buildings
24 and structures.

25 B. The applicant for an exemption shall pay
26 concurrent with the application, the fee, as prescribed
27 by resolution of the City Council, to cover cost of the
28 hearing and noticing of the hearing.

1 8.68.160 City facilities.

2 There shall be no smoking in any "city facility"
3 as defined in Section 8.68.020(c) or in any "city
4 vehicle" as defined in Section 8.68.020(D) or in any
5 covered area of the Long Beach Airport, notwithstanding
6 any exception or exemption contained in any other
7 provision of this Chapter.

8 8.68.170 Tobacco products distribution.

9 A. No person or entity shall sell or otherwise
10 distribute any cigarette or other tobacco product
11 unless such cigarette or tobacco product is in the
12 manufacturers original package with all required health
13 warnings.

14 B. No person or entity shall distribute or
15 furnish without charge or cause or authorize
16 distribution or furnishing of any cigarette or other
17 tobacco product in any public place or at any event to
18 which the public is invited unless such activity is
19 authorized in a permit for staging of a special event
20 which is subject to revocation for violation of the
21 requirement of Subsection A of this Section.

22 C. The provision of Subsection B of this section
23 shall not apply to private functions or nightclubs,
24 where minors are not present and such distribution is
25 authorized by the proprietor.

26 8.68.180 Billboard advertising.

27 No person or entity shall place, establish, keep,
28 maintain or locate any advertisement for any tobacco

1 product on any billboard within five hundred (500) feet
2 of or so oriented that the message portion of the sign
3 is visible from any school, child care center, nursery
4 school, hospital, place of worship or recreational
5 facility.

6 8.68.190 Violations and penalties.

7 Any person or entity violating any provision of
8 this Chapter is guilty of an infraction, and upon
9 conviction thereof, shall be punished by a fine not to
10 exceed one hundred dollars (\$100.00) for a first
11 violation, two hundred dollars (\$200.00) for a second
12 violation within one (1) year, and five hundred dollars
13 (\$500.00) for a third (3rd) and for each subsequent
14 violation within one (1) year.

15 8.68.200 Retaliation.

16 No person shall discharge, refuse to hire, or in
17 any other manner retaliate against any employee,
18 applicant, or patron exercising any right or privilege
19 created by this Chapter.

20 8.68.210 Mandatory compliance.

21 Mandatory compliance with Section 8.68.170 shall
22 not be required prior to the ninety first (91st) day
23 following enactment of this section.

24
25 Sec. 2. The City Clerk shall certify to the passage of
26 this ordinance by the City Council and cause the same to be
27 posted in three conspicuous places in the City of Long Beach, and
28 it shall take effect on the thirty-first (31st) day after it is

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City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 approved by the Mayor.

2 I hereby certify that this ordinance was adopted by the
3 City Council of the City of Long Beach at its meeting of
4 _____, 2000, by the following vote:

5 Ayes: Councilmembers: _____

6 _____

7 _____

8 _____

9 Noes: Councilmembers: _____

10 _____

11 Absent: Councilmembers: _____

12 _____

13 _____

14 _____

15 _____

City Clerk

17 Approved: _____
18 (Date)

19 _____

Mayor

20

21

22

23

24

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DSM:cjw

28

10/11/00

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