

OFFICE OF THE CITY ATTORNEY
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Long Beach, CA 90802-4664

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ORDINANCE NO. ORD-08-0003

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH ADDING CHAPTER 5.81 TO THE
LONG BEACH MUNICIPAL CODE REGARDING
TOBACCO RETAIL PERMIT

The City Council of the City of Long Beach ordains as follows:

Section 1. The Long Beach Municipal Code is amended by adding
Chapter 5.81:

Chapter 5.81

TOBACCO RETAIL PERMIT

5.81.005 Purpose and intent.

It is the intent of the City Council, in enacting this ordinance, to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors.

5.81.010 Definitions.

The following words as used in this Chapter shall have the meanings set forth in this Section unless otherwise clearly apparent from the context:

A. "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, bidis (or beedies) or any other preparation of tobacco.

B. "Tobacco paraphernalia" means cigarette papers or wrappers, pipe holders of smoking materials of all types, cigarette rolling machines, hookahs, and any other item designed for the smoking or ingestion of

1 tobacco products.

2 C. "Tobacco retailer" means any person who sells, offers for sale,
3 or offers to exchange for any form of consideration, tobacco, tobacco
4 products or tobacco paraphernalia; "tobacco retailing" shall mean
5 engaging in any of these things.

6 D. "Proprietor" means a person with an ownership or managerial
7 interest in a business. An ownership interest shall be deemed to exist
8 when a person has a ten percent (10%) or greater interest in the stock,
9 assets, or income of a business other than the sole interest of security for
10 debt. A managerial interest shall be deemed to exist when a person can
11 or does have, or can or does share, ultimate control over the day-to-day
12 operations of a business.

13 5.81.020 Permit-Required.

14 A. No person or proprietor shall act as a tobacco retailer without first
15 obtaining and maintaining a valid permit for each location at which tobacco
16 retailing is to occur or otherwise as provided in this Chapter. In addition to
17 the criminal penalties attached to violations of this section, tobacco retailing
18 without a valid tobacco permit is a public nuisance.

19 B. No permit will be issued to authorize tobacco retailing at any
20 place other than a fixed location; retailing by persons on foot and tobacco
21 retailing from vehicles is prohibited.

22 C. Violations of this chapter may constitute an infraction or a
23 misdemeanor.

24 D. In addition to the above remedy, a violation of this chapter may be
25 remedied by a civil injunction or abatement action initiated by the city
26 attorney.

27 5.81.030 Permit-Application.

28 A. Any person or proprietor desiring a permit to engage in tobacco

1 retailing as provided by this Chapter shall file an application with the City
2 Manager, City Health Officer or designee.

3 B. An application for a tobacco retailer's permit shall be submitted in
4 the name of each proprietor proposing to conduct retail tobacco sales and
5 shall be signed by each proprietor or an authorized agent thereof.

6 C. It is the responsibility of each proprietor to be informed of the laws
7 affecting the issuance of a tobacco retailer's permit.

8 D. The application for a tobacco retailing permit shall be filed on a
9 form and shall contain such information as is requested by the City,
10 including the following:

11 1. The name, mailing address and telephone number of the
12 applicant, and the signature of the applicant or an authorized person
13 thereof.

14 2. The business name, address and telephone number of each
15 location for which a tobacco retailing permit is sought.

16 3. Photo identification of the person seeking the permit.

17 4. Proof of State Board of Equalization Tobacco License.

18 5. Such other information as may be required by the City Manager
19 or designee, consistent with the purpose of this Chapter, this Code and applicable
20 law.

21 E. The City Manager or designee shall receive any fee required for
22 the tobacco retail permit. The fee for such permit shall be determined by
23 the City Council by resolution.

24 F. The City Manager, City Health Officer or designee shall issue the
25 tobacco retail permit to the applicant unless: such application is incomplete
26 or inaccurate, the application seeks authorization for tobacco retailing by a
27 person or location for which a suspension is in effect under this Chapter, or
28 the application seeks authorization for tobacco retailing that is unlawful

1 under this Chapter, this Code or applicable law.

2 G. Tobacco Products and Tobacco Paraphernalia offered for sale or
3 exchange in violation of this ordinance are subject to seizure and forfeiture.
4 Forfeited Tobacco Products and Tobacco Paraphernalia may be destroyed.

5 5.81.040 Permit-Issuance.

6 A. The tobacco retail permit shall clearly state the following on its
7 face:

- 8 (1) The legal owner(s) of the permitted premises;
- 9 (2) Doing Business As (dba), if any;
- 10 (3) The LBMC Chapter pursuant to which the permit was
11 issued;
- 12 (4) The business and mailing address of the owner of the
13 permitted premises;
- 14 (5) The date the permit was issued; and
- 15 (6) The permit number.

16 B. The tobacco retail permit shall not be transferable or assignable
17 from one person or proprietor to another or from one location to another
18 location. If the information required in the permit application changes, a
19 new Tobacco Retailer's permit is required before the business may continue
20 to act as a Tobacco Retailer. For example, if a Proprietor to whom a permit
21 has been issued changes business location, that Proprietor must apply for a
22 new permit prior to acting as a Tobacco Retailer at the new location. Or if
23 the business is sold, the new owner must apply for a permit for that location
24 before acting as a Tobacco Retailer.

25 C. Each permittee shall prominently display the permit at each
26 location where tobacco retailing occurs.

27 D. Possession of a valid tobacco retail permit under this Chapter
28 does not entitle the permittee to engage in an activity which is otherwise

1 prohibited by law. Violations of any tobacco-related laws shall constitute
2 violations of the tobacco retail permit issued pursuant to this Chapter. In
3 addition, a violation of California Penal Code section 308 or any violation of
4 the Long Beach Municipal Code, may subject the permit holder to
5 suspension or revocation of their permit.

6 E. No person shall engage in Tobacco Retailing, if the person is
7 below the minimum age allowed by state law for selling or possessing any
8 Tobacco Product.

9 5.81.050 Permit–Fees.

10 An annual fee shall be charged for a tobacco retail permit. The fee
11 shall be generally calculated so as to recover the cost of both the
12 administration and enforcement of the tobacco retail permit program,
13 including the cost of issuing the permits, renewing the permits,
14 administering the retailer permit program, retailer education, retailer
15 inspection and compliance checks, documentation of violations,
16 adjudications, and convictions, and prosecution of violators. All fees are
17 non-refundable, except as required by law. Fees shall not be prorated.

18 5.81.060 Permit–Term and renewals.

19 All tobacco retail permits issued under this Chapter will be for a
20 period not to exceed one (1) year in duration. The City Manager or his or
21 her designee shall automatically renew such permits if the City Manager or
22 designee determines that the permit holder complied with the provisions of
23 this Chapter and applicable laws during the preceding permit term, and if
24 the permit holder pays the annual fee required by this Chapter. All tobacco
25 retailers must notify the City in writing if they discontinue selling tobacco
26 products.

27 5.81.070 Permit–Requirements.

28 It shall be a violation of the permit to violate any federal, state, or

1 local laws relating to youth and Tobacco Products or youth and Tobacco
2 Paraphernalia, including, for example, violations of: California Penal Code
3 Section 308; the STAKE ACT (California Business & Professions Code
4 Sections 22950 et seq); any laws relating to self-service displays, signage,
5 sale of bidis or single cigarettes, pack size, sampling, or mail order and
6 internet sales; or any other law relating to youth and tobacco products.

7 5.81.080 Permit–Violations and penalties.

8 In addition to the administrative penalties detailed pursuant to
9 Section 9.65.060 of the Long Beach Municipal Code, violation of or failure to
10 comply with any provision of Chapter 5.81 may result in the following:

11 A. For the first violation in any five (5) year period, the tobacco
12 retailer's tobacco retailing permit may be suspended for ten (10) business
13 days;

14 B. For the second violation in any five (5) year period, the tobacco
15 retailer's tobacco retailing permit may be suspended for thirty (30) business
16 days;

17 C. For the third violation in any five (5) year period, the tobacco
18 retailer's tobacco retailing permit may be revoked;

19 D. A tobacco retailer whose permit has been revoked may not apply
20 for a new tobacco retailer's permit for a period of 120 calendar days after
21 the effective date of revocation.

22 E. Any decision to suspend or revoke a permit may be appealed
23 pursuant to Section 5.06.010 of the Long Beach Municipal Code.

24 F. During any period of permit suspension or revocation, the
25 tobacco retailer must remove from public view all tobacco products and
26 tobacco-related advertising.

27 5.81.090 Severability.

28 If any section, subsection, subdivision, paragraph, sentence, clause

1 or phrase of this Ordinance, or its application to any person or
2 circumstance, is for any reason held to be invalid or unenforceable, such
3 invalidity or unenforceability shall not affect the validity or enforceability of
4 the remaining sections, subsections, subdivisions, paragraphs, sentences,
5 clauses or phrases of this Ordinance, or its application to any other person
6 or circumstance. The City of Long Beach hereby declares that it would
7 have adopted each section, subsection, subdivision, paragraph, sentence,
8 clause or phrase hereof, irrespective of the fact that any one or more
9 sections, subsections, subdivisions paragraphs, sentences, clauses or
10 phrases hereof be declared invalid or unenforceable.

11 5.81.100 Administration and enforcement.

12 A. The provisions of this chapter shall be administered by the
13 Department of Health and Human Services, the Long Beach City Attorney
14 and the Long Beach City Prosecutor Offices.

15
16 Section 2. The City Clerk shall certify to the passage of this ordinance by
17 the City Council and cause it to be posted in three (3) conspicuous places in the City of
18 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
19 Mayor, but in no event prior to January 1, 2008.

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I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of February 19, 2008 by the following vote:

Ayes: Councilmembers: B. Lowenthal, S. Lowenthal, DeLong,
O'Donnell, Schipske, Andrews,
Reyes Uranga, Gabelich, Lerch.

Noes: Councilmembers: None.

Absent: Councilmembers: None.



City Clerk



Mayor

Approved: 2/20/08
(Date)

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