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Long Beach, California

ORD-17

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February 11, 2014

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by amending Chapters 5.81 and 8.68, relating to Electronic Cigarettes and similar devices, read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION:

Pursuant to your request on December 3, 2013, this ordinance has been prepared and is submitted for your consideration.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By


LINDA T. VU
Deputy City Attorney

1 cartomizers, e-liquid, smoke juice, tips, atomizers, electronic cigarette
2 batteries, electronic cigarette chargers, and any other item designed for the
3 preparation, storing, charging, or use of electronic cigarettes.

4 C. "Nominal cost" means the cost of any item imposed for the
5 transfer from one person to another for less than the total of: (1) twenty-five
6 percent (25%) of the fair market value of the item exclusive of taxes and
7 government fees; plus (2) all taxes and government fees previously paid
8 and all taxes and government fees still due on the item at the time of
9 transfer.

10 D. "Nonsale distribution" means to give, furnish, or cause or
11 allow to be given or furnished within the jurisdictional limits of the City, a
12 tobacco product, tobacco paraphernalia, an electronic cigarette or
13 electronic cigarette paraphernalia at no cost or at nominal cost to a person
14 who is not a retailer.

15 E. "Proprietor" means a person with an ownership or managerial
16 interest in a business. An ownership interest shall be deemed to exist when
17 a person has a ten percent (10%) or greater interest in the stock, assets, or
18 income of a business other than the sole interest of security for debt. A
19 managerial interest shall be deemed to exist when a person can or does
20 have, or can or does share, ultimate control over the day-to-day operations
21 of a business.

22 F. "Self-service display" means the open display or storage of
23 tobacco products, tobacco paraphernalia, electronic cigarettes or electronic
24 cigarette paraphernalia in a manner that is physically accessible in any way
25 to the general public without the assistance of a retailer or employee of a
26 retailer and a direct person-to-person transfer between a retailer or
27 employee of a retailer and any other person. A vending machine is a form
28 of self-service display.

1 G. "Tobacco paraphernalia" means cigarette papers or wrappers,
2 pipe holders of smoking materials of all types, cigarette rolling machines,
3 hookahs, and any other item designed for the smoking or ingestion of
4 tobacco products.

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

8 I. "Tobacco retailer" means any person who sells, offers for
9 sale, or offers to exchange for any form of consideration, tobacco, tobacco
10 products or tobacco paraphernalia; "tobacco retailing" shall mean engaging
11 in any of these things.

12 5.81.020 Permit - Required.

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

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

21 C. Violations of this Chapter may constitute an infraction or a
22 misdemeanor.

23 D. In addition to the above remedy, a violation of this Chapter
24 may be remedied by a civil injunction or abatement action initiated by the
25 City Attorney.

26 5.81.030 Permit - Application.

27 A. Any person or proprietor desiring a permit to engage in
28 tobacco retailing as provided by this Chapter shall file an application with

1 the City Manager, City Health Officer or designee.

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

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

8 D. The application for a tobacco retailing permit shall be filed on
9 a 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
12 the applicant, and the signature of the applicant or an authorized person
13 thereof;

14 2. The business name, address and telephone number of
15 each 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 and

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

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

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

1 this Chapter, or the application seeks authorization for tobacco retailing that
2 is unlawful under this Chapter, this Code or applicable law.

3 G. Tobacco products and tobacco paraphernalia offered for sale
4 or exchange in violation of this Chapter are subject to seizure and forfeiture.
5 Forfeited tobacco products and tobacco paraphernalia may be destroyed.

6 5.81.040 Permit - Issuance.

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

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

17 B. The tobacco retail permit shall not be transferable or
18 assignable from one (1) person or proprietor to another or from one (1)
19 location to another location. If the information required in the permit
20 application changes, a new tobacco retailer's permit is required before the
21 business may continue to act as a tobacco retailer. For example, if a
22 proprietor to whom a permit has been issued changes business location,
23 that proprietor must apply for a new permit prior to acting as a tobacco
24 retailer at the new location. Or if the business is sold, the new owner must
25 apply for a permit for that location before acting as a tobacco retailer.

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

28 D. Possession of a valid tobacco retail permit under this Chapter

1 does not entitle the permittee to engage in an activity which is otherwise
2 prohibited by law. Violations of any tobacco-related laws shall constitute
3 violations of the tobacco retail permit issued pursuant to this Chapter. In
4 addition, a violation of California Penal Code section 308 or any violation of
5 the Long Beach Municipal Code, may subject the permit holder to
6 suspension or revocation of their permit.

7 E. No person shall engage in tobacco retailing, if the person is
8 below the minimum age allowed by State law for selling or possessing any
9 tobacco product.

10 5.81.050 Permit - Fees.

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

19 5.81.060 Permit - Term and renewals.

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

28 5.81.070 Permit - Retailing requirements and prohibitions.

1 A. Sale to minors prohibited. It shall be a violation of the permit
2 to sell, give or furnish, or cause to be sold, given or furnished, a tobacco
3 product or tobacco paraphernalia to a natural person under eighteen (18)
4 years of age in any place within the City.

5 B. Positive identification required. No retailer shall sell, give or
6 furnish a tobacco product or tobacco paraphernalia to a natural person who
7 appears to be under the age of twenty-seven (27) years without first
8 examining identification to confirm that the recipient is at least eighteen (18)
9 years of age.

10 C. Self-service displays of tobacco products or tobacco
11 paraphernalia are prohibited.

12 D. Nonsale distribution prohibited. No person, motivated by an
13 economic or a business purpose, shall engage in the nonsale distribution of
14 any tobacco product or tobacco paraphernalia in any public place.

15 E. It is a violation of the permit to violate any federal, State, or
16 local laws relating to youth and tobacco products or youth and tobacco
17 paraphernalia, including, for example, violations of: California Penal Code
18 Section 308; the Stake Act (California Business and Professions Code
19 Sections 22950 et seq.); any laws relating to self-service displays, signage,
20 sale of bidis or single cigarettes, pack size, sampling, or mail order and
21 internet sales; or any other law relating to youth and tobacco products.

22 5.81.080 Permit - Retailing of electronic cigarettes and electronic
23 cigarette paraphernalia.

24 All permitting requirements and any other regulatory provisions of this
25 Chapter relating to tobacco retailing shall apply the same to the retailing of
26 electronic cigarettes and electronic cigarettes paraphernalia.

27 5.81.090 Permit - Violations and penalties.

28 In addition to the administrative penalties detailed pursuant to

1 Section 9.65.060 of the Long Beach Municipal Code, violation of or failure to
2 comply with any provision of Chapter 5.81 may result in the following:

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

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

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

11 D. A tobacco retailer whose permit has been revoked may not
12 apply for a new tobacco retailer's permit for a period of one hundred twenty
13 (120) calendar days after the effective date of revocation.

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

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

19 5.81.100 Severability.

20 If any section, subsection, subdivision, paragraph, sentence, clause
21 or phrase of this Chapter, or its application to any person or circumstance, is
22 for any reason held to be invalid or unenforceable, such invalidity or
23 unenforceability shall not affect the validity or enforceability of the remaining
24 sections, subsections, subdivisions, paragraphs, sentences, clauses or
25 phrases of this Chapter, or its application to any other person or
26 circumstance. The City of Long Beach declares that it would have adopted
27 each section, subsection, subdivision, paragraph, sentence, clause or
28 phrase hereof, irrespective of the fact that any one (1) or more sections,

1 subsections, subdivisions paragraphs, sentences, clauses or phrases
2 hereof be declared invalid or unenforceable.

3 5.81.110 Administration and enforcement.

4 A. The provisions of this Chapter shall be administered by the
5 Department of Health and Human Services, the Long Beach City Attorney
6 and the Long Beach City Prosecutor offices.

7
8 Section 2. Chapter 8.68 of the Long Beach Municipal Code is amended
9 to read as follows:

10 8.68.010 Purpose and findings.

11 The City Council finds that the smoking of tobacco, or any other
12 weed or plant, is a medically documented danger to health and a material
13 annoyance, inconvenience, discomfort and health hazard to those who are
14 present in confined spaces, and in order to reduce exposure to
15 environmental tobacco smoke and to serve the public health, safety and
16 welfare, the declared purpose of this Chapter is to prohibit the smoking of
17 tobacco, or any other weed or plant, in public places and places of
18 employment as stated and required in this Chapter.

19 8.68.020 Definitions.

20 The following words and phrases, whenever used in this Chapter,
21 shall be given the following definitions:

22 A. "Adjacent water areas" shall mean fifty feet (50') seaward of
23 the mean high tide line of the City beaches.

24 B. "Bar" means an area which is devoted to serving of alcoholic
25 beverages and in which the service of food is only incidental to the
26 consumption of such beverages. Bar shall also include a nightclub or
27 cabaret where entertainment and/or dancing are provided in addition to the
28 consumption of alcoholic beverages or food.

1 C. "Beach bike path" shall mean that portion of the bike path
2 located on the sand areas of the beach from the eastern edge of the Long
3 Beach Shoreline Marina parking lot at approximately Alamitos Avenue
4 easterly to the southeastern corner of the intersection of Ocean Boulevard
5 at approximately Bayshore Avenue.

6 D. "Beach launch ramps" shall mean the launch ramps located at
7 the foot of Claremont Avenue and Granada Avenue.

8 E. "Childcare facility" means any location or portion thereof
9 where children other than those of the owner, operator or proprietor are
10 cared for or supervised in exchange for anything of value.

11 F. "Cigar" shall have the same definition as California Health and
12 Safety Code § 104550, as currently defined or as may be amended.

13 G. "Cigarette" shall have the same definition as California Health
14 and Safety Code § 104556 as currently defined or as may be amended.

15 H. "City facility" means any enclosed structure wherever owned
16 or used by the City of Long Beach for its operations or activities.

17 I. "City vehicle" means any vehicle owned and operated by the
18 City for public purposes.

19 J. "Electronic cigarette" means an electronic and/or battery-
20 operated device, the use of which may resemble smoking, which can be
21 used to deliver an inhaled dose of nicotine or other substances. "Electronic
22 Cigarette" includes any such device, whether manufactured, distributed,
23 marketed, or sold as an electronic cigarette, an electronic cigar, an
24 electronic cigarillo, an electronic pipe, an electronic hookah, or any other
25 product name or descriptor.

26 K. "Employee" means any person who is employed by any
27 employer for direct or indirect monetary wages or profit.

28 L. "Employer" means any person who employs the services of

1 any person other than himself or herself.

2 M. "Enclosed" means closed in by a roof and four (4) walls with
3 appropriate openings for ingress and egress but does not include areas
4 commonly described as public lobbies.

5 N. "Motion picture theater" means any theater engaged in the
6 business of exhibiting motion pictures.

7 O. "Playground", for purposes of California Health and Safety
8 Code § 104495, is more specifically defined to mean twenty-five feet (25')
9 from the edge of a sand area within a City park or recreational area
10 specifically designed to be used by children and that has play equipment
11 installed in it.

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

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

27 R. "Smoke" or "Smoking" shall mean the carrying of a lighted
28 pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe,

1 cigar or cigarette of any kind, including, but not limited to, tobacco, or any
2 other weed or plant.

3 S. "Smoking lounge" means any business establishment that is
4 dedicated to the smoking of tobacco products, including, but not limited to,
5 establishments known variously as cigar lounges, hookah lounges or
6 tobacco clubs. For purposes of this Chapter, "smoking lounge" means
7 private smokers' lounge as defined in Section 6404.5 of the California Labor
8 Code.

9 T. "Workplace" means any enclosed area of a structure or
10 portion thereof occupied by any entity and frequented by employees during
11 the normal course of their employment where clerical, professional,
12 manufacturing, business services or other normal and customary activities
13 of the entity are performed or where other work is done at that location.
14 Workplace also includes, but is not limited to, spaces in office buildings,
15 medical office waiting rooms, libraries, museums, gaming clubs, bars,
16 taverns, employee lounges, employee breakrooms, conference rooms and
17 employee cafeterias. Workplace does not include any of the following: a
18 private home, except where such home is used as a "childcare facility" as
19 defined in Subsection 8.68.020.E, and any "smoking lounge" as defined in
20 Subsection 8.68.020.S that satisfies the conditions specified in Subsection
21 8.68.060.B.

22 8.68.030 Smoking prohibited - Elevators.

23 Smoking is prohibited and is unlawful within elevators in buildings
24 generally used by and open to the public, including elevators in office, hotel
25 and multifamily buildings.

26 8.68.040 Smoking prohibited - Hospitals, healthcare facilities and childcare
27 facilities.

28 A. Smoking is prohibited in public areas of healthcare facilities

1 and hospitals, as defined in California Health and Safety Code § 1250.

2 B. "Staff and visitor smoking prohibited" signs shall be
3 conspicuously posted in public areas of healthcare facilities.

4 C. Smoking is prohibited in all childcare facilities as defined in
5 Subsection 8.68.020.E.

6 8.68.050 Smoking prohibited - Public meeting rooms.

7 Smoking is prohibited and is unlawful in public meeting rooms,
8 hearing rooms, conference rooms, chambers and places of public assembly
9 in which public business is conducted, when the public business requires or
10 permits direct participation or observation by the general public.

11 8.68.060 Smoking prohibited - Enclosed public places.

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

19 B. This Section is not intended to prohibit smoking in any
20 "smoking lounge" as defined in Subsection 8.68.020.S and in compliance
21 with the provisions of Chapter 5.88.

22 8.68.065 Smoking prohibited - City beaches, beach bike path and beach
23 launch ramps.

24 Smoking shall be prohibited on all sand areas and adjacent water
25 areas of City beaches, the beach bike path and beach launch ramps, with
26 the exception of designated outdoor dining areas or permitted beach
27 concessions and permitted activities, including, but not limited to filming
28 and/or special events.

- 1 8.68.066 Smoking prohibited - City parks and other recreation areas.
- 2 A. Smoking shall be prohibited in any outdoor area that has been
- 3 improved or developed by or on behalf of the City, and open to the general
- 4 public for park or open space use, including, but not limited to public parks,
- 5 picnic areas, playgrounds, sports or playing fields, walking paths, gardens,
- 6 hiking trails, bike paths, and any other areas designated a park by the
- 7 Director of the Department of Parks and Recreation.
- 8 B. The provisions of this Section shall not apply to Municipal golf
- 9 courses, or permitted activities, including, but not limited to filming and/or
- 10 special events.
- 11 8.68.070 Smoking prohibited - Public restrooms.
- 12 Smoking is prohibited and is unlawful in public restrooms.
- 13 8.68.075 Smoking prohibited - Bus stops.
- 14 Smoking is prohibited and is unlawful at and within twenty feet (20')
- 15 of any bus stop, with the exception of designated outdoor dining areas,
- 16 private residential property, or while actively passing on the way to another
- 17 destination.
- 18 8.68.080 Smoking prohibited - Indoor service lines.
- 19 Smoking is prohibited and is unlawful in indoor service lines in which
- 20 more than one (1) person is giving or receiving services of any kind.
- 21 8.68.085 Smoking prohibited - Farmers' markets.
- 22 Smoking is prohibited and is unlawful at any farmers' market and
- 23 within twenty feet (20') of all entrances and exits of farmers' markets, as
- 24 defined in Subsection 3.80.180.G of the Long Beach Municipal Code.
- 25 8.68.090 Smoking prohibited - Eating establishments and bars.
- 26 A. Smoking is prohibited and is unlawful in every publicly or
- 27 privately owned enclosed coffee shop, cafeteria, short order cafe,
- 28 luncheonette, sandwich shop, soda fountain, restaurant, gaming club, bar,

1 tavern or other eating establishment serving food.

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

6 8.68.095 Mobile food preparation vehicle.

7 Smoking is prohibited and is unlawful at and within forty feet (40') of
8 any operating mobile food preparation vehicle, as defined in Section
9 5.37.110 of the Long Beach Municipal Code.

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

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

14 8.68.110 Regulation of smoking in the workplace.

15 A. Smoking is prohibited in all workplaces in the City of Long
16 Beach as defined in Subsection 8.68.020.T.

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

21 C. This Section is not intended to regulate smoking in the
22 following places and under the following conditions:

23 1. A private home which may serve as a workplace
24 except when used as a "childcare facility" as defined in Subsection
25 8.68.020.E; or

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

28 D. The provisions of Sections 8.68.090 and 8.68.100 shall

1 govern the public access areas of such facilities; however, such employers
2 shall otherwise comply with provisions of this Section 8.68.110

3 8.68.120 Prohibition of electronic cigarette use in smoke-free places and other
4 regulations.

5 A. It shall be a violation of this Chapter to use an electronic
6 cigarette in any place within the City where smoking is prohibited by law.

7 B. No person or entity shall knowingly permit the use of
8 electronic cigarettes in an area under the legal or de facto control of that
9 person or entity and in which smoking is prohibited by law.

10 C. All other regulations and prohibitions contained in this Chapter
11 relating to tobacco products shall apply the same to electronic cigarettes.

12 8.68.130 Posting of signs required.

13 A. Except where other signs are required, whenever in this Code
14 smoking is prohibited, conspicuous signs shall be posted so stating,
15 containing all capital lettering not less than one inch (1") in height on a
16 contrasting background. It is the duty of the owner, operator, manager, or
17 other persons having control of such room, building, workplace, or other
18 place where smoking is prohibited, to post such signs or to cause such
19 signs to be posted.

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

25 C. Notwithstanding this Section, the presence or absence of
26 signs shall not be a defense to the violation of any other provision of this
27 Chapter.

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1 8.68.140 Structural modifications not required.
2 A. It shall be the responsibility of employers to provide smoke-
3 free areas for nonsmokers within existing facilities to the maximum extent
4 possible, but employers are not required to incur any expense to make
5 structural or other physical modifications in providing these areas.

6 B. Nothing in this Chapter shall require the owner, operator, or
7 manager of any theater, auditorium, healthcare facility, or any building,
8 facility, structure, or business, to incur any expense to make structural or
9 other physical modifications to any area or workplace.

10 C. Nothing in this Section shall relieve any person from the duty
11 to post signs or adopt policies as required by this Chapter.

12 8.68.150 Administration and enforcement.

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

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

18 8.68.160 Exemptions.

19 Any owner or manager of a business or other establishment subject
20 to this Chapter may apply to the City Health Officer for an exemption or
21 modification to any provisions of this Chapter due to unusual circumstances
22 or conditions.

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

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

4 8.68.170 City facilities.

5 There shall be no smoking in any "City facility" as defined in
6 Subsection 8.68.020.H or in any "City vehicle" as defined in Subsection
7 8.68.020.I or in any covered area of the Long Beach Airport,
8 notwithstanding any exception or exemption contained in any other
9 provision of this Chapter.

10 8.68.180 Tobacco products distribution.

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

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

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

23 8.68.190 Billboard advertising.

24 No person or entity shall place, establish, keep, maintain or locate
25 any advertisement for any tobacco product on any billboard within five
26 hundred feet (500') of or so oriented that the message portion of the sign is
27 visible from any school, childcare center, nursery school, hospital, place of
28 worship or recreational facility.

1 8.68.200 Violations and penalties.

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

8 8.68.210 Retaliation.

9 No person shall discharge, refuse to hire, or in any other manner
10 retaliate against any employee, applicant, or patron exercising any right or
11 privilege created by this Chapter.

12 8.68.220 Severability.

13 All provisions of this Chapter are severable. If any part or provision of
14 this Chapter, or the application thereof to any person or circumstance, is
15 held invalid for any reason, the remainder of this Chapter, including the
16 application of such part or provision to persons or circumstances other than
17 those to which it is held invalid, shall not be affected and shall remain in full
18 force and effect.

19

20 Section 3. The City Clerk shall certify to the passage of this ordinance by
21 the City Council and cause it to be posted in three (3) conspicuous places in the City of
22 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
23 Mayor.

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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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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 _____, 2014, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor

CHAPTER 5.81 TOBACCO RETAIL PERMIT

5.81.005 Purpose and intent.

5.81.010 Definitions.

5.81.020 Permit—Required.

5.81.030 Permit—Application.

5.81.040 Permit—Issuance.

5.81.050 Permit—Fees.

5.81.060 Permit—Term and renewals.

5.81.070 Permit —Retailing Rrequirements and prohibitions.

5.81.080 Permit – Retailing of electronic cigarettes and electronic cigarette paraphernalia.

5.81.0890 Permit—Violations and penalties.

5.81.090100 Severability.

5.81.1010 Administration and enforcement.

5.81.005 Purpose and intent.

It is the intent of the City Council, in enacting this Chapter, 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. “Electronic cigarette” means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. “Electronic Cigarette” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

B. “Electronic cigarette paraphernalia” means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic cigarette batteries, electronic cigarette chargers, and any other item designed for the preparation, storing, charging, or use of electronic cigarettes.

C. “Nominal cost” means the cost of any item imposed for the transfer from one person to another for less than the total of: (1) twenty-five percent (25%) of the fair market

value of the item exclusive of taxes and government fees; plus (2) all taxes and government fees previously paid and all taxes and government fees still due on the item at the time of transfer.

D. "Nonsale distribution" means to give, furnish, or cause or allow to be given or furnished within the jurisdictional limits of the City, a tobacco product, tobacco paraphernalia, an electronic cigarette or electronic cigarette paraphernalia at no cost or at nominal cost to a person who is not a retailer.

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

F. "Self-service display" means the open display or storage of tobacco products, tobacco paraphernalia, electronic cigarettes or electronic cigarette paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of a retailer or employee of a retailer and a direct person-to-person transfer between a retailer or employee of a retailer and any other person. A vending machine is a form of self-service display.

G. "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 tobacco products.

H. "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.

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

5.81.020 Permit—Required.

A.

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

- B. No permit will be issued to authorize tobacco retailing at any place other than a fixed location; retailing by persons on foot and tobacco retailing from vehicles is prohibited.
- C. Violations of this Chapter may constitute an infraction or a misdemeanor.
- D. In addition to the above remedy, a violation of this Chapter may be remedied by a civil injunction or abatement action initiated by the City Attorney.

5.81.030 Permit—Application.

- A. Any person or proprietor desiring a permit to engage in tobacco retailing as provided by this Chapter shall file an application with the City Manager, City Health Officer or designee.
- B. An application for a tobacco retailer's permit shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof.
- C. It is the responsibility of each proprietor to be informed of the laws affecting the issuance of a tobacco retailer's permit.
- D. The application for a tobacco retailing permit shall be filed on a form and shall contain such information as is requested by the City, including the following:
 - 1. The name, mailing address and telephone number of the applicant, and the signature of the applicant or an authorized person thereof;
 - 2. The business name, address and telephone number of each location for which a tobacco retailing permit is sought;
 - 3. Photo identification of the person seeking the permit;
 - 4. Proof of State Board of Equalization Tobacco License; and
 - 5. Such other information as may be required by the City Manager or designee, consistent with the purpose of this Chapter, this Code and applicable law.
- E.

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

F.

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

G.

Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this Chapter are subject to seizure and forfeiture. Forfeited tobacco products and tobacco paraphernalia may be destroyed.

5.81.040 Permit—Issuance.

A.

The tobacco retail permit shall clearly state the following on its face:

1.

The legal owner(s) of the permitted premises;

2.

Doing Business As (dba), if any;

3.

The LBMC Chapter pursuant to which the permit was issued;

4.

The business and mailing address of the owner of the permitted premises;

5.

The date the permit was issued; and

6.

The permit number.

B.

The tobacco retail permit shall not be transferable or assignable from one (1) person or proprietor to another or from one (1) location to another location. If the information required in the permit application changes, a new tobacco retailer's permit is required before the business may continue to act as a tobacco retailer. For example, if a proprietor to whom a permit has been issued changes business location, that proprietor must apply for a new permit prior to acting as a tobacco retailer at the new location. Or if the business is sold, the new owner must apply for a permit for that location before acting as a tobacco retailer.

C.

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

D.

Possession of a valid tobacco retail permit under this Chapter does not entitle the permittee to engage in an activity which is otherwise prohibited by law. Violations of any tobacco-related laws shall constitute violations of the tobacco retail permit issued pursuant to this Chapter. In addition, a violation of California Penal Code section 308 or any violation of the Long Beach Municipal Code, may subject the permit holder to suspension or revocation of their permit.

E.

No person shall engage in tobacco retailing, if the person is below the minimum age allowed by State law for selling or possessing any tobacco product.

5.81.050 Permit—Fees.

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

5.81.060 Permit—Term and renewals.

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

5.81.070 Permit—Retailing Requirements and prohibitions.

A. Sale to minors prohibited. It shall be a violation of the permit to sell, give or furnish, or cause to be sold, given or furnished, a tobacco product or tobacco paraphernalia to a natural person under eighteen (18) years of age in any place within the City.

B. Positive identification required. No retailer shall sell, give or furnish a tobacco product or tobacco paraphernalia to a natural person who appears to be under the age of twenty-seven (27) years without first examining identification to confirm that the recipient is at least eighteen (18) years of age.

C. Self-service displays of tobacco products or tobacco paraphernalia are prohibited.

D. Nonsale distribution prohibited. No person, motivated by an economic or a business purpose, shall engage in the nonsale distribution of any tobacco product or tobacco paraphernalia in any public place.

E. It is a violation of the permit to violate any federal, State, or local laws relating to youth and tobacco products or youth and tobacco paraphernalia, including, for example, violations of: California Penal Code Section 308; the Stake Act (California Business and Professions Code Sections 22950 et seq.); any laws relating to self-service displays, signage, sale of bidis or single cigarettes, pack size, sampling, or mail order and internet sales; or any other law relating to youth and tobacco products.

5.81.080 Permit—Retailing of electronic cigarettes and electronic cigarette paraphernalia.

All permitting requirements and any other regulatory provisions of this Chapter relating to tobacco retailing shall apply the same to the retailing of electronic cigarettes and electronic cigarettes paraphernalia.

5.81.0890 Permit—Violations and penalties.

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

- A.
For the first violation in any five (5) year period, the tobacco retailer's tobacco retailing permit may be suspended for ten (10) business days;
- B.
For the second violation in any five (5) year period, the tobacco retailer's tobacco retailing permit may be suspended for thirty (30) business days;
- C.
For the third violation in any five (5) year period, the tobacco retailer's tobacco retailing permit may be revoked;
- D.
A tobacco retailer whose permit has been revoked may not apply for a new tobacco retailer's permit for a period of one hundred twenty (120) calendar days after the effective date of revocation.
- E.

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

F.

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

5.81.090100 Severability.

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

5.81.400110 Administration and enforcement.

A.

The provisions of this Chapter shall be administered by the Department of Health and Human Services, the Long Beach City Attorney and the Long Beach City Prosecutor offices.

CHAPTER 8.68 SMOKING IN PUBLIC PLACES

8.68.010 Purpose and findings.

8.68.020 Definitions.

8.68.030 Smoking prohibited—Elevators.

8.68.040 Smoking prohibited—Hospitals, healthcare facilities and childcare facilities.

8.68.050 Smoking prohibited—Public meeting rooms.

8.68.060 Smoking prohibited—Enclosed public places.

—Amended by Ordinance No. ORD-13-0017

8.68.065 Smoking prohibited—City beaches, beach bike path and beach launch ramps.

8.68.066 Smoking prohibited—City parks and other recreation areas.

8.68.070 Smoking prohibited—Public restrooms.

8.68.075 Smoking prohibited—Bus stops.

8.68.080 Smoking prohibited—Indoor service lines.

8.68.085 Smoking prohibited—Farmers' markets.

8.68.090 Smoking prohibited—Eating establishments and bars.

8.68.095 Mobile food preparation vehicle.

8.68.100 Smoking prohibited—Retail food production and marketing establishments.

8.68.110 Regulation of smoking in the workplace.

8.68.120 Prohibition of electronic cigarette use in smoke-free places and other regulations.

8.68.1230 Posting of signs required.

8.68.1340 Structural modifications not required.

8.68.1450 Administration and enforcement.

8.68.1560 Exemptions.

8.68.1670 City facilities.

8.68.1780 Tobacco products distribution.

8.68.1890 Billboard advertising.

8.68.190200 Violations and penalties.

8.68.2010 Retaliation.

8.68.2420 Severability.

8.68.010 Purpose and findings.

The City Council finds that the smoking of tobacco, or any other weed or plant, is a medically documented danger to health and a material annoyance, inconvenience, discomfort and health hazard to those who are present in confined spaces, and in order to

reduce exposure to environmental tobacco smoke and to serve the public health, safety and welfare, the declared purpose of this Chapter is to prohibit the smoking of tobacco, or any other weed or plant, in public places and places of employment as stated and required in this Chapter.

8.68.020 Definitions.

The following words and phrases, whenever used in this Chapter, shall be given the following definitions:

- A. "Adjacent ~~W~~water ~~A~~areas" shall mean fifty feet (50') seaward of the mean high tide line of the City beaches.
- B. "Bar" means an area which is devoted to serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages. Bar shall also include a nightclub or cabaret where entertainment and/or dancing are provided in addition to the consumption of alcoholic beverages or food.
- C. "Beach ~~B~~bike ~~P~~path" shall mean that portion of the bike path located on the sand areas of the beach from the eastern edge of the Long Beach Shoreline Marina parking lot at approximately Alamitos Avenue easterly to the southeastern corner of the intersection of Ocean Boulevard at approximately Bayshore Avenue.
- D. "Beach ~~L~~launch ~~R~~ramps" shall mean the launch ramps located at the foot of Claremont Avenue and Granada Avenue.
- E. "Childcare ~~F~~facility" means any location or portion thereof where children other than those of the owner, operator or proprietor are cared for or supervised in exchange for anything of value.
- F. "Cigar" shall have the same definition as California Health and Safety Code § 104550, as currently defined or as may be amended.
- G. "Cigarette" shall have the same definition as California Health and Safety Code § 104556 as currently defined or as may be amended.
- H. "City ~~F~~facility" means any enclosed structure wherever owned or used by the City of Long Beach for its operations or activities.

I.

"City Vehicle" means any vehicle owned and operated by the City for public purposes.

J. "Electronic cigarette" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. "Electronic cigarette" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

K. "Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit.

K.

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

L.

M. "Enclosed" means closed in by a roof and four (4) walls with appropriate openings for ingress and egress but does not include areas commonly described as public lobbies.

M.

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

N.

O. "Playground", for purposes of California Health and Safety Code § 104495, is more specifically defined to mean twenty-five feet (25') from the edge of a sand area within a City park or recreational area specifically designed to be used by children and that has play equipment installed in it.

O.

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

P.

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

Q.

R. _____ "Smoke" or "Smoking" shall mean the carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar or cigarette of any kind, including, but not limited to, tobacco, or any other weed or plant.

R.

S. _____ "Smoking Lounge" means any business establishment that is dedicated to the smoking of tobacco products, including, but not limited to, establishments known variously as cigar lounges, hookah lounges or tobacco clubs. For purposes of this Chapter, "smoking lounge" means private smokers' lounge as defined in Section 6404.5 of the California Labor Code.

S.

T. _____ "Workplace" means any enclosed area of a structure or portion thereof occupied by any entity and frequented by employees during the normal course of their employment where clerical, professional, manufacturing, business services or other normal and customary activities of the entity are performed or where other work is done at that location. Workplace also includes, but is not limited to, spaces in office buildings, medical office waiting rooms, libraries, museums, gaming clubs, bars, taverns, employee lounges, employee breakrooms, conference rooms and employee cafeterias. Workplace does not include any of the following; A private home, except where such home is used as a "childcare facility" as defined in Subsection 8.68.020.E, and any "smoking lounge" as defined in Subsection 8.68.020.RS that satisfies the conditions specified in Subsection 8.68.060.B.

8.68.030 Smoking prohibited—Elevators.

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

8.68.040 Smoking prohibited—Hospitals, healthcare facilities and childcare facilities.

A.

Smoking is prohibited in public areas of healthcare facilities and hospitals, as defined in California Health and Safety Code § 1250.

B.

"Staff and visitor smoking prohibited" signs shall be conspicuously posted in public areas of healthcare facilities.

C.

Smoking is prohibited in all childcare facilities as defined in Subsection 8.68.020.E.

8.68.050 Smoking prohibited—Public meeting rooms.

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

8.68.060 Smoking prohibited—Enclosed public places.

~~Amended by Ordinance No. ORD-13-0017~~

A.

Smoking is prohibited and is unlawful in every enclosed "public place" as defined in Subsection 8.68.020.~~OP~~. Every owner, manager or operator of such facility shall post signs conspicuously in the premises stating that smoking is prohibited within the "public place" as defined in Section 8.68.020 and in the case of motion picture theaters, such information shall be shown upon the screen for at least five (5) seconds before showing feature motion pictures.

B.

This Section is not intended to prohibit smoking in any "smoking lounge" as defined in Subsection 8.68.020.~~RS~~ and in compliance with the provisions of Chapter 5.88. ~~This exemption shall only apply to the places of business operating under smoking lounge applications that were on file and deemed complete by the Director of Financial Management on or before April 12, 2011.~~

8.68.065 Smoking prohibited—City beaches, beach bike path and beach launch ramps.

Smoking shall be prohibited on all sand areas and adjacent water areas of City beaches, the beach bike path and beach launch ramps, with the exception of designated outdoor dining areas or permitted beach concessions and permitted activities, including, but not limited to filming and/or special events.

8.68.066 Smoking prohibited—City parks and other recreation areas.

A.

Smoking shall be prohibited in any outdoor area that has been improved or developed by or on behalf of the City, and open to the general public for park or open space use, including, but not limited to public parks, picnic areas, playgrounds, sports or playing fields, walking paths, gardens, hiking trails, bike paths, and any other areas designated a park by the Director of the Department of Parks and Recreation.

B.

The provisions of this Section shall not apply to Municipal golf courses, or permitted activities, including, but not limited to filming and/or special events.

8.68.070 Smoking prohibited—Public restrooms.

Smoking is prohibited and is unlawful in public restrooms.

8.68.075 Smoking prohibited—Bus stops.

Smoking is prohibited and is unlawful at and within twenty feet (20') of any bus stop, with the exception of designated outdoor dining areas, private residential property, or while actively passing on the way to another destination.

8.68.080 Smoking prohibited—Indoor service lines.

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

8.68.085 Smoking prohibited—Farmers' markets.

Smoking is prohibited and is unlawful at any farmers' market and within twenty feet (20') of all entrances and exits of farmers' markets, as defined in Subsection 3.80.180.G of the Long Beach Municipal Code.

8.68.090 Smoking prohibited—Eating establishments and bars.

A.

Smoking is prohibited and is unlawful in every publicly or privately owned enclosed coffee shop, cafeteria, short order cafe, luncheonette, sandwich shop, soda fountain, restaurant, gaming club, bar, tavern or other eating establishment serving food.

B.

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

8.68.095 Mobile food preparation vehicle.

Smoking is prohibited and is unlawful at and within forty feet (40') of any operating mobile food preparation vehicle, as defined in Section 5.37.110 of the Long Beach Municipal Code.

8.68.100 Smoking prohibited—Retail food production and marketing establishments.

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

8.68.110 Regulation of smoking in the workplace.

A.

Smoking is prohibited in all workplaces in the City of Long Beach as defined in Subsection 8.68.020.ST.

B.

Smoking is prohibited in conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways, elevators, cafeteria, lunchrooms, employee lounges, employee breakrooms, designated eating areas and common areas.

C.

This Section is not intended to regulate smoking in the following places and under the following conditions:

1.

A private home which may serve as a workplace except when used as a "childcare facility" as defined in Subsection 8.68.020.E.; or

2.

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

D.

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

8.68.120 Prohibition of electronic cigarette use in smoke-free places and other regulations.

A. It shall be a violation of this Chapter to use an electronic cigarette in any place within the City where smoking is prohibited by law.

B. No person or entity shall knowingly permit the use of electronic cigarettes in an area under the legal or de facto control of that person or entity and in which smoking is prohibited by law.

C. All other regulations and prohibitions contained in this Chapter relating to tobacco products shall apply the same to electronic cigarettes.

8.68.1230 Posting of signs required.

A.

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

B.

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

C.

Notwithstanding this Section, the presence or absence of signs shall not be a defense to the violation of any other provision of this Chapter.

8.68.1340 Structural modifications not required.

A.

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

B.

Nothing in this Chapter shall require the owner, operator, or manager of any theater, auditorium, healthcare facility, or any building, facility, structure, or business, to incur any expense to make structural or other physical modifications to any area or workplace.

C.

Nothing in this Section shall relieve any person from the duty to post signs or adopt policies as required by this Chapter.

8.68.1450 Administration and enforcement.

A.

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

B.

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

8.68.1560 Exemptions.

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

A.

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

B.

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

8.68.1670 City facilities.

There shall be no smoking in any "City facility" as defined in Subsection 8.68.020.H or in any "City vehicle" as defined in Subsection 8.68.020.I or in any covered area of the Long Beach Airport, notwithstanding any exception or exemption contained in any other provision of this Chapter.

8.68.1780 Tobacco products distribution.

A.

No person or entity shall sell or otherwise distribute any cigarette or other tobacco product unless such cigarette or tobacco product is in the manufacturer's original package with all required health warnings.

B.

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

C.

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

8.68.1890 Billboard advertising.

No person or entity shall place, establish, keep, maintain or locate any advertisement for any tobacco product on any billboard within five hundred feet (500') of or so oriented that the message portion of the sign is visible from any school, childcare center, nursery school, hospital, place of worship or recreational facility.

8.68.190200 Violations and penalties.

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

8.68.2010 Retaliation.

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

8.68.2120 Severability.

All provisions of this Chapter are severable. If any part or provision of this Chapter, or the application thereof to any person or circumstance, is held invalid for any reason, the remainder of this Chapter, including the application of such part or provision to persons or circumstances other than those to which it is held invalid, shall not be affected and shall remain in full force and effect.