



OFFICE OF THE CITY ATTORNEY  
Long Beach, California

**ORD-11**

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December 8, 2009

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by amending Subsections 8.68.020.R and 8.68.060.B; and by adding Chapter 5.88 all relating to smoking lounge regulations, read the first time and laid over to the next regular meeting of the City Council for final reading.

DISCUSSION:

At its meeting held on November 17, 2009, the City Council considered the Economic Development and Finance Committee's recommended changes to the smoking lounge regulations presented by the Long Beach Department of Health and Human Services. The Council concurred with the Committee, and adopted a minute order requesting the City Attorney revise the smoking lounge regulations to incorporate the following changes:

- 1) Financial Management, Business License Division as the lead department with involvement from the Health Department;
- 2) Food and beverage regulations - only limited to sales;
- 3) Special consideration be given to current operating smoking lounges who currently have separate ventilation systems installed, and those that operate in stand-alone buildings be exempt from the ventilation system requirement;
- 4) Smoking lounge permit revocations may be appealed to the City Council;
- 5) Reinstate the section allowing the granting of exemptions based on undue financial hardship; and
- 6) Extend the moratorium for an additional year.

Please note that requested item # 6 above will be responded to by a separate ordinance relating to an extension of a temporary moratorium on smoking lounges.

Pursuant to the remainder of your request on November 17, 2009, this ordinance relating to smoking lounge regulations has been prepared and is submitted for your consideration (Attachment "A"). A red-line comparison document is also attached as Attachment "C" to show the changes that you requested be made to the smoking lounge regulations that was first brought before you on November 17, 2009. In particular, in the interest of having an ordinance that does not conflict with local, state or federal laws, please be advised that this ordinance responds to requested items # 2, 3 and 5 in the following manner:

**2) Food and beverage regulations - only limited to sales.**

As requested, the food and beverage regulations under Section 5.88.130 of this ordinance now states that "no person shall *receive for sale, sell, offer for sale, keep for sale, have in such person's possession with intent to sell*, any food or beverages in the smoking lounge" (emphasis added). This prohibition is only limited to sales, and does not expressly prohibit the serving, dispensing or consumption of food or beverages.

In addition, in consideration of food and beverages possibly being served in the smoking lounges on an occasional basis as suggested by the Council, the definition of "smoking lounge" must be modified accordingly to account for this possibility. The existing definition of a smoking lounge in the Long Beach Municipal Code strictly states that the smoking of tobacco must be the "sole" purpose of the smoking lounge; however, if food or beverage service will in fact be offered in a smoking lounge then the business would technically not meet this "sole" purpose definition to qualify under the smoking lounge exemption. Therefore, in order to address this potential conflict, the definition of "smoking lounge" in Subsections 8.68.020.R and 5.88.020.E has been modified to replace the "sole" purpose element to now mean a business establishment "dedicated to" the smoking of tobacco products.

However, please be advised that although the food and beverage prohibition in this ordinance is only limited to sales, it does not in any manner authorize the permittee of a smoking lounge permit to engage in any activities that would otherwise be in violation of or subject to other applicable laws. Therefore, for example, if any food or beverage is to be dispensed or served in a smoking lounge, such business owner shall be fully responsible for ensuring that they have obtained the appropriate health permits, liquor licenses, and any other applicable requirements under existing laws.

- 3) Special consideration be given to current operating smoking lounges who currently have separate ventilation systems installed, and those that operate in stand-alone buildings be exempt from the ventilation system requirement; and**
- 5) Reinstate the section allowing the granting of exemptions based on undue financial hardship.**

Items # 3 and 5 requested by the Council deal with the ventilation requirement and exemptions for certain existing businesses. These changes to the regulations cannot be made in the exact manner as requested, because to do so may effectively allow smoking lounge businesses to operate at levels that fall below requirements under existing state law. Local municipalities have regulatory powers so long as the regulation or ordinance is not less stringent than state or federal law. Thus, the Council may impose ventilation standards that are equal to or more stringent, but cannot adopt an ordinance that permits businesses to fall below standards required by state or federal law.

Therefore, to the greatest extent possible under existing law and without exception, the ventilation requirement under Section 5.88.140 of this ordinance now sets forth a more reasonable standard that is essentially equivalent to the requirements imposed by state law. Specifically, this ordinance aligns with the California Mechanical Code and California Building Energy Efficiency Standards for Residential and Nonresidential Buildings as adopted and amended by Chapter 18.36 of the Long Beach Municipal Code, and other applicable state or federal laws. This ventilation standard should adequately address public concerns that tobacco smoke produced in smoking lounges is intruding into other units or businesses within the same structural building, by requiring that the exhaust air not be re-circulated to other parts of the building shared by co-tenants. No special consideration or exemptions shall be granted from this Section under any circumstances, because doing so would be in conflict with requirements under existing laws.

Finally, all business establishments currently existing under a valid business license that desire to operate as smoking lounges must be brought into full compliance with these regulations within ninety (90) days following the effective date of this ordinance.

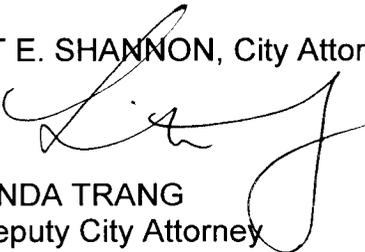
**SUGGESTED ACTION:**

Approve recommendation.

Very truly yours,

ROBERT E. SHANNON, City Attorney

By

  
LINDA TRANG  
Deputy City Attorney

**ATTACHMENTS:**

- Attachment "A" – Ordinance
- Attachment "B" – Long Beach Municipal Code Redline
- Attachment "C" – Redline for comparison purposes only

1 REDLINE

2  
3 8.68.020 Definitions.

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

9  
10 8.68.060 Smoking prohibited--Enclosed public places.

11 B. This sSection is not intended to prohibit smoking in any "smoking lounge" as defined  
12 in Subsection 8.68.020.R and ~~under the following conditions:~~ in compliance with the  
13 provisions of Chapter 5.88.

14 1. ~~No food or beverages, including, but not limited to alcoholic beverages,~~  
15 ~~shall be sold or consumed on the business premises.~~

16 2. ~~No persons under eighteen (18) years of age shall be permitted within~~  
17 ~~the business.~~

18 3. ~~The business establishment shall have separate ventilation such that air~~  
19 ~~from the smoking lounge is exhausted directly outside and not recirculated within the~~  
20 ~~building or mixed with the general dilution ventilation for the building. Windows which~~  
21 ~~open to the outside shall not be deemed to comply with this provision.~~

22  
23 Chapter 5.88

24 SMOKING LOUNGES

25  
26 5.88.010 Purpose and Intent.

27 The City Council finds that a regulatory process is necessary for reviewing,  
28 approving and enforcing related business and public health codes for smoking lounges

1 as defined in this Chapter. It is the intent of this Chapter to establish regulatory  
2 provisions that allow the City or such persons as the City may designate to regulate  
3 smoking lounges operating in the City. The issuance of any smoking lounge permit  
4 under this Chapter shall not be deemed permission or authorization for a business to  
5 operate in any manner otherwise prohibited by local, state or federal law.

6  
7 5.88.020 Definitions.

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

10 A. "Director of Financial Management" means the Director of Financial  
11 Management of the City of Long Beach, or his or her designee.

12 B. "Food" means any raw, cooked or processed edible article,  
13 substance, ice, beverage or ingredient, used or intended to be used in whole or in part as  
14 food, drink, liquor, confection, or condiment for human consumption.

15 C. "Health Officer" means and includes the Health Officer of the City of  
16 Long Beach, his/her deputy, or other designated officer.

17 D. "Smoke" or "Smoking" means the carrying or holding of a lighted  
18 pipe, lighted cigar, hookah, or lighted cigarette of any kind, including but not limited to  
19 tobacco or any other weed or plant.

20 E. "Smoking lounge" means any business establishment that is  
21 dedicated to the smoking of tobacco products, including but not limited to establishments  
22 known variously as cigar lounges, hookah lounges, or tobacco clubs. For purposes of  
23 this Chapter, "smoking lounge" means private smokers' lounge as defined in Section  
24 6404.5 of the California Labor Code.

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

28

1 5.88.030 Compliance required.

2 No person shall operate any smoking lounge without first complying with the  
3 provisions of this Chapter regulating such businesses. Owners and operators of smoking  
4 lounges shall adequately inform their workers and employees of all smoking laws and  
5 regulations, and shall ensure that workers and employees comply with the provisions of  
6 this Chapter. Such owners and operators shall be held responsible for violations of their  
7 workers and employees.

8  
9 5.88.040 Business license, tobacco retail permit and smoking lounge permit -  
10 Required.

11 No person shall engage in, operate, conduct, carry on or allow to be carried on,  
12 the business of a smoking lounge in the City without first having obtained, for each  
13 separate smoking lounge or place of business where indoor smoking is to occur, a  
14 business license as prescribed by the provisions of Chapter 3.80, a tobacco retail permit  
15 as provided in Chapter 5.81, and a smoking lounge permit as provided in this Chapter.

16  
17 5.88.050 Smoking lounge permit application process.

18 A. Any person desiring a permit required by this Chapter to carry on or  
19 conduct the business of a smoking lounge in the City shall, for each separate smoking  
20 lounge or place of business where indoor smoking is to occur, complete and file an  
21 application on forms provided by the Director of Financial Management. Such application  
22 forms shall require information including the name, address and telephone number of the  
23 applicant, the business name (Doing Business As (dba), if any) and location of the  
24 smoking lounge or place of business where indoor smoking is to occur, a brief description  
25 of the nature of the business, products to be sold, and such other and further information  
26 deemed pertinent by the Director of Financial Management, the Health Officer, or any  
27 concerned City department, to ensure compliance with the provisions of this Chapter and  
28 other applicable laws.

1                   1.     The person whose signature appears on the application shall  
2 attest that they are a duly authorized representative of the applicant and that the  
3 information contained in the application is true and correct.

4                   2.     The application shall be filed under penalty of perjury. False  
5 statements therein will constitute grounds for denial, or revocation as applicable.

6                   3.     An incomplete application shall not be accepted for  
7 processing.

8                   4.     A nonrefundable investigation fee, as adopted by the City  
9 Council by resolution, shall be paid to the City at the time the application is filed.

10                  B.     On receipt of a completed smoking lounge permit application, the  
11 Director of Financial Management shall refer the application to all concerned City  
12 departments for investigation. Such departments shall file a report providing  
13 recommendations regarding the approval or denial of the permit with the Director of  
14 Financial Management within sixty (60) calendar days after the completed application is  
15 filed, except where circumstances beyond the control of the City justifiably delay such  
16 response.

17  
18 5.88.060     Smoking lounge permit - Issuance.

19                  A.     The Director of Financial Management shall make or cause to be  
20 made an investigation of the place of business and the manner in which the smoking  
21 lounge is to be conducted, and if it is found that all provisions of this Code and all  
22 applicable laws have been and will be complied with, the Director of Financial  
23 Management shall issue the smoking lounge permit; otherwise, the application for a  
24 smoking lounge permit shall be denied.

25                  B.     Such smoking lounge permits shall be good for one (1) year and  
26 shall be automatically renewed every year, provided that the Director of Financial  
27 Management determines that the permit holder has complied with the provisions of this  
28 Chapter and applicable laws during the preceding permit term.

1           C. Such smoking lounge permits shall be nontransferable and  
2 nonassignable. All smoking lounge permit holders must notify the Director of Financial  
3 Management in writing if they discontinue their business operations, if there is a change  
4 of ownership, or if there is a change in the business name.

5           D. Permittees must notify the Director of Financial Management in  
6 writing if structural modifications are planned to be made to a smoking lounge for which a  
7 permit has been issued under this Chapter. Prior to making any structural modifications  
8 to a smoking lounge, in whole or in part, the permittee shall submit plans and  
9 specifications to the Director of Financial Management for approval. The Director of  
10 Financial Management shall refer the plans and specifications to all concerned City  
11 departments for review and inspection, as appropriate. Such departments shall file a  
12 report providing recommendations regarding the approval or denial of the structural  
13 modifications with the Director of Financial Management within thirty (30) calendar days  
14 after the plans and specifications are submitted, except where circumstances beyond the  
15 control of the City justifiably delay such response.

16  
17 5.88.070 Smoking lounge permit - Fees.

18           Every applicant for a smoking lounge permit under this Chapter shall pay to the  
19 City, before a permit is issued, an annual fee as adopted by the City Council by  
20 resolution. All fees are nonrefundable; therefore, in the event that any permit issued  
21 pursuant to this Chapter is suspended or revoked, or because the permittee no longer  
22 owns or operates the smoking lounge, no portion of a permit fee paid by such permittee  
23 shall be refunded.

24  
25 5.88.080 Inspections.

26           A. The Director of Financial Management, the Health Officer and  
27 representatives of concerned City departments are empowered to enter any smoking  
28 lounge, or other place of business where indoor smoking occurs or is suspected of

1 occurring, at any time for the purpose of inspection, including the taking of photographs,  
2 samples or other evidence that is plainly visible, and to enforce any of the provisions of  
3 this Chapter, or of any applicable law, rule or regulation governing such places in the  
4 City.

5 B. No person shall refuse to permit or allow the Director of Financial  
6 Management, the Health Officer, any authorized inspector, or any representatives of  
7 concerned City departments, to enter or inspect or examine any portion of any smoking  
8 lounge or other place of business where indoor smoking occurs. No person shall  
9 interfere with, hinder, or harass, in any manner any City representative in the inspection  
10 or the examination of such smoking lounge or other place of business where indoor  
11 smoking occurs.

12  
13 5.88.090 Smoking lounge permit – Suspension – Revocation – Denial – Hearing.

14 A. If a City department determines that the applicant does not satisfy  
15 applicable requirements of this Chapter, the Director of Financial Management shall deny  
16 said permit application in accordance with the provisions set forth in Section 5.06.020,  
17 Subsection A, of this Code.

18 B. If a City department determines that the permittee failed to comply  
19 with any provision of this Chapter, or with any other provision or requirement of law, the  
20 Director of Financial Management shall revoke or suspend the smoking lounge permit in  
21 accordance with the provisions set forth in Section 5.06.020, Subsection A, of this Code.

22 C. The Director of Financial Management shall notify the applicant of a  
23 rejected application, or the permittee of the permit revocation or suspension by dated  
24 written notice. Said notice shall advise the applicant or permittee of the right to appeal  
25 the decision to the City Council. The request for appeal shall be in writing, shall set forth  
26 the specific ground(s) on which it is based and shall be submitted to the Director of  
27 Financial Management within ten (10) calendar days from the date the written notice was  
28 mailed along with an appeal deposit in an amount determined by the City Council by

1 resolution.

2 D. The City Council shall conduct a hearing on the appeal or refer the  
3 matter to a hearing officer, pursuant to Chapter 2.93 of this Code, within thirty (30)  
4 business days from the date the completed request for appeal was received by the  
5 Director of Financial Management, except where good cause exists to extend this period.  
6 The appellant shall be given at least ten (10) business days written notice of such  
7 hearing. The hearing and rules of evidence shall be conducted pursuant to Chapter 2.93  
8 of this Code. The determination of the City Council on the appeal shall be final.

9 E. Whenever a smoking lounge permit application has been denied or a  
10 smoking lounge permit has been revoked, no other such permit application shall be  
11 considered for a period of one (1) year from either the date notice of the denial, or  
12 revocation was mailed or the date of the final decision of the City Council, whichever is  
13 later.

14 F. Notwithstanding any other provisions in this Chapter, in the event  
15 that a tobacco retail permit is suspended, denied, or revoked, the smoking lounge permit  
16 shall at the same time be suspended, denied, or revoked.

17  
18 5.88.100 License and permits display.

19 City business license, tobacco retail permit and smoking lounge permit shall be  
20 prominently displayed in each smoking lounge.

21  
22 5.88.110 Health warning signage.

23 A. A Proposition 65 warning sign regarding exposure to tobacco smoke,  
24 supplied by the Health and Human Services Department, must be posted at each  
25 entrance to a smoking lounge.

26 B. A smoking hazard sign, supplied by the Health and Human Services  
27 Department, must be posted at each entrance to a smoking lounge.

28

1 5.88.120 Age restriction and signage.

2 A. No persons under eighteen (18) years of age shall be permitted  
3 within the smoking lounge at any time.

4 B. A warning sign must be posted at each entrance to a smoking  
5 lounge, and conspicuously posted in a place that can be clearly seen by the public,  
6 stating that persons under eighteen (18) years of age are prohibited.

7  
8 5.88.130 Sale of food and beverages prohibited.

9 No person shall receive for sale, sell, offer for sale, keep for sale, have in such  
10 person's possession with intent to sell, any food or beverages in the smoking lounge. All  
11 places where food or beverages are kept or suspected of being kept shall be subject at  
12 all times to inspection by the Health Officer, other officers or City representative  
13 appointed for that purpose, and such persons are authorized to enter and inspect all such  
14 places.

15  
16 5.88.140 Ventilation requirement.

17 The permittee of a smoking lounge permit shall minimize the intrusion of drifting  
18 tobacco smoke and other adverse impacts on businesses in the vicinity of the smoking  
19 lounge and areas where smoking is not permitted. Exhaust air from the smoking lounge  
20 shall be exhausted directly to the outside by an exhaust fan and shall not be re-circulated  
21 to other parts of the building. The ventilation and exhaust system shall conform to the  
22 latest edition of the California Mechanical Code and California Building Energy Efficiency  
23 Standards for Residential and Nonresidential Buildings as adopted and amended by  
24 Chapter 18.36 of the Long Beach Municipal Code, or as otherwise required by applicable  
25 state or federal laws.

26  
27 5.88.150 Application to existing businesses.

28 Any business establishment operating as a smoking lounge under an existing

1 business license on the effective date of this Chapter shall be brought into full compliance  
2 with the provisions of this Chapter, not later than ninety (90) days following the effective  
3 date of this Chapter.

4  
5 5.88.160 Severability.

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

15  
16 5.88.170 Administration and Enforcement.

17 Any violation of the terms and conditions of a smoking lounge permit, of this  
18 Chapter, or of applicable local, state or federal regulations and laws shall be grounds for  
19 permit denial, suspension or revocation. Each day a violation exists constitutes a  
20 separate and distinct offense. Suspension or revocation of the permit shall be governed  
21 by the provisions of this Chapter, and criminal penalties may be assessed under Chapter  
22 1.32 of this Code.

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**REDLINE FOR COMPARISON PURPOSES ONLY**

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING SUBSECTIONS 8.68.020.R. AND 8.68.060.B.; AND BY ADDING CHAPTER 5.88S 8.69 AND 8.70; AND BY REPEALING CHAPTER 5.81, SECTION 8.68.130 AND SECTION 8.68.150 ALL RELATING TO SMOKING IN PUBLIC PLACES, TOBACCO RETAIL PERMITS AND SMOKING LOUNGE REGULATIONS PERMITS

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

Section 1. Subsection 8.68.020.R. of the Long Beach Municipal Code is amended to read as follows:

R. "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.

Section 1. Section 2. Subsection 8.68.060.B. of the Long Beach Municipal Code is amended to read as follows:

B. This Section is not intended to prohibit smoking in any

1 "smoking lounge" as defined in Subsection 8.68.020.R. and in compliance  
2 with the provisions of Chapter ~~8.695.88~~.

3  
4 ~~Section 2~~Section 3, Chapter ~~8.695.88~~ is added to the Long Beach  
5 Municipal Code to read as follows:

6 Chapter ~~8.695.88~~

7 SMOKING LOUNGES

8  
9 ~~8.695.88.010~~ Purpose and Intent.

10 The City Council finds that a regulatory process is necessary for  
11 reviewing, approving and enforcing related business and public health  
12 codes for smoking lounges as defined in this Chapter. It is the intent of this  
13 Chapter to establish regulatory provisions that allow the City or such  
14 persons as the City may designate to regulate smoking lounges operating in  
15 the City. The issuance of any smoking lounge permit under this Chapter  
16 shall not be deemed permission or authorization for a business to operate in  
17 any manner otherwise prohibited by local, state or federal law.

18  
19 ~~8.695.88.020~~ Definitions.

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

22 A. "Director of Financial Management" means the Director of  
23 Financial Management of the City of Long Beach, or his or her designee.

24 B. "Food" means any raw, cooked or processed edible article,  
25 substance, ice, beverage or ingredient, used or intended to be used in  
26 whole or in part as food, drink, liquor, confection, or condiment for human  
27 consumption.

28 C. "Health Officer" means and includes the Health Officer of the

1 City of Long Beach, his/her deputy, or other designated officer.

2 ~~D. "Person" means, without limitation, any natural person;~~  
3 ~~domestic, nonprofit or foreign corporation; firm; trust; estate; association;~~  
4 ~~syndicate; joint stock company; limited liability company; partnership of any~~  
5 ~~kind; joint venture; club; business or common law trust of any kind; society;~~  
6 ~~cooperative; or receiver, trustee, guardian or other representative appointed~~  
7 ~~by order of any court; or the manager, lessee, agent, servant, officer or~~  
8 ~~employee of any of them.~~

9 ED. "Smoke" or "Smoking" means the carrying or holding of a  
10 lighted pipe, lighted cigar, hookah, or lighted cigarette of any kind, including  
11 but not limited to tobacco or any other weed or plant.

12 FE. "Smoking lounge" means any business establishment that is  
13 ~~devoted to and designated specifically for the sole~~dedicated to the purpose  
14 ~~of smoking of tobacco~~ products, including but not limited to establishments  
15 known variously as cigar lounges, hookah lounges, or tobacco clubs. For  
16 purposes of this Chapter, "smoking lounge" means private smokers' lounge  
17 as defined in Section 6404.5 of the California Labor Code.

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

22  
23 ~~8.695.88.030~~ Compliance required.

24 No person shall operate any smoking lounge without first complying  
25 with the provisions of this Chapter regulating such businesses. Owners and  
26 operators of smoking lounges shall adequately inform their workers and  
27 employees of all smoking laws and regulations, and shall ensure that  
28 workers and employees comply with the provisions of this Chapter. Such

1 owners and operators shall be held responsible for violations of their  
2 workers and employees.

3  
4 ~~8.69.040 Business license Applicant investigation.~~

5 A. ~~No business license to operate any smoking lounge in the City~~  
6 ~~shall be issued by the Director of Financial Management unless such~~  
7 ~~smoking lounge is first inspected and approved by the Health Officer.~~

8 B. ~~Upon application being made to the Director of Financial~~  
9 ~~Management for a business license to operate a smoking lounge, the~~  
10 ~~Director of Financial Management shall refer the application to the Health~~  
11 ~~Officer. The Health Officer shall make or cause to be made an investigation~~  
12 ~~of the place where and the manner in which such smoking lounge is to be or~~  
13 ~~is being operated and conducted. If the Health Officer determines that the~~  
14 ~~smoking lounge conforms to the provisions of this Chapter, to the other~~  
15 ~~provisions of this Code, and to all applicable laws, the Health Officer shall~~  
16 ~~authorize the Director of Financial Management to issue the license;~~  
17 ~~otherwise, the Health Officer shall deny the application and the Director of~~  
18 ~~Financial Management shall not issue the license. The Health Officer shall~~  
19 ~~make his/her recommendation to the Director of Financial Management~~  
20 ~~within thirty (30) days after the filing of the application with the Director of~~  
21 ~~Financial Management.~~

22  
23 ~~8.69.0505.88.040 Business license, tobacco retail permit and smoking~~  
24 ~~lounge permit - Required.~~

25 No person shall engage in, operate, conduct, carry on or allow to be  
26 carried on, the business of a smoking lounge in the City without first having  
27 obtained, for each separate smoking lounge or place of business where  
28 indoor smoking is to occur, a business license as prescribed by the

1 provisions of Chapter 3.80, a tobacco retail permit as provided in Chapter  
2 8.705.81, as well as and a smoking lounge permit and a business license to  
3 operate a smoking lounge, as provided in this Chapter.

4  
5 ~~8.69.0605.88.050~~ Business license and ~~s~~Smoking lounge permit -  
6 application process~~Application contents.~~

7 A. ~~Every person desiring to carry on or conduct the business of a~~  
8 ~~smoking lounge in the City shall, for each separate smoking lounge or place~~  
9 ~~of business where indoor smoking is to occur, make a written application to,~~  
10 ~~and upon forms furnished by, the Health Officer, and shall be signed by the~~  
11 ~~applicant or his duly authorized agent. Any person signing the application~~  
12 ~~as an agent shall furnish a written authorization executed by the applicant~~  
13 ~~designating the person signing the permit as the applicant's duly authorized~~  
14 ~~agent for such purpose. Such authorization will remain in full force and~~  
15 ~~effect until revoked by a written document signed by the applicant and filed~~  
16 ~~with the Health Officer. Such application shall be verified and state the~~  
17 ~~name, address and telephone number of the applicant, the business name~~  
18 ~~(Doing Business As (dba), if any), address and phone number at which the~~  
19 ~~business is proposed to be carried on, a brief description of the nature of the~~  
20 ~~business, products to be sold, and such other information pertaining to~~  
21 ~~public health and safety as may be required by the Health Officer to ensure~~  
22 ~~compliance with the provisions of this Chapter and other applicable laws.~~

23 A. Any person desiring a permit required by this Chapter to carry  
24 on or conduct the business of a smoking lounge in the City shall, for each  
25 separate smoking lounge or place of business where indoor smoking is to  
26 occur, complete and file an application on forms provided by the Director of  
27 Financial Management. Such application forms shall require information  
28 including the name, address and telephone number of the applicant, the

1 business name (Doing Business As (dba), if any) and location of the  
2 smoking lounge or place of business where indoor smoking is to occur, a  
3 brief description of the nature of the business, products to be sold, and such  
4 other and further information deemed pertinent by the Director of Financial  
5 Management, the Health Officer, or any concerned City department, to  
6 ensure compliance with the provisions of this Chapter and other applicable  
7 laws.

8 1. The person whose signature appears on the  
9 application shall attest that they are a duly authorized representative of the  
10 applicant and that the information contained in the application is true and  
11 correct.

12 2. The application shall be filed under penalty of perjury.  
13 False statements therein will constitute grounds for denial, or revocation as  
14 applicable.

15 3. An incomplete application shall not be accepted for  
16 processing.

17 4. A nonrefundable investigation fee, as adopted by the  
18 City Council by resolution, shall be paid to the City at the time the  
19 application is filed.

20 B. On receipt of a completed smoking lounge permit application,  
21 the Director of Financial Management shall refer the application to all  
22 concerned City departments for investigation. Such departments shall file a  
23 report providing recommendations regarding the approval or denial of the  
24 permit with the Director of Financial Management within sixty (60) calendar  
25 days after the completed application is filed, except where circumstances  
26 beyond the control of the City justifiably delay such response.

27  
28 8.69.0705.88.060 Smoking lounge permit - Issuance.

1           A. The Director of Financial Management~~Health Officer~~ shall  
2 make or cause to be made an investigation of the ~~proposed~~ place of  
3 business and the manner in which the smoking lounge is to be conducted,  
4 and if it is found that all provisions of this Code and all applicable laws have  
5 been and will be complied with, the Director of Financial Management~~Health~~  
6 ~~Officer~~ shall issue the smoking lounge permit; otherwise, the application for  
7 a smoking lounge permit shall be denied.

8           B. Such smoking lounge permits shall be good for one (1) year  
9 and shall be automatically renewed every year, provided that the Director of  
10 Financial Management~~Health Officer~~ determines that the permit holder has  
11 complied with the provisions of this Chapter and applicable laws during the  
12 preceding permit term.

13           C. Such smoking lounge permits shall be nontransferable and  
14 nonassignable. All smoking lounge permit holders must notify the Director  
15 of Financial Management~~Health Officer~~ in writing if they discontinue their  
16 business operations, if there is a change of ownership, or if there is a  
17 change in the business name.

18           D. Permittees must notify the Director of Financial Management  
19 in writing if structural modifications are planned to be made to a smoking  
20 lounge for which a permit has been issued under this Chapter. Prior to  
21 making any structural modifications to a smoking lounge, in whole or in part,  
22 the permittee shall submit plans and specifications to the Director of  
23 Financial Management for approval. The Director of Financial Management  
24 shall refer the plans and specifications to all concerned City departments for  
25 review and inspection, as appropriate. Such departments shall file a report  
26 providing recommendations regarding the approval or denial of the  
27 structural modifications with the Director of Financial Management within  
28 thirty (30) calendar days after the plans and specifications are submitted.

1 except where circumstances beyond the control of the City justifiably delay  
2 such response.

3  
4 ~~8.69.0805.88.070~~ Smoking lounge permit - Fees.

5 Every applicant for a smoking lounge permit under this Chapter shall  
6 pay to the City, before a permit is issued, an annual fee as adopted by the  
7 City Council by resolution. All fees are nonrefundable; therefore, in the  
8 event that any permit issued pursuant to this Chapter is suspended or  
9 revoked, or because the permittee no longer owns or operates the smoking  
10 lounge, no portion of a permit fee paid by such permittee shall be refunded.

11  
12 ~~8.69.090~~ ~~Change of ownership or location.~~

13 A. ~~Any person who purchases any such business for which a~~  
14 ~~smoking lounge permit has been obtained and is in force at the time of such~~  
15 ~~sale may conduct and operate such business under such permit for a period~~  
16 ~~of not to exceed thirty (30) days from and after the date of such sale, unless~~  
17 ~~such permit is revoked or suspended as provided in this Chapter, and such~~  
18 ~~purchaser shall, during the period of said thirty (30) days, apply for and, if~~  
19 ~~approved, obtain a permit in the manner provided by this Chapter.~~

20 B. ~~If a holder of a smoking lounge permit changes or removes the~~  
21 ~~location of his place of business, such holder may not continue to conduct~~  
22 ~~and operate the business at the changed or new location under such permit.~~  
23 ~~Such permit holder shall immediately apply for and obtain a new smoking~~  
24 ~~permit in the manner provided by this Chapter. If such new permit is not~~  
25 ~~applied for and obtained in the manner prescribed in this Section, such~~  
26 ~~person shall be deemed to be conducting and operating such business~~  
27 ~~without a valid smoking lounge permit.~~

28 C. ~~Any structural modifications to such business, in whole or in~~

1 part, shall require plan submittals to the appropriate City departments,  
2 approval of plans and specifications, and inspections by the appropriate City  
3 departments.

4  
5 ~~8.69.1005.88.080~~ Inspections.

6 A. The Director of Financial Management, the Health Officer and  
7 representatives of concerned City departments are empowered to enter  
8 any smoking lounge, or other place of business where indoor smoking  
9 occurs or is suspected of occurring, at any time for the purpose of  
10 inspection, including the taking of photographs, samples or other evidence  
11 that is plainly visible, and to enforce any of the provisions of this Chapter, or  
12 of any applicable law, rule or regulation governing such places in the City.  
13 ~~The Health Officer may periodically conduct inspections of all business~~  
14 ~~establishments in the City where indoor smoking occurs to determine~~  
15 ~~whether they comply with the requirements of this Chapter and other~~  
16 ~~applicable laws.~~

17 B. No person shall refuse to permit or allow the Director of  
18 Financial Management, the Health Officer, or any authorized inspector, or  
19 any representatives of concerned City departments, to enter or inspect or  
20 examine any portion of any smoking lounge or other place of business  
21 where indoor smoking occurs. No person shall interfere with, hinder, or  
22 harass, in any manner the ~~Health Officer~~ any City representative in the  
23 inspection or the examination of such smoking lounge or other place of  
24 business where indoor smoking occurs.

25  
26 ~~8.69.1105.88.090~~ Smoking lounge permit – Suspension – Revocation –  
27 Denial – Hearing.

28 A. If a City department determines that the applicant does not

1 satisfy applicable requirements of this Chapter, the Director of Financial  
2 Management shall deny said permit application in accordance with the  
3 provisions set forth in Section 5.06.020, Subsection A, of this Code.

4 B. If a City department determines that the permittee failed to  
5 comply with any provision of this Chapter, or with any other provision or  
6 requirement of law, the Director of Financial Management shall revoke or  
7 suspend the smoking lounge permit in accordance with the provisions set  
8 forth in Section 5.06.020, Subsection A, of this Code.

9 C. The Director of Financial Management shall notify the  
10 applicant of a rejected application, or the permittee of the permit revocation  
11 or suspension by dated written notice. Said notice shall advise the  
12 applicant or permittee of the right to appeal the decision to the City Council.  
13 The request for appeal shall be in writing, shall set forth the specific  
14 ground(s) on which it is based and shall be submitted to the Director of  
15 Financial Management within ten (10) calendar days from the date the  
16 written notice was mailed along with an appeal deposit in an amount  
17 determined by the City Council by resolution.

18 D. The City Council shall conduct a hearing on the appeal or  
19 refer the matter to a hearing officer, pursuant to Chapter 2.93 of this Code,  
20 within thirty (30) business days from the date the completed request for  
21 appeal was received by the Director of Financial Management, except  
22 where good cause exists to extend this period. The appellant shall be given  
23 at least ten (10) business days written notice of such hearing. The hearing  
24 and rules of evidence shall be conducted pursuant to Chapter 2.93 of this  
25 Code. The determination of the City Council on the appeal shall be final.

26 E. Whenever a smoking lounge permit application has been  
27 denied or a smoking lounge permit has been revoked, no other such permit  
28 application shall be considered for a period of one (1) year from either the

1 date notice of the denial, or revocation was mailed or the date of the final  
2 decision of the City Council, whichever is later.

3 A. ~~If the Health Officer determines that any of the provisions of~~  
4 ~~this Chapter or any other provisions of the Code or applicable laws have~~  
5 ~~been or are being violated by the holder of a smoking lounge permit or such~~  
6 ~~holder's servants, employees or agents, the Health Officer may suspend or~~  
7 ~~revoke the permit. No smoking lounge permit shall be suspended or~~  
8 ~~revoked until after a hearing has been held by the Health Officer.~~

9 B. ~~Notification of the hearing shall be given in writing and~~  
10 ~~delivered at least ten (10) days prior to the date of hearing, upon the holder~~  
11 ~~of the permit or upon his manager or agent. The notice shall state the~~  
12 ~~grounds of complaint against the holder of the permit and shall also state~~  
13 ~~the time and place the hearing will be held. The notice shall be delivered to~~  
14 ~~the holder of the permit by delivering the same to said person or to his~~  
15 ~~manager or agent. If the holder of the permit cannot be found and delivery~~  
16 ~~of the notice cannot be made upon him or his manager or agent, then a~~  
17 ~~copy of the notice shall be mailed postpaid and registered, to the last known~~  
18 ~~address of the holder of the permit.~~

19 C. ~~The holder of the permit or his manager or agent may appear~~  
20 ~~in person, or with counsel, and present such evidence as he may desire~~  
21 ~~regarding the alleged violation and show cause why the permit shall not be~~  
22 ~~suspended or revoked. The Health Officer shall receive such information,~~  
23 ~~evidence and testimony as may concern the circumstances of the alleged~~  
24 ~~violation, and the formal rules of evidence shall not apply. The Health~~  
25 ~~Officer shall render his or her decision not later than fifteen (15) days after~~  
26 ~~the hearing is closed. All findings, determinations, or acts of the Health~~  
27 ~~Officer shall be final and conclusive.~~

28 DE. Notwithstanding any other provisions in this Chapter, in the

1 event that a tobacco retail permit is suspended, denied, or revoked, the  
2 smoking lounge permit shall at the same time be suspended, denied, or  
3 revoked.

4  
5 ~~8.69.120~~ ~~Smoking lounge permit~~ ~~Revocation~~ ~~Reapplication.~~

6 Whenever any smoking lounge permit has been revoked under the  
7 terms of this Chapter, no other application for a smoking lounge permit to  
8 carry on a similar business by the permit holder shall be considered for a  
9 period of one (1) year from the date of such revocation.

10  
11 ~~8.69.130~~8.88.100 License and permits display.

12 City business license, tobacco retail permit and smoking lounge  
13 permit shall be prominently displayed in each smoking lounge.

14  
15 ~~8.69.140~~8.88.110 Health warning signage.

16 A. A Proposition 65 warning sign regarding exposure to tobacco  
17 smoke, supplied by the Health and Human Services Department, must be  
18 posted at each entrance to a smoking lounge.

19 B. A smoking hazard sign, supplied by the Health and Human  
20 Services Department, must be posted at each entrance to a smoking  
21 lounge.

22  
23 ~~8.69.150~~8.88.120 Age restriction and signage.

24 A. No persons under eighteen (18) years of age shall be  
25 permitted within the smoking lounge at any time.

26 B. A warning sign must be posted at each entrance to a smoking  
27 lounge, and conspicuously posted in a place that can be clearly seen by the  
28 public, stating that persons under eighteen (18) years of age are prohibited.

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~~8.69.1605.88.130~~ 8.69.1705.88.130 Sale of Food and beverages prohibited.

No person shall receive for sale, sell, offer for sale, keep for sale, have in such person's possession with intent to sell, ~~give away, prepare, dispense, store, keep, provide or serve,~~ any food or beverages in the smoking lounge. All places where food or beverages are kept or suspected of being kept shall be subject at all times to inspection by the Health Officer, ~~or other officers~~ or City representative appointed for that purpose, and such ~~officers~~ persons are authorized to enter and inspect all such places.

~~8.69.1705.88.140~~ 8.69.1705.88.140 Separate Ventilation requirement.

The permittee of a smoking lounge permit shall minimize the intrusion of drifting tobacco smoke and other adverse impacts on businesses in the vicinity of the smoking lounge and areas where smoking is not permitted. Exhaust air from the smoking lounge shall be exhausted directly to the outside by an exhaust fan and shall not be re-circulated to other parts of the building. The ventilation and exhaust system shall conform to the latest edition of the California Mechanical Code and California Building Energy Efficiency Standards for Residential and Nonresidential Buildings as adopted and amended by Chapter 18.36 of the Long Beach Municipal Code, or as otherwise required by applicable state or federal laws.

A. ~~The smoking lounge shall have a mechanical ventilation and exhaust system that is in compliance with the California Building Energy Efficiency Standards for Residential and Nonresidential Buildings and the Long Beach Mechanical Code. A licensed contractor shall obtain a mechanical permit for the system and all work shall be completed and approved by the Health Officer and the Development Services Department prior to smoking within the smoking lounge.~~

1           B. ~~The Health Officer may review plans and specifications~~  
2 ~~pertaining to the design of ventilation systems for all smoking lounges, for~~  
3 ~~the control of environmental health hazards and shall have the authority to~~  
4 ~~require the submission of such plans and specifications. The Health Officer~~  
5 ~~shall not issue the smoking lounge permit until the mechanical ventilation~~  
6 ~~and exhaust system has been approved by the Development Services~~  
7 ~~Department.~~

8  
9       ~~8.69.1805.88.150~~ Application to existing businesses.

10           Any business establishment operating as a smoking lounge under an  
11 existing business license on the effective date of this Chapter shall be  
12 brought into full compliance with the provisions of this Chapter, not later  
13 than ninety (90) days following either ~~(i) the effective date of this Chapter, or~~  
14 ~~(ii) the expiration of Ordinance No. ORD 09-0009 which was adopted by the~~  
15 ~~City Council to temporarily prohibit development or operation of new~~  
16 ~~smoking lounges, whichever is later.~~

17       ~~8.69.1905.88.160~~ Severability.

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

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~~8.69.2005.88.170~~ Administration and Enforcement.

~~Any violation of the terms and conditions of a smoking lounge permit, of this Chapter, or of applicable local, state or federal regulations and laws shall be grounds for permit denial, suspension or revocation. Each day a violation exists constitutes a separate and distinct offense. The Health Officer shall have the duty to administer and enforce the Sections included in this Chapter. Suspension or revocation of the permit shall be governed by the provisions of this Chapter, and criminal penalties may be assessed under Chapter 1.32 of this Code.~~

~~Section 3. Chapter 8.70 is added to the Long Beach Municipal Code to read as follows:~~

~~Chapter 8.70  
TOBACCO RETAILERS~~

~~8.70.010 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.~~

~~8.70.020 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. "Health Officer" means and includes the Health Officer of the City of Long Beach, his/her deputy, or other designated officer.~~

1 B. "Person" means, without limitation, any natural person;  
2 domestic, nonprofit or foreign corporation, firm, trust, estate, association;  
3 syndicate, joint stock company, limited liability company, partnership of any  
4 kind, joint venture, club, business or common-law trust of any kind, society,  
5 cooperative, or receiver, trustee, guardian or other representative appointed  
6 by order of any court; or the manager, lessee, agent, servant, officer or  
7 employee of any of them.

8 C. "Tobacco paraphernalia" means cigarette papers or wrappers,  
9 pipe holders of smoking materials of all types, cigarette-rolling machines,  
10 hookahs, and any other item designed for the smoking or ingestion of  
11 tobacco products.

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

16 E. "Tobacco retailer" means any person who sells, offers for sale,  
17 gives away, or offers to exchange for any form of consideration, tobacco,  
18 tobacco products or tobacco paraphernalia; "tobacco retailing" shall mean  
19 engaging in any of these things.

20 8.70.030 Compliance required.

21 No person shall act as a tobacco retailer in the City, or at any "special  
22 event" as defined in Chapter 5.60 of this Code, without first complying with  
23 the provisions of this Chapter. Tobacco retailers shall adequately inform  
24 their workers and employees of all smoking laws and regulations, and shall  
25 ensure that workers and employees comply with the provisions of this  
26 Chapter. Such owners and operators shall be held responsible for  
27 violations of their workers and employees.  
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~~8.70.040 Business license, State Board of Equalization Tobacco License and tobacco retail permit Required.~~

~~A. No person shall act as a tobacco retailer without first having obtained for each location at which tobacco retailing is to occur or otherwise, a tobacco retail permit as provided in this Chapter, as well as a business license and a State Board of Equalization Tobacco License.~~

~~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.~~

~~8.70.050 Tobacco retail permit Application.~~

~~A. Any person desiring a permit to engage in tobacco retailing as provided by this Chapter shall make a written application to, and upon forms furnished by, the Health Officer, and shall be signed by the applicant or his duly authorized agent. Any person signing the application as an agent shall furnish a written authorization executed by the applicant designating the person signing the permit as the applicant's duly authorized agent for such purpose. Such authorization will remain in full force and effect until revoked by a written document signed by the applicant and filed with the Health Officer.~~

~~B. Such application shall be verified and include the following:~~

- ~~1. The name, mailing address and telephone number of the applicant;~~
- ~~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.~~

1 5. Such other information pertaining to public health and  
2 safety as may be required by the Health Officer, consistent with the purpose  
3 of this Chapter, this Code and applicable law.  
4 C. The Health Officer shall issue the tobacco retail permit to the  
5 applicant unless such application is incomplete or inaccurate, the  
6 application seeks authorization for tobacco retailing by a person or location  
7 for which a suspension is in effect under this Chapter, or the application  
8 seeks authorization for tobacco retailing that is unlawful under this Chapter,  
9 this Code or applicable law.  
10 D. Tobacco products and tobacco paraphernalia offered for sale  
11 or exchange in violation of this Chapter are subject to seizure and forfeiture.  
12 Forfeited tobacco products and tobacco paraphernalia may be destroyed.  
13 8.70.060 Tobacco retail permit issuance:  
14  
15 A. The Health Officer shall make or cause to be made an  
16 investigation of the place of business where tobacco retailing is to occur,  
17 and if it is found that all provisions of this Code and all applicable laws have  
18 been and will be complied with, the Health Officer shall issue the tobacco  
19 retail permit; otherwise, the application for a tobacco retail permit shall be  
20 denied.  
21 B. The tobacco retail permit shall clearly state the following on its face:  
22 1. The legal owner(s) of the permitted premises;  
23 2. Doing Business As (dba), if any;  
24 3. The LBMC Chapter pursuant to which the permit was  
25 issued;  
26 4. The business and mailing address of the owner of the  
27 permitted premises;  
28 5. The date the permit was issued; and

1                   6. The permit number.

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

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

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

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

23                  8.70.070 Tobacco retail permit Fees.

24                  Every applicant for a tobacco retail permit under this Chapter shall  
25                  pay to the City, before a permit is issued, an annual fee as adopted by the  
26                  City Council by resolution. All fees are nonrefundable; therefore, in the  
27                  event that any permit issued pursuant to this Chapter is suspended or  
28

1           ~~revoked, or because the permittee no longer acts as a tobacco retailer, no~~  
2           ~~portion of a permit fee paid by such permittee shall be refunded.~~

3  
4           ~~8.70.080 Tobacco retail permit Term and renewals:~~

5                     ~~All tobacco retail permits issued under this Chapter will be for a~~  
6           ~~period not to exceed one (1) year and shall be automatically renewed every~~  
7           ~~year, provided that the Health Officer determines that the permit holder has~~  
8           ~~complied with the provisions of this Chapter and applicable laws during the~~  
9           ~~preceding permit term. All tobacco retailers must notify the City in writing if~~  
10          ~~they discontinue selling tobacco products.~~

11  
12          ~~8.70.090 Inspections:~~

13                     ~~A. The Health Officer is empowered to enter any place of~~  
14           ~~business where tobacco retailing occurs or is suspected of occurring, at any~~  
15           ~~time for the purpose of inspection, including the taking of photographs,~~  
16           ~~samples or other evidence that is plainly visible, and to enforce any of the~~  
17           ~~provisions of this Chapter, or of any applicable law, rule or regulation~~  
18           ~~governing such places in the City. The Health Officer may periodically~~  
19           ~~conduct inspections of all business establishments in the City where~~  
20           ~~tobacco retailing occurs to determine whether they comply with the~~  
21           ~~requirements of this Chapter and other applicable laws.~~

22                     ~~B. No person shall refuse to permit or allow the Health Officer or~~  
23           ~~any authorized inspector to enter or inspect or examine any portion of any~~  
24           ~~place of business where tobacco retailing occurs. No person shall interfere~~  
25           ~~with, hinder, or harass, in any manner the Health Officer in the inspection or~~  
26           ~~the examination of such place of business where tobacco retailing occurs.~~  
27           ~~8.70.100 Tobacco retail permit Requirements:~~

28                     ~~It is a violation of the permit to violate any federal, state, or local laws~~

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

7  
8 8.70.110 ~~Tobacco retail permit~~ Suspension ~~Revocation~~ Hearing.

9 A. ~~In addition to the administrative penalties detailed pursuant to~~  
10 ~~Section 9.65.060 of the Long Beach Municipal Code, violation of or failure to~~  
11 ~~comply with any provision of this Chapter may result in suspension or~~  
12 ~~revocation of the tobacco retail permit. If the Health Officer determines that~~  
13 ~~any of the provisions of this Chapter or any other provisions of the Code or~~  
14 ~~applicable laws have been or are being violated by the holder of a tobacco~~  
15 ~~retail permit or such holder's servants, employees or agents, the Health~~  
16 ~~Officer may suspend or revoke the permit. No tobacco retail permit shall be~~  
17 ~~suspended or revoked until after a hearing has been held by the Health~~  
18 ~~Officer.~~

19 B. ~~Notification of the hearing shall be given in writing and~~  
20 ~~delivered at least ten (10) days prior to the date of hearing, upon the holder~~  
21 ~~of the permit or upon his manager or agent. The notice shall state the~~  
22 ~~grounds of complaint against the holder of the permit and shall also state~~  
23 ~~the time and place the hearing will be held. The notice shall be delivered to~~  
24 ~~the holder of the permit by delivering the same to said person or to his~~  
25 ~~manager or agent. If the holder of the permit cannot be found and delivery~~  
26 ~~of the notice cannot be made upon him or his manager or agent, then a~~  
27 ~~copy of the notice shall be mailed postpaid and registered, to the last known~~  
28 ~~address of the holder of the permit.~~

1 C. The holder of the permit or his manager or agent may appear  
2 in person, or with counsel, and present such evidence as he may desire  
3 regarding the alleged violation and show cause why the permit shall not be  
4 suspended or revoked. The Health Officer shall receive such information,  
5 evidence and testimony as may concern the circumstances of the alleged  
6 violation, and the formal rules of evidence shall not apply. The Health  
7 Officer shall render his or her decision not later than fifteen (15) days after  
8 the hearing is closed. All findings, determinations, or acts of the Health  
9 Officer shall be final and conclusive.

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

13 8.70.120 Tobacco retail permit. Revocation. Reapplication.

14 Whenever any tobacco retail permit has been revoked under the  
15 terms of this Chapter, no other application for a tobacco retail permit by the  
16 permit holder shall be considered for a period of one (1) year from the date  
17 of such revocation.

18 8.70.130 Severability.

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

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ROBERT E. SHANNON, City Attorney  
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Long Beach, CA 90802-4664

1 phrase hereof, irrespective of the fact that any one or more sections,  
2 subsections, subdivisions paragraphs, sentences, clauses or phrases  
3 hereof be declared invalid or unenforceable.

4  
5 ~~8.70.140 Administration and enforcement.~~

6 Each day a violation exists constitutes a separate and distinct  
7 offense. The Health Officer shall have the duty to administer and enforce  
8 the Sections included in this Chapter. Suspension or revocation of the  
9 permit shall be governed by the provisions of this Chapter, and criminal  
10 penalties may be assessed under Chapter 1.32 of this Code.

11  
12 Section 4.Chapter 5.81 of the Long Beach Municipal Code is hereby  
13 repealed.

14  
15 Section 5.Section 8.68.130 of the Long Beach Municipal Code is hereby  
16 repealed.

17  
18 Section 6.Section 8.68.150 of the Long Beach Municipal Code is hereby  
19 repealed.

20  
21 Section 7.Section 4. The City Clerk shall certify to the passage of this  
22 ordinance by the City Council and cause it to be posted in three (3) conspicuous places  
23 in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is  
24 approved by the Mayor.

25 ///

26 ///

27 I hereby certify that the foregoing ordinance was adopted by the City  
28 Council of the City of Long Beach at its meeting of \_\_\_\_\_, 20\_\_, by the





Chapter 5.88  
SMOKING LOUNGES

5.88.010 Purpose and Intent.

The City Council finds that a regulatory process is necessary for reviewing, approving and enforcing related business and public health codes for smoking lounges as defined in this Chapter. It is the intent of this Chapter to establish regulatory provisions that allow the City or such persons as the City may designate to regulate smoking lounges operating in the City. The issuance of any smoking lounge permit under this Chapter shall not be deemed permission or authorization for a business to operate in any manner otherwise prohibited by local, state or federal law.

5.88.020 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. "Director of Financial Management" means the Director of Financial Management of the City of Long Beach, or his or her designee.

B. "Food" means any raw, cooked or processed edible article, substance, ice, beverage or ingredient, used or intended to be used in whole or in part as food, drink, liquor, confection, or condiment for human consumption.

C. "Health Officer" means and includes the Health Officer of the City of Long Beach, his/her deputy, or other designated officer.

D. "Smoke" or "Smoking" means the carrying or holding of a lighted pipe, lighted cigar, hookah, or lighted cigarette of any kind, including but not limited to tobacco or any other weed or plant.

E. "Smoking lounge" means any business establishment that is

1 dedicated to the smoking of tobacco products, including but not limited to  
2 establishments known variously as cigar lounges, hookah lounges, or  
3 tobacco clubs. For purposes of this Chapter, "smoking lounge" means  
4 private smokers' lounge as defined in Section 6404.5 of the California Labor  
5 Code.

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

10  
11 5.88.030 Compliance required.

12 No person shall operate any smoking lounge without first complying  
13 with the provisions of this Chapter regulating such businesses. Owners and  
14 operators of smoking lounges shall adequately inform their workers and  
15 employees of all smoking laws and regulations, and shall ensure that  
16 workers and employees comply with the provisions of this Chapter. Such  
17 owners and operators shall be held responsible for violations of their  
18 workers and employees.

19  
20 5.88.040 Business license, tobacco retail permit and smoking lounge  
21 permit - Required.

22 No person shall engage in, operate, conduct, carry on or allow to be  
23 carried on, the business of a smoking lounge in the City without first having  
24 obtained, for each separate smoking lounge or place of business where  
25 indoor smoking is to occur, a business license as prescribed by the  
26 provisions of Chapter 3.80, a tobacco retail permit as provided in Chapter  
27 5.81, and a smoking lounge permit as provided in this Chapter.

28 ///

1           5.88.050     Smoking lounge permit application process.

2           A.     Any person desiring a permit required by this Chapter to carry  
3           on or conduct the business of a smoking lounge in the City shall, for each  
4           separate smoking lounge or place of business where indoor smoking is to  
5           occur, complete and file an application on forms provided by the Director of  
6           Financial Management. Such application forms shall require information  
7           including the name, address and telephone number of the applicant, the  
8           business name (Doing Business As (dba), if any) and location of the  
9           smoking lounge or place of business where indoor smoking is to occur, a  
10          brief description of the nature of the business, products to be sold, and such  
11          other and further information deemed pertinent by the Director of Financial  
12          Management, the Health Officer, or any concerned City department, to  
13          ensure compliance with the provisions of this Chapter and other applicable  
14          laws.

15                   1.     The person whose signature appears on the  
16                   application shall attest that they are a duly authorized representative of the  
17                   applicant and that the information contained in the application is true and  
18                   correct.

19                   2.     The application shall be filed under penalty of perjury.  
20                   False statements therein will constitute grounds for denial, or revocation as  
21                   applicable.

22                   3.     An incomplete application shall not be accepted for  
23                   processing.

24                   4.     A nonrefundable investigation fee, as adopted by the  
25                   City Council by resolution, shall be paid to the City at the time the  
26                   application is filed.

27           B.     On receipt of a completed smoking lounge permit application,  
28           the Director of Financial Management shall refer the application to all

1 concerned City departments for investigation. Such departments shall file a  
2 report providing recommendations regarding the approval or denial of the  
3 permit with the Director of Financial Management within sixty (60) calendar  
4 days after the completed application is filed, except where circumstances  
5 beyond the control of the City justifiably delay such response.  
6

7 5.88.060 Smoking lounge permit - Issuance.

8 A. The Director of Financial Management shall make or cause to  
9 be made an investigation of the place of business and the manner in which  
10 the smoking lounge is to be conducted, and if it is found that all provisions of  
11 this Code and all applicable laws have been and will be complied with, the  
12 Director of Financial Management shall issue the smoking lounge permit;  
13 otherwise, the application for a smoking lounge permit shall be denied.

14 B. Such smoking lounge permits shall be good for one (1) year  
15 and shall be automatically renewed every year, provided that the Director of  
16 Financial Management determines that the permit holder has complied with  
17 the provisions of this Chapter and applicable laws during the preceding  
18 permit term.

19 C. Such smoking lounge permits shall be nontransferable and  
20 nonassignable. All smoking lounge permit holders must notify the Director  
21 of Financial Management in writing if they discontinue their business  
22 operations, if there is a change of ownership, or if there is a change in the  
23 business name.

24 D. Permittees must notify the Director of Financial Management  
25 in writing if structural modifications are planned to be made to a smoking  
26 lounge for which a permit has been issued under this Chapter. Prior to  
27 making any structural modifications to a smoking lounge, in whole or in part,  
28 the permittee shall submit plans and specifications to the Director of

1 Financial Management for approval. The Director of Financial Management  
2 shall refer the plans and specifications to all concerned City departments for  
3 review and inspection, as appropriate. Such departments shall file a report  
4 providing recommendations regarding the approval or denial of the  
5 structural modifications with the Director of Financial Management within  
6 thirty (30) calendar days after the plans and specifications are submitted,  
7 except where circumstances beyond the control of the City justifiably delay  
8 such response.

9  
10 5.88.070 Smoking lounge permit - Fees.

11 Every applicant for a smoking lounge permit under this Chapter shall  
12 pay to the City, before a permit is issued, an annual fee as adopted by the  
13 City Council by resolution. All fees are nonrefundable; therefore, in the  
14 event that any permit issued pursuant to this Chapter is suspended or  
15 revoked, or because the permittee no longer owns or operates the smoking  
16 lounge, no portion of a permit fee paid by such permittee shall be refunded.

17  
18 5.88.080 Inspections.

19 A. The Director of Financial Management, the Health Officer and  
20 representatives of concerned City departments are empowered to enter any  
21 smoking lounge, or other place of business where indoor smoking occurs or  
22 is suspected of occurring, at any time for the purpose of inspection,  
23 including the taking of photographs, samples or other evidence that is  
24 plainly visible, and to enforce any of the provisions of this Chapter, or of any  
25 applicable law, rule or regulation governing such places in the City.

26 B. No person shall refuse to permit or allow the Director of  
27 Financial Management, the Health Officer, any authorized inspector, or any  
28 representatives of concerned City departments, to enter or inspect or

1 examine any portion of any smoking lounge or other place of business  
2 where indoor smoking occurs. No person shall interfere with, hinder, or  
3 harass, in any manner any City representative in the inspection or the  
4 examination of such smoking lounge or other place of business where  
5 indoor smoking occurs.

6  
7 5.88.090 Smoking lounge permit – Suspension – Revocation – Denial –  
8 Hearing.

9 A. If a City department determines that the applicant does not  
10 satisfy applicable requirements of this Chapter, the Director of Financial  
11 Management shall deny said permit application in accordance with the  
12 provisions set forth in Section 5.06.020, Subsection A, of this Code.

13 B. If a City department determines that the permittee failed to  
14 comply with any provision of this Chapter, or with any other provision or  
15 requirement of law, the Director of Financial Management shall revoke or  
16 suspend the smoking lounge permit in accordance with the provisions set  
17 forth in Section 5.06.020, Subsection A, of this Code.

18 C. The Director of Financial Management shall notify the  
19 applicant of a rejected application, or the permittee of the permit revocation  
20 or suspension by dated written notice. Said notice shall advise the  
21 applicant or permittee of the right to appeal the decision to the City Council.  
22 The request for appeal shall be in writing, shall set forth the specific  
23 ground(s) on which it is based and shall be submitted to the Director of  
24 Financial Management within ten (10) calendar days from the date the  
25 written notice was mailed along with an appeal deposit in an amount  
26 determined by the City Council by resolution.

27 D. The City Council shall conduct a hearing on the appeal or  
28 refer the matter to a hearing officer, pursuant to Chapter 2.93 of this Code,

1 within thirty (30) business days from the date the completed request for  
2 appeal was received by the Director of Financial Management, except  
3 where good cause exists to extend this period. The appellant shall be given  
4 at least ten (10) business days written notice of such hearing. The hearing  
5 and rules of evidence shall be conducted pursuant to Chapter 2.93 of this  
6 Code. The determination of the City Council on the appeal shall be final.

7 E. Whenever a smoking lounge permit application has been  
8 denied or a smoking lounge permit has been revoked, no other such permit  
9 application shall be considered for a period of one (1) year from either the  
10 date notice of the denial, or revocation was mailed or the date of the final  
11 decision of the City Council, whichever is later.

12 F. Notwithstanding any other provisions in this Chapter, in the  
13 event that a tobacco retail permit is suspended, denied, or revoked, the  
14 smoking lounge permit shall at the same time be suspended, denied, or  
15 revoked.

16  
17 5.88.100 License and permits display.

18 City business license, tobacco retail permit and smoking lounge  
19 permit shall be prominently displayed in each smoking lounge.

20  
21 5.88.110 Health warning signage.

22 A. A Proposition 65 warning sign regarding exposure to tobacco  
23 smoke, supplied by the Health and Human Services Department, must be  
24 posted at each entrance to a smoking lounge.

25 B. A smoking hazard sign, supplied by the Health and Human  
26 Services Department, must be posted at each entrance to a smoking  
27 lounge.

28 ///

1           5.88.120     Age restriction and signage.

2                   A.     No persons under eighteen (18) years of age shall be  
3 permitted within the smoking lounge at any time.

4                   B.     A warning sign must be posted at each entrance to a smoking  
5 lounge, and conspicuously posted in a place that can be clearly seen by the  
6 public, stating that persons under eighteen (18) years of age are prohibited.

7

8           5.88.130     Sale of food and beverages prohibited.

9                   No person shall receive for sale, sell, offer for sale, keep for sale,  
10 have in such person's possession with intent to sell, any food or beverages  
11 in the smoking lounge. All places where food or beverages are kept or  
12 suspected of being kept shall be subject at all times to inspection by the  
13 Health Officer, other officers or City representative appointed for that  
14 purpose, and such persons are authorized to enter and inspect all such  
15 places.

16

17           5.88.140     Ventilation requirement.

18                   The permittee of a smoking lounge permit shall minimize the intrusion  
19 of drifting tobacco smoke and other adverse impacts on businesses in the  
20 vicinity of the smoking lounge and areas where smoking is not permitted.

21 Exhaust air from the smoking lounge shall be exhausted directly to the  
22 outside by an exhaust fan and shall not be re-circulated to other parts of the  
23 building. The ventilation and exhaust system shall conform to the latest  
24 edition of the California Mechanical Code and California Building Energy  
25 Efficiency Standards for Residential and Nonresidential Buildings as  
26 adopted and amended by Chapter 18.36 of the Long Beach Municipal  
27 Code, or as otherwise required by applicable state or federal laws.

28     ///

1           5.88.150     Application to existing businesses.

2                    Any business establishment operating as a smoking lounge under an  
3 existing business license on the effective date of this Chapter shall be  
4 brought into full compliance with the provisions of this Chapter, not later  
5 than ninety (90) days following the effective date of this Chapter.  
6

7           5.88.160     Severability.

8                    If any section, subsection, subdivision, paragraph, sentence, clause  
9 or phrase of this Chapter, or its application to any person or circumstance, is  
10 for any reason held to be invalid or unenforceable, such invalidity or  
11 unenforceability shall not affect the validity of enforceability of the remaining  
12 sections, subsections, subdivisions, paragraphs, sentences, clauses or  
13 phrases of this Chapter, or its application to any other person or  
14 circumstance. The City of Long Beach declares that it would have adopted  
15 each section, subsection, subdivision, paragraph, sentence, clause or  
16 phrase hereof, irrespective of the fact that any one or more sections,  
17 subsections, subdivisions paragraphs, sentences, clauses or phrases  
18 hereof be declared invalid or unenforceable.  
19

20           5.88.170     Administration and Enforcement.

21                    Any violation of the terms and conditions of a smoking lounge permit,  
22 of this Chapter, or of applicable local, state or federal regulations and laws  
23 shall be grounds for permit denial, suspension or revocation. Each day a  
24 violation exists constitutes a separate and distinct offense. Suspension or  
25 revocation of the permit shall be governed by the provisions of this Chapter,  
26 and criminal penalties may be assessed under Chapter 1.32 of this Code.

27     ///

28     ///

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Section 4. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of \_\_\_\_\_, 20\_\_, by the following vote:

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
City Clerk

Approved: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Mayor