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Long Beach, California

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ROBERT E. SHANNON
City Attorney

October 17, 2000

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RE: Smoking Ordinance

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

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

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

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

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

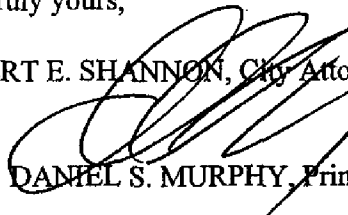
8.68.190 - the fine for violations the City's ordinance is amended to be consistent with State law.

8.68.200 - patrons are added to be protected from retaliation.

Very truly yours,

ROBERT E. SHANNON, City Attorney

By


DANIEL S. MURPHY, Principal Deputy

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Enclosure
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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY AMENDING CHAPTER 8.68 IN ITS
ENTIRETY RELATING TO SMOKING IN THE WORK PLACE
AND PUBLIC PLACES

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

Section 1. Chapter 8.68 of the Long Beach Municipal Code is hereby
amended in its entirety to read as follows:

CHAPTER 8.68

SMOKING IN PUBLIC PLACES

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 constructed as defined in this Section:

A. "Bar" means an area which is devoted to serving of alcoholic

1 beverages and in which the service of food is only incidental to the
2 consumption of such beverages. Bar shall also include a nightclub or
3 cabaret where entertainment and/or dancing are provided in addition to
4 the consumption of alcoholic beverages or food.

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

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

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

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

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

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

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

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

26 J. "Public Place" means any enclosed area to which the public is
27 invited or in which the public is permitted, including, but not limited to,
28 retail stores, retail service establishments, retail food production and

1 marketing establishments, restaurants, theaters, auditoriums,
2 gymnasiums, waiting rooms, reception areas, educational facilities, health
3 facilities, public transportation facilities, bowling alleys, bingo parlors, hair
4 salons, laundromats, gaming clubs, bars, taverns, hotel and motel lobbies.
5 A private residence is not a "public place", except that the enclosed
6 common areas of apartment or condominium structures, if any, shall be
7 considered "public places" for purposes of Section 8.68.060.

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

13 L. "Smoking" means the combustion of any cigar, cigarette, pipe,
14 or any similar article, using any form of tobacco or other combustible
15 substance in any form.

16 M. "Workplace" means any enclosed area of a structure or portion
17 thereof occupied by any entity and frequented by employees during the
18 normal course of their employment where clerical, professional,
19 manufacturing, business services or other normal and customary activities
20 of the entity are performed or where other work is done at that location.
21 Workplace also includes, but is not limited to, spaces in office buildings,
22 medical office waiting rooms, libraries, museums, gaming clubs, bars,
23 taverns, employee lounges, employee breakrooms, conference rooms,
24 and employee cafeterias. A private home is not a workplace, except
25 where such home is used as a child care facility as defined in Section
26 8.68.020(B).

27 8.68.030 Smoking prohibited - elevators.

28 Smoking is prohibited and is unlawful within elevators in buildings

1 generally used by and open to the public, including elevators in office,
2 hotel and multifamily buildings.

3 8.68.040 Smoking prohibited - hospitals and health care
4 facilities.

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

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

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

11 8.68.050 Smoking prohibited - public meeting rooms.

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

17 8.68.060 Smoking prohibited - enclosed public places.

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

25 8.68.070 Smoking prohibited - public restrooms.

26 Smoking is prohibited and is unlawful in public restrooms.

27 8.68.080 Smoking prohibited - indoor service lines.

28 Smoking is prohibited and is unlawful in indoor service lines in

1 which more than one (1) person is giving or receiving services of any kind.

2 8.68.090 Smoking prohibited - eating establishments and bars.

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

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

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

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

15 8.68.110 Regulation of smoking in the workplace.

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

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

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

24 1. A private home which may serve as a workplace except
25 when used as a child care facility as defined in Section 8.68.020(B).

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

28 D. The provisions of Section 8.68.090 and 8.68.100 shall govern

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

3 8.68.120 Posting of signs required.

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

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

16 8.68.130 Structural modifications not required.

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

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

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

27 8.68.140 Administration and enforcement.

28 A. The no smoking ordinance established by this Chapter shall be

1 administered by the Department of Health and Human Services.

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

5 8.68.150 Exemptions.

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

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

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

19 8.68.160 City facilities.

20 There shall be no smoking in any "city facility" as defined in Section
21 8.68.020(C) or in any "city vehicle" as defined in Section 8.68.020(D) or in
22 any covered area of the Long Beach Airport, notwithstanding any
23 exception or exemption contained in any other provision of this Chapter.

24 8.68.170 Tobacco products distribution.

25 A. No person or entity shall sell or otherwise distribute any
26 cigarette or other tobacco product unless such cigarette or tobacco
27 product is in the manufacturers original package with all required health
28 warnings.

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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.

8.68.180 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 (500) feet of or so oriented that the message portion of the sign is visible from any school, child care center, nursery school, hospital, place of worship or recreational facility.

8.68.190 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 (3rd) and for each subsequent violation within one (1) year.

8.68.200 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.

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Sec. 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause the same to be posted in three 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 this ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 2004, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

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