

CITY OF LONG BEACH **ORD-38**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2525 GRAND AVENUE • LONG BEACH, CALIFORNIA 90815 • (562) 570-4000 • FAX: (562) 570-4049

February 12, 2008

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Declare the Tobacco Retail Permit ordinance to encourage responsible retailing, discourage violations of youth related tobacco laws and discourage the sale or distribution of tobacco and nicotine products to minors, read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION

On September 19, 2006, the City Council approved the recommendation of the Public Safety Advisory Commission and requested that the City Attorney and the Department of Health and Human Services (Health Department) draft a comprehensive and cost effective Tobacco Retail Permit Program, and any needed ordinances, for all businesses in the City of Long Beach that sell tobacco products to prevent illegal sales to underage youth.

The illegal sale of tobacco products to children and youth in the city of Long Beach is a public health problem. In April of 2007, the illegal rate of tobacco sales to minors was 40 percent, based on information from the Long Beach Police Tobacco Decoy Program. A citywide Tobacco Youth Purchase Survey, conducted in 2005 by the Health Department, of tobacco retailers in all nine Council districts revealed an illegal youth sales rate of over 36 percent. By contrast, the statewide rate for 2005 was 10.2 percent, 13.2 percent in 2006 and 10.7 percent in 2007.

More than 70 cities and counties in California are currently implementing Tobacco Retail Permit or License ordinances. These jurisdictions are reporting significant reductions in the rates of illegal tobacco sales to minors, ranging from 25 to 90 percent, as a result of these Tobacco Retail Permit programs and enforcement procedures.

According to studies by the University of Irvine Transdisciplinary Tobacco Use Research Center, "Adolescent brain structure and function is likely to be substantially changed by exposure to nicotine." Smoking is the number one preventable cause of disease and death and national statistics indicate that 80 to 90 percent of smokers start before the age of 18. Public health interventions and policies that prevent youth from smoking are critical to promoting good adolescent health.

Since the early 1990's, the City and State Departments of Health, in partnership with concerned community members have educated tobacco retailers in Long Beach to not sell tobacco to minors. Long Beach Police continue to cite and fine retailers for violations of the California Penal Code, Section 308, that prohibits tobacco sales to minors.

According to a 2007 report from the National Association of Convenience Stores, cigarettes are the number one product sold at convenience stores and accounted for 34 percent of total store sales in 2006.

In order to address the problem of illegal tobacco sales to minors in Long Beach, a Tobacco Retail Enforcement Program with a strong ordinance and an annual fee is recommended. The estimated fee of \$395.00 will be cost neutral to the City and cover all costs of program operations and enforcement. The annual permit fee will be required for all businesses that sell tobacco products in the City of Long Beach.

The program will also provide reports to City Council on the reduction of illegal tobacco sales to minors. The tobacco retail permit fee is not a punishment or a fine. It covers the cost of operating and enforcing a public health regulation within a retail industry. Retailers receive considerable profits from selling tobacco and the fee is necessary to enforce this tobacco regulation to prevent illegal tobacco sales to minors. Penalties and fines will only be assessed to those who violate the City ordinance.

This matter was reviewed by Deputy City Attorney Gary Anderson on January 29, 2008, and by Budget Division Officer Victoria Bell on January 30, 2008.

TIMING CONSIDERATIONS

Council action on this item is requested on February 12th in order to begin program implementation.

FISCAL IMPACT

The Tobacco Retail Permit Program will be a full cost recovery fee program. Revenue from said fees and violations associated with the ordinance are anticipated to cover all direct and indirect program costs, including staffing, enforcement, oversight and billing.

The proposed fee is currently estimated at \$395.00. Once the ordinance is approved, the actual fee will be determined and presented to Council as part of the next quarterly Fee Resolution Schedule update.

SUGGESTED ACTION:

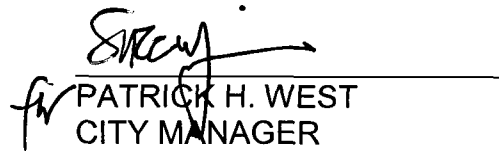
Approve recommendation.

Respectfully submitted,



RONALD R. ARIAS
DIRECTOR
HEALTH AND HUMAN SERVICES

APPROVED:



PATRICK H. WEST
CITY MANAGER

Attachment

1 RED-LINED VERSION

2 CHAPTER 5.81

3 TOBACCO RETAIL PERMIT

4
5 5.81.005 Purpose and intent.

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

10 5.81.010 Definitions.

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

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

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

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

25 D. "Proprietor" means a person with an ownership or managerial
26 interest in a business. An ownership interest shall be deemed to exist
27 when a person has a ten percent (10%) or greater interest in the stock,
28 assets, or income of a business other than the sole interest of security for

1 debt. A managerial interest shall be deemed to exist when a person can
2 or does have, or can or does share, ultimate control over the day-to-day
3 operations of a business.

4 5.81.020 Permit Required.

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

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

13 C. Violations of this chapter may constitute an infraction or a
14 misdemeanor.

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

18 5.81.030 Permit Application.

19 A. Any person or proprietor desiring a permit to engage in tobacco
20 retailing as provided by this Chapter shall file an application with the City
21 Manager, City Health Officer or designee.

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

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

27 D. The application for a tobacco retailing permit shall be filed on a
28 form and shall contain such information as is requested by the City.

1 including the following:

2 1. The name, mailing address and telephone number of the
3 applicant, and the signature of the applicant or an authorized person
4 thereof.

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

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

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

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

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

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

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

24 5.81.040 Permit Issuance.

25 A. The tobacco retail permit shall clearly state the following on its
26 face:

27 (1) The legal owner(s) of the permitted premises;

28 (2) Doing Business As (dba), if any;

1 (3) The LBMC Chapter pursuant to which the permit was
2 issued;

3 (4) The business and mailing address of the owner of the
4 permitted premises;

5 (5) The date the permit was issued; and

6 (6) The permit number.

7 B. The tobacco retail permit shall not be transferable or assignable
8 from one person or proprietor to another or from one location to another
9 location. If the information required in the permit application changes, a
10 new Tobacco Retailer's permit is required before the business may continue
11 to act as a Tobacco Retailer. For example, if a Proprietor to whom a permit
12 has been issued changes business location, that Proprietor must apply for a
13 new permit prior to acting as a Tobacco Retailer at the new location. Or if
14 the business is sold, the new owner must apply for a permit for that location
15 before acting as a Tobacco Retailer.

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

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

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

28 5.81.050 Permit Fees.

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

9 5.81.060 Permit-Term and renewals.

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

18 5.81.070 Permit-Requirements.

19 It shall be a violation of the permit to violate any federal, state, or
20 local laws relating to youth and Tobacco Products or youth and Tobacco
21 Paraphernalia, including, for example, violations of: California Penal Code
22 Section 308; the STAKE ACT (California Business & Professions Code
23 Sections 22950 et seq); any laws relating to self-service displays, signage,
24 sale of bidis or single cigarettes, pack size, sampling, or mail order and
25 internet sales; or any other law relating to youth and tobacco products.

26 5.81.080 Permit-Violations and penalties.

27 In addition to the administrative penalties detailed pursuant to
28 Section 9.65.060 of the Long Beach Municipal Code, violation of or failure to

1 comply with any provision of Chapter 5.81 may result in the following:

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

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

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

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

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

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

18 5.81.090 Severability.

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

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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phrases hereof be declared invalid or unenforceable.

5.81.100 Administration and enforcement.

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

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ORDINANCE NO.

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

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

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

Chapter 5.81

TOBACCO RETAIL PERMIT

5.81.005 Purpose and intent.

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

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

13 5.81.020 Permit-Required.

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27 5.81.070 Permit—Requirements.

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3 Section 308; the STAKE ACT (California Business & Professions Code
4 Sections 22950 et seq); any laws relating to self-service displays, signage,
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10 comply with any provision of Chapter 5.81 may result in the following:

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

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

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

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

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

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

27 5.81.090 Severability.

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

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

11 5.81.100 Administration and enforcement.

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

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

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

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664