

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 5.88 ALL RELATING TO SMOKING LOUNGE REGULATIONS

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 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 "smoking lounge" as defined in Subsection 8.68.020.R and in compliance with the provisions of Chapter 5.88.

Section 3. Chapter 5.88 is added to the Long Beach Municipal Code to read as follows:

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

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5.88.120 Age restriction and signage.

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

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

5.88.130 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, 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, other officers or City representative appointed for that purpose, and such persons are authorized to enter and inspect all such places.

5.88.140 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.

///

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 ///

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

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

8
9 Ayes: Councilmembers: _____

10 _____

11 _____

12 _____

13 Noes: Councilmembers: _____

14 _____

15 Absent: Councilmembers: _____

16 _____

17 _____

18 _____

19 _____

City Clerk

20 _____

21 _____

22 Approved: _____
23 (Date)

24 Mayor

25 _____

26 _____

27 _____

28 _____

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

REDLINE

8.68.020 Definitions.

R. "Smoking lounge" means any business establishment that is ~~devoted~~ dedicated to and ~~designated specifically for the sole purpose of~~ 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 ~~e~~Chapter, "smoking lounge" means private smokers' lounge as defined in Section 6404.5 of the California Labor Code.

8.68.060 Smoking prohibited--Enclosed public places.

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

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

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

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

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

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.

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.

23
24
25
26
27
28

1
2 **REDLINE FOR COMPARISON PURPOSES ONLY**
3

4 ORDINANCE NO.
5

6 AN ORDINANCE OF THE CITY COUNCIL OF THE
7 CITY OF LONG BEACH AMENDING THE LONG BEACH
8 MUNICIPAL CODE BY AMENDING SUBSECTIONS
9 8.68.020.R. AND 8.68.060.B.; AND BY ADDING CHAPTER
10 ~~5.88S 8.69 AND 8.70~~; ~~AND BY REPEALING CHAPTER~~
11 ~~5.81, SECTION 8.68.130 AND SECTION 8.68.150~~ ALL
12 RELATING TO ~~SMOKING IN PUBLIC PLACES, TOBACCO~~
13 ~~RETAIL PERMITS AND SMOKING LOUNGE~~
14 REGULATIONS PERMITS
15

16 The City Council of the City of Long Beach ordains as follows:
17

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

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

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

28 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 GE. "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 ~~§.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 sSmoking lounge permit -
6 application processApplication 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

~~8.69.1605.88.130~~ 8.88.130 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~~ 8.88.140 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

~~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
21 8.70.030 ~~— Compliance required.~~

22 ~~No person shall act as a tobacco retailer in the City, or at any “special~~
23 ~~event” as defined in Chapter 5.60 of this Code, without first complying with~~
24 ~~the provisions of this Chapter. Tobacco retailers shall adequately inform~~
25 ~~their workers and employees of all smoking laws and regulations, and shall~~
26 ~~ensure that workers and employees comply with the provisions of this~~
27 ~~Chapter. Such owners and operators shall be held responsible for~~
28 ~~violations of their workers and employees.~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

~~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
14 8.70.060 ~~Tobacco retail permit Issuance.~~

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

~~6. The permit number.~~

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

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

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

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

~~8.70.070 Tobacco retail permit Fees.~~

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

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 bidis 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
14 8.70.120 ~~— Tobacco retail permit — Revocation — Reapplication.~~

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

19
20 8.70.130 ~~— Severability.~~

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

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
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

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

1 following vote:

2

3 Ayes: Councilmembers: _____

4 _____

5 _____

6 _____

7 Noes: Councilmembers: _____

8 _____

9 Absent: Councilmembers: _____

10 _____

11 _____

12 _____

13 _____ City Clerk

14 _____

15 _____

16 Approved: _____
(Date) Mayor

17 _____

18 _____

19 _____

20 _____

21 _____

22 _____

23 _____

24 _____

25 _____

26 _____

27 _____

28 _____