



Legislation Text

File #: 09-1296, **Version:** 2

Recommendation to declare ordinance amending the Long Beach Municipal Code by amending Subsections 8.68.020.R and 8.68.060.B; and by adding Chapter 5.88 all relating to smoking lounge regulations, read and adopted as read. (Citywide)

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

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

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

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

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

As requested, the food and beverage regulations under Section 5.88.130 of this ordinance now states that "no person shall receive for sale, sell, offer for sale, keep for sale, have in such person's

possession with intent to sell, any food or beverages in the smoking lounge" (emphasis added). This prohibition is only limited to sales, and does not expressly prohibit the serving, dispensing or consumption of food or beverages.

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

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

3) Special consideration be given to current operating smoking lounges who currently have separate ventilation systems installed, and those that operate in stand-alone buildings be exempt from the ventilation system requirement; and

5) Reinstate the section allowing the granting of exemptions based on undue financial hardship.

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

Thus, the Council may impose ventilation standards that are equal to or more stringent, but cannot adopt an ordinance that permits businesses to fall below standards required by state or federal law.

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

Finally, all business establishments currently existing under a valid business license that desire to

operate as smoking lounges must be brought into full compliance with these regulations within ninety (90) days following the effective date of this ordinance.

[Timing Considerations]

[Fiscal Impact]

Approve recommendation.

Linda Trang
Deputy City Attorney

Respectf
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submitted

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ROBERT
E.
SHANNO
N, City
Attorney

By:

NAME
TITLE

INITIALS

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