



CITY OF LONG BEACH ORD-33

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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

November 17, 2009

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach,
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by repealing Chapter 5.81; by amending Subsection 8.68.060.B.; by repealing Sections 8.68.130 and 8.68.150; and by adding Chapters 8.69 and 8.70, all relating to smoking in public places, tobacco retail permit and smoking lounge permit, read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION

On March 17, 2009, the City Council requested that the City Manager and the City Attorney develop a regulatory process for reviewing, approving and enforcing related building and public health codes for smoking lounges as defined in the Long Beach Municipal Code 8.68 and return with proposed regulatory changes to the City Council. Additionally at that meeting, the Council requested that the City Manager provide recommendations to the Planning Commission to restrict smoking lounges to those tobacco related businesses currently operating in the City of Long Beach. The one-year moratorium applies to any application received by the Development Services Department, Business Licensing Division after March 17, 2009.

As directed by the City Council, staff from the City Attorney's Office and the City Manager's Office, acting through the Department of Health and Human Services' (Health Department) Public Health Bureau Tobacco Education Program and Environmental Health Bureau, have collaborated to develop a smoking lounge regulatory process, as proposed in the attached ordinance. In addition, the Development Services Department was consulted regarding ventilation inspection procedures.

The proposed ordinance consists of the adding of Chapter 8.69 to the Long Beach Municipal Code to require smoking lounge permits to be administered and enforced by the City's Health Officer. The ordinance also includes the removal of administration and enforcement of the Tobacco Retail Enforcement Permit (TREP) ordinance from Title 5, the Business Section of the Municipal Code, by repealing Chapter 5.81 and transferring administration and enforcement of the TREP ordinance to the City's Health Officer under Title 8, the Health and Safety Section, by adding Chapter 8.70. Finally, the attached ordinance repeals the following sections from Chapter 8.68 (Smoking in Public Places ordinance): Section 8.68.130 (Structural modifications not required) and Section 8.68.150 (Exemptions). These sections pertained to Section 8.68.100, Subsections 3a-d (Employee breakroom smoking areas) that were repealed when Chapter 8.68 was

amended in 2004. This action amends the language to correctly align with the changes made in 2004.

Specifically, with respect to the development of a regulatory process for reviewing, approving and enforcing compliance by smoking lounges operating in the City of Long Beach as requested by the City Council, the attached proposed smoking lounge ordinance under Chapter 8.69 requires that smoking lounges have a separate smoking lounge permit, as well as a valid tobacco retail permit under Chapter 8.70, and that they meet all the requirements of the permitting process including payment of an annual fee. The attached ordinance contains the following requirements which must be met by smoking lounge operators:

- A. No persons under eighteen (18) years of age shall be permitted within the smoking lounge at any time.
- B. No food or beverages shall be stored, prepared, dispensed, served, or sold in the smoking lounge.
- C. The business establishment shall have a separate 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.

The Health Department will administer and enforce the smoking lounge program by issuing permits, providing education, conducting inspections, and implementing applicable enforcement. The Health Department will be assisted by the offices of the City Attorney, City Prosecutor, and Development Services to implement enforcement, consisting of administrative hearings and civil and/or criminal action, to correct violations, suspend or revoke permits, and assess applicable fines and imprisonment terms.

This matter was reviewed by Deputy City Attorney Linda Trang on November 3, 2009, and by Budget and Performance Management Bureau Manager David Wodynski on November 3, 2009.

TIMING CONSIDERATIONS

City Council action on this item is requested on November 17, 2009 in order to begin program implementation.

FISCAL IMPACT

Fees shall be calculated so as to recover the cost of administration and enforcement, including the cost of issuing the permits, renewing the permits, conducting periodic inspections, police compliance checks, documentation of violations, adjudications, convictions, and the prosecution of violators. All fees are nonrefundable, except as required by law. Revenue from said fees and violations associated with the ordinance are anticipated to cover all direct and indirect program costs, including staffing, enforcement,

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oversight and billing. Once the ordinance is approved, the actual fee will be determined and presented to the City Council as part of the next quarterly Master Fee and Charges Schedule update.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



RONALD R. ARIAS
DIRECTOR
HEALTH AND HUMAN SERVICES

APPROVED:



PATRICK H. WEST
CITY MANAGER

REDLINE

1
2 8.68.060 Smoking prohibited – Enclosed public places.

3 B. This ~~s~~Section is not intended to prohibit smoking in any "smoking lounge"
4 as defined in Subsection 8.68.020.R. and in compliance with the provisions of Chapter
5 8.69 under the following conditions:

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

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

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

14
15 Chapter 8.69

16 Smoking Lounges

17 8.69.010 Purpose and Intent.

18 The City Council finds that a regulatory process is necessary for reviewing,
19 approving and enforcing related business and public health codes for smoking lounges
20 as defined in this Chapter. It is the intent of this Chapter to establish regulatory
21 provisions that allow the City or such persons as the City may designate to regulate
22 smoking lounges operating in the City.

23
24 8.69.020 Definitions.

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

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

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

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

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

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

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

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

23
24 8.69.030 Compliance required.

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

1 this Chapter. Such 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 shall be
6 issued by the Director of Financial Management unless such smoking lounge is first
7 inspected and approved by the Health Officer.

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

20
21 8.69.050 Business license, tobacco retail permit and smoking lounge permit -
22 Required.

23 No person shall engage in, operate, conduct, carry on or allow to be carried on,
24 the business of a smoking lounge in the City without first having obtained, for each
25 separate smoking lounge or place of business where indoor smoking is to occur, a
26 tobacco retail permit as provided in Chapter 8.70, as well as a smoking lounge permit
27 and a business license to operate a smoking lounge, as provided in this Chapter.

28 8.69.060 Business license and smoking lounge permit - Application contents.

OFFICE OF THE CITY ATTORNEY
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333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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

15
16 8.69.070 Smoking lounge permit - Issuance.

17 The Health Officer shall make or cause to be made an investigation of the
18 proposed place of business and the manner in which the smoking lounge is to be
19 conducted, and if it is found that all provisions of this Code and all applicable laws have
20 been and will be complied with, the Health Officer shall issue the smoking lounge permit;
21 otherwise, the application for a smoking lounge permit shall be denied. Such smoking
22 lounge permits shall be good for one (1) year and shall be automatically renewed every
23 year, provided that the Health Officer determines that the permit holder has complied with
24 the provisions of this Chapter and applicable laws during the preceding permit term.
25 Such smoking lounge permits shall be nontransferable and nonassignable. All smoking
26 lounge permit holders must notify the Health Officer in writing if they discontinue their
27 business operations.

1 8.69.080 Smoking lounge permit - Fees.

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

8
9 8.69.090 Change of ownership or location.

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

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

23 C. Any structural modifications to such business, in whole or in part, shall
24 require plan submittals to the appropriate City departments, approval of plans and
25 specifications, and inspections by the appropriate City departments.

26
27 8.69.100 Inspections.

28 A. The Health Officer is empowered to enter any smoking lounge, or other

1 place of business where indoor smoking occurs or is suspected of occurring, at any time
2 for the purpose of inspection, including the taking of photographs, samples or other
3 evidence that is plainly visible, and to enforce any of the provisions of this Chapter, or of
4 any applicable law, rule or regulation governing such places in the City. The Health
5 Officer may periodically conduct inspections of all business establishments in the City
6 where indoor smoking occurs to determine whether they comply with the requirements of
7 this Chapter and other applicable laws.

8 B. No person shall refuse to permit or allow the Health Officer or any
9 authorized inspector to enter or inspect or examine any portion of any smoking lounge or
10 other place of business where indoor smoking occurs. No person shall interfere with,
11 hinder, or harass, in any manner the Health Officer in the inspection or the examination of
12 such smoking lounge or other place of business where indoor smoking occurs.

13
14 8.69.110 Smoking lounge permit – Suspension – Revocation - Hearing.

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

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

28 C. The holder of the permit or his manager or agent may appear in person, or

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

8 D. Notwithstanding any other provisions in this Chapter, in the event that a
9 tobacco retail permit is suspended, denied, or revoked, the smoking lounge permit shall
10 at the same time be suspended, denied, or revoked.

11
12 8.69.120 Smoking lounge permit – Revocation - Reapplication.

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

17
18 8.69.130 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 8.69.140 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.

1 8.69.150 Age restriction and signage.

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

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

7

8 8.69.160 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, give away, prepare, dispense, store, keep,
11 provide or serve, any food or beverages in the smoking lounge. All places where food or
12 beverages are kept or suspected of being kept shall be subject at all times to inspection
13 by the Health Officer or other officers appointed for that purpose, and such officers are
14 authorized to enter and inspect all such places.

15

16 8.69.170 Separate ventilation.

17 A. The smoking lounge shall have a mechanical ventilation and exhaust
18 system that is in compliance with the California Building Energy Efficiency Standards for
19 Residential and Nonresidential Buildings and the Long Beach Mechanical Code. A
20 licensed contractor shall obtain a mechanical permit for the system and all work shall be
21 completed and approved by the Health Officer and the Development Services
22 Department prior to smoking within the smoking lounge. The system shall be equipped
23 with such provisions that the air from the establishment is exhausted directly to the
24 outside and not re-circulated within the building or mixed with the general dilution
25 ventilation for the building. Windows, which open to the outside, shall not be deemed to
26 comply with this provision.

27 B. The Health Officer may review plans and specifications pertaining to the
28 design of ventilation systems for all smoking lounges, for the control of environmental

1 health hazards and shall have the authority to require the submission of such plans and
2 specifications. The Health Officer shall not issue the smoking lounge permit until the
3 mechanical ventilation and exhaust system has been approved by the Development
4 Services Department.

5
6 8.69.180 Application to existing businesses.

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

13
14 8.69.190 Severability.

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

24
25 8.69.200 Administration and Enforcement.

26 Each day a violation exists constitutes a separate and distinct offense. The Health
27 Officer shall have the duty to administer and enforce the Sections included in this
28 Chapter. Suspension or revocation of the permit shall be governed by the provisions of

1 this Chapter, and criminal penalties may be assessed under Chapter 1.32 of this Code.

2
3 Chapter 8.70

4 Tobacco Retailers

5 8.70.010 Purpose and intent.

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

10
11 8.70.020 Definitions.

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

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

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

22 C. "Tobacco paraphernalia" means cigarette papers or wrappers, pipe holders
23 of smoking materials of all types, cigarette rolling machines, hookahs, and any other item
24 designed for the smoking or ingestion of tobacco products.

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

28 E. "Tobacco retailer" means any person who sells, offers for sale, gives away,

1 or offers to exchange for any form of consideration, tobacco, tobacco products or tobacco
2 paraphernalia; "tobacco retailing" shall mean engaging in any of these things.

3
4 8.70.030 Compliance required.

5 No person shall act as a tobacco retailer in the City, or at any "special event" as
6 defined in Chapter 5.60 of this Code, without first complying with the provisions of this
7 Chapter. Tobacco retailers shall adequately inform their workers and employees of all
8 smoking laws and regulations, and shall ensure that workers and employees comply with
9 the provisions of this Chapter. Such owners and operators shall be held responsible for
10 violations of their workers and employees.

11
12 8.70.040 Business license, State Board of Equalization Tobacco License and
13 tobacco retail permit - Required.

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

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

21
22 8.70.050 Tobacco retail permit - Application.

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

1 revoked by a written document signed by the applicant and filed with the Health Officer.

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

3 1. The name, mailing address and telephone number of the applicant.

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

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

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

8 5. Such other information pertaining to public health and safety as may
9 be required by the Health Officer, consistent with the purpose of this Chapter, this Code
10 and applicable law.

11 C. The Health Officer shall issue the tobacco retail permit to the applicant
12 unless: such application is incomplete or inaccurate, the application seeks authorization
13 for tobacco retailing by a person or location for which a suspension is in effect under this
14 Chapter, or the application seeks authorization for tobacco retailing that is unlawful under
15 this Chapter, this Code or applicable law.

16 D. Tobacco products and tobacco paraphernalia offered for sale or exchange
17 in violation of this Chapter are subject to seizure and forfeiture. Forfeited tobacco
18 products and tobacco paraphernalia may be destroyed.

19
20 8.70.060 Tobacco retail permit - Issuance.

21 A. The Health Officer shall make or cause to be made an investigation of the
22 place of business where tobacco retailing is to occur, and if it is found that all provisions
23 of this Code and all applicable laws have been and will be complied with, the Health
24 Officer shall issue the tobacco retail permit; otherwise, the application for a tobacco retail
25 permit shall be denied.

26 B. The tobacco retail permit shall clearly state the following on its 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 issued;
2 4. The business and mailing address of the owner of the permitted
3 premises;
4 5. The date the permit was issued; and
5 6. The permit number.

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

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

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

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

24
25 8.70.070 Tobacco retail permit - Fees.

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

1 Chapter is suspended or revoked, or because the permittee no longer acts as a tobacco
2 retailer, no 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 period not to
6 exceed one (1) year and shall be automatically renewed every year, provided that the
7 Health Officer determines that the permit holder has complied with the provisions of this
8 Chapter and applicable laws during the preceding permit term. All tobacco retailers must
9 notify the City in writing if they discontinue selling tobacco products.

10
11 8.70.090 Inspections.

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

20 B. No person shall refuse to permit or allow the Health Officer or any
21 authorized inspector to enter or inspect or examine any portion of any place of business
22 where tobacco retailing occurs. No person shall interfere with, hinder, or harass, in any
23 manner the Health Officer in the inspection or the examination of such place of business
24 where tobacco retailing occurs.

25
26 8.70.100 Tobacco retail permit - Requirements.

27 It is a violation of the permit to violate any federal, state, or local laws relating to
28 youth and tobacco products or youth and tobacco paraphernalia, including, for example,

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

5
6 8.70.110 Tobacco retail permit – Suspension – Revocation - Hearing.

7 A. In addition to the administrative penalties detailed pursuant to Section
8 9.65.060 of the Long Beach Municipal Code, violation of or failure to comply with any
9 provision of this Chapter may result in suspension or revocation of the tobacco retail
10 permit. If the Health Officer determines that any of the provisions of this Chapter or any
11 other provisions of the Code or applicable laws have been or are being violated by the
12 holder of a tobacco retail permit or such holder's servants, employees or agents, the
13 Health Officer may suspend or revoke the permit. No tobacco retail permit shall be
14 suspended or revoked until after a hearing has been held by the Health Officer.

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

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

1 hearing is closed. All findings, determinations, or acts of the Health Officer shall be final
2 and conclusive.

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

6
7 8.70.120 Tobacco retail permit – Revocation - Reapplication.

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

11
12 8.70.130 Severability.

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

22
23 8.70.140 Administration and enforcement.

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

28

Chapter 5.81

TOBACCO RETAIL PERMIT

5.81.005 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.

5.81.010 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:

"Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

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

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

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

5.81.020 Permit Required.

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

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

9 C. ~~Violations of this chapter may constitute an infraction or a misdemeanor.~~

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

12
13 ~~5.81.030 Permit Application.~~

14 A. ~~Any person or proprietor desiring a permit to engage in tobacco retailing as~~
15 ~~provided by this chapter shall file an application with the city manager, city health officer~~
16 ~~or designee.~~

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

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

22 D. ~~The application for a tobacco retailing permit shall be filed on a form and~~
23 ~~shall contain such information as is requested by the city, including the following:~~

24 1. ~~The name, mailing address and telephone number of the applicant,~~
25 ~~and the signature of the applicant or an authorized person thereof.~~

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

28 3. ~~Photo identification of the person seeking the permit.~~

1 4. ~~Proof of State Board of Equalization Tobacco License.~~
2 5. ~~Such other information as may be required by the city manager or~~
3 ~~designee, consistent with the purpose of this chapter, this code and applicable law.~~

4 E. ~~The city manager or designee shall receive any fee required for the tobacco~~
5 ~~retail permit. The fee for such permit shall be determined by the city council by resolution.~~

6 F. ~~The city manager, city health officer or designee shall issue the tobacco~~
7 ~~retail permit to the applicant unless: such application is incomplete or inaccurate, the~~
8 ~~application seeks authorization for tobacco retailing by a person or location for which a~~
9 ~~suspension is in effect under this chapter, or the application seeks authorization for~~
10 ~~tobacco retailing that is unlawful under this chapter, this code or applicable law.~~

11 G. ~~Tobacco products and tobacco paraphernalia offered for sale or exchange~~
12 ~~in violation of this chapter are subject to seizure and forfeiture. Forfeited tobacco~~
13 ~~products and tobacco paraphernalia may be destroyed.~~

14
15 5.81.040 ~~Permit Issuance.~~

16 A. ~~The tobacco retail permit shall clearly state the following on its face:~~

- 17 1. ~~The legal owner(s) of the permitted premises;~~
18 2. ~~Doing Business As (dba), if any;~~
19 3. ~~The LBMC Chapter pursuant to which the permit was issued;~~
20 4. ~~The business and mailing address of the owner of the permitted~~
21 ~~premises;~~
22 5. ~~The date the permit was issued; and~~
23 6. ~~The permit number.~~

24 B. ~~The tobacco retail permit shall not be transferable or assignable from one~~
25 ~~person or proprietor to another or from one location to another location. If the information~~
26 ~~required in the permit application changes, a new tobacco retailer's permit is required~~
27 ~~before the business may continue to act as a tobacco retailer. For example, if a proprietor~~
28 ~~to whom a permit has been issued changes business location, that proprietor must apply~~

1 ~~for a new permit prior to acting as a tobacco retailer at the new location. Or if the~~
2 ~~business is sold, the new owner must apply for a permit for that location before acting as~~
3 ~~a tobacco retailer.~~

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

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

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

14
15 ~~5.81.050 Permit Fees.~~

16 ~~An annual fee shall be charged for a tobacco retail permit. The fee shall be~~
17 ~~generally calculated so as to recover the cost of both the administration and enforcement~~
18 ~~of the tobacco retail permit program, including the cost of issuing the permits, renewing~~
19 ~~the permits, administering the retailer permit program, retailer education, retailer~~
20 ~~inspection and compliance checks, documentation of violations, adjudications, and~~
21 ~~convictions, and prosecution of violators. All fees are nonrefundable, except as required~~
22 ~~by law. Fees shall not be prorated.~~

23
24 ~~5.81.060 Permit Term and renewals.~~

25 ~~All tobacco retail permits issued under this chapter will be for a period not to~~
26 ~~exceed one year in duration. The city manager or his or her designee shall automatically~~
27 ~~renew such permits if the city manager or designee determines that the permit holder~~
28 ~~complied with the provisions of this chapter and applicable laws during the preceding~~

1 ~~permit term, and if the permit holder pays the annual fee required by this chapter. All~~
2 ~~tobacco retailers must notify the city in writing if they discontinue selling tobacco~~
3 ~~products.~~

4
5 ~~5.81.070 Permit Requirements.~~

6 ~~It is a violation of the permit to violate any federal, state, or local laws relating to~~
7 ~~youth and tobacco products or youth and tobacco paraphernalia, including, for example,~~
8 ~~violations of: California Penal Code Section 308; the STAKE ACT (California Business~~
9 ~~and Professions Code Sections 22950 et seq.); any laws relating to self service displays,~~
10 ~~signage, sale of bidis or single cigarettes, pack size, sampling, or mail order and internet~~
11 ~~sales; or any other law relating to youth and tobacco products.~~

12
13 ~~5.81.080 Permit Violations and penalties.~~

14 ~~In addition to the administrative penalties detailed pursuant to Section 9.65.060 of~~
15 ~~the Long Beach Municipal Code, violation of or failure to comply with any provision of~~
16 ~~Chapter 5.81 may result in the following:~~

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

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

21 ~~C. For the third violation in any five year period, the tobacco retailer's tobacco~~
22 ~~retailing permit may be revoked;~~

23 ~~D. A tobacco retailer whose permit has been revoked may not apply for a new~~
24 ~~tobacco retailer's permit for a period of one hundred twenty (120) calendar days after the~~
25 ~~effective date of revocation.~~

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

28 ~~F. During any period of permit suspension or revocation, the tobacco retailer~~

1 must remove from public view all tobacco products and tobacco related advertising.

2
3 ~~5.81.090 Severability.~~

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

13
14 ~~5.81.100 Administration and enforcement.~~

15 A. The provisions of this chapter shall be administered by the department of health
16 and human services, the Long Beach city attorney and the Long Beach city prosecutor
17 offices.

18
19 ~~8.68.130 Structural modifications not required.~~

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

24 B. Nothing in this chapter shall require the owner, operator, or manager of any
25 theater, auditorium, healthcare facility, or any building, facility, structure, or business, to
26 incur any expense to make structural or other physical modifications to any area of
27 workplace:

28 C. Nothing in this section shall relieve any person from the duty to post signs

1 ~~or adopt policies as required by this chapter.~~

2
3 ~~8.68.150 — Exemptions.~~

4 ~~Any owner or manager of a business or other establishment subject to this chapter may~~
5 ~~apply to the city health officer for an exemption or modification to any provisions of this~~
6 ~~chapter due to unusual circumstances or conditions.~~

7 ~~A. — Such exemption shall be granted only if the city health officer finds from the~~
8 ~~evidence presented by the applicant for exemption at a public hearing that the applicant~~
9 ~~cannot comply with the provisions of this chapter for which an exemption is requested~~
10 ~~without incurring expenses for structural or other physical modifications, other than~~
11 ~~posting signs, to buildings and structures.~~

12 ~~B. — The applicant for an exemption shall pay concurrent with the application, the fee,~~
13 ~~as prescribed by resolution of the city council, to cover cost of the hearing and noticing of~~
14 ~~the hearing.~~

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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ORDINANCE NO.

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

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

Section 1. 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 8.69.

Section 2. Chapter 8.69 is added to the Long Beach Municipal Code to read as follows:

Chapter 8.69
SMOKING LOUNGES

8.69.010 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

1 Chapter to establish regulatory provisions that allow the City or such
2 persons as the City may designate to regulate smoking lounges operating in
3 the City.

4
5 8.69.020 Definitions.

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

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

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

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

16 D. "Person" means, without limitation, any natural person;
17 domestic, nonprofit or foreign corporation; firm; trust; estate; association;
18 syndicate; joint stock company; limited liability company; partnership of any
19 kind; joint venture; club; business or common-law trust of any kind; society;
20 cooperative; or receiver, trustee, guardian or other representative appointed
21 by order of any court; or the manager, lessee, agent, servant, officer or
22 employee of any of them.

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

26 F. "Smoking lounge" means any business establishment that is
27 devoted to and designated specifically for the sole purpose of smoking
28 tobacco products, including but not limited to establishments known

1 variously as cigar lounges, hookah lounges, or tobacco clubs. For purposes
2 of this Chapter, "smoking lounge" means private smokers' lounge as defined
3 in Section 6404.5 of the California Labor Code.

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

8
9 8.69.030 Compliance required.

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

17
18 8.69.040 Business license - Applicant investigation.

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

22 B. Upon application being made to the Director of Financial
23 Management for a business license to operate a smoking lounge, the
24 Director of Financial Management shall refer the application to the Health
25 Officer. The Health Officer shall make or cause to be made an investigation
26 of the place where and the manner in which such smoking lounge is to be or
27 is being operated and conducted. If the Health Officer determines that the
28 smoking lounge conforms to the provisions of this Chapter, to the other

1 provisions of this Code, and to all applicable laws, the Health Officer shall
2 authorize the Director of Financial Management to issue the license;
3 otherwise, the Health Officer shall deny the application and the Director of
4 Financial Management shall not issue the license. The Health Officer shall
5 make his/her recommendation to the Director of Financial Management
6 within thirty (30) days after the filing of the application with the Director of
7 Financial Management.

8
9 8.69.050 Business license, tobacco retail permit and smoking lounge
10 permit - Required.

11 No person shall engage in, operate, conduct, carry on or allow to be
12 carried on, the business of a smoking lounge in the City without first having
13 obtained, for each separate smoking lounge or place of business where
14 indoor smoking is to occur, a tobacco retail permit as provided in Chapter
15 8.70, as well as a smoking lounge permit and a business license to operate
16 a smoking lounge, as provided in this Chapter.

17
18 8.69.060 Business license and smoking lounge permit - Application
19 contents.

20 Every person desiring to carry on or conduct the business of a
21 smoking lounge in the City shall, for each separate smoking lounge or place
22 of business where indoor smoking is to occur, make a written application to,
23 and upon forms furnished by, the Health Officer, and shall be signed by the
24 applicant or his duly authorized agent. Any person signing the application
25 as an agent shall furnish a written authorization executed by the applicant
26 designating the person signing the permit as the applicant's duly authorized
27 agent for such purpose. Such authorization will remain in full force and
28 effect until revoked by a written document signed by the applicant and filed

1 with the Health Officer. Such application shall be verified and state the
2 name, address and telephone number of the applicant, the business name
3 (Doing Business As (dba), if any), address and phone number at which the
4 business is proposed to be carried on, a brief description of the nature of the
5 business, products to be sold, and such other information pertaining to
6 public health and safety as may be required by the Health Officer to ensure
7 compliance with the provisions of this Chapter and other applicable laws.

8
9 8.69.070 Smoking lounge permit - Issuance.

10 The Health Officer shall make or cause to be made an investigation
11 of the proposed place of business and the manner in which the smoking
12 lounge is to be conducted, and if it is found that all provisions of this Code
13 and all applicable laws have been and will be complied with, the Health
14 Officer shall issue the smoking lounge permit; otherwise, the application for
15 a smoking lounge permit shall be denied. Such smoking lounge permits
16 shall be good for one (1) year and shall be automatically renewed every
17 year, provided that the Health Officer determines that the permit holder has
18 complied with the provisions of this Chapter and applicable laws during the
19 preceding permit term. Such smoking lounge permits shall be
20 nontransferable and nonassignable. All smoking lounge permit holders
21 must notify the Health Officer in writing if they discontinue their business
22 operations.

23
24 8.69.080 Smoking lounge permit - Fees.

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

1 revoked, or because the permittee no longer owns the smoking lounge, no
2 portion of a permit fee paid by such permittee shall be refunded.

3
4 8.69.090 Change of ownership or location.

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

12 B. If a holder of a smoking lounge permit changes or removes the
13 location of his place of business, such holder may not continue to conduct
14 and operate the business at the changed or new location under such permit.
15 Such permit holder shall immediately apply for and obtain a new smoking
16 permit in the manner provided by this Chapter. If such new permit is not
17 applied for and obtained in the manner prescribed in this Section, such
18 person shall be deemed to be conducting and operating such business
19 without a valid smoking lounge permit.

20 C. Any structural modifications to such business, in whole or in
21 part, shall require plan submittals to the appropriate City departments,
22 approval of plans and specifications, and inspections by the appropriate City
23 departments.

24
25 8.69.100 Inspections.

26 A. The Health Officer is empowered to enter any smoking lounge,
27 or other place of business where indoor smoking occurs or is suspected of
28 occurring, at any time for the purpose of inspection, including the taking of

1 photographs, samples or other evidence that is plainly visible, and to
2 enforce any of the provisions of this Chapter, or of any applicable law, rule
3 or regulation governing such places in the City. The Health Officer may
4 periodically conduct inspections of all business establishments in the City
5 where indoor smoking occurs to determine whether they comply with the
6 requirements of this Chapter and other applicable laws.

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

13
14 8.69.110 Smoking lounge permit – Suspension – Revocation - Hearing.

15 A. If the Health Officer determines that any of the provisions of
16 this Chapter or any other provisions of the Code or applicable laws have
17 been or are being violated by the holder of a smoking lounge permit or such
18 holder's servants, employees or agents, the Health Officer may suspend or
19 revoke the permit. No smoking lounge permit shall be suspended or
20 revoked until after a hearing has been held by the Health Officer.

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

1 copy of the notice shall be mailed postpaid and registered, to the last known
2 address of the holder of the permit.

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

12 D. 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 8.69.120 Smoking lounge permit – Revocation - Reapplication.

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

22
23 8.69.130 License and permits display.

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

26
27 8.69.140 Health warning signage.

28 A. A Proposition 65 warning sign regarding exposure to tobacco

1 smoke, supplied by the Health and Human Services Department, must be
2 posted at each entrance to a smoking lounge.

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

6
7 8.69.150 Age restriction and signage.

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

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

13
14 8.69.160 Food and beverages prohibited.

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

22
23 8.69.170 Separate ventilation.

24 A. The smoking lounge shall have a mechanical ventilation and
25 exhaust system that is in compliance with the California Building Energy
26 Efficiency Standards for Residential and Nonresidential Buildings and the
27 Long Beach Mechanical Code. A licensed contractor shall obtain a
28 mechanical permit for the system and all work shall be completed and

1 approved by the Health Officer and the Development Services Department
2 prior to smoking within the smoking lounge. The system shall be equipped
3 with such provisions that the air from the establishment is exhausted directly
4 to the outside and not re-circulated within the building or mixed with the
5 general dilution ventilation for the building. Windows, which open to the
6 outside, shall not be deemed to comply with this provision.

7 B. The Health Officer may review plans and specifications
8 pertaining to the design of ventilation systems for all smoking lounges, for
9 the control of environmental health hazards and shall have the authority to
10 require the submission of such plans and specifications. The Health Officer
11 shall not issue the smoking lounge permit until the mechanical ventilation
12 and exhaust system has been approved by the Development Services
13 Department.

14
15 8.69.180 Application to existing businesses.

16 Any business establishment operating as a smoking lounge on the
17 effective date of this Chapter shall be brought into full compliance with the
18 provisions of this Chapter, not later than ninety (90) days following either (i)
19 the effective date of this Chapter, or (ii) the expiration of Ordinance No.
20 ORD-09-0009 which was adopted by the City Council to temporarily prohibit
21 development or operation of new smoking lounges, whichever is later.

22
23 8.69.190 Severability.

24 If any section, subsection, subdivision, paragraph, sentence, clause
25 or phrase of this Chapter, or its application to any person or circumstance, is
26 for any reason held to be invalid or unenforceable, such invalidity or
27 unenforceability shall not affect the validity of enforceability of the remaining
28 sections, subsections, subdivisions, paragraphs, sentences, clauses or

1 phrases of this Chapter, or its application to any other person or
2 circumstance. The City of Long Beach declares that it would have adopted
3 each section, subsection, subdivision, paragraph, sentence, clause or
4 phrase hereof, irrespective of the fact that any one or more sections,
5 subsections, subdivisions paragraphs, sentences, clauses or phrases
6 hereof be declared invalid or unenforceable.

7
8 8.69.200 Administration and Enforcement.

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

14
15 Section 3. Chapter 8.70 is added to the Long Beach Municipal Code to
16 read as follows:

17 Chapter 8.70

18 TOBACCO RETAILERS

19
20 8.70.010 Purpose and intent.

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

25
26 8.70.020 Definitions.

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

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

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

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

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

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

22
23 8.70.030 Compliance required.

24 No person shall act as a tobacco retailer in the City, or at any "special
25 event" as defined in Chapter 5.60 of this Code, without first complying with
26 the provisions of this Chapter. Tobacco retailers shall adequately inform
27 their workers and employees of all smoking laws and regulations, and shall
28 ensure that workers and employees comply with the provisions of this

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

3
4 8.70.040 Business license, State Board of Equalization Tobacco
5 License and tobacco retail permit - Required.

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

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
14 8.70.050 Tobacco retail permit - Application.

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

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

25 1. The name, mailing address and telephone number of
26 the applicant.

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

- 1 3. Photo identification of the person seeking the permit.
- 2 4. Proof of State Board of Equalization Tobacco License.
- 3 5. Such other information pertaining to public health and
- 4 safety as may be required by the Health Officer, consistent with the purpose
- 5 of this Chapter, this Code and applicable law.

6 C. The Health Officer shall issue the tobacco retail permit to the
7 applicant unless: such application is incomplete or inaccurate, the
8 application seeks authorization for tobacco retailing by a person or location
9 for which a suspension is in effect under this Chapter, or the application
10 seeks authorization for tobacco retailing that is unlawful under this Chapter,
11 this Code or applicable law.

12 D. Tobacco products and tobacco paraphernalia offered for sale
13 or exchange in violation of this Chapter are subject to seizure and forfeiture.
14 Forfeited tobacco products and tobacco paraphernalia may be destroyed.

15
16 8.70.060 Tobacco retail permit - Issuance.

17 A. The Health Officer shall make or cause to be made an
18 investigation of the place of business where tobacco retailing is to occur,
19 and if it is found that all provisions of this Code and all applicable laws have
20 been and will be complied with, the Health Officer shall issue the tobacco
21 retail permit; otherwise, the application for a tobacco retail permit shall be
22 denied.

23 B. The tobacco retail permit shall clearly state the following on its face:

- 24 1. The legal owner(s) of the permitted premises;
- 25 2. Doing Business As (dba), if any;
- 26 3. The LBMC Chapter pursuant to which the permit was
- 27 issued;
- 28 4. The business and mailing address of the owner of the

1 permitted premises;

2 5. The date the permit was issued; and

3 6. The permit number.

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

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

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

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

25
26 8.70.070 Tobacco retail permit - Fees.

27 Every applicant for a tobacco retail permit under this Chapter shall
28 pay to the City, before a permit is issued, an annual fee as adopted by the

1 City Council by resolution. All fees are nonrefundable; therefore, in the
2 event that any permit issued pursuant to this Chapter is suspended or
3 revoked, or because the permittee no longer acts as a tobacco retailer, no
4 portion of a permit fee paid by such permittee shall be refunded.

5
6 8.70.080 Tobacco retail permit - Term and renewals.

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

13
14 8.70.090 Inspections.

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

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

1 8.70.100 Tobacco retail permit - Requirements.

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

9
10 8.70.110 Tobacco retail permit – Suspension – Revocation - Hearing.

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

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

1 copy of the notice shall be mailed postpaid and registered, to the last known
2 address of the holder of the permit.

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

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

15
16 8.70.120 Tobacco retail permit – Revocation - Reapplication.

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

21
22 8.70.130 Severability.

23 If any section, subsection, subdivision, paragraph, sentence, clause
24 or phrase of this Chapter, or its application to any person or circumstance, is
25 for any reason held to be invalid or unenforceable, such invalidity or
26 unenforceability shall not affect the validity of enforceability of the remaining
27 sections, subsections, subdivisions, paragraphs, sentences, clauses or
28 phrases of this Chapter, or its application to any other person or

1 circumstance. The City of Long Beach declares that it would have adopted
2 each section, subsection, subdivision, paragraph, sentence, clause or
3 phrase hereof, irrespective of the fact that any one or more sections,
4 subsections, subdivisions paragraphs, sentences, clauses or phrases
5 hereof be declared invalid or unenforceable.
6

7 8.70.140 Administration and enforcement.

8 Each day a violation exists constitutes a separate and distinct
9 offense. The Health Officer shall have the duty to administer and enforce
10 the Sections included in this Chapter. Suspension or revocation of the
11 permit shall be governed by the provisions of this Chapter, and criminal
12 penalties may be assessed under Chapter 1.32 of this Code.
13

14 Section 4. Chapter 5.81 of the Long Beach Municipal Code is hereby
15 repealed.
16

17 Section 5. Section 8.68.130 of the Long Beach Municipal Code is hereby
18 repealed.
19

20 Section 6. Section 8.68.150 of the Long Beach Municipal Code is hereby
21 repealed.
22

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

27 ///

28 ///

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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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