



## Legislation Text

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**File #:** 09-1234, **Version:** 1

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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)

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.

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

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, 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.

Approve recommendation.

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

RONALD R. ARIAS  
DIRECTOR HEALTH AND HUMAN SERVICES

NAME

APPROVED:

TITLE

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PATRICK H. WEST  
CITY MANAGER