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ORDINANCE NO. ORD-09-0038

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY AMENDING SUBSECTIONS
8.68.020.R AND 8.68.060.B; AND BY ADDING CHAPTER
5.88 ALL RELATING TO SMOKING LOUNGE
REGULATIONS

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

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

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

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

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

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

Chapter 5.88

SMOKING LOUNGES

5.88.010 Purpose and Intent.

The City Council finds that a regulatory process is necessary for reviewing, approving and enforcing related business and public health codes for smoking lounges as defined in this Chapter. It is the intent of this Chapter to establish regulatory provisions that allow the City or such persons as the City may designate to regulate smoking lounges operating in the City. The issuance of any smoking lounge permit under this Chapter shall not be deemed permission or authorization for a business to operate in any manner otherwise prohibited by local, state or federal law.

5.88.020 Definitions.

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

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

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

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

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

E. "Smoking lounge" means any business establishment that is

1 dedicated to the smoking of tobacco products, including but not limited to
2 establishments known variously as cigar lounges, hookah lounges, or
3 tobacco clubs. For purposes of this Chapter, "smoking lounge" means
4 private smokers' lounge as defined in Section 6404.5 of the California Labor
5 Code.

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

10
11 5.88.030 Compliance required.

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

19
20 5.88.040 Business license, tobacco retail permit and smoking lounge
21 permit - Required.

22 No person shall engage in, operate, conduct, carry on or allow to be
23 carried on, the business of a smoking lounge in the City without first having
24 obtained, for each separate smoking lounge or place of business where
25 indoor smoking is to occur, a business license as prescribed by the
26 provisions of Chapter 3.80, a tobacco retail permit as provided in Chapter
27 5.81, and a smoking lounge permit as provided in this Chapter.

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1 5.88.050 Smoking lounge permit application process.

2 A. Any person desiring a permit required by this Chapter to carry
3 on or conduct the business of a smoking lounge in the City shall, for each
4 separate smoking lounge or place of business where indoor smoking is to
5 occur, complete and file an application on forms provided by the Director of
6 Financial Management. Such application forms shall require information
7 including the name, address and telephone number of the applicant, the
8 business name (Doing Business As (dba), if any) and location of the
9 smoking lounge or place of business where indoor smoking is to occur, a
10 brief description of the nature of the business, products to be sold, and such
11 other and further information deemed pertinent by the Director of Financial
12 Management, the Health Officer, or any concerned City department, to
13 ensure compliance with the provisions of this Chapter and other applicable
14 laws.

15 1. The person whose signature appears on the
16 application shall attest that they are a duly authorized representative of the
17 applicant and that the information contained in the application is true and
18 correct.

19 2. The application shall be filed under penalty of perjury.
20 False statements therein will constitute grounds for denial, or revocation as
21 applicable.

22 3. An incomplete application shall not be accepted for
23 processing.

24 4. A nonrefundable investigation fee, as adopted by the
25 City Council by resolution, shall be paid to the City at the time the
26 application is filed.

27 B. On receipt of a completed smoking lounge permit application,
28 the Director of Financial Management shall refer the application to all

concerned City departments for investigation. Such departments shall file a report providing recommendations regarding the approval or denial of the permit with the Director of Financial Management within sixty (60) calendar days after the completed application is filed, except where circumstances beyond the control of the City justifiably delay such response.

5.88.060 Smoking lounge permit - Issuance.

A. The Director of Financial Management shall make or cause to be made an investigation of the place of business and the manner in which the smoking lounge is to be conducted, and if it is found that all provisions of this Code and all applicable laws have been and will be complied with, the Director of Financial Management shall issue the smoking lounge permit; otherwise, the application for a smoking lounge permit shall be denied.

B. Such smoking lounge permits shall be good for one (1) year and shall be automatically renewed every year, provided that the Director of Financial Management determines that the permit holder has complied with the provisions of this Chapter and applicable laws during the preceding permit term.

C. Such smoking lounge permits shall be nontransferable and nonassignable. All smoking lounge permit holders must notify the Director of Financial Management in writing if they discontinue their business operations, if there is a change of ownership, or if there is a change in the business name.

D. Permittees must notify the Director of Financial Management in writing if structural modifications are planned to be made to a smoking lounge for which a permit has been issued under this Chapter. Prior to making any structural modifications to a smoking lounge, in whole or in part, the permittee shall submit plans and specifications to the Director of

1 Financial Management for approval. The Director of Financial Management
2 shall refer the plans and specifications to all concerned City departments for
3 review and inspection, as appropriate. Such departments shall file a report
4 providing recommendations regarding the approval or denial of the
5 structural modifications with the Director of Financial Management within
6 thirty (30) calendar days after the plans and specifications are submitted,
7 except where circumstances beyond the control of the City justifiably delay
8 such response.

9
10 5.88.070 Smoking lounge permit - Fees.

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

17
18 5.88.080 Inspections.

19 A. The Director of Financial Management, the Health Officer and
20 representatives of concerned City departments are empowered to enter any
21 smoking lounge, or other place of business where indoor smoking occurs or
22 is suspected of occurring, at any time for the purpose of inspection,
23 including the taking of photographs, samples or other evidence that is
24 plainly visible, and to enforce any of the provisions of this Chapter, or of any
25 applicable law, rule or regulation governing such places in the City.

26 B. No person shall refuse to permit or allow the Director of
27 Financial Management, the Health Officer, any authorized inspector, or any
28 representatives of concerned City departments, to enter or inspect or

1 examine any portion of any smoking lounge or other place of business
2 where indoor smoking occurs. No person shall interfere with, hinder, or
3 harass, in any manner any City representative in the inspection or the
4 examination of such smoking lounge or other place of business where
5 indoor smoking occurs.

6
7 5.88.090 Smoking lounge permit – Suspension – Revocation – Denial –
8 Hearing.

9 A. If a City department determines that the applicant does not
10 satisfy applicable requirements of this Chapter, the Director of Financial
11 Management shall deny said permit application in accordance with the
12 provisions set forth in Section 5.06.020, Subsection A, of this Code.

13 B. If a City department determines that the permittee failed to
14 comply with any provision of this Chapter, or with any other provision or
15 requirement of law, the Director of Financial Management shall revoke or
16 suspend the smoking lounge permit in accordance with the provisions set
17 forth in Section 5.06.020, Subsection A, of this Code.

18 C. The Director of Financial Management shall notify the
19 applicant of a rejected application, or the permittee of the permit revocation
20 or suspension by dated written notice. Said notice shall advise the
21 applicant or permittee of the right to appeal the decision to the City Council.
22 The request for appeal shall be in writing, shall set forth the specific
23 ground(s) on which it is based and shall be submitted to the Director of
24 Financial Management within ten (10) calendar days from the date the
25 written notice was mailed along with an appeal deposit in an amount
26 determined by the City Council by resolution.

27 D. The City Council shall conduct a hearing on the appeal or
28 refer the matter to a hearing officer, pursuant to Chapter 2.93 of this Code,

1 within thirty (30) business days from the date the completed request for
2 appeal was received by the Director of Financial Management, except
3 where good cause exists to extend this period. The appellant shall be given
4 at least ten (10) business days written notice of such hearing. The hearing
5 and rules of evidence shall be conducted pursuant to Chapter 2.93 of this
6 Code. The determination of the City Council on the appeal shall be final.

7 E. Whenever a smoking lounge permit application has been
8 denied or a smoking lounge permit has been revoked, no other such permit
9 application shall be considered for a period of one (1) year from either the
10 date notice of the denial, or revocation was mailed or the date of the final
11 decision of the City Council, whichever is later.

12 F. Notwithstanding any other provisions in this Chapter, in the
13 event that a tobacco retail permit is suspended, denied, or revoked, the
14 smoking lounge permit shall at the same time be suspended, denied, or
15 revoked.

16
17 5.88.100 License and permits display.

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

20
21 5.88.110 Health warning signage.

22 A. A Proposition 65 warning sign regarding exposure to tobacco
23 smoke, supplied by the Health and Human Services Department, must be
24 posted at each entrance to a smoking lounge.

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

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1 5.88.120 Age restriction and signage.

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

4 B. A warning sign must be posted at each entrance to a smoking
5 lounge, and conspicuously posted in a place that can be clearly seen by the
6 public, stating that persons under eighteen (18) years of age are prohibited.
7

8 5.88.130 Sale of food and beverages prohibited.

9 No person shall receive for sale, sell, offer for sale, keep for sale,
10 have in such person's possession with intent to sell, any food or beverages
11 in the smoking lounge. All places where food or beverages are kept or
12 suspected of being kept shall be subject at all times to inspection by the
13 Health Officer, other officers or City representative appointed for that
14 purpose, and such persons are authorized to enter and inspect all such
15 places.
16

17 5.88.140 Ventilation requirement.

18 The permittee of a smoking lounge permit shall minimize the intrusion
19 of drifting tobacco smoke and other adverse impacts on businesses in the
20 vicinity of the smoking lounge and areas where smoking is not permitted.
21 Exhaust air from the smoking lounge shall be exhausted directly to the
22 outside by an exhaust fan and shall not be re-circulated to other parts of the
23 building. The ventilation and exhaust system shall conform to the latest
24 edition of the California Mechanical Code and California Building Energy
25 Efficiency Standards for Residential and Nonresidential Buildings as
26 adopted and amended by Chapter 18.36 of the Long Beach Municipal
27 Code, or as otherwise required by applicable state or federal laws.
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1 5.88.150 Application to existing businesses.

2 Any business establishment operating as a smoking lounge under an
3 existing business license on the effective date of this Chapter shall be
4 brought into full compliance with the provisions of this Chapter, not later
5 than ninety (90) days following the effective date of this Chapter.
6

7 5.88.160 Severability.

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

20 5.88.170 Administration and Enforcement.

21 Any violation of the terms and conditions of a smoking lounge permit,
22 of this Chapter, or of applicable local, state or federal regulations and laws
23 shall be grounds for permit denial, suspension or revocation. Each day a
24 violation exists constitutes a separate and distinct offense. Suspension or
25 revocation of the permit shall be governed by the provisions of this Chapter,
26 and criminal penalties may be assessed under Chapter 1.32 of this Code.

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

5 I hereby certify that the foregoing ordinance was adopted by the City
6 Council of the City of Long Beach at its meeting of December 15, 2009, by the
7 following vote:

8
9 Ayes: Councilmembers: Garcia, Lowenthal, DeLong,
10 O'Donnell, Andrews, Reyes Uranga,
11 Lerch.

12
13 Noes: Councilmembers: Schipske, Gabelich.

14
15 Absent: Councilmembers: None.

16
17
18 
19 _____
City Clerk

20
21
22 Approved: 12/17/09
23 (Date)

24
25 
26 _____
27 Mayor
28