

Substitute Motion by Councilmember Nehrenheim, seconded by Councilmember Loewenstein, to authorize the City Manager to execute the grant application and certifications for submission to the U.S. Department of Housing and Urban Development (HUD), authorize the Mayor and/or City Manager to execute the CDBG funding agreement upon HUD's approval of the Action Plan, and to approve Option #2. Motion failed with the following vote:

AYES: Nehrenheim, Loewenstein
NOES: Horvath, Gran, Emdee
ABSENT: None

M. ITEMS CONTINUED FROM PREVIOUS AGENDAS - NONE

N. ITEMS FOR DISCUSSION PRIOR TO ACTION

N.1 DISCUSSION AND POSSIBLE ACTION ON PROVISIONS FOR ORDINANCES TO ESTABLISH A CITY-WIDE SMOKING BAN IN PUBLIC PLACES AND IMPLEMENT A TOBACCO RETAIL PERMIT.

CONTACT: BRANDY FORBES, COMMUNITY DEVELOPMENT DIRECTOR

Community Development Director Forbes gave a report and reviewed the following:

- Background
- City-Wide Smoking Ban in Public Places
- Local Tobacco Retail Permit
- Recommendation

Senior Deputy City Attorney Jillian Martins spoke on the following:

- Provide staff with specific direction on the following:
 - City-wide smoking ban
 - Definition of public place or a list of specified locations
 - Inclusion or exclusion of ESDs and cannabis
 - Civil or criminal
 - Local tobacco retail permit
 - Direct staff to prepare the ordinances

Mayor Brand called for public comment.

Michael Olivarez, Advocacy Manager of Lung Force, American Lung Association, supported the City's efforts regarding nicotine addiction which is very dangerous, noted a rise again because of the reinvention, expressed concern with costly and deadly impacts of nicotine addiction, and supported the measure.

Elizabeth Jacoby, Policy Coordinator County of Los Angeles Public Health, gave a report, spoke on addiction, noted new users from new electronic smoking devices which are not safe, a significant increases in tobacco use, gave statistics and studies and reviewed strategies from the County of Los Angeles Public Health.

Motion by Councilmember Nehrenheim, seconded by Councilmember Loewenstein, to receive and file documentation presented by Ms. Jacoby. Motion carried unanimously.

Marie Gambon, Redondo Beach, spoke on issues regarding smoking and youth access, electronic vaping, epidemic proportions, ages have become younger, and asked for the licensing ordinance.

Dr. Andrew Lesser, District 1, stated he quit smoking four years ago after smoking for 35 years, noted increased difficulty of smoking in public places helped him quit, and expressed concern with the ESD's which don't help smokers quit. He expressed concern with the ads for ESD's which are just as dangerous as tobacco. He said cigarettes are an addiction and supported saving the youth from smoking, to include ESD's and to ban smoking and vaping in public places.

Jacqueline Sun, Beach Cities Health District, spoke on exposure to secondhand smoke, economic burdens of smoking-related illnesses, emissions from ESD's and cannabis, stated pollutants are harmful, and vaping is continuing to be a trend among the youth. She said the ordinances will allow citation of youth on campus, and giving more tools. She suggested directing to the Manhattan Beach ordinance where smoking isn't allowed and best practices. She spoke on tobacco retail licensing which is a tool to address youth access, reviewed smoking among students at RUHS, and stated products are being marketed to youth with flavors.

Motion by Councilmember Loewenstein, seconded by Councilmember Nehrenheim, to extend Ms. Sun's time. Motion carried unanimously.

Ms. Sun reviewed best practices and fees, suggested considering the opportunity to limit proximity to schools and young-sensitive areas and ban flavors, and supported community education and technical support.

Craig Cadwallader, Surfrider Foundation SB Chapter, supported a comprehensive outdoor ban such as in Manhattan Beach rather than a listing which failed in Hermosa Beach, expressed concern with the number of cigarette butts in the area, and noted impacts from cigarettes. He supported passing the ordinances.

In response to Councilmember Gran regarding the bars on the street in Hermosa Beach and Manhattan Beach, Mr. Cadwallader stated designated areas didn't work and are difficult to implement. He also said Beverly Hills had a smoking ban in place which did not affect the businesses, and statistics show that businesses improved without the smoking.

Susan Humola supported a ban on smoking in multi-housing and pointed out that their balconies are very close to each other and smoke comes into their home at all hours.

Senior Deputy City Attorney Martins noted legal issue as they relate to private residences, but stated she could review options for regulating common areas or banning smoking in multi-unit residential.

Sam Humola, 565 Esplanade, expressed concern with smoking exposure from cigarettes and marijuana in multi-unit condos and apartments, and suggested a public hearing for residents to weigh-in.

Rolf Strutzenberg stated Manhattan Beach did a good job with their ordinance.

There being no one else wishing to comment, Mayor Brand closed the public comment period.

In response to Councilmember Horvath regarding defining public places, Senior Deputy City Attorney Martins stated it is important to inclusively define a public place if the intention is to enact a comprehensive ban. She reviewed examples in the Manhattan Beach ordinance, and stated she is looking for direction regarding a definition as broad and expansive as in Manhattan Beach or more narrow such as solely publicly owned areas/public rights-of-way.

In response to Councilmember Loewenstein, Senior Deputy City Attorney Martins stated beaches and parks are already included. She also said the use of cigarettes, ESD's and cannabis should all be disallowed together.

Councilmember Horvath supported a comprehensive ban that would be broad such as in Manhattan Beach, to include ESD's and cannabis and an infraction such as already set up in the City. He supported a comprehensive approach for a local tobacco retail permit including the banning of flavored products. He stated TRL's should have a one-time warning/suspension of a license for a 30 or 60 day period and if compliance is still not met, a revocation hearing of a permit would start.

In response to Councilmember Horvath regarding adding in a buffer to cover potential enforcement compliance costs, Senior Deputy City Attorney Martins stated the main concern is to tie specific costs for enacting the tobacco retail license process. She also referred to the grace period to comply, stated there are currently 43 tobacco retailers in the City, and suggested a six-month grace period.

Councilmember Horvath pointed out that Beverly Hills is discussing whether or not to disallow sales of all tobacco products throughout their city.

In response to Mayor Brand regarding alcohol consumption in conjunction with a permit, Senior Deputy City Attorney Martins stated the current state requirements regarding hookah lounges cannot sell alcohol at the same location where tobacco is allowed. She said this would add a clarifying local regulation ensuring that alcohol consumption is not allowed at the same location.

In response to Councilmember Gran, Senior Deputy City Attorney Martins stated as part of the permit fee, two annual inspections by code enforcement personnel would be included. She said enforcement costs can also be included in an annual license fee and as a cost recovery mechanism.

Councilmember Gran asked about public places and people coming out on the sidewalk and smoking on private property. Senior Deputy City Attorney Martins explained that with the Manhattan Beach definition, private property accessible to the public is considered a public place and smoking is disallowed. She suggested having designated smoking areas that are permitted.

Planning Analyst Lina Portolese stated Manhattan Beach's ordinance is more restrictive and includes public open areas and places of employment.

Councilmember Gran suggested allowing businesses or places to permit a small area for smoking. He also supported a stepped approach and looking at the majority of people.

Councilmember Nehrenheim supported allowing smoking in certain areas per the businesses. He also referred to enforcement for the tobacco retail license and suggested the first violation be a 30-day suspension, the second violation a 90-day suspension and the third violation to undertake to revoke the license. He also reviewed the recommendations in the staff report.

Councilmember Emdee noted government overreach versus what society would want, and suggested making a stand that the City is a nonsmoking city, and believed the City doesn't have the resources for penalizing. She suggested more of a civil issue, and believed there will be self-regulation. She also supported the retail licensing permit and to allow a small smoking designated area for businesses.

In response to Councilmember Loewenstein regarding paraphernalia, Planning Analyst Lina Portolese explained this would include rolling papers, little cigars, flavored products, pipes, etc.

Senior Deputy City Attorney Martins believed that paraphernalia was intended as a broad term and suggested Council could limit the sales of certain smoking devices.

Councilmember Loewenstein did not support banning certain paraphernalia, stated the point of a smoking ban is the impact on everybody else, expressed concern with the number of cigarette butts in the harbor, supported banning smoking in public areas, and suggested eventually looking at a ban in private places.

Senior Deputy City Attorney Martins clarified that an infraction is a citation that only comes with a fine, stated it is difficult to collect any kind of fine with a civil penalty, and suggested an infraction based enforcement process for the city-wide smoking ban. She also noted the retail permit process proposed by Councilmember Horvath would be an administrative/civil process, suspending the license either once or twice and then revoking the license.

Councilmember Loewenstein supported enforcement, putting in effort and resources which could be tracked.

Councilmember Gran supported having a designated permitted area for smoking.

Councilmember Loewenstein supported a total ban.

Mayor Brand believed our right to breathe clean area far supersedes those who want to smoke, supported having an infraction, noted that the police will enforce at their discretion, stated he didn't expect full enforcement, and noted the City is behind the curve with other cities.

In response to Mayor Brand regarding the status of leaf blowers, Community Development Director Forbes stated the City has issued approximately 1,000 notices of leaf blower violations and will be issuing citations by code enforcement.

Councilmember Horvath stated education and branding will need to take place with the ban, and believed an infraction system may be easier to enforce. He also did not support smoking outside of businesses, and stated he can go either way on the civil or infraction and the paraphernalia.

Motion by Councilmember Horvath, seconded by Councilmember Loewenstein, to support a citywide comprehensive smoking ban using the Manhattan Beach listing of public places with some specificity, with the inclusion of ESD's and cannabis, and having a stepped infraction as a penalty; for the Local Tobacco Retail Permit, to include everything listed under staff recommendation with paraphernalia being clearly youth oriented products; and to have a one-time 60-day suspension with a second violation resulting in a potential revocation of the permit.

Friendly Amendment by Councilmember Gran to include a stepped approach and having a designated smoking area outside. Councilmembers Horvath and Loewenstein accepted the amendment.

Friendly Amendment by Councilmember Nehrenheim to have a 60-day suspension, 90-day suspension, and then a revocation process, to remove "banning alcohol consumption in conjunction with a permit" and to have an inspection once a year. Councilmembers Horvath and Loewenstein accepted the amendment.

Motion carried unanimously (5-0).

Motion by Councilmember Nehrenheim, seconded by Councilmember Loewenstein, to defer Item N2 and to complete Items P1 through P4 on the agenda. Motion carried unanimously.