



# Administrative Report

N.1., File #19-0329

Council Action Date: 10/8/2019

**To:** MAYOR AND CITY COUNCIL

**From:** BRANDY FORBES, COMMUNITY DEVELOPMENT DIRECTOR

## **TITLE**

DISCUSSION AND POSSIBLE ACTION REGARDING IMPLEMENTING A CITY-WIDE SMOKING BAN IN PUBLIC EXCEPT FOR DESIGNATED SMOKING AREAS, DISALLOWING POSSESSION AND USE OF TOBACCO PRODUCTS BY MINORS ON SCHOOL GROUNDS, AND ESTABLISHING A LOCAL TOBACCO RETAIL PERMIT AND PROCESS FOR ALL TOBACCO RETAILERS IN THE CITY

- A. INTRODUCE BY TITLE ONLY ORDINANCE NO. O-3193-19 ADDING MUNICIPAL CODE CHAPTER 9, ARTICLE 1, TO TITLE 5 TO DISALLOW SMOKING IN PUBLIC IN THE CITY WITH THE EXCEPTION OF DESIGNATED SMOKING AREAS. FOR INTRODUCTION AND FIRST READING;

OR

- B. INTRODUCE BY TITLE ONLY ORDINANCE NO. O-3193-19 ADDING MUNICIPAL CODE CHAPTER 9, ARTICLE 1, TO TITLE 5 TO DISALLOW SMOKING IN PUBLIC IN THE CITY WITH THE EXCEPTION OF DESIGNATED SMOKING AREAS AND DISALLOWING POSSESSION AND USE OF TOBACCO PRODUCTS BY MINORS ON SCHOOL GROUNDS. FOR INTRODUCTION AND FIRST READING;

AND

- C. INTRODUCE BY TITLE ONLY ORDINANCE NO. O-3194-19 ADDING MUNICIPAL CODE CHAPTER 9, ARTICLE 2, TO TITLE 5 TO CREATE A LOCAL TOBACCO RETAIL PERMIT AND APPROVAL PROCESS. FOR INTRODUCTION AND FIRST READING.

## **EXECUTIVE SUMMARY**

In response to a Strategic Plan objective, staff has prepared draft ordinances to establish a City-wide smoking ban in public places and implement a local tobacco retail permit. The City Council discussed the draft ordinances at three meetings, provided direction, and supported the City-wide smoking ban with the exception of designated areas and the Local Tobacco Retail Permit Ordinance.

## **BACKGROUND**

On September 18, 2018, May 7, 2019 City Council discussed potential tobacco regulations. The

meetings included testimony from representatives of the Beach Cities Health District, the Coalition for Tobacco Free Los Angeles County, Los Angeles County Department of Public Health, Asian American Drug Abuse Program, along with City residents. After discussion, the Council was favorable to establishing tobacco regulations utilizing a stepped approach, where stricter regulations could be implemented over time, if needed. City Council directed staff to prepare ordinances for a local retail tobacco control permit and smoke free public places. Draft ordinances were reviewed by City Council on September 3<sup>rd</sup> and October 1<sup>st</sup>, 2019. Based on feedback from each of those meetings, staff incorporated requested changes to the drafts and proposed ordinances are being presented tonight for reintroduction and first reading.

### **City-wide Smoking Ban in Public Places**

Existing law prohibits smoking in public parks and the pier. Based on City Council direction, the new ordinance would expand the prohibition and defines additional public areas where smoking would be prohibited. The proposed ordinance would define "Public place as "any public place, or any private place open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, plazas, bars, restaurants, clubs, stores, stadiums, farmers' markets, bus shelters, ATM or ticket lines, theaters, parking lots, parks, playgrounds, taxis, and buses. This also shall include outdoor dining areas open to the general public." The smoking ban would include areas within twenty (20) feet of any door, window, opening, or vent into a public place. Residential property and moving vehicles are excluded from the ban. Violations would be punishable by infraction.

Additionally, the ordinance includes an updated definition of "smoking" and "smoke" to include electronic smoking devices and marijuana smoke.

City Council was supportive of providing an option for commercial businesses to create a designated smoking area and the ordinance contains language for this provision.

Staff has prepared two (2) ordinances for City Council consideration. The first ordinance reflects the provisions specified by Councilmember Emdee's motion, carried unanimously (1) changing the provisions of the designated smoking area(s) to be approved in the city; (2) deeming tobacco smoke a nuisance and (3) adding a private right of action for enforcement of the provisions of the ordinance. The second ordinance was prepared pursuant to the City Council's direction to staff. At the "Mayor and Council Referrals to Staff" portion of the meeting, Councilmember Nehrenheim made a motion for city staff to return with an ordinance banning possession of tobacco products on school property for persons under twenty-one (21) years of age. After some clarification, Councilmember Nehrenheim further specified that he would like the penalty for violation to be an "educational program." As Mr. Webb stated during this discussion, the City Attorney's office and Police Department had begun working on this item prior to the Council's direction on October 1, 2019. As such, the City Attorney's Office had language available to add to the existing public smoking ordinance which would meet the criteria of Councilman Nehrenheim's motion. That ordinance is the second ordinance presented for first reading and adoption.

### **Local Tobacco Retail Permit**

Also consideration this evening, is an ordinance establishing a local tobacco retail permit. The local permit is a valuable mechanism that allows the City to establish its own stricter local tobacco regulations and helps fund enforcement.

By implementing a local tobacco retail permit ordinance, the current 43 tobacco retailers, and any new, would be required to obtain and maintain an annual Tobacco Retail Permit with the City of Redondo Beach, in addition to their City Business License. Tobacco retailers include any business location where tobacco, tobacco products, and tobacco paraphernalia are sold.

Provisions included in the tobacco retail permit are:

- Defining “tobacco products” to include electronic smoking devices
- Prohibiting the sale of all flavored tobacco products
- No sales to minors
- Banning self-service displays
- Requiring an inspection once a year
- Allowing undercover enforcement
- Non-transferrable

At the September 3, 2019 meeting, discussion occurred among City Council regarding the extent to which flavored products should be banned. The proposed ordinance presented that evening excluded mint, spearmint, wintermint, and menthol from the sale prohibition, based on the assumption that those were not typical flavors which are attractive to youth. However, after public testimony to the contrary and further discussion, Council provided direction to staff to include mint and menthol variations in the definition of “flavored” and ban the sale of all flavored tobacco products. Further discussion on October 1, 2019 resulted in direction from Council to allow an exemption from the flavor ban provision specifically to hookah lounges that allow only patrons 21-years of age and older or active military 18-years of age and older to enter the location. These hookah lounges will be allowed to sell flavored products for both consumption at the location and off-site (i.e. retail sales to customers). All other retailers within the City must comply with the flavor ban.

Enforcement would be administrative, with written notices for initial violations that would allow the business to take corrective actions. Non-compliance, or further violations, will result in a 60-day suspension, then a 90-day suspension for further violation, and potential revocation for continued violations.

Based on the City Council’s direction, current tobacco retailers will have a one (1) year grace period to comply with this ordinance.

#### Annual Permit Fee

After adoption of the Tobacco Retail Permit Ordinance, an annual permit fee will be established within the City’s Master Fee Schedule, by separate Resolution, in an amount not to exceed the City’s reasonable costs of permit administration, including staff time for inputting, processing, monitoring, and enforcing. A proposed resolution with the recommended fee amount will be presented to City Council at a future meeting with an administrative report detailing other municipalities’ fees and the basis for the City’s proposed fee.

#### COORDINATION

The preparation of the administrative report and ordinances have been coordinated with the City Attorney's Office.

**FISCAL IMPACT**

The cost of preparing this report is included within the Community Development Department's portion of the adopted 2019-20 Annual Budget and is part of the department's annual work program.

Fiscal impact of a Tobacco Retail Permit will be assessed upon adoption of a resolution establishing the permit fee.

**APPROVED BY:**

*Joe Hoefgen, City Manager*

**ATTACHMENTS**

- Ordinance City-wide smoking ban with exception of designated smoking areas
- Ordinance City-wide smoking ban with exception of designated smoking areas and disallowing possession and use by minors on school grounds
- Ordinance Local Tobacco Retail Permit
- October 1, 2019 City Council Administrative Report
- Public Comment Letters