This fact sheet summarizes the provisions of Labor Code Section 6404.5 prohibiting smoking in places of employment. This summary information should not be relied upon as legal advice. A copy of Section 6404.5 is attached with this Fact Sheet.

**Effective Date**
January 1, 1995

**General Provision**
"No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment."

**Enforcement**
This law will be enforced by local law enforcement agencies, including but not limited to, local health departments.

For workplaces covered by AB-13, Cal/OSHA is required to respond to complaints regarding smoking in places of employment only after the employer has been found guilty of three violations of this law within the previous year. Complaints received by Cal/OSHA regarding smoking in workplaces not covered by AB-13 smoking restrictions (see Workplace Exceptions below) will result in a letter directing the employer to investigate and correct the problem.

**Workplace Exceptions**
See page 3 of this fact sheet for the complete list from AB-13.

In addition to workplaces specifically listed on page 3 of this fact sheet, any employer with five or fewer employees (full or part-time) may permit smoking where:

1. The smoking area is not accessible to minors.
2. All employees who enter the smoking area consent to permit smoking, and no one is required as part of their job to work in an area where smoking is permitted.
3. Air from the smoking area is exhausted directly outside.

**Maximum Fines from Local Agencies**

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<th>Violation Level</th>
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<td>2nd violation</td>
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<td>3rd and subsequent violations</td>
<td>$500</td>
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**Maximum Fines from Cal/OSHA**
After a 3rd violation within the previous year, Cal/OSHA is required to investigate complaints and may cite employers with fines up to $7,000 for violations classified as general or serious, and fines up to $70,000 for violations classified as willful serious. Violations can be classified as serious depending upon specific circumstances. For example, where the exposure to second hand smoke causes a serious asthma attack which could have been prevented the violation may be cited as serious.

**Breakrooms**
Breakrooms are exempted from the smoking ban provided air from the room is exhausted directly to the outside by an exhaust fan and the rooms are in a nonwork area where employees are not required to be present as part of their work responsibilities other than custodial or maintenance work when the room is unoccupied.

Where they are provided for smokers, there must also be a sufficient number of breakrooms to accommodate nonsmokers. However, the law does not require employers to provide smoking areas or breakrooms for smokers, or to provide breakrooms for nonsmokers where they are not provided for smokers.

**Adequate Compliance Measures (specified in AB-13)**

1. Posting of clear and prominent signs stating "No Smoking" at entrances to buildings where smoking is prohibited throughout;
2. In buildings where smoking is permitted in designated areas, posting of a sign at the building entrance stating "Smoking is prohibited except in designated areas;" and
3. Requesting that nonemployees smoking in prohibited areas refrain from doing so unless such a request would involve a risk of physical harm to the employer or any employee.

Note: Employers are not required to physically eject smoking nonemployees from workplaces.

Supersedes Local Laws This law supersedes and pre-empts local laws, ordinances, and regulations with respect to smoking in enclosed places of employment. However, the law does not supersede local authority to regulate work environments exempted from coverage in the law and to require provision of breakrooms for smokers and nonsmokers. This law also does not prevent employers from enacting more restrictive smoking prohibitions in their workplaces.

Workplaces, or portions thereof, not covered by Labor Code Section 6404.5 (AB-13) smoking restrictions:¹

- 65% of the guest rooms of hotels, motels, and similar transient lodging;
- Lobby areas of hotels, motels, and similar transient lodging designated for smoking (not to exceed 25% of the total lobby floor area or, if the lobby area is 2,000 square feet or less, not to exceed 50% of the total lobby floor area);
- Meeting and banquet rooms except while food or beverage functions are taking place (including set-up, service, and clean-up activities or when the room is being used for exhibit activities);
- Retail or wholesale tobacco shops and private smokers lounges;
- Truck cabs or truck tractors, if no nonsmoking employees are present;
- Warehouse facilities with more than 100,000 square feet of total floor space and 20 or fewer full-time employees working at the facility, but does not include any area within such a facility that is utilized as office space;
- Theatrical production sites, if smoking is an integral part of the story;
- Medical research or treatment sites, if smoking is integral to the research or treatment being conducted;
- Private residences, except for homes licensed as family day care homes, during the hours of operation and in those areas where children are present;
- Patient smoking areas in long-term health care facilities.
- Breakrooms designated by employers for smoking, under specified conditions (see page 2 of fact sheet); and
- Employers with five or fewer full or part-time employees, under specified conditions (see page 1 of fact sheet).

¹An exemption for gaming clubs, bars, and taverns expires January 1, 1998.

LABOR CODE SECTION 6404.5 Smoking in Places of Employment Prohibited - Exceptions
(Source: www.leginfo.ca.gov 10/10/97)

6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need for local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a "place of employment" pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products.

(b) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment.

(c) For purposes of this section, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally if he or she has taken the following reasonable steps to prevent smoking by a nonemployee:

(1) Posted clear and prominent signs, as follows:

   (A) Where smoking is prohibited throughout the building or structure, a sign stating "No smoking" shall be posted at each entrance to the building or structure.
   (B) Where smoking is permitted in designated areas of the building or structure, a sign stating "Smoking is prohibited except in designated areas" shall be posted at each entrance to the building or structure.
(2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace.

For purposes of this subdivision, "reasonable steps" does not include (A) the physical ejection of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee.

(d) For purposes of this section, "place of employment" does not include any of the following:

1. Sixty-five percent of the guest room accommodations in a hotel, motel, or similar transient lodging establishment.
2. Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking by the establishment. Such an establishment may permit smoking in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, "lobby" means the common public area of such an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment's guests and members of the public typically congregate.
3. Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking is not permitted in such a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking in corridors and prefunction areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area on other than a passing basis.
4. Retail or wholesale tobacco shops and private smokers lounges. For purposes of this paragraph:
   A. "Private smokers lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.
   B. "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.
5. Cabs of motor trucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no nonsmoking employees are present.
6. Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than 100,000 square feet of total floor space, and 20 or fewer full-time employees working at the facility, but does not include any area within such a facility that is utilized as office space.
7. Gaming clubs, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "gaming club" means any gaming club, as defined in Section 19802 of the Business and Professions Code, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under 18 years of age.
8. Bars and taverns, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. "Bar or tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, "bar" or "tavern" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.
9. Theatrical production sites, if smoking is an integral part of the story in the theatrical production.
10. Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.
11. Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present.
12. Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.
13. Breakrooms designated by employers for smoking, provided that all of the following conditions are met:
   A. Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building.
The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

The smoking room shall be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this paragraph, "work responsibilities" does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied.

There are sufficient nonsmoking breakrooms to accommodate nonsmokers.

Employers with a total of five or fewer employees, either full-time or part-time, may permit smoking where all of the following conditions are met:

(a) The smoking area is not accessible to minors.
(b) All employees who enter the smoking area consent to permit smoking. No one, as part of his or her work responsibilities, shall be required to work in an area where smoking is permitted. An employer who is determined by the division to have used coercion to obtain consent or who has required an employee to work in the smoking area shall be subject to the penalty provisions of Section 6427.
(c) Air from the smoking area shall be exhausted directly to the outside by an exhaust fan. Air from the smoking area shall not be recirculated to other parts of the building.
(d) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency. This paragraph shall not be construed to (i) supersede or render inapplicable any condition or limitation on smoking areas made applicable to specific types of business establishments by any other paragraph of this subdivision or (ii) apply in lieu of any otherwise applicable paragraph of this subdivision that has become inoperative.
(e) Paragraphs (13) and (14) of subdivision (d) shall not be construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.
(f) (1) Except as otherwise provided in this subdivision, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), until the earlier of the following:
   b. The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.
   c. If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1998, smoking may thereafter be permitted in gaming clubs and bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.
   d. If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1998, the exemptions specified in paragraphs (7) and (8) of subdivision (d) shall be inoperative on and after January 1, 1998, until such a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve
compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(4) From January 1, 1997, to December 31, 1997, inclusive, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), subject to both of the following conditions:

(A) If practicable, the gaming club or bar or tavern shall establish a designated nonsmoking area.

(B) If feasible, no employee shall be required, in the performance of ordinary work responsibilities, to enter any area in which smoking is permitted.

(g) The smoking prohibition set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100 percent of) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(h) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment for any reason.

(i) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100 percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100 percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, any area not defined as a "place of employment" or in which the smoking is not regulated pursuant to subdivision (d) or (e), shall be subject to local regulation of smoking of tobacco products.

(j) Any violation of the prohibition set forth in subdivision (b) is an infraction subject to subdivision (d) of Section 17 of the Penal Code and, notwithstanding Section 19.8 of the Penal Code, is punishable by a fine not to exceed one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second violation within one year, and five hundred dollars ($500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies including, but not limited to, local health departments, as determined by the local governing body.

(k) Notwithstanding Section 6309, the division shall not be required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (j) of a third violation of subdivision (b) within the previous year.

(l) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision of application, and to this end the provisions of this act are severable.
SMOKING ORDINANCE

Chapter 8.68

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8.68.010 Purpose and findings.

The city council finds that the smoking of tobacco, or any other weed or plant, is a medically documented danger to health and a material annoyance, inconvenience, discomfort and health hazard to those who are present in confined spaces, and in order to reduce exposure to environmental tobacco smoke and to serve the public health, safety and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco, or any other weed or plant, in public places and places of employment as stated and required in this chapter. (Ord. C-7955 § 1, 2004).

8.68.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be given the following definitions:

A. "Adjacent water areas" shall mean fifty feet (50') seaward of the mean high tide line of the city beaches.

B. "Bar" means an area which is devoted to serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages. Bar shall also include a nightclub or cabaret where entertainment and/or dancing are provided in addition to the consumption of alcoholic beverages or food.

C. "Beach bike path" shall mean that portion of the bike path located on the sand areas of the beach from the eastern edge of the Long Beach Shoreline Marina parking lot at approximately Alamitos Avenue easterly to the southeastern corner of the intersection of Ocean Boulevard at approximately Bayshore Avenue.

D. "Beach launch ramps" shall mean the launch ramps located at the foot of Claremont Avenue and Granada Avenue.

E. "Childcare facility" means any location or portion thereof where children other than those of the owner, operator or proprietor are cared for or supervised in exchange for anything of value.

F. "Cigar" shall have the same definition as California Health and Safety Code section 104550, as currently defined or as may be amended.

G. "Cigarette" shall have the same definition as California Health and Safety Code section 104556 as currently defined or as may be amended.

H. "City facility" means any enclosed structure wherever owned or used by the city of Long Beach for its operations or activities.

I. "City vehicle" means any vehicle owned and operated by the city for public purposes.
J. "Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit.

K. "Employer" means any person who employs the services of any person other than himself or herself.

L. "Enclosed" means closed in by a roof and four (4) walls with appropriate openings for ingress and egress but does not include areas commonly described as public lobbies.

M. "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.

N. "Playground", for purposes of California Health and Safety Code section 104495, is more specifically defined to mean twenty five feet (25') from the edge of a sand area within a city park or recreational area specifically designed to be used by children and that has play equipment installed in it.

O. "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, auditoriums, gymnasiums, waiting rooms, reception areas, educational facilities, health facilities, public transportation facilities, bowling alleys, bingo parlors, hair salons, laundromats, gaming clubs, bars, taverns, hotel and motel lobbies. A private residence is not a "public place", except that the enclosed common areas of apartment or condominium structures, if any, shall be considered "public places" for purposes of section 8.68.060.

P. "Service line" means an indoor line or area in which persons await service of any kind, regardless of whether or not such service involves the exchange of money. Such service shall include, but is not limited to, sales, providing information, directions, or advice and transfers of money or goods.

Q. "Smoke" or "smoking" shall mean the carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar or cigarette of any kind, including, but not limited to, tobacco, or any other weed or plant.

R. "Workplace" means any enclosed area of a structure or portion thereof occupied by any entity and frequented by employees during the normal course of their employment where clerical, professional, manufacturing, business services or other normal and customary activities of the entity are performed or where other work is done at that location. Workplace also includes, but is not limited to, spaces in office buildings, medical office waiting rooms, libraries, museums, gaming clubs, bars, taverns, employee lounges, employee breakrooms, conference rooms, and employee cafeterias. A private home is not a workplace, except where such home is used as a "childcare facility" as defined in subsection 8.68.020.E. (Ord. ORD-05-0015 § 1, 2005: Ord. C-7955 § 1, 2004).

8.68.030 Smoking prohibited-Elevators.
Smoking is prohibited and is unlawful within elevators in buildings generally used by and open to the public, including elevators in office, hotel and multi-family buildings. (Ord. C-7955 § 1, 2004).

8.68.040 Smoking prohibited-Hospitals, healthcare facilities and childcare facilities.

A. Smoking is prohibited in public areas of healthcare facilities and hospitals, as defined in section 1250 of the California Health and Safety Code.

B. "Staff and visitor smoking prohibited" signs shall be conspicuously posted in public areas of healthcare facilities.

C. Smoking is prohibited in all childcare facilities as defined in subsection 8.68.020.E. (Ord. C-7955 § 1, 2004).

8.68.050 Smoking prohibited-Public meeting rooms.

Smoking is prohibited and is unlawful in public meeting rooms, hearing rooms, conference rooms, chambers and places of public assembly in which public business is conducted, when the public business requires or permits direct participation or observation by the general public. (Ord. C-7955 § 1, 2004).

8.68.060 Smoking prohibited-Enclosed public places.

Smoking is prohibited and is unlawful in every enclosed "public place" as defined in subsection 8.68.020.O. Every owner, manager or operator of such facility shall post signs conspicuously in the premises stating that smoking is prohibited within the "public place" as defined in section 8.68.020 and in the case of motion picture theaters, such information shall be shown upon the screen for at least five (5) seconds before showing feature motion pictures. (Ord. C-7955 § 1, 2004).

8.68.065 Smoking prohibited-City beaches, beach bike path and beach launch ramps.

Smoking shall be prohibited on all sand areas and adjacent water areas of city beaches, the beach bike path and beach launch ramps, with the exception of designated outdoor dining areas or permitted beach concessions and permitted activities, including, but not limited to, filming and/or special events. (Ord. ORD-05-0015 § 3, 2005).
8.68.070 Smoking prohibited—Public restrooms.

Smoking is prohibited and is unlawful in public restrooms. (Ord. C-7955 § 1, 2004).

8.68.080 Smoking prohibited—Indoor service lines.

Smoking is prohibited and is unlawful in indoor service lines in which more than one person is giving or receiving services of any kind. (Ord. C-7955 § 1, 2004).

8.68.090 Smoking prohibited—Eating establishments and bars.

A. Smoking is prohibited and is unlawful in every publicly or privately owned enclosed coffee shop, cafeteria, short order cafe, luncheonette, sandwich shop, soda fountain, restaurant, gaming club, bar, tavern, or other eating establishment serving food.

B. Establishments, as defined in subsection A of this section, which maintain an outdoor seating area shall maintain a contiguous no smoking area of not less than two-thirds (2/3) of both the outdoor seating capacity or the outdoor floor space in which customers are being served. (Ord. C-7955 § 1, 2004).

8.68.100 Smoking prohibited—Retail food production and marketing establishments.

Smoking is prohibited and unlawful in any retail food marketing establishments including grocery stores and supermarkets. (Ord. C-7955 § 1, 2004).

8.68.110 Regulation of smoking in the workplace.

A. Smoking is prohibited in all workplaces in the city of Long Beach as defined in subsection 8.68.020.R.

B. Smoking is prohibited in conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways, elevators, cafeteria, lunchrooms, employee lounges, employee breakrooms, designated eating areas and common areas.

C. This section is not intended to regulate smoking in the following places and under the following conditions:

   1. A private home which may serve as a workplace except when used as a "childcare facility" as defined in subsection 8.68.020.E.
D. The provisions of sections 8.68.090 and 8.68.100 shall govern the public access areas of such facilities; however, such employers shall otherwise comply with provisions of this section 8.68.110. (Ord. C-7955 § 1, 2004).

8.68.120 Posting of signs required.

A. Except where other signs are required, whenever in this code smoking is prohibited, conspicuous signs shall be posted so stating, containing all capital lettering not less than one inch (1") in height on a contrasting background. It is the duty of the owner, operator, manager, or other persons having control of such room, building, workplace, or other place where smoking is prohibited, to post such signs or to cause such signs to be posted.

B. A warning sign must be posted at each sales counter and on each vending machine where tobacco products are sold. This warning sign must be posted in a place that can be clearly seen by the public, and the size and format of the warning sign shall comply with California Code of Regulations, title 17. (Ord. C-7955 § 1, 2004).

8.68.130 Structural modifications not required.

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

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

C. Nothing in this section shall relieve any person from the duty to post signs or adopt policies as required by this chapter. (Ord. C-7955 § 1, 2004).

8.68.140 Administration and enforcement.

A. The no smoking ordinance established by this chapter shall be administered by the department of health and human services.

B. Any person may register a complaint for an alleged noncompliance with this chapter with the department of health and human services. (Ord. C-7955 § 1, 2004).
8.68.150 Exemptions.

Any owner or manager of a business or other establishment subject to this chapter may apply to the city health officer for an exemption or modification to any provisions of this chapter due to unusual circumstances or conditions.
A. Such exemption shall be granted only if the city health officer finds from the evidence presented by the applicant for exemption at a public hearing that the applicant cannot comply with the provisions of this chapter for which an exemption is requested without incurring expenses for structural or other physical modifications, other than posting signs, to buildings and structures.

B. The applicant for an exemption shall pay concurrent with the application, the fee, as prescribed by resolution of the city council, to cover cost of the hearing and noticing of the hearing. (Ord. C-7955 § 1, 2004).

8.68.160 City facilities.

There shall be no smoking in any "city facility" as defined in subsection 8.68.020.H or in any "city vehicle" as defined in subsection 8.68.020.I or in any covered area of the Long Beach airport, notwithstanding any exception or exemption contained in any other provision of this chapter. (Ord. C-7955 § 1, 2004).

8.68.170 Tobacco products distribution.

A. No person or entity shall sell or otherwise distribute any cigarette or other tobacco product unless such cigarette or tobacco product is in the manufacturer's original package with all required health warnings.

B. No person or entity shall distribute or furnish without charge or cause or authorize distribution or furnishing of any cigarette or other tobacco product in any public place or at any event to which the public is invited unless such activity is authorized in a permit for staging of a special event which is subject to revocation for violation of the requirement of subsection A of this section.

C. The provision of subsection B of this section shall not apply to private functions or nightclubs, where minors are not present and such distribution is authorized by the proprietor. (Ord. C-7955 § 1, 2004).

8.68.180 Billboard advertising.

No person or entity shall place, establish, keep, maintain or locate any advertisement for any tobacco product on any billboard within five hundred feet (500') of or so oriented that the message portion of the sign is visible from any school, childcare center, nursery school, hospital, place of worship or recreational facility. (Ord. C-7955 § 1, 2004).
8.68.190 Violations and penalties.

Any person or entity violating any provision of this chapter is guilty of an infraction, and upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars ($100.00) for a first violation, two hundred dollars ($200.00) for a second violation within one year, and five hundred dollars ($500.00) for a third and for each subsequent violation within one year. (Ord. C-7955 § 1, 2004).

8.68.200 Retaliation.

No person shall discharge, refuse to hire, or in any other manner retaliate against any employee, applicant, or patron exercising any right or privilege created by this chapter. (Ord. C-7955 § 1, 2004).

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