



## STAFF REPORT

**Meeting Date:** December 6, 2016  
**To:** Honorable Mayor & City Council  
**From:** Kevin Kearney, Senior Management Analyst  
**Subject:** Request by Mayor Mirisch to Discuss Expanding the City's Smoking Regulations

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### INTRODUCTION

As a request by Mayor Mirisch, this report discusses expanding existing City smoking regulations in hotels, surrounding adjacent areas, and buffer distances from entrances. This report provides an overview of the smoking regulations adopted by the State of California and the City of Beverly Hills. If the Council wishes to expand current regulations then staff will research options, along with the pros and cons, and bring this back for further consideration.

### DISCUSSION

To protect and promote public health, the City of Beverly Hills regulates smoking in accordance with State law. Additionally, the City has adopted regulations to further define where smoking is permitted. The State limits smoking in a variety of locations, including hotels. The City has a number of regulations that may affect adjacent areas to the hotels which may include parks, plazas and community gardens.

#### *Smoking Regulations in Beverly Hills*

A summary of where smoking/vaping is permitted and not permitted is outlined in the following table:

| <b>Areas where Smoking is Not Permitted</b>                                                                                                                                                                                                                                                                                         | <b>Areas where Smoking is Permitted</b>                                                                                                                                                            |
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| <b>According to State Law:</b> <ul style="list-style-type: none"><li>• Inside public buildings</li><li>• Near windows of public buildings</li><li>• Outdoor areas within 20 ft. of public buildings</li><li>• Enclosed space at places of employment</li><li>• Public school property</li><li>• In a vehicle with a minor</li></ul> | <b>According to State Law:</b> <ul style="list-style-type: none"><li>• Designated hotel/motel rooms and areas</li><li>• Private smoker lounges</li><li>• Private single family residence</li></ul> |

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| <b>According to City Regulations:</b> <ul style="list-style-type: none"><li>• City parks and recreational facilities</li><li>• Open air dining areas located on private and public property, including public right of way</li><li>• Within 5 ft. of open air dining areas, except while actively passing by</li><li>• City-owned vehicles</li><li>• Outdoor public gathering events</li><li>• Outdoor service lines (e.g. ATM and movie/theatre ticket lines)</li><li>• Farmers Markets</li><li>• Public and private plazas (except for clearly marked designated smoking areas on private plazas located beyond 20 ft. of operable doors)</li></ul> | <b>Areas Currently Not Regulated:</b> <ul style="list-style-type: none"><li>• Sidewalks</li><li>• Alleyways</li><li>• Beyond 5 ft. of outdoor dining areas</li><li>• Beyond 20 ft. of operable doors and windows of public buildings</li></ul> |
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Smoking within the radius of a hotel may be affected by the regulations for open air dining, city parks and plazas, depending on a hotel's location and surrounding area. The City currently regulates smoking within five feet of open air dining areas, except while actively passing through. Additionally, smoking is not permitted in city parks, and public and private plazas, unless there is a designated smoking area beyond 20 feet of operable doors.

One of the areas where smoking is not currently regulated is in multi-unit housing. During the August 16, 2016 Study Session, the City Council decided to pursue a policy regulating smoking for multi-unit housing. The Council tasked the Health and Safety Commission with the project and to report back on findings and recommendations to the Council at a subsequent meeting. Currently, the Commission is actively working through the nuances of a policy and is hosting meetings to solicit community input. It is anticipated that the Commission's findings, recommendations and a proposed ordinance may be heard at a Council Study Session meeting sometime in early 2017.

#### *State Codes Regulating Smoking in Hotels*

The California State Labor Code Section 6404.5 regulates smoking in hotels. The State Labor Code regulates tobacco usage in certain indoor workplaces and in places of employment, with certain exceptions. These "smoke-free laws" prohibit smoking of tobacco products in public buildings, school campuses, places of employment, retail food facilities, among others. The Code also regulates smoking in lobbies, lounges, waiting areas, elevators, stairwells and restrooms. Although the Code outlines the various locations, there are a number of exemptions from the workplace smoking prohibition.

Up until recently, exemptions to Labor Code Section 6404.5 included hotel and motel lobbies that meet certain size requirements, meeting and banquet rooms in hotels or motels. Additionally, it allowed hotels, motels and similar lodging establishments to designate up to 65% of their guestrooms as "smoking". On May 4, 2016, the California State Assembly passed ABX2-7, which amended Labor Code Section 6404.5. The Bill reduced the amount of guestrooms hotels could designate as "smoking" to 20%, and now prohibits the smoking of tobacco products indoors in hotel or motel lobbies and meeting and banquet rooms.

Meeting Date: December 6, 2016

This Labor Code section also imposes an infraction, punishable by a fine. It requires local health departments and law enforcement agencies to enforce these provisions, unless an employer has been found guilty of three or more violations. After the third violation, the Division of Occupational Safety and Health would be required to investigate the issue.

### **FISCAL IMPACT**

At present, the fiscal impacts of a policy regulating smoking in hotels are unknown. Additional time will certainly need to be allocated for the study of a policy design and implementation.

### **RECOMMENDATION**

It is recommended that the City Council review this report and determine where to expand existing regulations. If the City should study a policy that further regulates smoking in hotels and adjacent areas beyond the current State and City regulations, then a survey of hotels within the City could be conducted regarding their current smoking policies. Additionally, outreach could also be performed with the Conference and Visitors Bureau, Chamber of Commerce and affected businesses to receive their input. The City Council could also refer this item to the Health and Safety Commission for further analysis.

Pamela Mottice-Muller *PMM*  
Approved By