CITY OF BEVERLY HILLS
STAFF REPORT

Meeting Date: May 6, 2008

To: Honorable Mayor & City Council

From: Daniel E. Cartagena, Assistant to the City Manager

Subject: 90210 Fresh Air Dining Ordinance Assessment Report

Attachments:
1. 90210 Collateral Materials
2. Restaurant and Hotel Survey
3. List of California Cities with Local Smoking Ordinances

INTRODUCTION

In May 2007, the City Council adopted an ordinance prohibiting smoking in restaurants and hotels with open air dining areas throughout the City. This ordinance became effective on October 1, 2007. On October 1st, restaurant patrons and hotel guests could no longer smoke cigarettes, cigars or pipes in open air areas where food and beverages were consumed. This ordinance affected open air dining areas located on private property, open air dining areas on the public right-of-ways and portions of the pool deck areas for those hotels with pools.

At the time the ordinance was adopted, the City Council directed staff to monitor and evaluate the potential effects of the ordinance and to report back by May 31, 2008. In particular, the City Council requested the evaluation concentrate on and compare financial and other impacts of the 4th Quarter of 2007 (October 1 to December 31, 2007) to the 4th Quarter in 2006. The evaluation was to be based on empirical data, proactive outreach and other inquiries, comments or opinions received by the City.

To maximize awareness, the City put in place numerous options to receive comments and opinions:

- Staff contact information was included in the press release circulated to the media
- For ease and convenience, a 24-hour telephone hotline number and an email address was provided.
- A restaurant survey was circulated inviting comments.

- Telephone interviews were conducted to discuss the effects of the ordinance on hotel occupancy.

This report will broadly detail the feedback from restaurants, hotels, economic partners, visitors and residents and will present the State sales tax data covering the 4th Quarter 2007.

DISCUSSION

Regardless of the measurement, the 90210 Fresh Air Ordinance has been successfully accepted by businesses, patrons, guests and residents in the City. Further, the City's hospitality industry remains competitive and attractive to diners and visitors despite the option to dine in neighboring cities that allow smoking in outdoor dining areas.

The acceptance of the 90210 Fresh Air Dining Ordinance can be attributed to the foresight of the City Council in supporting a program that:

- Invested in a marketing campaign to develop awareness of the new ordinance and educating businesses and the public of the overall benefits
- Proactively pursued comments and responses from businesses and the public
- Directing staff to evaluate, assess and provide a report on the ordinance

90210 Fresh Air Dining Marketing Program

When the City Council adopted the ordinance, it also approved the development of a marketing program based on the following objectives:

1. To educate the public of the new ordinance
2. To promote awareness of Beverly Hills as an outdoor dining destination.

The City hired M&C Saatchi to develop an extensive marketing campaign. M&C Saatchi branded the program with one of the most recognized zip codes in the world, enhancing it with a bold and dynamic look based on health and the environment. The Program was branded as the "90210 Fresh Air Dining" program. The components included:

- Newspaper Ads – were placed in each of the City's community newspapers
- Banners – were posted on major streets and intersections
- Postcards – were mailed out to all residents
- Parking Lot Posters – were posted at entrances of each City parking structures
- Elevator Clings – were affixed to elevator doors in City parking structures
- Window Clings – were provided to restaurants with outdoor dining
- Regulatory No-Smoking Signs – were provided to restaurants with outdoor dining
- Informational packets – were provided to restaurants offering open air dining
- 90210 materials were distributed to shoppers at the Farmer's Market
- City Council hosted a media event at Porta Via Restaurant
- T-Shirts were made available at the media event

The 90210 Campaign was rolled-out in mid-September and remained in place until November 1, 2007. The campaign captured the attention of many traveling in and through the City. The public's immediate response was upbeat and positive. The appeal of the new logo and the clear message in the tagline were well received.

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Evaluation

Telephone and email messages

The City received local news coverage on Monday, October 1st, the first day that the ordinance went into effect. This turned out to be the day that the City received its highest single day total of telephone calls and emails: eight telephone calls and four emails. For the duration of the evaluation period, the volume of calls and emails declined steadily. By the middle of October, the City averaged one call or one email per week. By December, calls and emails had nearly stopped entirely. Table 1, lists the breakdown of the total number of calls and emails received during the 4th Quarter 2007.

Table 1 – *Summary of Telephone & Email Contacts: October 1 – December 31, 2007*

	Comments	Questions	Complaints	Total
Telephone Calls	8	8	1	17
Email Messages	9	4	1	14

As noted, only two complaints were received out of the 31 contacts with the City.

Code Enforcement

Of the two complaints received, one was referred to Code Enforcement. The second was handled by staff from the City Manager's Office. Code Enforcement forwarded a letter advising the business of the new ordinance. No other follow-up was required. The second complaint centered on smoking taking place on a bench located outside of an establishment. The bench was not permitted and the owner was asked to remove it and was instructed to apply for a permit through the planning department.

Business Outreach

Staff pursued two primary methods of outreach:

1. Individual business contacts
2. Restaurant survey

The General Managers from each of the City's hotels was contacted to discuss the ordinance and gauge the effects it had with hotel bookings. The comments received were mixed. Some hotels expressed enthusiasm and positive support for the ordinance. Other General Managers expressed the opposite indicating their restaurants experienced a measurable drop in business. A few of the hotels that do not have a pool deck areas reported the difficultly of locating a designated smoking area. Of these, only one hotel indicated this to be a challenge to its business.

The Chamber of Commerce met with Mayor Brucker on April 21st and shared its perspective of the ordinance. The Chamber reported it received few comments from restaurateurs since the ordinance went into effect. Of those received, three restaurants with sizable international clientele expressed a preference to allow patrons dining outdoors to smoke. However, it was indicated these sentiments were not portrayed as opposition to the ordinance.

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Restaurant Survey

In February 2008, a survey was mailed out to each of the 189 restaurants in the City. The City received an 18% response or 32 completed surveys. Survey questions focused on impressions of any change in business from the 4th Quarter 2006 to 4th Quarter 2007.

Table 2, summarizes the responses to each question listed in the survey. Of the responses, 17 of the businesses indicated that business remained the same or increase substantially. The Fresh Air Dining Ordinance was credited by 4 of these businesses for this increase. Alternatively, 15 businesses reported a decrease, of which, only four pointed to the Fresh Air Dining Ordinance as the reason for the decrease. Many restaurant owners identified the general economic climate as a significant factor on their business. (Please note some restaurants checked more than one box to a question or left blank. Consequently, number of responses does not add-up to the number of surveys received)

Table 2 – *Summary of Survey Responses*

Did your 4th Quarter 2007 business increase or decrease in comparison with the 4th Quarter of 2006?

	Increased Substantially	Increased Somewhat	Remained the same	Decreased Somewhat	Decreased Substantially
Responses	4	6	7	8	7

If your business has increased in the 4th Quarter of 2007, to what do you attribute that?

	Good Holiday Sales	Fresh Air Smoke-Free Dining	Proprietary Business Practice or Activity	General Economic Climate	Other Factor (Please Explain)
Responses	2	4	5	3	1

If your business decreased in the 4th Quarter of 2007; to what do you attribute that?

	Slow Holiday Sales	Fresh Air Smoke-Free Dining	Proprietary Business Practice or Activity	General Economic Climate	Other Factor (Please Explain)
Responses	5	4	2	11	7

Sales Tax Analysis

4th Quarter 2007 General Economic Conditions

Overall, Beverly Hills restaurant sales remained strong in 2007. The same can be said in a 4th Quarter-to-4th Quarter comparison. This was true despite the second half of 2007 turning-out to be a pivotal point for the local, regional, state and national economies.

The housing bubble burst forecast earlier in the year began to emerge. The term "sub-prime" became the short descriptor of the economic times. Moreover, in September 2007, news reports began mentioning a slowdown in the economy. The Los Angeles Business Journal reported that UCLA's Anderson Forecast predicted the state's

economy is in for a rough 18 months, due to sluggish job growth, a rise in unemployment and stagnant growth of personal income.

In November two events could have greatly affected the City's hospitality industry. The first was the Writers' Guild of America strike. The second was the beginning of a cold and wet winter. Individually or combined, the two had the potential to impact business.

Despite these local economic factors, City restaurant sales continued to grow. One favorable reason was the strength of foreign currency to the US Dollar, particularly the Euro. Southern California and Beverly Hills remained a popular destination to European tourist due to strength of their buying power.

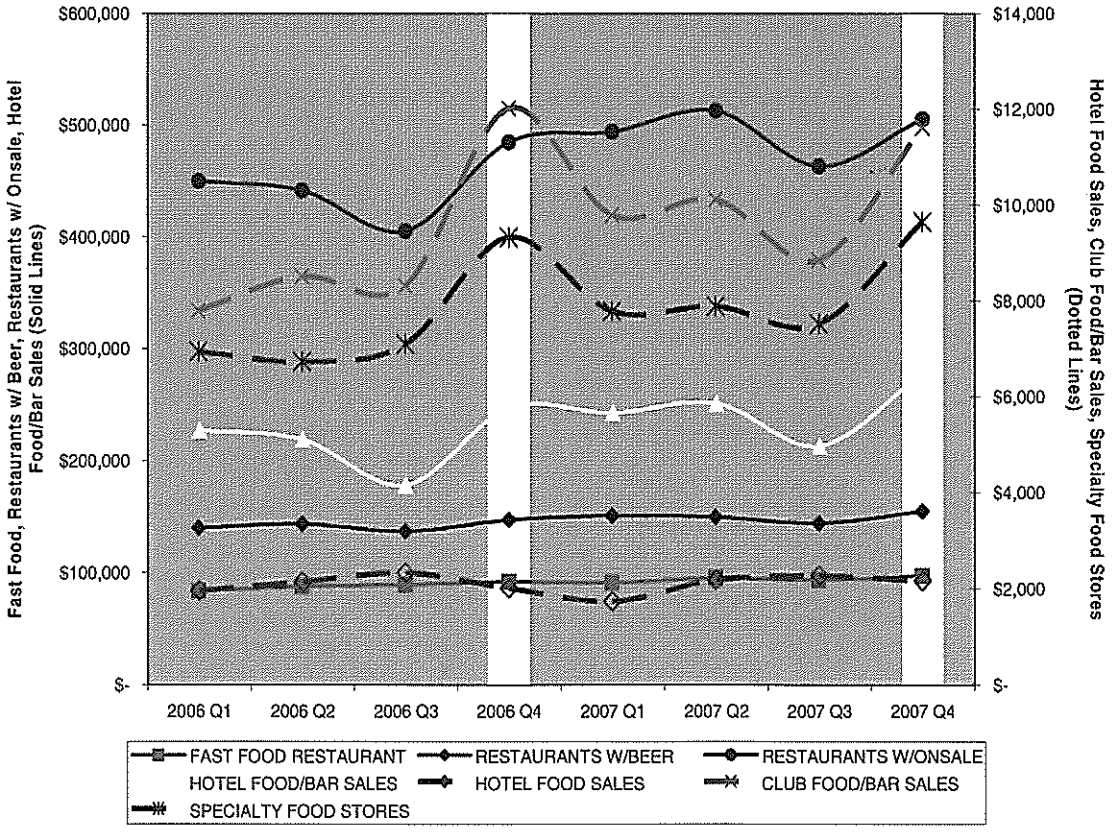
4th Quarter 2007 State Sales Tax Data

In preparation for this staff report, the City's financial consultant was requested to provide a report containing sales tax data broken-down in the following manner:

- Quarterly sales tax data for all of 2007
- Quarterly sales tax data for all of 2006
- Total annual sales tax data for 2007
- Total annual sales tax data for 2006
- Sales tax 2006 and 2007 reported by all restaurants and hotels

As indicated in Table 3, all segments of the businesses with a food production code remained steady or experienced growth.

Table 3 – *Sales Tax comparing 4th Quarter 2007with 4th Quarter 2006 (in yellow)*



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In 2007, an overwhelming number of businesses experienced an increase in sales. There were instances where restaurants experienced a drop in sales in 2007. Yet a connection between the drop in business and 90210 Fresh Air Dining Ordinance could not be established. Other economic factors such as those described above are more likely to have had a stronger impact.

Of the survey responses indicating a decline in business, staff reviewed the sales tax data and was unable to substantiate the assertion. Seven restaurants reported that their business had decreased substantially in the 4th Quarter 2007. However, State sales tax data didn't support these claims. Only three of the businesses reported fewer sales in 4th Quarter 2007 than in 4th Quarter 2006. Of these, two experienced less annual sales from 2007 to 2006.

In sum, the City's hotels and restaurants overcame significant economic hurdles that materialized during the evaluation period. The City's hospitality industry remains strong. No doubt this is due to the world-class appeal, ambiance, vibe and cuisine that can be found only in Beverly Hills. The 90210 Fresh Air Dining Ordinance has been embraced by the public and business alike producing lasting benefits for workers, patrons and the businesses, themselves. With the elimination of second-hand smoke, a healthier and more pleasant environment is created maximizing the enjoyment of a dining experience in Beverly Hills.

FISCAL IMPACT

The City Council appropriated $150,000 to develop a marketing program. The total spent on this effort was $96,839.

RECOMMENDATION

As directed by the City Council the analysis of the ordinance has been completed. Staff recommends that the City continue its efforts advocating for a statewide law that would ban smoking in all restaurants with open air dining areas.

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Daniel E. Cartagena
Approved By

BEVERLY HILLS DINING IS NOW SMOKE-FREE

90210

NO SMOKING
WITHIN 5 FEET OF
OPEN AREA DINING
BHMC 5-4-2
NO SMOKING
BHMC 5-4-2

City of Beverly Hills Survey

1. **Did your fourth quarter 2007 business increase or decrease in comparison with the fourth quarter of 2006?**

Increased Substantially	[ ]	Increased Somewhat	[ ]	Remained the same	[ ]	Decreased Somewhat	[ ]	Decreased Substantially	[ ]

2. **If your business has increased in the 4th Quarter of 2007, to what do you attribute that?**

Good Holiday Sales	[ ]	Fresh Air Smoke-Free Dining	[ ]	Proprietary Business Practice or Activity	[ ]	General Economic Climate	[ ]	Other Factor (Please Explain)	[ ]

Explain: _____

3. **If your business decreased in the 4th Quarter of 2007; to what do you attribute that?**

Slow Holiday Sales	[ ]	Fresh Air Smoke-Free Dining	[ ]	Proprietary Business Practice or Activity	[ ]	General Economic Climate	[ ]	Other Factor (Please Explain)	[ ]

Explain: _____

4. **Smoke-free dining has been in effect for 6 months; how do you feel about the experience to date?**

_____

_____

_____

Company Name: _____

Contact Name: _____ Phone Number: _____ email: _____

Return Survey to: Daniel Cartagena • City of Beverly Hills • 455 N. Rexford Drive • Beverly Hills, CA 90210

CBH - City Council Study Session - 05/06/2008

ANRF AMERICAN NONSMOKERS' RIGHTS FOUNDATION
Defending your right to breathe smokefree air since 1976

California Municipalities with Smokefree Outdoor Dining Laws

as of January 2, 2008, by date of enactment

This list includes those municipalities that have enacted laws for 100% smokefree outdoor dining areas. The list does not include those municipalities that have restricted smoking to certain parts or percentages of outdoor dining areas.

Municipality	State	Enactment Date
1. Belmont	CA	August-1993
2. Pleasanton	CA	October-1993
3. Tuolumne County	CA	November-1994
4. Berkeley	CA	September-1996
5. Arcata	CA	June-1997
6. Alameda County	CA	July-1997
7. Dublin	CA	October-2002
8. Reedley	CA	May-2003
9. Laguna Woods	CA	August-2004
10. Laguna Hills	CA	January-2005
11. Calabasas	CA	February-2006
12. Chula Vista	CA	June-2006
13. Santa Rosa	CA	July-2006
14. Santa Monica	CA	October-2006
15. Contra Costa County	CA	October-2006
16. Marin County	CA	November-2006
17. Emeryville	CA	December-2006
18. Beverly Hills	CA	May-2007
19. Temecula	CA	May-2007
20. Blue Lake	CA	June-2007
21. Newark	CA	July-2007
22. El Cajon	CA	August-2007

While ANRF has been tracking smokefree laws since the mid-1980s, we didn't start tracking smokefree outdoor dining laws until recently, when these laws became more common. We will continue to review older laws that may have contained these specific provisions, and to update this list to reflect our findings. If you know of a smokefree outdoor dining law that is not currently listed here, please contact ANRF at (510) 841-3032 or anr@no-smoke.org.

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