

MEMORANDUM

DATE: October 22, 2010
TO: Outdoor Smoking Task Force Members
FROM: Maribel Louie, Economic Development Analyst
RE: DRAFT OUTDOOR SMOKING ORDINANCE

Attached is a draft staff report outlining the issues the City Council asked us to examine further at the September 7, 2010 City Council meeting.

At the meeting on Wednesday, October 27, 2010 we will examine each item as outlined in the draft staff report and will seek your input on the staff recommendations. The Task Force's discussion will be included in the final staff report that will be presented to City Council.

CITY COUNCIL
UNFINISHED BUSINESS

NOVEMBER 15, 2010

SUBJECT: ORDINANCE AMENDING THE CITY OF WEST
HOLLYWOOD MUNICIPAL CODE TO PROHIBIT SMOKING IN
OUTDOOR DINING AND OTHER PUBLIC AREAS

INITIATED BY: CITY MANAGER'S DEPARTMENT
(Paul Arevalo, City Manager)

ECONOMIC DEVELOPMENT & SPECIAL PROJECTS
DIVISION
(Jeffrey Huffer, Manager)
(Maribel R. Louie, Analyst)

STATEMENT ON THE SUBJECT:

The City Council will consider approving an ordinance to prohibit smoking in outdoor dining areas and other public areas in the City.

RECOMMENDATIONS:

1. Receive and file draft ordinance amending the City of West Hollywood Municipal Code to prohibit smoking in outdoor dining and other public spaces.
2. Provide staff with direction on remaining items for incorporation into the draft ordinance.
3. Schedule first reading of the ordinance for December 6, 2010.
4. Direct Public Information Office to work with Social Services and health service providers to develop an education campaign to inform the public of the dangers of smoking and resources in the community available to help them quit, including harm reduction models and return to the Council within 90 days with a plan and proposed budget.
5. Direct Economic Development to work with the City's business partners to explore an incentive plan that would encourage businesses that are exempt from the ordinance to prohibit smoking in their establishments and report back to the City Council in 90 days after ordinance becomes effective.

BACKGROUND

On December 21, 2009 the City Council directed the City Attorney to draft a comprehensive ordinance prohibiting smoking in outdoor patios and open air spaces. The Council also directed the City Manager to convene a Task Force comprised of members of the community interested in participating in discussions about how the ordinance should be structured and implemented.

On September 7, 2010 the City Council received a report on the Task Force deliberations and was presented with a set of questions of outstanding issues to be considered. The items presented below were identified as areas that required further study. Additional information is provided for the Council’s deliberation and direction.

The City convened a Task Force meeting on October 27, 2010 to review the draft ordinance and consider the items that required further study. Their input has been incorporated into this staff report.

Buffer Zones

Buffer zones are the zones immediately adjacent to areas where smoking is prohibited. Buffer zones provide additional protection for patrons by minimizing the chance that second-hand smoke will be blown inadvertently into a designated non-smoking area.

Buffer zones vary from as little as 5 feet to as high as 20 feet. The following table outlines how other cities have applied buffer zones into their ordinances.

CITY	BUFFER ZONE
City of Los Angeles	<ul style="list-style-type: none">• 10 ft. buffer zone around outdoor dining areas• An outdoor dining area does not include an area that is contiguous to a bar, or a nightclub that requires its patrons be eighteen or older.• Does not apply to smokers passing by
Culver City	<ul style="list-style-type: none">• 5 ft. buffer zone around outdoor dining areas• Also created an Outdoor Bar Patio Definition which exempts outdoor patios of bars.• Does not apply to smokers passing by
Beverly Hills	<ul style="list-style-type: none">• 5 ft. buffer zone around outdoor dining areas• Does not apply to smokers passing by

Task Force Deliberation: (to be filled in after Oct. 27th Task Force meeting)

Staff Recommendation: Designate a five (5) foot buffer zone around outdoor dining areas and service areas.

Outdoor Patio Areas at Hotels

The City of West Hollywood is home to eighteen (18) hospitality venues in the City, including hotels, motels and inns. Of those eighteen (18), there are thirteen (13) venues that have pools. Most hotels offer some level of poolside food service. The City of Beverly Hills is the only City to have allowed special considerations for hotels.

CITY	HOTELS
City of Los Angeles	<ul style="list-style-type: none"> All restaurants are included in its ordinance. No distinction is made for restaurants in hotels.
City of Beverly Hills	<ul style="list-style-type: none"> Allows 25% of contiguous deck space to be exempt from the ordinance. More information below.
City of Santa Monica	<ul style="list-style-type: none"> Most major hotels are currently smoke-free. City is seeking to prohibit smoking in newly constructed hotel properties.

City of Beverly Hills

The City of Beverly Hills included hotels in its ordinance by allowing up to twenty-five (25%) of contiguous deck space surrounding hotel swimming pools to be exempt from the ordinance.

Since the City also included a five (5) foot buffer zone around outdoor dining areas, the twenty-five (25%) deck space would have to be a minimum of five (5) feet away from an outdoor dining area, should the hotel have a restaurant on its premises that was in close proximity to the pool area.

Enforcement – The City of Beverly Hills requires hotels that want to allow smoking poolside to submit a plan consisting of a letter and photos documenting their twenty-five (25%) designated smoking area to the City. That plan is then used by Code Enforcement to ensure hotels are otherwise complying with the ordinance.

Staff Recommendation:

Option 1: Do not allow food service in poolside areas where smoking is allowed.

Option 2: Do not allow smoking in poolside areas regardless of food service.

Option 3: Allow up to twenty-five percent of contiguous outdoor patio areas surrounding hotel swimming pools to be exempt from the ordinance, provided a minimum five (5) foot buffer zone around outdoor dining areas exists.

Enforcement: Require hotels to submit a smoking operations plan to Code Compliance that will be used for compliance purposes as well as place signage that indicates smoking is prohibited in areas surrounding the poolside area.

Task Force Deliberation: (to be filled in after Oct. 27 Task Force Meeting)

Restaurants

Staff was asked to consider allowing smoking and non-smoking designated areas where businesses have the opportunity to create distinctly separate areas. The

City's of Los Angeles, Culver City and Beverly Hills do not have provisions allowing for designated smoking areas in restaurants.

City of Glendale

The City of Glendale allows an owner, manager, or person in charge or control of an outdoor dining area to designate a portion of the premises adjoining outdoor area as a smoking permitted area, when the area meets all of the requirements listed in subsection (B) of its ordinance [outlined below].

A designated smoking permitted area:

1. Must represent a separate and discrete area of the outdoor dining area;
2. Must have a clearly marked boundary by using one (1) or more of the following means, including but not limited to, [a rope and stanchions; a knee or half wall, a row of planters, etc]
3. Must be identified by one (1) or more posted "Smoking Permitted" signs.
4. Must not comprise more than twenty-five (25%) percent of the premises' total outdoor seating capacity, calculating any fraction or partial number downward to the nearest whole number;
5. Must have all tables and chairs located;
 - a. Inside a physical barrier; or
 - b. The greatest distance practicable, but at least ten (10) feet away, from all tables and chairs in the indoor and outdoor nonsmoking areas, measured from the clearly marked boundary described in subsection (B)(2) and
 - c. At least twenty (20) feet away from an adjacent area or location of this chapter where smoking is prohibited; and
 - d. arranged so that they cannot be placed deliberately or inadvertently within the 10-foot separation area or outside of the physical barrier;
6. Must not allow secondhand smoke to enter into one (1) or more nonsmoking areas located on the same premises as the outdoor dining area's designated smoking permitted area; and
7. Must have at least one (1) smoker's waste receptacle on each table

Enforcement

8. An employee, owner, manager, or person in charge or control of an outdoor dining area shall ask a patron, before seating that person, whether the patron prefers seating in a smoking or nonsmoking part of the outdoor dining area.
9. An owner, manager, or person in charge or control of an outdoor dining area shall:
 - a. Maintain on the premises a plan or diagram of the outdoor dining area that depicts and describes the dimensions and layout of the outdoor dining areas.
 - b. Permit the neighborhood services administrator, or a designee, at any time, to:
 - i. Enter and inspect the premises and the outdoor dining area; and
 - ii. Examine and copy the plan or diagram that... this section requires.
10. If an owner, manager or person in charge or control of an outdoor dining area cannot satisfy all of the requirements listed ... the outdoor dining area is

entirely a nonsmoking area.

Staff Recommendation:

Allow any restaurant with a minimum of <insert> sq. ft. of outdoor patio space contained entirely within private property to designate up to 25% of contiguous space as a smoking area provided that distance to the non-smoking area meets the minimum buffer zone requirement for outdoor dining.

Enforcement: Should an option be approved to allow the designation of smoking areas, the business would be required to submit a smoking operations plan to the City for review and approval similar to that of the City of Glendale.

Task Force Deliberation: (to be filled in after Oct. 27 Task Force Meeting)

Bars & Nightclubs Exemption

At its September 7, 2010 meeting the City Council generally agreed that the ordinance should exempt bars and nightclub outdoor dining areas from the ordinance and allow smoking in these areas

One of the main difficulties with this exemption is how to identify which businesses function as a bar, which businesses function as a restaurant and which have characteristics of both. The two main operating characteristics that define a bar are that food service is typically subordinate to alcohol sales, and the establishment limits entry to persons of a certain age. Therefore to distinguish bars from restaurants, the draft ordinance indicates that if a bar/nightclub chooses to allow smoking, minors cannot be present at the establishment.

Staff Recommendation:

To simply enforcement of this distinction, staff recommends further clarification to require that any business exempt from the ordinance and allowing smoking in its outdoor dining area under the bar exemption cannot have minors present after 9:00 p.m. If a business allows minors entrance during all of its operating hours, it does not meet the definition of bar and cannot utilize the exemption.

Task Force Deliberation: (to be filled in after Oct. 27 Task Force Meeting)

Implementation

Staff was directed to provide the Council with a recommended timeline for implementation which would include a public education grace period and a phasing in of the ordinance requirements. A suggested timetable is provided below.

Staff Recommendation:

- **Effective Date of the Ordinance:** Thirty (30) days after it is approved by City Council. (Not all provisions take effect immediately)
- **Public Education Grace Period:** 90 days after date approved by City Council through January 1, 2012 at 6:00 a.m.
- **Public Education Notice Posted by Business:** Thirty (30) days from the ordinance effective date through January 1, 2012.

Signage must state:

” Beginning January 2, 2012 smoking is prohibited in the outdoor dining area of this business during its hours of operation, and within <insert buffer> of it, by order of the City of West Hollywood.

Want to quit? Contact the California Smokers Helpline 1-800-NO-BUTTS.”

- **Date by which required permanent signage must be posted by businesses:** The final day of the grace period, December 31, 2011.
- **When the no-smoking provisions take effect:** The day after the grace period ends January 2, 2012.

Task Force Deliberation: (to be filled in after Oct. 27 Task Force Meeting)

Enforcement

Enforcement of a smoking ordinance generally functions as a “self-enforcing” ordinance. It is expected that businesses and individuals will adhere to the new regulations if the City conducts an education and outreach program. A survey of local municipalities including Culver City, Santa Monica, Beverly Hills, and Calabasas revealed that enforcement is typically initiated by a customer who observes and reports a violating individual or business. In other cases, businesses inform customers of the new regulation and most individuals voluntarily comply. These cities report that while there may be a few businesses that refuse to comply initially, most businesses eventually comply.

This enforcement approach is similar to what the City of West Hollywood has experienced with the prohibition of indoor smoking. Generally, code compliance fields complaints that are submitted via a hotline or the website. Code compliance investigates the complaint, meets with the business and issues warnings, which are often enough to get businesses to comply with their responsibilities. If a violator becomes difficult or the situation escalates to a disturbance, the Sheriff’s department may be called to assist with those situations.

Staff Recommendation:

- Code compliance will field complaints through the City’s hotline from patrons or employees. The City will keep records to determine whether businesses consistently allow or encourage smoking to occur.
- The City will more aggressively monitor businesses that receive frequent complaints (i.e. no signage posted; ashtrays on tables; or documentation that employees are not warning people that smoking is prohibited) and cite violators as necessary.
- Businesses will be expected to do the following to comply with the ordinance:
 - Post required signage;
 - Inform customers who smoke that smoking is not allowed in the area and direct them to where smoking is allowed;
 - Should the customer refuse to stop smoking, the business should stop serving food and/or beverage to the customer;
 - Should the customer become difficult or the situation escalate, the business owner should call the Sheriff’s department for assistance.
 - Should the business find that customers frequently refuse to smoke, they should contact Code Compliance who will assist the business in developing a strategy to reduce incidents of non-compliant customers.

Signage requirements for businesses:

- 30 days after the ordinance is approved, the business must post temporary signage informing employees and customers that as of “date certain” smoking will be prohibited in the outdoor dining area.
- Once effective, the business must post permanent signage indicating that smoking is not allowed in the outdoor dining area.
- Signage specifications will be consistent with the existing smoking regulations (size, font, required information).
- Signage requirements will include instructions for businesses that are exempt or have designated smoking areas.

Task Force Deliberation: (to be filled in after Oct. 27 Task Force Meeting)

Comments on Draft Ordinance

Please note that the draft ordinance presented with this staff report is a strikethrough version and contains additional deletions that are necessary to remove some old provisions that duplicate state law, and may in some cases

require updates to the zoning code. Those updates will occur concurrently with the General Plan Update schedule.

CONFORMANCE WITH VISION 2020:

This item is consistent with *the Primary Strategic Goal and/or Ongoing Strategic Program* to **Actively Participate in Regional Issues**.

EVALUATION:

The goal of this amendment to the smoking ordinance is to decrease the public's exposure to second-hand smoke. This specific strategies to encourage people to stop smoking and will be evaluated on their effectiveness and include 1) an education and outreach campaign on the dangers of smoking and how to find resources to help quit smoking; and 2) improvements in quality of life indicators.

ENVIRONMENTAL SUSTAINABILITY AND HEALTH:

This ordinance will decrease exposure to secondhand smoke in public areas and improve overall air quality throughout the community. Over time, the impact can be measured through quality of life surveys conducted for air pollution, strength of smoking ordinances in place conducted by various health and environmental groups.

OFFICE OF PRIMARY RESPONSIBILITY:

City Managers Department - Economic Development & Special Projects Division

FISCAL IMPACT:

There is a strong perception that the ordinance prohibiting smoking in outdoor dining areas will result in a negative economic impact on the businesses, as customers would be driven away to cities where smoking is still allowed. By contrast, others contend that a smoke-free dining environment could generate more business from individuals who prefer smoke-free businesses.

Research analyzing the economic impact of indoor smoking bans suggests that there is more likely to be an economic benefit from creating smoke-free environments. The City of Beverly Hills is the only city known to have conducted an analysis of the economic impact of their outdoor smoking ban which, while limited in scope, shows there was a net economic benefit for most businesses

The City currently does not have comparative data to determine whether the economic impact would be positive or negative.

Attachments

- a. Draft ordinance prohibiting smoking in outdoor dining areas, patios and service areas.