


# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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Date: December 2, 2009

To: Honorable Members of the Los Angeles City Council

From: Gerry F. Miller   
Chief Legislative Analyst

Assignment No. 09-12-1799  
Council File No. 08-0923

Subject: Medical Marijuana Facilities & Policy Issues

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## SUMMARY

On November 24, 2009 you requested our office to provide a report relative to various unresolved policy issues relative to medical marijuana facilities. To address your request we met with staff from the Planning Department, the Police Department, and the Office of the City Attorney. The policy issues that you asked us to follow up are the following:

- (a) A potential cap on the number of collectives citywide.
- (b) A cap on the employee salary of medical marijuana dispensaries.
- (c) Restrictions to access patients records.
- (d) Amendments to allow patients to obtain medical marijuana at more than one location in emergency situations.
- (e) State law restricting smoking in nursing and long-term care facilities.
- (f) Audits of medical marijuana dispensaries.
- (g) Medical Marijuana Collective Request for Proposals (RFP) process.
- (h) Pre-Interim Control Ordinance (ICO) 186 Medical Marijuana Dispensaries.

## FINDINGS

### (a) Cap on the number of collectives Citywide:

Council directed us to look into placing a cap on the number of dispensaries Citywide either by Community Planning Areas of which there are 35 throughout the City, or by Police Department Divisions, of which there are 21 located in the four Police bureaus in the City (Central, South, Valley, and West).

Placing a cap on the number of dispensaries by Community Plan Areas is a feasible approach because its geographical boundaries do not change, and therefore, are more stable. The only instance where there would be a change to the boundaries of Community Plan Areas would be if the City were to expand its current geographical boundaries (469.3 square miles) through annexation.

In addition, placing a cap on the number of dispensaries by Community Plan Areas instead of Police Divisions avoids any over-concentration based on geography, inasmuch as there are more Community Plan Areas than Police Divisions. A cap on the number of dispensaries by Community Plan Areas would mitigate economic market forces from driving dispensary operators to certain areas of the City where commercial rental rates may be lower than in other more affluent geographical areas of the City. Therefore, caps by Community Plan Areas would provide a statistical distribution that is evenly distributed and not skewed to certain geographical sections of the City that may already be saturated with challenging land uses.

Planning Department Location Analysis:

We have reviewed the Community Plan Areas location analysis prepared by the Planning Department (Attachment 1) based on a 500-foot and 1000-foot radius from sensitive use areas. The Planning Department analysis presumes that medical marijuana dispensaries would locate in either commercial or industrial zones, resulting in approximately 18,000 acres citywide in which medical marijuana facilities could be located based on a 500-foot radius and approximately 12,000 acres based on a 1000-foot radius. However, it is important to consider Note 4 of Attachment 1, which states the acreage is likely overstated because the Planning Department's land use database does not include actual land uses. Since commercial zones allow residential uses by right and therefore may include residential and mixed uses buildings, the Planning Department would have to do a case-by-case review to determine if residential land uses exist within the specified radius.

While this information is useful as a guide for identifying the potential areas in which facilities may be located, both our office and the Planning Department conclude that this methodology, on its own, would not be useful in determining the number of potential medical marijuana facilities as it could yield thousands of locations.

Alternative Approach on Cap Using Statewide Data:

We obtained statistical data as to the total number of cities Statewide that have authorized medical marijuana dispensaries. This data was obtained from a January 18, 2007 report from the Police Commission to the Public Safety and Planning and Land Use Management Committees.

The data shows that the total Statewide population of all the cities (including Los Angeles) that authorize and have medical marijuana dispensaries is 6,003,870, with a total 1,235 square miles, and 247 dispensaries. Therefore, we used this base statistical information to arrive at the total potential 165 Citywide medical marijuana dispensaries based on population by using the following mathematical formula:

*"247 (total dispensaries Statewide) / 6,003,870 (total population of cities allowing dispensaries) = 4.11 (ratio of dispensaries per person) x 4,003,457 (Los Angeles population) = 165 (potential maximum number of medical marijuana dispensaries in Los Angeles)."*

We believe this is a reasonable approach for determining a cap of 165 dispensaries in the City. However, in discussions with the Planning Department and Police Department and as discussed earlier this report, the cap should be coupled with a limit in a geographical area so there is not an over-concentration of medical marijuana facilities in a single area. We concur with the Planning Department recommendation to use Community Plan Areas. Attachment 2 of this report identifies by Community Plan Area, the number of facilities that may be located in the area based on a cap of 165. We have also included for your information as Attachment 3 a distribution of the proposed 165 cap by Police Division.

As a matter of information, using the same calculation based on square miles (247 dispensaries in 1,235 square miles, 469 square miles in the City), it would yield a cap of 94 medical marijuana facilities in the City.

**(b) Medical Marijuana Employees & Salary Caps:**

Council directed us to look into placing a salary cap to limit the employee salaries of a medical marijuana establishments to ensure that compensation does not exceed industry standards for nonprofit organizations such as the United Way or other like entity. We contacted the City's Community Development Department (CDD) to find out if the City places salary caps on other non-profit entities.

CDD staff indicates that they enforce limits on salary and bonuses for executive level employees paid with Department of Labor (DOL) and Employment and Training Administration (ETA) funded programs only. This limit is established by the State Employment Development Department (EDD) in compliance with DOL and Workforce Investment Act requirements. The 2009 maximum annual salary/bonus amount is \$177,000, according to a directive released in July 2009. CDD does not limit recipient salaries beyond these requirements.

CDD reports that agencies may pay their employees more than this amount, but they cannot use DOL funds beyond the established limit. The Department further states that the DOL funded programs RFPs reference compliance with all DOL regulations, but do not specifically call out salary restrictions.

If the Council chooses to impose a salary cap, the draft ordinance could include the limit established by EDD or any other amount the Council may chose.

**( c ) Restrictions to access patients records:**

Pursuant to the adoption of Council Item 10D, the City Attorney has prepared a revised proposed ordinance addressing limited access to patient medical information held by medical marijuana collectives. The proposed ordinance language (revised November 30, 2009) is contained in sections 45.19.6.1 B [Definitions], 45.19.6.2 E [Registration Form], 45.19.6.4 [Maintenance of Records], and 45.19.6.6 [Inspection and Enforcement Responsibilities]. The various sections read as follows:

45.19.6.1 B [Definitions] - ***“Private medical record.”*** Documentation of the medical history of a qualified patient or person with identification card. *“Private medical records” shall not include the recommendation of an attending physician for medical marijuana for a qualified patient, an identification card, or the designation of a primary caregiver by a qualified patient or by a person with an identification card.*

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45.19.6.2 E [Registration Form] - ***E. Registration Form.*** Upon receipt of a Department of Building and Safety preinspection report and a Certificate of Occupancy verifying compliance with the standards set forth in Section 45.19.6.3 A of this article, and following compliance with the location priority status provisions set forth in Section 45.19.6.2 C of this article, the collective shall file a registration form with the Department of Building and Safety. The registration form shall require the following accurate and truthful information: the address and physical description (e.g., one-story commercial building, etc.) of the location at and upon which the collective is located; the name, telephone number, and address of a person authorized to accept service of process for the collective; the name(s), telephone number(s), and address(es) of each member engaged in the management of the collective; the onsite telephone number at the collective and the name of the member engaged in the management of the collective who is responsible for receiving, logging, and responding to complaints regarding the collective; and any other information reasonably required to show that the collective complies with this article.

In addition, the registration form shall confirm the consent by the collective, without requirement for a search warrant, subpoena or court order, for the inspection and copying by the Police Department of the recordings and records required to be maintained under Sections 45.19.6.3, 45.19.6.4, and 45.19.6.5 of this article, except that private medical records shall be made available by the collective to the Police Department only pursuant to a properly executed search warrant, subpoena, or court order.

45.19.6.4 [Maintenance of Records] - *A medical marijuana collective shall maintain records at the location accurately and truthfully documenting: (1) the full name, address, and telephone number(s) of the owner, landlord and/or lessee of the location; (2) the full name, address, and telephone number(s) of all members who are engaged in the management of the collective and the exact nature of each member's participation in the management of the collective; (3) the full name, address, and telephone number(s) of all patient members to whom the collective provides medical marijuana and a copy of every attending physician's recommendation or patient identification card;*

(4) the full name, address, and telephone number(s) of all primary caregiver members to whom the collective provides medical marijuana and a copy of every written designation(s) by the primary caregiver's qualified patient(s) or the primary caregiver's identification card; (5) written documentation of all circumstances under which the collective provided medical marijuana to a non-member, including but not limited to the recipient's full name, address, and telephone number, amount of medical marijuana received, and medical emergency justification; (6) all receipts of the collective, including but not limited to all contributions, reimbursements, and reasonable compensation, whether in cash or in kind, and all expenditures incurred by the collective for the cultivation of medical marijuana; (7) an inventory record documenting the dates, amounts, and content testing results of marijuana cultivated at the location, including the amounts of marijuana stored at the location at any given time; (8) a log documenting the date, nature, and response by the collective to all complaints received by the collective pursuant to Section 45.19.6.3 B.18 of this article; (9) a copy of the annual audit reports required pursuant to Section 45.19.6.5 A of this article; (10) the testing log required to be maintained pursuant to Section 45.19.6.5 C of this article; and (11) proof of registration with the Department of Building and Safety in conformance with Section 45.19.6.2 of this article, including evidence of an accepted registration form. These records shall be maintained by the collective for a period of five years and shall be made available by the collective to the Police Department upon request, except that private medical records shall be made available by the collective to the Police Department only pursuant to a properly executed search warrant, subpoena, or court order. In addition to all other formats that the collective may maintain, these records shall be stored by the collective at the location in a printed format in its fire-proof safe. Any loss, damage or destruction of the records shall be reported to the Police Department within 24 hours of the loss, destruction or damage. In addition to all other formats that the collective may maintain, these records shall be stored by the collective at the location in a printed format in its fire-proof safe. Any loss, damage or destruction of the records shall be reported to the Police Department within 24 hours of the loss, destruction or damage.

45.19.6.6 [Inspection and Enforcement Responsibilities] - The Department of Building and Safety may enter and inspect the location of any collective between the hours of 10:00 a.m. and 8:00 p.m., or at any reasonable time, to ensure compliance with Section 45.19.6.3 A of this article. In addition, a designated unit within the Police Department may enter and inspect the location of any collective and the recordings and records maintained pursuant to Sections 45.19.6.3, 45.19.6.4, and 45.19.6.5 of this article between the hours of 10:00 a.m. and 8:00 p.m., or at any reasonable time, to ensure compliance with this article, except that the inspection and copying of private medical records shall be made available to the Police Department only pursuant to a properly executed search warrant, subpoena, or court order.

It is unlawful for any owner, landlord, lessee, member (including but not limited to a member engaged in the management), or any other person having any responsibility over the operation of the collective to refuse to allow, impede, obstruct or interfere with an inspection, review or copying of records and closed-circuit monitoring authorized and required under this article, including but not limited to, the concealment, destruction, and falsification of any recordings, records, or monitoring.

***(d) Amendments to allow patients to obtain medical marijuana at more than one location in emergency situations:***

Pursuant to the adoption of Council Item 10M, the City Attorney has prepared a revised proposed ordinance addressing limited access to medical marijuana by a collective member from a different collective during an emergency situation. The proposed ordinance language (revised November 30, 2009) is contained in section 45.19.6.3 B.15 [Conditions of Operation] and reads as follows:

*15. No qualified patient, person with an identification card, or primary caregiver may be a member of more than one collective located within the City, except that in the event of a medical emergency, a qualified patient, person with an identification card, or primary caregiver may obtain medical marijuana sufficient to meet that medical emergency from another collective in the City. In addition to all other required documentation, for a medical emergency, the qualified patient, person with an identification card, or primary caregiver shall provide written proof of the medical emergency and, as applicable, his or her attending physician recommendation, identification card, and, in the case of a primary caregiver, the patient designation to both the member's collective and to the collective that is distributing the emergency medical marijuana. This written documentation shall be maintained in the records of both collectives;*

***(e) State law restricting smoking in nursing and long-term care facilities:***

Pursuant to the adoption of verbal Motion 10AA (Alarcon/LaBonge), the City Attorney has prepared a revised proposed ordinance addressing state and local laws pertaining to smoking in assisted living facilities. As advised by the City Attorney's office, state and local law currently provide exceptions to allow smoking in designated areas of residential health care facilities, and reference material provided by the City Attorney's office is attached (Attachment 5). Accordingly, the proposed ordinance was revised (revised November 30, 2009) with specific amendments contained in sections 45.19.6.3 A.2 [Preinspection Requirements] and 45.19.6.3 B.13 [Conditions of Operation]. The various sections read as follows:

*45.19.6.3 A.2 [Preinspection Requirements] - 2. No collective shall be located on a lot abutting, across the street or alley from, or having common corner with a lot improved with an exclusively residential building or with a mixed use building containing residential units. This provision shall not apply to a collective that is also a licensed residential medical or eldercare facility;*

*45.19.6.3 B.13 [Conditions of Operation] - 13. Medical marijuana may not be inhaled, smoked, eaten, ingested, or otherwise consumed at the location, in the parking areas of the location, or in those areas restricted under the provisions of California Health and Safety Code Section 11362.79. This prohibition shall not apply to a qualified patient's use of marijuana for his or her own medical needs if the qualified patient's permanent legal residence is the location, nor shall this prohibition limit the exceptions provided in local and state law that permit smoking in designated areas within licensed residential medical and eldercare facilities;*

**(f) Audits of medical marijuana dispensaries:**

Pursuant to the adoption of Amending Motion 10X (Huizar/Cardenas), the City Attorney has prepared a revised proposed ordinance addressing an annual audit of medical marijuana collectives. The proposed ordinance language (revised November 30, 2009) is contained in section 45.19.6.5 A [Annual Audits] and reads as follows:

*A. Annual Audits. No later than February 15 of every year, each collective shall file with the City Controller an audit of its operations of the previous calendar year, completed and certified by an independent certified public accountant in accordance with generally accepted auditing and accounting principles. The audit shall include but not be limited to a discussion, analysis, and verification of each of the records required to be maintained pursuant to Section 45.19.6.4 of this article.*

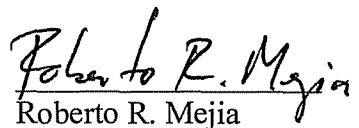
**(g) Medical Marijuana and Request for Proposals (RFP) Process:**

This policy issue cannot be addressed at this time until Council decides on a cap as to the total number collectives Citywide, and until a decision is made whether the Council will give preference to the pre- Interim Control Ordinance (ICO) 186 medical marijuana dispensaries.

In terms of how the RFP process would specifically work in this context, the CLA can work with the City Attorney's office on some preferred suggestions and language. The CLA has already started discussing this issue with the City Attorney's office, but we have deferred any specific language until it is known how the caps and priority issues are resolved.

**(h) Pre-Interim Control Ordinance (ICO) 186 Medical Marijuana Dispensaries:**

As you know, 186 medical marijuana dispensaries registered under the provisions of the 2007 ICO. The City Attorney conducted a review of these Pre-ICO facilities and has determined that 137 remain open and 49 have closed or moved. An excerpt of the City Attorney presentation on this issue which identifies the changes by Council District is contained in Attachment 4.

  
Roberto R. Mejia  
Analyst

| MEDICAL MARIJUANA COLLECTIVES (MIMCs) COMMERCIAL AND INDUSTRIAL LAND ANALYSIS |   |  |            |   |            |
|---|---|--|------------|---|------------|
| Community Plan Area   | Total Industrial & Commercial Acreage (n=100) | Total Acreage Where MIMCs May Be Permitted 500' Analysis |            | Total Acreage Where MIMCs May Be Permitted 1000' Analysis |            |
|   |   | Acreage  | % of Total | Acreage   | % of Total |
| Arleta - Pacoima  | 601   | 484  | 81%        | 400   | 67%        |
| Bel Air - Beverly Crest   | 3   | 3  | 100%       | 3   | 100%       |
| Boyle Heights   | 967   | 820  | 85%        | 648   | 67%        |
| Brentwood - Pacific Palisades   | 63  | 31   | 48%        | 14  | 21%        |
| Canoga Park - Winnetka - Woodland Hills - West Hills                          | 414   | 300  | 73%        | 175   | 42%        |
| Central City  | 1,048   | 693  | 66%        | 249   | 24%        |
| Central City North  | 925   | 775  | 84%        | 586   | 63%        |
| Chatsworth - Porter Ranch   | 664   | 602  | 91%        | 511   | 77%        |
| Encino - Tarzana  | 262   | 158  | 61%        | 62  | 24%        |
| Granada Hills - Knollwood   | 521   | 431  | 83%        | 346   | 66%        |
| Harbor Gateway  | 1,028   | 950  | 92%        | 787   | 77%        |
| Hollywood   | 905   | 444  | 49%        | 117   | 13%        |
| Mission Hills - Panorama City - North Hills                                   | 608   | 433  | 71%        | 287   | 47%        |
| North Hollywood - Valley Village  | 805   | 564  | 70%        | 330   | 41%        |
| Northeast Los Angeles   | 1,558   | 990  | 64%        | 454   | 29%        |
| Northridge  | 278   | 207  | 74%        | 89  | 32%        |
| Palms - Mar Vista - Del Rey   | 526   | 402  | 77%        | 299   | 57%        |
| Reseda - West Van Nuys  | 1,238   | 1,076  | 87%        | 901   | 73%        |
| San Pedro   | 445   | 191  | 43%        | 73  | 16%        |
| Sherman Oaks - Studio City - Toluca Lake - Cahuenga Pass                      | 369   | 264  | 72%        | 141   | 38%        |
| Silver Lake - Echo Park   | 262   | 143  | 55%        | 48  | 18%        |
| South Los Angeles   | 1,071   | 267  | 25%        | 68  | 6%         |
| Southeast Los Angeles   | 1,862   | 897  | 48%        | 355   | 19%        |
| Sun Valley - La Tuna Canyon   | 1,893   | 1,762  | 93%        | 1524  | 80%        |
| Sunland - Tujunga - Lake View Terrace - Shadow Hills - East La Tuna Canyon    | 146   | 79   | 54%        | 23  | 16%        |
| Sylmar  | 621   | 598  | 96%        | 557   | 90%        |
| Van Nuys - North Sherman Oaks   | 845   | 646  | 76%        | 402   | 48%        |
| Venice  | 172   | 95   | 55%        | 25  | 14%        |
| West Adams - Baldwin Hills, - Leimert Park                                    | 758   | 290  | 38%        | 108   | 14%        |
| West Los Angeles  | 531   | 373  | 70%        | 188   | 35%        |
| Westchester - Playa Del Rey   | 672   | 542  | 81%        | 354   | 53%        |



|                          |               |               |            |               |            |
|--------------------------|---------------|---------------|------------|---------------|------------|
| Westlake                 | 308           | 38            | 12%        | 0             | 0%         |
| Westwood                 | 82            | 55            | 68%        | 13            | 15%        |
| Wilmington - Harbor City | 1,954         | 1,817         | 93%        | 1608          | 82%        |
| Wilshire                 | 1,065         | 356           | 33%        | 86            | 8%         |
| <b>Citywide Total</b>    | <b>25,471</b> | <b>17,779</b> | <b>70%</b> | <b>11,830</b> | <b>46%</b> |

\*LAX and Port of LA are excluded from the Citywide Total

## NOTES:

- Sensitive land uses.** As set forth in the City Attorney's draft ordinance the following sensitive land uses are included in the Planning Department's study: schools; public parks and playgrounds; public libraries; religious institutions; licensed child care facilities; youth centers, and hospitals.
- Data limitations.** Due to data limitations, the following sensitive land uses are not included in the Planning Department's study: medical facilities and substance abuse rehabilitation centers.
- Zones.** Although the City Attorney's draft ordinance does not identify the zones where MMCs are permitted, it restricts the location of MMCs near residential buildings, which is not analyzed here. Accordingly, the Planning Department's study presumes that MMCs will locate exclusively in commercial and industrial zones in the City of Los Angeles.
- Residential proximity.** Since commercial zones allow residential uses by right and therefore include many residential and mixed use buildings, the acreage estimates shown in this analysis overstate the amount of acreage that may be available for MMCs to locate. The Planning Department's land use data base does not include actual land uses, only planned and zoned land uses.
- 500-foot analysis.** The Planning Department's study calculates the total amount of commercially- and industrially-zoned acreage that falls outside a 500-foot radius drawn around each location of a sensitive land use, as identified in Note #1. This number is an estimate of the amount of acreage that may be available for MMCs to locate, by Community Plan Area.
- 1 000-foot analysis.** The Planning Department's study calculates the total amount of commercially- and industrially- zoned acreage that falls outside a 1000-foot radius drawn around each location of a sensitive land use, as identified in Note #1. This number is an estimate of the amount of acreage that may be available for MMCs to locate, by Community Plan Area.

## POPULATION-BASED DISTRIBUTION OF MMCs BY COMMUNITY PLAN AREA IF CAPPED AT 70, 100, OR 186

|  | CITYWIDE  | 4,003,457 | PCT OF TOTAL | 5  | 6  | 11   | 12   | 11   | 12   | 11   | 12   | 11   | 12   | 11   | 12   |
|--|---|-----------|--------------|--|--|--|--|--|--|--|--|--|--|--|--|
|  |   |           |              | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>57,000 PERSONS | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>40,000 PERSONS | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>22,000 PERSONS | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>20,000 PERSONS | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>22,000 PERSONS | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>20,000 PERSONS | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>22,000 PERSONS | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>20,000 PERSONS | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>22,000 PERSONS | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>20,000 PERSONS | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>22,000 PERSONS | ONE MEDICAL<br>MARIJUANA<br>COLLECTIVE PER<br>20,000 PERSONS |
|  | NORTHEAST LOS ANGELES   | 258,188   | 6.45%        | 2  | 2  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  |
|  | BOYLE HEIGHTS   | 92,626    | 2.31%        | 5  | 7  | 13   | 13   | 13   | 13   | 13   | 13   | 13   | 13   | 13   | 13   |
|  | SOUTHEAST LOS ANGELES   | 274,583   | 6.86%        | 3  | 5  | 9  | 9  | 9  | 9  | 9  | 9  | 9  | 9  | 9  | 9  |
|  | WEST ADAMS-BALDWIN HILLS-LEIMERT PARK                             | 182,584   | 4.56%        | 5  | 7  | 13   | 14   | 13   | 14   | 13   | 14   | 13   | 14   | 11   | 11   |
|  | SOUTH CENTRAL LOS ANGELES   | 275,400   | 6.88%        | 6  | 8  | 15   | 16   | 15   | 16   | 15   | 16   | 15   | 16   | 13   | 13   |
|  | WILSHIRE  | 317,248   | 7.92%        | 4  | 6  | 11   | 11   | 11   | 11   | 11   | 11   | 11   | 11   | 9  | 9  |
|  | HOLLYWOOD   | 226,137   | 5.65%        | 1  | 2  | 6  | 4  | 6  | 4  | 6  | 4  | 6  | 4  | 4  | 4  |
|  | SILVERLAKE-ECHO PARK  | 82,008    | 2.05%        | 2  | 3  | 2  | 6  | 2  | 6  | 2  | 6  | 2  | 6  | 5  | 5  |
|  | WESTLAKE  | 120,476   | 3.01%        | 1  | 1  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 1  | 1  |
|  | CENTRAL CITY  | 31,900    | 0.80%        | 1  | 1  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 1  | 1  |
|  | CENTRAL CITY NORTH  | 32,835    | 0.82%        | 1  | 1  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 1  | 1  |
|  | SHERMAN OAKS-STUDIO CITY-TOLUCA LAKE-CAHUENGA PASS                | 79,028    | 1.97%        | 3  | 4  | 7  | 8  | 7  | 8  | 7  | 8  | 7  | 8  | 3  | 3  |
|  | NORTH HOLLYWOOD-VALLEY VILLAGE                                    | 149,245   | 3.73%        | 2  | 3  | 4  | 6  | 4  | 6  | 4  | 6  | 4  | 6  | 4  | 4  |
|  | ARLETA-PACOIMA  | 105,238   | 2.63%        | 3  | 4  | 7  | 8  | 7  | 8  | 7  | 8  | 7  | 8  | 6  | 6  |
|  | VAN NUYS-NORTH SHERMAN OAKS                                       | 168,987   | 4.22%        | 3  | 4  | 7  | 8  | 7  | 8  | 7  | 8  | 7  | 8  | 7  | 7  |
|  | MISSION HILLS-NORTH HILLS-PANORAMA CITY                           | 145,551   | 3.64%        | 3  | 4  | 7  | 8  | 7  | 8  | 7  | 8  | 7  | 8  | 6  | 6  |
|  | SUN VALLEY-LA TUNA CANYON   | 93,228    | 2.33%        | 2  | 2  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  |
|  | SYLMAR  | 79,741    | 1.99%        | 1  | 2  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 3  | 3  |
|  | GRANADA HILLS-KNOLLWOOD   | 60,843    | 1.52%        | 1  | 2  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 3  | 3  |
|  | CANOGA PARK-WEST HILLS-WINNETKA-WOODLAND HILLS                    | 185,670   | 4.64%        | 3  | 5  | 9  | 9  | 9  | 9  | 9  | 9  | 9  | 9  | 8  | 8  |
|  | CHATSWORTH-PORTER RANCH   | 96,251    | 2.40%        | 2  | 2  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  |
|  | NORTHRIDGE  | 67,415    | 1.68%        | 1  | 2  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 3  | 3  |
|  | RESEDA-WEST VAN NUYS  | 106,125   | 2.65%        | 2  | 3  | 6  | 6  | 6  | 6  | 6  | 6  | 6  | 6  | 4  | 4  |
|  | ENCINO-TARZANA  | 74,820    | 1.87%        | 1  | 2  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 3  | 3  |
|  | SUNLAND-TUJUNGA-LAKEVIEW TERRACE-SHADOW HILLS-EAST LA TUNA CANYON | 62,644    | 1.56%        | 1  | 2  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 3  | 3  |
|  | WESTWOOD  | 53,491    | 1.34%        | 1  | 1  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  |
|  | WEST LOS ANGELES  | 77,012    | 1.92%        | 1  | 2  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 3  | 3  |
|  | PALMS-MAR VISTA-DEL REY   | 122,666   | 3.06%        | 2  | 3  | 6  | 6  | 6  | 6  | 6  | 6  | 6  | 6  | 5  | 5  |
|  | VENICE  | 40,943    | 1.02%        | 1  | 1  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  |
|  | WESTCHESTER-PLAYA DEL REY   | 54,441    | 1.36%        | 1  | 1  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  |
|  | BRENTWOOD-PACIFIC PALISADES                                       | 57,513    | 1.44%        | 1  | 1  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 1  | 1  |
|  | BEL AIR-BEVERLY CREST   | 21,659    | 0.54%        | 0  | 1  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 3  | 3  |
|  | WILMINGTON-HARBOR CITY  | 80,991    | 2.02%        | 1  | 2  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  |
|  | SAN PEDRO   | 81,921    | 2.05%        | 1  | 2  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  | 4  |
|  | HARBOR GATEWAY  | 42,075    | 1.05%        | 1  | 1  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  | 2  |
|  | PORT OF LOS ANGELES   | 1,974     | 0.05%        | 0  | 0  | 0  | 0  | 0  | 0  | 0  | 0  | 0  | 0  | 0  | 0  |
|  | TOTAL POPULATION AS OF OCT 1, 2008                                | 4,003,457 |              | 70   | 100  | 186  | 200  | 186  | 200  | 186  | 200  | 186  | 200  | 165  | 165  |

## POPULATION-BASED DISTRIBUTION OF MMCs PER LAPD DIVISION IF CAPPED AT 70, 100, 186, 200, or 165

|  | population       | pct of total | distribution per division        |                                  |                                  |                                  |                                  |
|--|------------------|--------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
|  |                  |              | 70                               | 100                              | 186                              | 200                              | 165                              |
|  |                  |              | ONE MMC PER<br>57,000<br>PERSONS | ONE MMC PER<br>40,000<br>PERSONS | ONE MMC PER<br>22,000<br>PERSONS | ONE MMC PER<br>20,000<br>PERSONS | ONE MMC PER<br>24,000<br>PERSONS |
| <b>CENTRAL BUREAU</b>                      |                  |              |                                  |                                  |                                  |                                  |                                  |
| DIVISION 1; CENTRAL                        | 64,243           | 1.60%        | 1                                | 2                                | 4                                | 4                                | 3                                |
| DIVISION 2; RAMPART                        | 184,502          | 4.61%        | 3                                | 5                                | 9                                | 10                               | 8                                |
| DIVISION 4; HOLLENBECK                     | 191,016          | 4.77%        | 3                                | 5                                | 9                                | 10                               | 8                                |
| DIVISION 11; NORTHEAST                     | 252,859          | 6.32%        | 5                                | 6                                | 11                               | 12                               | 10                               |
| DIVISION 13; NEWTON                        | 149,875          | 3.74%        | 3                                | 4                                | 7                                | 8                                | 6                                |
| <b>SOUTH BUREAU</b>                        |                  |              |                                  |                                  |                                  |                                  |                                  |
| DIVISION 3; SOUTHWEST                      | 195,515          | 4.88%        | 4                                | 5                                | 9                                | 10                               | 8                                |
| DIVISION 5; HARBOR                         | 189,443          | 4.73%        | 3                                | 5                                | 9                                | 10                               | 8                                |
| DIVISION 12; 77TH STREET                   | 179,591          | 4.49%        | 3                                | 5                                | 8                                | 10                               | 7                                |
| DIVISION 18; SOUTHEAST                     | 137,891          | 3.44%        | 2                                | 3                                | 7                                | 6                                | 6                                |
| <b>WEST BUREAU</b>                         |                  |              |                                  |                                  |                                  |                                  |                                  |
| DIVISION 6; HOLLYWOOD                      | 147,065          | 3.67%        | 3                                | 4                                | 7                                | 8                                | 6                                |
| DIVISION 7; WILSHIRE                       | 162,158          | 4.05%        | 3                                | 4                                | 8                                | 8                                | 7                                |
| DIVISION 8; WEST LA                        | 237,035          | 5.92%        | 4                                | 6                                | 11                               | 12                               | 10                               |
| DIVISION 14; PACIFIC                       | 217,205          | 5.43%        | 4                                | 5                                | 10                               | 10                               | 9                                |
| DIVISION 20; OLYMPIC                       | 217,126          | 5.42%        | 4                                | 5                                | 10                               | 10                               | 9                                |
| <b>VALLEY BUREAU</b>                       |                  |              |                                  |                                  |                                  |                                  |                                  |
| DIVISION 9; VAN NUYS                       | 186,054          | 4.65%        | 3                                | 4                                | 9                                | 8                                | 7                                |
| DIVISION 10; WEST VALLEY                   | 196,840          | 4.92%        | 3                                | 5                                | 9                                | 10                               | 8                                |
| DIVISION 15; NORTH HOLLYWOOD               | 219,783          | 5.49%        | 4                                | 6                                | 10                               | 12                               | 9                                |
| DIVISION 16; FOOTHILL                      | 203,667          | 5.09%        | 3                                | 5                                | 9                                | 10                               | 8                                |
| DIVISION 17; DEVONSHIRE                    | 219,153          | 5.47%        | 4                                | 5                                | 10                               | 10                               | 9                                |
| DIVISION 19; MISSION                       | 246,825          | 6.17%        | 5                                | 6                                | 11                               | 12                               | 10                               |
| DIVISION 21; TOPANGA                       | 205,848          | 5.14%        | 3                                | 5                                | 9                                | 10                               | 9                                |
| <b>TOTAL POPULATION AS OF OCT 1, 2008*</b> | <b>4,003,693</b> | <b>100%</b>  | <b>70</b>                        | <b>100</b>                       | <b>186</b>                       | <b>200</b>                       | <b>165</b>                       |

\* Note: Total persons (includes group quarters population). Group quarters include: dorms, jails/prisons/detention centers, nursing homes/residential hospitals, fraternity/sorority houses, etc.

# THE ORIGINAL 186



|      | Originally<br>Open | Closed<br>Moved | Now<br>Open |
|------|--------------------|-----------------|-------------|
| CD1  | 3                  | 2               | 1           |
| CD2  | 15                 | 3               | 12          |
| CD3  | 20                 | 6               | 14          |
| CD4  | 23                 | 8               | 15          |
| CD5  | 13                 | 3               | 10          |
| CD6  | 12                 | 3               | 9           |
| CD7  | 5                  | 1               | 4           |
| CD8  | 3                  | 0               | 3           |
| CD9  | 11                 | 4               | 7           |
| CD10 | 15                 | 2               | 13          |
| CD11 | 16                 | 4               | 12          |
| CD12 | 17                 | 8               | 9           |
| CD13 | 19                 | 4               | 15          |
| CD14 | 10                 | 1               | 9           |
| CD15 | 4                  | 0               | 4           |
|      | 186                | 49              | 137         |

## SECTIONS OF THE CALIFORNIA STATE LABOR CODE SPECIFICALLY RELATING TO SMOKING IN ENCLOSED WORKPLACES (SECTIONS 6404 & 6404.5)

### 6404.

No employer shall occupy or maintain any place of employment that is not safe and healthful.

### 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 of 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 non-employee 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 non-employee:

(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 non-employee 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 non-employee from the place of employment or

(B) Any requirement for making a request to a non-employee 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. An establishment may permit smoking in a design-

nated 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 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 a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking in corridors and pre-function 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 motortrucks, 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 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 daycare 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.

(B) 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.

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

(D) There are sufficient nonsmoking breakrooms to accommodate nonsmokers.

(14) 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:

(A) January 1, 1998.

(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.

- (2) 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 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 Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

- (3) 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 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, 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 - Los Angeles Municipal Code Section 41.50**

Sec. 41.50. Smoking Prohibited in Designated Areas.  
(Amended by Ord. No. 159,498, Eff. 12/15/84.)

### **A. Definitions:**

The following words and phrases, whenever used in this ordinance shall be construed as hereinafter set out, unless it shall be apparent from the context that they have a different meaning.

"Bar" shall mean an indoor area utilized primarily for the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages. (Added by Ord. No. 162,989, Eff. 1/7/88.)

1. "Employee" shall mean any person who is employed by any employer in consideration for monetary compensation or profit
2. "Employer" shall mean any person, partnership, corporation, excluding municipal corporation, who employs the services of more than four persons. (Amended by Ord. No. 169,790, Eff. 6/9/94.)
3. "Place of employment" shall mean any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, conference rooms, and employee cafeterias. A private residence is not a place of employment.

"Service Line" shall mean any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money. (Added by Ord. No. 162,989, Eff. 1/7/88.)

4. "Smoke" or "Smoking" shall include the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

### **B. Prohibition:**

It shall be unlawful to smoke in the following places:

1. Those portions of any building, structure or other enclosed facility open to the general public for the primary purpose of exhibiting any motion picture, stage production, musical recital, or similar performance. However, smoking may be permitted in designated areas of lobbies. (Added by Ord. No. 162,989, Eff. 1/7/88.)

2. Any room, chamber, indoor place of meeting or indoor public assembly, wherein public business is conducted and which is open to members of the general public either as participants or as spectators. (Amended by Ord. No. 164,776, Eff. 6/3/89.)
3. Those areas within the buildings or structures of any health care facility which are open to visitors to the premises except that in such areas there may be enclosed areas designated and set aside on each floor where smoking may be allowed.
4. Any retail food marketing establishments including grocery stores and supermarkets except those areas of such establishments set aside for the serving of food and drink, restrooms, and offices and areas thereof not open to the public.
5. Service lines in those areas of buildings open to the public, except those lines in stores specializing in the sale of tobacco products. (Added by Ord. No. 162,989, Eff. 1/7/88.)
6. Those indoor areas of libraries, museums and art galleries open to the public. (Added by Ord. No. 162,989, Eff. 1/7/88.)
7. Those indoor areas of retail stores open to the public, except retail stores specializing in the sale of tobacco products. (Added by Ord. No. 162,989, Eff. 1/7/88.)
8. Indoor polling places. (Added by Ord. No. 162,989, Eff. 1/7/88.)
9. Those indoor areas normally occupied by children in private elementary and secondary schools, private child day care facilities as defined in Section 1596.750 of the Health and Safety Code, and private residences licensed as child day care facilities during the hours of operation as such a facility. (Added by Ord. No. 162,989, Eff. 1/7/88.)
10. (Amended by Ord. No. 168,844, Eff. 8/2/93.)
  - a. Indoor restaurants, except as set forth in paragraphs b and c below.
  - b. Restaurants with a seating capacity of more than 50 persons located in a dance club, excluding from that calculation of capacity any portion of such facility which is located outdoors and/or which is utilized as a bar, shall have a portion of the dining area designated as a non-smoking area. The non-smoking area required by this paragraph must be a contiguously maintained indoor area comprised of at least 50% of both the seating capacity and floor space of the area in which customers are being served.
  - c. The prohibition set forth in paragraphs a and b above, shall not apply to any portion of a restaurant which is utilized as a bar, or to any rooms which are being used for private functions, but only while any such rooms are used for such private functions.

11. Those portions open to the general public of any arena, gymnasium or other similar enclosed building designed primarily for the purpose of observing sports events. However, smoking may be permitted in designated areas of lobbies. (Added by Ord. No. 162,989, Eff. 1/7/88.)
12. Train, cruise ship, and bus depot waiting areas and ticket lines as regulated pursuant to Health and Safety Code Section 25949.4. Violation of, or failure to comply with the provisions of Health and Safety Code Section 25949.4 shall be punishable as set forth in Health and Safety Code Section 25949.8. (Amended by Ord. No. 170,386, Eff. 3/17/95.)
13. (Amended by Ord. No. 170,386, Eff. 3/17/95.) Any portion of a building owned by the City of Los Angeles, and those portions of a building leased by the City of Los Angeles, except that:
  - a. Waiting areas and ticket lines in the Los Angeles Harbor cruise ship terminals shall be regulated as set forth in Subdivision 12 above, and
  - b. Restaurants in any building owned by the City of Los Angeles or in those portions of a building leased by the City of Los Angeles shall be regulated as set forth in Subdivision 10 above.
14. Airport ticket lines as regulated pursuant to Health and Safety Code Section 25949.4, and public circulation areas and public waiting room areas (except for intransit lounges which shall be 75% by area, no smoking). It is the purpose of this Subdivision to prohibit, pursuant to the authority contained in Health and Safety Code Section 25949.6, smoking in airport public circulation areas, and airport public waiting room areas. Violation of, or failure to comply with the provisions of Health and Safety Code Section 25949.4 shall be punishable as set forth in Health and Safety Code Section 25949.8. (Added by Ord. No. 170,386, Eff. 3/17/95.)
15. Notwithstanding the provisions of paragraph c of Subdivision 10 of Subsection B and Subsection F of Section 41.50, smoking shall be prohibited in bars located in airport terminals. (Added by Ord. No. 170,386, Eff. 3/17/95.)

C. Regulation of Smoking in Places of Employment:

(First unnumbered paragraph amended by Ord. No. 162,989, Eff. 1/7/88.)

The places subject to regulation pursuant to Subdivisions 1,2,3,4,8, and 9 of Subsection B shall not be deemed places of employment for purposes of this subsection.

The following regulations apply to places of employment:

1. Within one hundred twenty (120) days of the effective date of this ordinance, each employer shall adopt, implement and maintain a written smoking policy which shall contain at a minimum, provisions related to the following:
  - a. The prohibition of smoking in cafeterias, restrooms, elevators and nurses aid stations or similar facilities for the treatment of employees. (Amended by Ord. No. 168,844, Eff. 8/2/93.)
  - b. The provision and maintenance of a contiguous non-smoking area of not less than two-thirds of the seating capacity and floor space in lunchrooms and employee lounges. (Amended by Ord. No. 168,844, Eff. 8/2/93.)
  - c. A statement providing that in any dispute arising between smokers and non-smokers, efforts shall be made by the employer to accommodate the desires of both smokers and non-smokers.

It shall be the responsibility of employers to provide smoke-free work areas for non-smokers 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. An employer who makes reasonable efforts to develop and promulgate a policy regarding smoking and nonsmoking in the work place shall be deemed to be in compliance with this paragraph, provided that a policy which designates an entire work place as a smoking area shall not be deemed in compliance with this paragraph.

- d. An employer shall post "No Smoking" signs in any area designated as a non-smoking area.
2. The smoking policy shall be communicated in writing to all current employees within three weeks of the date of adoption, and to all future employees at the time of their entry into employment.
3. Notwithstanding the above, every employer shall have the authority to designate any work area as a non-smoking area.
4. An employer who fails to adopt a smoking policy, or who fails to post signs in any area designated as a non-smoking area as required by Subdivision 1 shall be in violation of said subdivision. Such a violation shall be punishable as a misdemeanor.
- D. Signs and Other Management Responsibilities: (Title and Section amended by Ord. No. 162,989, Eff. 1/7/88.)

1. Signs.

- a. The person having the authority to manage and control any area designated as a non-

smoking area pursuant to Subdivisions 5 and 10 of Subsection B shall place or caused to be placed and prominently displayed, and shall maintain "No Smoking" signs in conspicuous locations within said areas. All such signs shall clearly and conspicuously recite the phrase "NO SMOKING" and/or use the international no-smoking symbol and shall cite Section 41.50 of the Los Angeles Municipal Code. The signs shall be of sufficient number and location to cause the message of the signs to be clearly visible, legible and readable.

- b. The person having the authority to manage and control any area designated as a non-smoking area pursuant to all other provisions of Subsections B or C, shall post or cause to be posted and prominently displayed, and shall maintain "No Smoking" signs in conspicuous locations within said areas. All such signs shall clearly and conspicuously recite the phrase "NO SMOKING" and/or use the international no-smoking symbol and shall cite Section 41.50 of the Los Angeles Municipal Code. The signs shall be posted not less than 5 feet nor more than 8 feet above floor level and shall be of sufficient number and location to cause the message of at least one of the signs to be clearly visible, legible and readable.

- 2. The person having the authority to manage and control those restaurants subject to Subdivision 10 of Subsection B with both smoking and non-smoking sections shall be responsible for ensuring that patrons are asked their preference for seating in either the smoking or non-smoking section.

3. Violations.

- a. Violation of, or failure to comply with the provisions of Subdivision 1 of this subsection shall be punishable as a misdemeanor.
- b. Violation of, or failure to comply with the provisions of Subdivision 2 of this subsection shall be punishable as an infraction.

E. Other Agency Cooperation:

Federal, State, County, public school and special district officials are urged to enact and enforce provisions similar to the provisions contained herein. (Amended by Ord. No. 162,989, Eff. 1/7/88.)

F. Exceptions:

The prohibition set forth in Subsection B and C shall not apply to private enclosed offices occupied exclusively by smokers even though such an office may be visited by non-smokers, or to those portions of bars open to the public. (Amended by Ord. No. 162,989, Eff. 1/7/88.)

G. Implementation:

Employers shall implement the provisions of this section in a manner consistent with all applicable State or Federal statutes, rules or regulations, on employer-employee relations.

H. Penalties:

1. It shall be unlawful to willfully mutilate or destroy any signs required by this section.
2. It shall be unlawful to smoke in any area posted as a non-smoking area.
3. It shall be unlawful for an employer to discharge or in any manner discriminate against any employee who exercises his or her rights under this section if the dominant intent of the employer is retaliation against the employee for exercising those rights. Violation of this provision shall be a misdemeanor.
4. Except as otherwise expressly provided herein, violation of any provision or failure to comply with any requirement of this section is an infraction.

Sec. 41.50.5. Signage Regulations for Places Subject to Regulation Pursuant to Labor Code Section 6404.5

(Added by Ord. No. 172,487, Eff. 4/12/99.)

All employers subject to the provisions of Labor Code Section 6404.5 shall post, or cause to be posted and prominently displayed, signs containing the following phrase "To Report Violations of Labor Code Section 6404.5 Call 1-888-333-0730". This phrase may be included on the same signs required by Labor Code Section 6404.5, or on additional signs. The signs shall be posted at each entrance to the building or structure. Violation of, or failure to comply with the provisions of this section shall be punishable as set forth in Labor Code Section 6404.5(j).

Sec. 41.51. Smoking in Elevators Prohibited.

- (a) It shall be unlawful for any person to light, ignite or otherwise set fire to, or smoke, carry, throw or deposit any lighted cigar, cigarette or other smoldering or smoke-producing substance within any public or private elevator open to use by the general public. (Added by Ord. No. 146,792, Eff. 1/12/75.)
- (b) Every person having the authority to manage and control premises wherein elevator service is provided for use by the general public shall post "NO SMOKING" signs in all such elevators. Such signs shall be clearly visible and readable. Such signs shall cite Section 41.51 of the Municipal Code and state that persons smoking in elevators are subject to a fine. (Added by Ord. No. 146,792, Eff. 1/12/75.)
- (c) Notwithstanding any other provision of this Code, violation of this section is an infraction. (Added by Ord. No. 153,590, Eff. 5/11/80.)

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Sec. 41.52. Smoking in Buses.

No person shall smoke or possess any burning cigarette, cigar or pipe while on any motor bus or other vehicle operated for the purpose of transporting persons for hire within the City of Los Angeles along a regular route, and picking up or discharging such passengers in the city streets. (Added by Ord. No. 127,508, Eff. 6/29/64.)

Notwithstanding any other provisions of this Code, violation of this section is an infraction. (Added by Ord. No. 153,590, Eff. 5/11/80.)

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## Possible Application of Labor Code 6404.5 to Board and Care Facilities

To: Ana Johnson and Nora Manzanilla

Date: May 23, 2006

From: Theresa Boschert  
California's Clean Air Project  
916-739-8925

Labor Code 6404.5, the California Smoke-free Workplace Act, applies to all indoor workplaces except those specifically described in section LC6404.5(d) as not being a "place of employment" for the purposes of this law. The exceptions include 6404.5(d)(12): "Patient smoking areas in long-term health care facilities, as defined in section 1418 of the Health and Safety Code."

Health and Safety Code section 1418 reads as follows:

1418. As used in this chapter:

(a) "Long-term health care facility" means any facility licensed pursuant to Chapter 2 (commencing with Section 1250) that is any of the following:

- (1) Skilled nursing facility.
- (2) Intermediate care facility.
- (3) Intermediate care facility/developmentally disabled.
- (4) Intermediate care facility/developmentally disabled habilitative.

- (5) Intermediate care facility/developmentally disabled--nursing.
- (6) Congregate living health facility.
- (7) Nursing facility.

(b) "Long-term health care facility" also includes a pediatric day health and respite care facility licensed pursuant to Chapter 8.6 (commencing with Section 1760).

(c) "Long-term health care facility" does not include a general acute care hospital or an acute psychiatric hospital, except for that distinct part of the hospital that provides skilled nursing facility, intermediate care facility, or pediatric day health and respite care facility services.

(d) "Licensee" means the holder of a license issued under Chapter 2 (commencing with Section 1250) or Chapter 8.6 (commencing with Section 1760) for a long-term health care facility.

Does a board and care home fall within this definition is the first question. To answer this, one would have to discover whether or not the facility is licensed under HS section 1250, Chapter 2 or also under HS section 1760, Chapter 8.6. An examination of the facility's license would seem to be a reasonable first step.

If the facility does fit within the definition of "long-term health care facility", the next question is what constitutes "patient smoking areas" within such a facility. We believe that "patient smoking areas" are intended to be a specific designated area within the facility, not the entire facility and not the general work area of facility employees. Labor Code 6404.5 was intended to provide workplace protection from the cancer-causing

effects of Second Hand Smoke for virtually all California workers. To meet that purpose separate, discrete "patient smoking areas" would be needed to reduce the impact of smoke on the general population and staff of the facility. Common work areas such hallways, lobbies, dining areas, exercise rooms etc. would not logically be "patient smoking areas". Since it is essential for non-smoking employees to enter these areas on a regular basis in order to carry out their work duties, we believe these would be work areas protected by LC 6404.5. Also the exception speaks only of "patient smoking areas" and does not allow for employee smoking areas anywhere within "long-term health care facilities".

Another question is: do the living quarters within such a facility constitute possible "patient smoking areas". We believe that since all staff are required to enter these areas also on a regular basis in order to carry out their work responsibilities, they would be protected as work areas by LC 6404.5. The use of the specific designation "patient smoking areas" would not have been necessary in the code if it were not intended to be a distinct, separate location within the facility.

The broad protections of LC 6404.5 and the narrow, specific exceptions found within the law are all the more pertinent today since the California Air Resources Board, a branch of the California Environmental Protection Agency, declared in January 2006 that Second Hand Smoke is a Toxic Air Contaminant that increases the risk of breast cancer in young women by 68%. A summary of the ARB's report is attached.

In summary, we believe that since Second Hand Smoke is a Toxic Air Contaminant and a Class A carcinogen to which there is no safe level of exposure, the public, local government and California taxpayers who bear the cost of smoking-related deaths and disease are all served best by the Legislature's intention to provide wide protections and narrow exceptions within California's Smoke-free Workplace Act (LC6404.5).