



## **REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of March 13, 2018

**TO:** Mayor Kelley and Members of the City Council

**SUBMITTED BY:** Patrick Tang, City Attorney

**SUBJECT:** Discuss Amendments to Hercules Municipal Code Title 5, Chapter 6,  
Smoking Ordinance

### **RECOMMENDED ACTION:**

Receive report, discuss and provide direction, if any.

### **FISCAL IMPACT OF RECOMMENDATION:**

There may be some expense associated with providing notice to residents and affected businesses should amendments to the current smoking ordinance be adopted. There may be some minimal cost associated with code enforcement efforts in the event enforcement is required.

### **DISCUSSION:**

The City Council considered and discussed legislation to ban commercial sale of cannabis in the City of Hercules, and in 2017 passed an ordinance prohibiting various aspects of cannabis use and sales. During that discussion, the Council noted that the City's current smoking ordinance has not been updated since 1992, and that e-cigarettes and vaping were not expressly addressed in the existing ordinance. The 1992 Hercules ordinance actually allows for smoking in bars, in designated smoking areas within office spaces, and in restaurants with outdoor areas. This conflicts with current state law; since January 1, 1995, smoking has been banned in all enclosed workplaces in California, including bars and restaurants (smoking in bars was permitted until January 1, 1998). Given that the 1992 ordinance is outdated and inconsistent with state law, Council directed that staff and the City Attorney report back during the first quarter of 2018 on current standards for smoking ordinances.

A model ordinance promulgated by Americans for Nonsmokers' Rights (ANR), based in Berkeley, California, is attached for your review and consideration. ANR claims that the model ordinance for smoke free workplaces and public places has been used by hundreds of cities and numerous states. The City Attorney has requested information regarding California cities that have adopted the ANR model, but has not heard from ANR in sufficient time to include that information in this report.

According to ANR, the purpose of the model ordinance is to provide fair and sound language that clearly states the intent and specific points of a smoke free policy. The ordinance is intended to allow for clear implementation and enforcement, and is designed by ANR to stand up to legal challenges.

The ANR model provides definitions for “Electronic Smoking Device”, “Hookah”, and a definition of “Smoking” that includes marijuana use. I would recommend in addition to the definitions provided in the model ordinance the inclusion of a definition for “Tobacco Shop” or “Smoke Shop” as is found in ordinances in some other jurisdictions.

It should be noted that the ANR model ordinance is intended to further the goal of a smoke free workplace, and thus would not allow smoking in any enclosed places, including hotels and motels. While Hercules does not currently have any hotel or motel facilities, the Model Ordinance if adopted would preclude smoking in any hotel or motel rooms.

**ATTACHMENTS:**

1. Title 5, Chapter 6, Hercules Municipal Code
2. Model Ordinance Prohibiting Smoking in All Workplaces and Public Places