



REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of April 24, 2018

TO: Mayor Kelley and Members of the City Council

SUBMITTED BY: Patrick Tang, City Attorney

SUBJECT: Ordinance to Amend Hercules Municipal Code Title 5, Chapter 6, to update, revise, and clarify the City's Smoking Ordinance

RECOMMENDED ACTION:

Receive a presentation, open the public hearing, waive the First Reading, and introduce an Ordinance amending the City's smoking ordinance

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:

On March 13, 2018, the City Council discussed the need to update the City's smoking regulations, which were originally enacted in 1992 and which may be in conflict with more recent state laws regulating smoking. E-cigarettes, vaping, smoke shops, and medical and recreational cannabis uses are not expressly addressed in the 1992 ordinance. A copy of the staff report from that meeting is provided as Attachment A to this report.

Following the discussion at the March 13th meeting, Council directed the City Attorney to bring back for consideration and possible action a revised smoking ordinance using as a model the ordinance promulgated by Americans for Nonsmokers' Rights (ANR), based in Berkeley, California, which was provided as an example to the Council at the March 13th meeting. As discussed on March 13th, the ANR model ordinance for smoke free workplaces and public places has served as the basis for numerous jurisdictions in establishing local smoking regulations.

The proposed ordinance would replace in its entirety the original 1992 smoking ordinance. It includes definitions for "Electronic Smoking Device", "Hookah", and a definition of "Smoking" that expressly includes marijuana use. The following matters raised by Council on March 13th have also been addressed in the proposed draft:

- Add definition of Smoke Shop.
- Trim back and consolidate the Findings section of the ANR model ordinance.
- Set the distances for smoking near prohibited areas to 25 feet.
- Cross reference the existing penalties section in the Hercules Municipal Code.
- Re-phrase the reference to “liberal construction”.

There are several issues that were discussed by the Council where there was not a clear consensus:

- Should smoking in hotels/motels be banned or otherwise regulated?

The draft bans smoking in hotels. (Sec. 5-6.108(b)). However, Council has the discretion to allow for an exception.

- Should there be an exception for use of hookahs in limited circumstances?

The draft provides language for an exception that under limited conditions would allow hookah use in outdoor areas of restaurants or bars, but only when 25 or more feet from other establishments, residences, schools, etc. and only when such use does not create a disturbance or generate complaints. (Sec. 5-6.103(s)).

While not discussed in detail at the March 13th meeting, language is included for Council consideration that would regulate the location and operation of smoke shops. (Sec. 5-6.111).

CONCLUSION:

The proposed ordinance is intended to further the goal of a smoke free environment, and thus eliminates the outdated allowances in the 1992 ordinance for smoking accommodations in office buildings, public areas, restaurants and bars. It addresses newer forms of smoking such as vaping and e-cigarettes that did not exist when the original ordinance was adopted. It clarifies, consistent with state law, that smoking marijuana is not allowed in any place where the smoking of tobacco is prohibited. It also establishes a 25 foot distance requirement from building entrances and windows.

ATTACHMENTS:

1. Smoking Ordinance Staff Report from March 13, 2018 Council Meeting.
2. Draft Ordinance based on the ANR model ordinance, with changes as directed by Council at the March 13, 2018 meeting.