

CALENDAR
for
REGULAR MEETING OF THE COUNCIL
of the
CITY OF LONG BEACH
held
NOVEMBER 21, 2017

PUBLIC HEARING: (Subject to Tabling) Local Law Amending Subpart C of Related Acts Relating to the Charter of the City of Long Beach Re: A Local Law to Prohibit the Sale of Tobacco Products, Liquid Nicotine and Electronic Cigarettes to Persons Under 21.

1. Local Law Amending Subpart C of Related Acts Relating to the Charter of the City of Long Beach Re: A Local Law to Prohibit the Sale of Tobacco Products, Liquid Nicotine and Electronic Cigarettes to Persons Under 21.

Legislative Memo: The City Council wishes to protect the public interest, welfare and health of all persons through the adoption of this law. To help ensure that the sale of tobacco products to individuals under 21 will be prohibited, and thereby help delay or prevent tobacco use, as tobacco use is a leading cause of preventable death and disease in New York State and the United States.

2. Resolution Authorizing the City Manager to Approve a Purchase Order for the Removal of Tideline Debris from the City's Transfer Station.

Legislative Memo: The accumulation of almost 500 tons of tideline debris at the City's Transfer Station created an imminent health and safety hazard, requiring the City to find a vendor for emergency removal.

3. Resolution Authorizing Settlement of an Action Brought by XTDR LLC d/b/a Servpro Against the City of Long Beach.

Legislative Memo: After numerous years of litigation, on July 19, 2017, the parties attended a pre-trial/settlement conference, wherein the Court strongly recommended that the parties settle.

4. Resolution Authorizing Publication of a Public Hearing on an Application Recommended by the Landmarks Preservation Commission.

Legislative Memo: An application has been submitted by the owner of 350 East Market Street for approval as a designated City Landmark.

5. Resolution Authorizing Publication for Hearing of an Ordinance Authorizing Financing for the Cost of Payment of Settled Claims Against the City in the Matter of Marshall Starkman v. City of Long Beach, Stating the Estimated Total Cost Thereof is \$656,000, Appropriating Said Amount Therefor, and Authorizing the Issuance of Not to Exceed \$656,000 Bonds of Said City to Finance Said Appropriation.

Legislative Memo: This item is on for publication only.

November 21, 2017

Item No. 1
Local Law No.

The following Local Law was moved by
and seconded by :

Introductory No. 350
Introduced by:

CITY OF LONG BEACH

CHAPTER I LAWS OF 2017

A LOCAL LAW

AMENDING SUBPART C OF RELATED ACTS RELATING
TO THE CHARTER OF THE CITY OF LONG BEACH,
RE: A LOCAL LAW TO PROHIBIT THE SALE OF TOBACCO PRODUCTS,
LIQUID NICOTINE AND ELECTRONIC CIGARETTES TO
PERSONS UNDER 21

BE IT ENACTED, by the City Council of the City of Long Beach, New York as
follows:

Section 1. Subpart C of Related Local Laws relating to the Charter of the City of
Long Beach, New York, enacted as Chapter 635 of the Laws of 1922, as heretofore amended,
shall be and the same is hereby amended to read as follows:

**“ARTICLE X. PROHIBITION OF THE SALE OF TOBACCO PRODUCTS, LIQUID
NICOTINE AND ELECTRONIC CIGARETTES TO PERSONS
UNDER 21**

Sec. 86. Legislative Intent.

**It is the intent of this Local Law to prohibit any person operating a place of business
wherein tobacco, tobacco products, liquid nicotine and electronic cigarettes are sold or
offered for sale, from selling such products to individuals under 21 years of age.**

Sec. 87. Findings

**a. Tobacco is a leading cause of preventable death and disease in New York
State and the United States.**

**b. According to a report prepared by the *Institute of Medicine*, entitled “Public
Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products”,
the following was concluded and suggested:**

- 1. Adolescent brains are uniquely vulnerable to the effects of nicotine;**
- 2. A younger age of initiation is strongly associated with greater nicotine
dependence and is also associated with greater intensity and persistence of
smoking beyond adolescence and into adulthood;**

- 3. Almost one in five high school seniors is a cigarette smoker;**
 - 4. Underage users rely primarily on social sources, such as friends and family, to acquire tobacco, and most of these sources are likely to be between eighteen and twenty years old;**
 - 5. Raising the minimum legal age to twenty-one will mean that those who can legally obtain tobacco are less likely to be in the same social networks as high school seniors;**
 - 6. Delaying initiation rates will likely decrease the prevalence of tobacco users in the United States population;**
 - 7. Raising the minimum legal age will likely immediately improve the health of adolescents and young adults by reducing the number who suffer with adverse physiological effects.**
- c. Most of those addicted to tobacco (nearly 90%), start using tobacco before twenty-one years of age.**
- d. There is a growing rate of electronic cigarette use among youth, exposing users to unhealthy levels of nicotine and other unknown harmful chemicals.**
- e. The parts of the brain most responsible for cognitive and psychosocial maturity continue to develop and change through young adulthood, and adolescent brains are uniquely vulnerable to the effects of nicotine.**
- f. The application of evidence based strategies to address the public health issues that result from tobacco use, including but not limited to, cancer, heart disease and lung disease.**
- g. E-cigarettes and similar devices pose health hazards and may contribute to youth smoking and reduced cessation, regardless of nicotine and content since the devices contain or produce chemicals other than nicotine that are known to be toxic, carcinogenic and causative of respiratory and heart disease. E-cigarette and similar devices look identical whether they contain nicotine or not, and as a result, their use not only normalizes e-cigarette use, but also renormalizes tobacco addiction and use of tobacco products, like combustible cigarettes.**
- h. Smokeless tobacco products, which according to the *Centers for Disease Control and Prevention*, are known to cause lung, larynx, esophageal, oral and pancreatic cancers. According to the *National Institute on Drug Abuse*, a dip of smokeless tobacco typically contains 3-5 times more nicotine than a cigarette.**

Sec. 88. Definitions.

As used in this article, the following terms and expressions shall have the following meanings:

Age-Prohibited Products. Cigarettes, cigars, chewing tobacco, powdered tobacco, shisha, bidis, gutka, other tobacco products, nicotine water, herbal cigarettes, electronic cigarettes, liquid nicotine, snuff, smoking paraphernalia (any pipe, water pipe, hookah, rolling papers, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco), as those terms are defined in the New York State Public Health Law Article 13-F and, all other products which are prohibited from being sold to minors by New York State Public Health Law Article 13-F, as the same may be amended from time to time.

Enforcement Officer. Any police officer, building code enforcement officer or other employee of the City of Long Beach authorized to enforce this code.

Sec. 89. Policy.

- a. No person shall sell or permit the sale of age-prohibited products to any person under the age of twenty-one.
- b. The identification requirements contained in New York State Public Health Law Article 13-F, Section 1399-cc(3), as the same may be amended from time to time, are hereby incorporated into this law by reference, except that the age to be proven by such identification shall be twenty-one.
- c. No person operating a place of business wherein age-prohibited products are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any age-prohibited product in any manner, unless such age-prohibited product is stored for sale (a) behind a counter in an area accessible only to the personnel of such business, or (b) in a locked container/cabinet; provided, however, such restriction shall not apply to tobacco businesses as defined in subdivision eight of §1399-aa of New York State Public Health Law Article 13-F, as the same may be amended from time to time, and to places to which admission is restricted to persons twenty-one years of age or older.

Sec. 90. Posting of Signs.

Vendors of age-prohibited products shall post a sign in a conspicuous place, which shall state: **“SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA, BIDIS, GUTKA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING PAPERS, OR SMOKING PARAPHERNALIA, TO PERSONS UNDER TWENTY-ONE YEARS OF AGE, IS PROHIBITED BY LOCAL LAW.”**

Sec. 91. Enforcement

- a. The enforcement officer is charged with ensuring compliance with this Article. The enforcement officer shall be authorized to serve official notices of violation of this Article.

Sec. 92. Penalties.

Any person who violated any provision of this Article shall be deemed guilty of an offense and, upon conviction thereof, shall be subject to penalties in the following manner:

(1) Upon a first conviction, by a fine not less than fifty dollars (\$50.00) and not more than two-hundred fifty dollars (\$250.00) or by imprisonment for a period not to exceed seven (7) days or by both such fine and imprisonment.

(2) Upon a second conviction, by a fine not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) or by imprisonment for a period not to exceed ten (10) days or by both such fine and imprisonment.

(3) Upon a third or subsequent conviction, by a fine not less than two hundred fifty dollars (\$250.00) and not more than three thousand dollars (\$3,000.00) or by imprisonment for a period not to exceed fifteen (15) days or by both such fine and imprisonment.

(4) If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate and distinct offense.

Sec. 93. Severability.

If any clause, sentence, paragraph, subdivision or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.”

Sec. 2. This Local Law shall take effect March 1, 2018 upon being filed in the Office of the New York Secretary of State.

November 21, 2017

Item No. 2
Resolution No.

The following Resolution was moved by
and seconded by :

Resolution Authorizing the City Manager to Approve a Purchase
Order for the Removal of Tideline Debris from the City's Transfer Station.

WHEREAS, the accumulation of almost 500 tons of tideline debris at the City's
Transfer Station created an imminent health and safety hazard, requiring the City to find a
vendor for emergency removal; and

WHEREAS, three vendors were contacted by the Office of Public Works and
only one was willing to remove and to dispose of the tideline debris; and

WHEREAS, Liotta & Sons Inc., 3966 Long Beach Road, Island Park, New York
11558 removed an initial 200 tons and was paid \$17,000 (which did not require Council
approval) and a subsequent 294.98 tons which remained at the Transfer Station, at a cost of
\$25,071;

NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York
that the City Manager be and he hereby is authorized to approve a purchase order for \$25,071 to
be paid to Liotta & Sons Inc., 3966 Long Beach Road, Island Park, New York 11558 for the
emergency removal of tideline debris from the City's Transfer Station.

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Item No. 3
Resolution No.

The following Resolution was moved by
and seconded by :

Resolution Authorizing Settlement of an Action Brought by
XTDR LLC d/b/a Servpro Against the City of Long Beach.

WHEREAS, on October 29, 2012, Superstorm Sandy struck the City of Long Beach, resulting in widespread damage to City properties and facilities; and

WHEREAS, in the chaotic days following Superstorm Sandy, Servpro arrived in the City of Long Beach, soliciting work, and began working in City facilities, claiming they had an oral contract after speaking with various City personnel; and

WHEREAS, the City took the position that it never entered into a contract for Servpro to perform cleaning services for the City, and that the services performed were substandard; and

WHEREAS, Servpro commenced an action on April 4, 2014, wherein it sought payment of cleaning costs at four (4) City of Long Beach (“City”) facilities: the Ice Arena, the City Garage, the Senior Center, and the Martin Luther King Center (“MLK”) Center; and

WHEREAS, Servpro subsequently invoiced the City in the amount of \$343,149.40 in connection with these facilities; and

WHEREAS, the City submitted a Summary Judgment motion, wherein the Court adopted the City’s arguments regarding Servpro’s claims sounding in quantum meruit, but denied the City’s motion with respect to Servpro’s breach of contract claims; and

WHEREAS, the Court subsequently denied the City’s Motion for Reconsideration on the breach claims; and

WHEREAS, after numerous years of litigation, on July 19, 2017, the parties attended a pre-trial/settlement conference before the Honorable Denis R. Hurley, United States District Judge, Eastern District of New York, wherein the Court strongly recommended, to both sides, a settlement in the amount of \$250,000; and

WHEREAS, the parties and their counsel, after having participated in subsequent settlement negotiations, have determined that the interests of all concerned are best served by accepting the Court’s proposed settlement in full;

NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York that the Corporation Counsel be and he hereby is authorized to settle the above referenced action entitled “XTDR LLC d/b/a Servpro against the City of Long Beach”, for the sum of \$250,000 in settlement of all claims of said Plaintiff, including Plaintiff’s claims in the United States District Court for the Eastern District of New York No. 14-cv-2157, inclusive of costs and attorneys’ fees, and the City Comptroller is hereby authorized to pay \$250,000 to the Plaintiff in full

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payment of the City's settlement upon the Corporation Counsel's execution of said settlement. Funds are available in Account No. C1930.54434 (Judgments and Claims-Insurance Reserve).

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Item No. 4
Resolution No.

The following Resolution was moved by
and seconded by :

Resolution Authorizing Publication of a Public Hearing on
an Application Recommended by the Landmarks Preservation
Commission.

WHEREAS, the owner of 350 East Market Street, Long Beach, New York 11561
has submitted an application to the Landmarks Preservation Commission for approval as a City
Landmark; and

WHEREAS, the Long Beach Landmarks Preservation Commission has
considered the special character, ambiance, and historical significance of the property and has
recommended the approval of the application of 350 East Market Street as a Landmark in the
City of Long Beach; and

WHEREAS, pursuant to Section 7-274(f) of the Code of Ordinances of the City
of Long Beach, a public hearing shall be held regarding the proposed landmarks designation;

NOW, THEREFORE, be it

RESOLVED, that the City Clerk shall cause to be published in the City's official
newspaper a notice of Public Hearing to be held on December 5, 2017 at 7:00 p.m., on the 6th
floor of City Hall, 1 West Chester Street, Long Beach, New York for the purpose of giving
citizens an adequate opportunity to publicly present their views on this application; and be it
further

RESOLVED, that the notice of this hearing shall be given by the Building
Department by mail on or before November 25, 2017 to the owner of the site and all property
owners located within 150 feet of the exterior boundaries of 350 East Market Street.

November 21, 2017

Item No. 5
Resolution No.

The following Resolution was moved by
and seconded by :

Resolution Authorizing Publication for Hearing of an Ordinance Authorizing Financing for the Cost of Payment of Settled Claims Against the City in the Matter of Marshall Starkman v. City of Long Beach, Stating the Estimated Total Cost Thereof is \$656,000, Appropriating Said Amount Therefor, and Authorizing the Issuance of Not to Exceed \$656,000 Bonds of Said City to Finance Said Appropriation.

WHEREAS, there has been presented to this Council the following proposed Bond Ordinance:

“BOND ORDINANCE DATED DECEMBER 5, 2017.

AUTHORIZING FINANCING FOR THE COST OF PAYMENT OF SETTLED CLAIMS AGAINST THE CITY IN THE MATTER OF MARSHALL STARKMAN v. CITY OF LONG BEACH, STATING THE ESTIMATED TOTAL COST THEREOF IS \$656,000, APPROPRIATING SAID AMOUNT THEREFOR, AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$656,000 BONDS OF SAID CITY TO FINANCE SAID APPROPRIATION.”

(See Proposed Ordinance)

NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York, that the City Clerk shall cause to be published in the official newspaper of the City of Long Beach, the title and the full text of said Ordinance; and be it further

RESOLVED, that said Ordinance shall be on the calendar for public hearing at a meeting of the City Council to be held at City Hall, 1 West Chester Street, in the City of Long Beach, New York, on December 5, 2017 at 7:00 p.m. on that day.

AUTHORIZING FINANCING FOR THE COST OF PAYMENT OF SETTLED CLAIMS AGAINST THE CITY IN THE MATTER OF MARSHALL STARKMAN v. CITY OF LONG BEACH, STATING THE ESTIMATED TOTAL COST THEREOF IS \$656,000, APPROPRIATING SAID AMOUNT THEREFOR, AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$656,000 BONDS OF SAID CITY TO FINANCE SAID APPROPRIATION.

BE IT ENACTED, by the Council of the City of Long Beach, Nassau County, New York, as follows:

Section 1. The City of Long Beach, Nassau County, New York (herein called the “City”), is hereby authorized to finance the cost of payment of settled claims against the City in the matter of Marshall Starkman v. City of Long Beach, at the estimated maximum cost of \$656,000. The estimated maximum cost of said object or purpose, including preliminary costs and costs incidental thereto and to the financing thereof, is \$656,000 and said amount is hereby appropriated therefor. The plan of financing includes the issuance of not to exceed \$656,000 bonds of the City to finance said appropriation, and the levy and collection of taxes on all the taxable real property in the City to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

Section 2. Bonds of the City in the aggregate principal amount of \$656,000 are hereby authorized to be issued pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called “Law”), to finance the appropriation referred to herein.

Section 3. The period of probable usefulness of the specific object or purpose for which said \$656,000 bonds herein authorized are to be issued, within the limitations of Section 11.00 a. 33(a)(1) of the Law, is five (5) years.

Section 4. The proceeds of the bonds herein authorized and any bond anticipation notes issued in anticipation of said bonds shall be applied to reimburse the City for expenditures made after the effective date of this ordinance for the purpose or purposes for which said bonds are authorized. The foregoing statement of intent with respect to reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.

Section 5. Each of the bonds authorized by this ordinance and any bond anticipation notes issued in anticipation of the sale of said bonds shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation of said bonds shall be general obligations of the City, payable as to both principal and interest by general tax upon all the taxable real property within the City. The faith and credit of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds and provision shall be made annually in the budget of the City by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 6. Subject to the provisions of this ordinance and of the Law and pursuant to the provisions of Section 21.00 relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the City Council relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, and relative to executing agreements for credit enhancement, are hereby delegated to the City Comptroller, the chief fiscal officer of the City.

Section 7. The validity of the bonds authorized by this ordinance, and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or
- (b) the provisions of law which should be complied with at the date of the publication of such ordinance or a summary hereof, are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or such obligations are authorized in violation of the provisions of the constitution.

Section 8. This ordinance, which takes effect immediately upon the final passage thereof, shall be published in summary form in the official newspaper of said City, together with a notice of the City Clerk in substantially the form set forth in paragraph a of §81.00 of the Local Finance Law.