

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: June 17, 2014

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations  
Committee

FROM: Gerry F. Miller *HEK for*  
Chief Legislative Analyst

Council File No.: 14-0002-S64  
Assignment No. : 14-05-0358

SUBJECT: Resolution (Parks - O'Farrell) to support AB 1819 (Hall) to prohibit smoking in family  
day care homes at all times.

CLA RECOMMENDATION: Adopt the attached Resolution (Parks – O'Farrell) to include in the  
City's 2013-2014 State Legislative Program SUPPORT of AB 1819 (Hall), which would prohibit  
smoking in family day care homes at all times.

## SUMMARY

Resolution (Parks - O'Farrell) states that the dangers of second hand smoke are widely documented and are particularly dangerous to the health of young children. In California, smoking is currently banned within family day care center homes whenever children are present to protect against the dangers associated with second-hand smoke. According to the Resolution, chemicals from tobacco smoke become embedded in common household items and present an especially high risk to infants and children. The Resolution states that these imbedded chemicals (known as third-hand smoke) can become more potent and can develop into carcinogenic pollutants.

AB 1819 (Hall) would prohibit smoking in family day care centers at all times. The Resolution indicates that smoking should be banned in family day care centers to ensure that young children are not exposed to the health risks associated with off-hours smoking. The Resolution therefore recommends that the City support AB 1819 (Hall).

## BACKGROUND

Under current law, tobacco products are prohibited in a licensed day care home during operating hours. A family daycare home is defined as a home that regularly provides non-medical care, protection and supervision for 14 or fewer children in the provider's own home for less than 24 hours per day. The Community Care Licensing Division within the California Department of Social Services conducts investigations of violations in response to complaints filed against child care homes or facilities.

On January 29, 2014, the University of California, Riverside (UCR) released a study regarding the effects of residual chemicals left on indoor surfaces as a result of smoking, also known as third-hand smoke. According to UCR, emerging evidence of the possible negative health effects of third-hand smoke has created a critical need to evaluate biological effects of exposure to third-hand smoke in order to determine potential human health risks. The study determined that third-hand smoke causes significant damage to the liver, lungs, and in the ability to heal wounds, especially in children. In

addition, according to the Mayo Clinic, the only way to protect nonsmokers from third-hand smoke is to create smoke-free environment in private homes, vehicles, and public places.

To address these issues, AB 1819 (Hall) would extend the current ban on smoking while children are present in family day care homes to a ban on smoking at all times. According to the author, AB 1819 (Hall) will reduce childhood exposure to third-hand smoke and decrease the chance of a child developing health issues related to smoking. The Assembly Committee on Appropriations estimates that the State will incur unknown but likely minor costs if AB 1819 (Hall) is enacted.

AB 1819 (Hall) is consistent with existing City policies and practices that enhance the health of City residents. Therefore, we recommend support of Resolution (Parks – O’Farrell).

Departments Notified

None.

Bill Status

June 12	From committee: Do pass and re-refer to Committee on Appropriations.
May 15	From committee chair, with author's amendments. Re-referred to Committee on Health.
May 8	Referred to Committee on Health.
April 21	In Senate. Read first time. To Committee on Rules for assignment.
April 21	Read third time. Passed (Ayes 58. Noes 13). Ordered to the Senate.
April 9	From committee: Do pass.
April 2	From committee: Do pass and re-referred to Committee on Appropriation.
March 26	From committee: Do pass and re-refer to Committee on Government Organization.
Feb. 27	Referred to Committees on Human Services and Governmental Organization.

  
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Brian Randol  
Analyst

- Attachments:
1. Resolution (Parks – O’Farrell)
  2. Text of AB 1819 (Hall)

14-0002-564

MAY 09 2014

RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the dangers of second hand smoke are widely documented and are particularly dangerous to the health of young children; and

WHEREAS, in California smoking is currently banned within family day care center homes whenever children are present to protect against the dangers associated with second-hand smoke; and

WHEREAS, recent research has revealed the health impacts of third-hand smoke, which are chemicals that remain on indoor surfaces as a result of smoking; and

WHEREAS, chemicals from third-hand smoke become imbedded in common household items and, thus, present an especially high risk to infants and children; and

WHEREAS, these chemicals can become more condensed and potent, and in some cases will develop into carcinogenic pollutants; and

WHEREAS, AB 1819 (Hall) would prohibit smoking in family day care centers at all times; and

WHEREAS, smoking should be banned in family day care centers to ensure that young children are not exposed to the health risks associated with off-hours smoking; and

WHEREAS, support of AB 1819 (Hall) is consistent with existing City policies and practices which enhance the health of City residents;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013-14 State Legislative Program support for AB 1819 (Hall), which would prohibit smoking in family day care homes at all times.

PRESENTED BY: Bernard C. Parks  
BERNARD C. PARKS  
Councilmember, 8<sup>th</sup> District

SECONDED BY: Michael J. Zaroff

BMR

MAY 9 2014

ORIGINAL

AMENDED IN SENATE MAY 15, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1819**

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**Introduced by Assembly Member Hall**  
*(Coauthors: Assembly Members Garcia and Ting)*

February 18, 2014

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An act to amend Section 1596.795 of the Health and Safety Code, and to amend Section 6404.5 of the Labor Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1819, as amended, Hall. Family day care home: smoking prohibition.

Existing law, the California Child Day Care Facilities Act, governs the licensing and operation of family day care homes and requires the State Department of Social Services to administer these provisions. Among other things, the act prohibits the smoking of tobacco in a private residence that is licensed as a family day care home during the hours of operation as a family day care home. A person who willfully or repeatedly violates a provision of the act is guilty of a misdemeanor.

This bill would prohibit the smoking of tobacco in a private residence that is licensed as a family day care home without regard to whether the act occurs during the hours of operation of the home. By expanding the scope of a crime, the bill would impose a state-mandated local program. *The bill would also make a conforming change.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1596.795 of the Health and Safety Code  
2 is amended to read:

3 1596.795. (a) The smoking of tobacco in a private residence  
4 that is licensed as a family day care home shall be prohibited in  
5 the home and in those areas of the family day care home where  
6 children are present. Nothing in this section shall prohibit a city  
7 or county from enacting or enforcing an ordinance relating to  
8 smoking in a family day care home if the ordinance is more  
9 stringent than this section.

10 (b) The smoking of tobacco on the premises of a licensed day  
11 care center shall be prohibited.

12 SEC. 2. Section 6404.5 of the Labor Code is amended to read:

13 6404.5. (a) The Legislature finds and declares that regulation  
14 of smoking in the workplace is a matter of statewide interest and  
15 concern. It is the intent of the Legislature in enacting this section  
16 to prohibit the smoking of tobacco products in all (100 percent of)  
17 enclosed places of employment in this state, as covered by this  
18 section, thereby eliminating the need of local governments to enact  
19 workplace smoking restrictions within their respective jurisdictions.  
20 It is further the intent of the Legislature to create a uniform  
21 statewide standard to restrict and prohibit the smoking of tobacco  
22 products in enclosed places of employment, as specified in this  
23 section, in order to reduce employee exposure to environmental  
24 tobacco smoke to a level that will prevent anything other than  
25 insignificantly harmful effects to exposed employees, and also to  
26 eliminate the confusion and hardship that can result from enactment  
27 or enforcement of disparate local workplace smoking restrictions.  
28 Notwithstanding any other provision of this section, it is the intent  
29 of the Legislature that any area not defined as a "place of  
30 employment" pursuant to subdivision (d) or in which the smoking  
31 of tobacco products is not regulated pursuant to subdivision (e)  
32 shall be subject to local regulation of smoking of tobacco products.

1 (b) No employer shall knowingly or intentionally permit, and  
2 no person shall engage in, the smoking of tobacco products in an  
3 enclosed space at a place of employment. "Enclosed space"  
4 includes lobbies, lounges, waiting areas, elevators, stairwells, and  
5 restrooms that are a structural part of the building and not  
6 specifically defined in subdivision (d).

7 (c) For purposes of this section, an employer who permits any  
8 nonemployee access to his or her place of employment on a regular  
9 basis has not acted knowingly or intentionally in violation of this  
10 section if he or she has taken the following reasonable steps to  
11 prevent smoking by a nonemployee:

12 (1) Posted clear and prominent signs, as follows:

13 (A) Where smoking is prohibited throughout the building or  
14 structure, a sign stating "No smoking" shall be posted at each  
15 entrance to the building or structure.

16 (B) Where smoking is permitted in designated areas of the  
17 building or structure, a sign stating "Smoking is prohibited except  
18 in designated areas" shall be posted at each entrance to the building  
19 or structure.

20 (2) Has requested, when appropriate, that a nonemployee who  
21 is smoking refrain from smoking in the enclosed workplace.

22 For purposes of this subdivision, "reasonable steps" does not  
23 include (A) the physical ejection of a nonemployee from the place  
24 of employment or (B) any requirement for making a request to a  
25 nonemployee to refrain from smoking, under circumstances  
26 involving a risk of physical harm to the employer or any employee.

27 (d) For purposes of this section, "place of employment" does  
28 not include any of the following:

29 (1) Sixty-five percent of the guestroom accommodations in a  
30 hotel, motel, or similar transient lodging establishment.

31 (2) Areas of the lobby in a hotel, motel, or other similar transient  
32 lodging establishment designated for smoking by the establishment.  
33 An establishment may permit smoking in a designated lobby area  
34 that does not exceed 25 percent of the total floor area of the lobby  
35 or, if the total area of the lobby is 2,000 square feet or less, that  
36 does not exceed 50 percent of the total floor area of the lobby. For  
37 purposes of this paragraph, "lobby" means the common public  
38 area of an establishment in which registration and other similar or  
39 related transactions, or both, are conducted and in which the

1 establishment's guests and members of the public typically  
2 congregate.

3 (3) Meeting and banquet rooms in a hotel, motel, other transient  
4 lodging establishment similar to a hotel or motel, restaurant, or  
5 public convention center, except while food or beverage functions  
6 are taking place, including setup, service, and cleanup activities,  
7 or when the room is being used for exhibit purposes. At times  
8 when smoking is not permitted in a meeting or banquet room  
9 pursuant to this paragraph, the establishment may permit smoking  
10 in corridors and prefunction areas adjacent to and serving the  
11 meeting or banquet room if no employee is stationed in that  
12 corridor or area on other than a passing basis.

13 (4) Retail or wholesale tobacco shops and private smokers'  
14 lounges. For purposes of this paragraph:

15 (A) "Private smokers' lounge" means any enclosed area in or  
16 attached to a retail or wholesale tobacco shop that is dedicated to  
17 the use of tobacco products, including, but not limited to, cigars  
18 and pipes.

19 (B) "Retail or wholesale tobacco shop" means any business  
20 establishment the main purpose of which is the sale of tobacco  
21 products, including, but not limited to, cigars, pipe tobacco, and  
22 smoking accessories.

23 (5) Cabs of motortrucks, as defined in Section 410 of the Vehicle  
24 Code, or truck tractors, as defined in Section 655 of the Vehicle  
25 Code, if no nonsmoking employees are present.

26 (6) Warehouse facilities. For purposes of this paragraph,  
27 "warehouse facility" means a warehouse facility with more than  
28 100,000 square feet of total floorspace, and 20 or fewer full-time  
29 employees working at the facility, but does not include any area  
30 within a facility that is utilized as office space.

31 (7) Gaming clubs, in which smoking is permitted by subdivision  
32 (f). For purposes of this paragraph, "gaming club" means any  
33 gaming club, as defined in Section 19802 of the Business and  
34 Professions Code, or bingo facility, as defined in Section 326.5 of  
35 the Penal Code, that restricts access to minors under 18 years of  
36 age.

37 (8) Bars and taverns, in which smoking is permitted by  
38 subdivision (f). For purposes of this paragraph, "bar" or "tavern"  
39 means a facility primarily devoted to the serving of alcoholic  
40 beverages for consumption by guests on the premises, in which

1 the serving of food is incidental. "Bar or tavern" includes those  
2 facilities located within a hotel, motel, or other similar transient  
3 occupancy establishment. However, when located within a building  
4 in conjunction with another use, including a restaurant, "bar" or  
5 "tavern" includes only those areas used primarily for the sale and  
6 service of alcoholic beverages. "Bar" or "tavern" does not include  
7 the dining areas of a restaurant, regardless of whether alcoholic  
8 beverages are served therein.

9 (9) Theatrical production sites, if smoking is an integral part of  
10 the story in the theatrical production.

11 (10) Medical research or treatment sites, if smoking is integral  
12 to the research and treatment being conducted.

13 (11) Private residences, except for private residences licensed  
14 as family day care homes, ~~during the hours of operation as family~~  
15 ~~day care homes and in those areas where children are present.~~  
16 *where smoking is prohibited pursuant to Section 1596.795 of the*  
17 *Health and Safety Code.*

18 (12) Patient smoking areas in long-term health care facilities,  
19 as defined in Section 1418 of the Health and Safety Code.

20 (13) Breakrooms designated by employers for smoking, provided  
21 that all of the following conditions are met:

22 (A) Air from the smoking room shall be exhausted directly to  
23 the outside by an exhaust fan. Air from the smoking room shall  
24 not be recirculated to other parts of the building.

25 (B) The employer shall comply with any ventilation standard  
26 or other standard utilizing appropriate technology, including, but  
27 not limited to, mechanical, electronic, and biotechnical systems,  
28 adopted by the Occupational Safety and Health Standards Board  
29 or the federal Environmental Protection Agency. If both adopt  
30 inconsistent standards, the ventilation standards of the Occupational  
31 Safety and Health Standards Board shall be no less stringent than  
32 the standards adopted by the federal Environmental Protection  
33 Agency.

34 (C) The smoking room shall be located in a nonwork area where  
35 no one, as part of his or her work responsibilities, is required to  
36 enter. For purposes of this subparagraph, "work responsibilities"  
37 does not include any custodial or maintenance work carried out in  
38 the breakroom when it is unoccupied.

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

1 (14) Employers with a total of five or fewer employees, either  
2 full time or part time, may permit smoking where all of the  
3 following conditions are met:

4 (A) The smoking area is not accessible to minors.

5 (B) All employees who enter the smoking area consent to permit  
6 smoking. No one, as part of his or her work responsibilities, shall  
7 be required to work in an area where smoking is permitted. An  
8 employer who is determined by the division to have used coercion  
9 to obtain consent or who has required an employee to work in the  
10 smoking area shall be subject to the penalty provisions of Section  
11 6427.

12 (C) Air from the smoking area shall be exhausted directly to  
13 the outside by an exhaust fan. Air from the smoking area shall not  
14 be recirculated to other parts of the building.

15 (D) The employer shall comply with any ventilation standard  
16 or other standard utilizing appropriate technology, including, but  
17 not limited to, mechanical, electronic, and biotechnical systems,  
18 adopted by the Occupational Safety and Health Standards Board  
19 or the federal Environmental Protection Agency. If both adopt  
20 inconsistent standards, the ventilation standards of the Occupational  
21 Safety and Health Standards Board shall be no less stringent than  
22 the standards adopted by the federal Environmental Protection  
23 Agency.

24 This paragraph shall not be construed to (i) supersede or render  
25 inapplicable any condition or limitation on smoking areas made  
26 applicable to specific types of business establishments by any other  
27 paragraph of this subdivision or (ii) apply in lieu of any otherwise  
28 applicable paragraph of this subdivision that has become  
29 inoperative.

30 (e) Paragraphs (13) and (14) of subdivision (d) shall not be  
31 construed to require employers to provide reasonable  
32 accommodation to smokers, or to provide breakrooms for smokers  
33 or nonsmokers.

34 (f) (1) Except as otherwise provided in this subdivision,  
35 smoking may be permitted in gaming clubs, as defined in paragraph  
36 (7) of subdivision (d), and in bars and taverns, as defined in  
37 paragraph (8) of subdivision (d), until the earlier of the following:

38 (A) January 1, 1998.

39 (B) The date of adoption of a regulation (i) by the Occupational  
40 Safety and Health Standards Board reducing the permissible

1 employee exposure level to environmental tobacco smoke to a  
2 level that will prevent anything other than insignificantly harmful  
3 effects to exposed employees or (ii) by the federal Environmental  
4 Protection Agency establishing a standard for reduction of  
5 permissible exposure to environmental tobacco smoke to an  
6 exposure level that will prevent anything other than insignificantly  
7 harmful effects to exposed persons.

8 (2) If a regulation specified in subparagraph (B) of paragraph  
9 (1) is adopted on or before January 1, 1998, smoking may thereafter  
10 be permitted in gaming clubs and in bars and taverns, subject to  
11 full compliance with, or conformity to, the standard in the  
12 regulation within two years following the date of adoption of the  
13 regulation. An employer failing to achieve compliance with, or  
14 conformity to, the regulation within this two-year period shall  
15 prohibit smoking in the gaming club, bar, or tavern until  
16 compliance or conformity is achieved. If the Occupational Safety  
17 and Health Standards Board and the federal Environmental  
18 Protection Agency both adopt regulations specified in subparagraph  
19 (B) of paragraph (1) that are inconsistent, the regulations of the  
20 Occupational Safety and Health Standards Board shall be no less  
21 stringent than the regulations of the federal Environmental  
22 Protection Agency.

23 (3) If a regulation specified in subparagraph (B) of paragraph  
24 (1) is not adopted on or before January 1, 1998, the exemptions  
25 specified in paragraphs (7) and (8) of subdivision (d) shall become  
26 inoperative on and after January 1, 1998, until a regulation is  
27 adopted. Upon adoption of such a regulation on or after January  
28 1, 1998, smoking may thereafter be permitted in gaming clubs and  
29 in bars and taverns, subject to full compliance with, or conformity  
30 to, the standard in the regulation within two years following the  
31 date of adoption of the regulation. An employer failing to achieve  
32 compliance with, or conformity to, the regulation within this  
33 two-year period shall prohibit smoking in the gaming club, bar,  
34 or tavern until compliance or conformity is achieved. If the  
35 Occupational Safety and Health Standards Board and the federal  
36 Environmental Protection Agency both adopt regulations specified  
37 in subparagraph (B) of paragraph (1) that are inconsistent, the  
38 regulations of the Occupational Safety and Health Standards Board  
39 shall be no less stringent than the regulations of the federal  
40 Environmental Protection Agency.

1 (4) From January 1, 1997, to December 31, 1997, inclusive,  
2 smoking may be permitted in gaming clubs, as defined in paragraph  
3 (7) of subdivision (d), and in bars and taverns, as defined in  
4 paragraph (8) of subdivision (d), subject to both of the following  
5 conditions:

6 (A) If practicable, the gaming club or bar or tavern shall  
7 establish a designated nonsmoking area.

8 (B) If feasible, no employee shall be required, in the  
9 performance of ordinary work responsibilities, to enter any area  
10 in which smoking is permitted.

11 (g) The smoking prohibition set forth in this section shall  
12 constitute a uniform statewide standard for regulating the smoking  
13 of tobacco products in enclosed places of employment and shall  
14 supersede and render unnecessary the local enactment or  
15 enforcement of local ordinances regulating the smoking of tobacco  
16 products in enclosed places of employment. Insofar as the smoking  
17 prohibition set forth in this section is applicable to all (100-percent)  
18 places of employment within this state and, therefore, provides  
19 the maximum degree of coverage, the practical effect of this section  
20 is to eliminate the need of local governments to enact enclosed  
21 workplace smoking restrictions within their respective jurisdictions.

22 (h) Nothing in this section shall prohibit an employer from  
23 prohibiting smoking in an enclosed place of employment for any  
24 reason.

25 (i) The enactment of local regulation of smoking of tobacco  
26 products in enclosed places of employment by local governments  
27 shall be suspended only for as long as, and to the extent that, the  
28 (100-percent) smoking prohibition provided for in this section  
29 remains in effect. In the event this section is repealed or modified  
30 by subsequent legislative or judicial action so that the (100-percent)  
31 smoking prohibition is no longer applicable to all enclosed places  
32 of employment in California, local governments shall have the full  
33 right and authority to enforce previously enacted, and to enact and  
34 enforce new, restrictions on the smoking of tobacco products in  
35 enclosed places of employment within their jurisdictions, including  
36 a complete prohibition of smoking. Notwithstanding any other  
37 provision of this section, any area not defined as a "place of  
38 employment" or in which smoking is not regulated pursuant to  
39 subdivision (d) or (e), shall be subject to local regulation of  
40 smoking of tobacco products.

1 (j) Any violation of the prohibition set forth in subdivision (b)  
2 is an infraction, punishable by a fine not to exceed one hundred  
3 dollars (\$100) for a first violation, two hundred dollars (\$200) for  
4 a second violation within one year, and five hundred dollars (\$500)  
5 for a third and for each subsequent violation within one year. This  
6 subdivision shall be enforced by local law enforcement agencies,  
7 including, but not limited to, local health departments, as  
8 determined by the local governing body.

9 (k) Notwithstanding Section 6309, the division shall not be  
10 required to respond to any complaint regarding the smoking of  
11 tobacco products in an enclosed space at a place of employment,  
12 unless the employer has been found guilty pursuant to subdivision  
13 (j) of a third violation of subdivision (b) within the previous year.

14 (l) If any provision of this act or the application thereof to any  
15 person or circumstances is held invalid, that invalidity shall not  
16 affect other provisions or applications of the act that can be given  
17 effect without the invalid provision or application, and to this end  
18 the provisions of this act are severable.

19 ~~SEC. 2.~~

20 *SEC. 3.* No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.