

MEETING DATE:

September 8, 2008

AGENDA ITEM:

Introduction of an Ordinance Amending Chapter 9.11 of the Culver City Municipal Code Relating to Smoking Regulations to 1) Add New Regulations Prohibiting Smoking in Outdoor Dining Areas; 2) Relocate Existing Regulations Prohibiting Smoking in City Parks from Subchapter 9.10.500, et seq. to Chapter 9.11; and 3) Update Existing Regulations Contained in Chapter 9.11 to be Consistent with State Law.

ATTACHMENTS

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Attachment 1

ORDINANCE NO. 2008-_____

AN ORDINANCE OF THE CITY OF CULVER CITY, CALIFORNIA, AMENDING CHAPTER 9.11 OF THE CULVER CITY MUNICIPAL CODE RELATING TO SMOKING REGULATIONS TO 1) ADD NEW REGULATIONS PROHIBITING SMOKING IN OUTDOOR DINING AREAS; 2) RELOCATE EXISTING REGULATIONS PROHIBITING SMOKING IN CITY PARKS FROM SUBCHAPTER 9.10.500, *et seq.* TO CHAPTER 9.11; AND 3) UPDATE EXISTING REGULATIONS CONTAINED IN CHAPTER 9.11 TO BE CONSISTENT WITH STATE LAW.

WHEREAS, the California Air Resources Board has identified environmental tobacco smoke, or secondhand smoke, as a Toxic Air Contaminant, which may cause and contribute to death or serious illness, including increased risks of cancer, and is especially hazardous to children and people with asthma and other respiratory problems; and

WHEREAS, according to the United States Environmental Protection Agency, any level of exposure to secondhand smoke is harmful; and

WHEREAS, it is the intent of the City Council of the City of Culver City to provide for the public's health, safety, and welfare by discouraging the inherently dangerous activity of tobacco use around non-consenting individuals; and

WHEREAS, the City Council hereby declares that the intent and purpose of prohibiting smoking at the locations identified in this Ordinance is to protect the public health, safety, and welfare by reducing the number of locations in the City where exposure to secondhand smoke can occur; and

WHEREAS, for organizational purposes and ease of reference for the public, the City's smoke-free parks regulations set forth in Chapter 9.10 shall be relocated to Chapter 9.11; and

WHEREAS, the City's existing general smoking regulations set forth in Chapter 9.11 are unnecessary as they are either duplicative of or in conflict with state law.

1 **NOW THEREFORE**, the City Council of the City of Culver City, California,
2 **DOES HEREBY ORDAIN** as follows:

3 **SECTION 1.** Chapter 9.11 of the Culver City Municipal Code is hereby
4 repealed and replaced with the following:

5 **CHAPTER 9.11: SMOKING REGULATIONS**

6 § 9.11.100 Purpose

7 § 9.11.105 Definitions

8 § 9.11.110 Smoking Prohibited in Outdoor Dining Areas

9 § 9.11.115 Smoking Prohibited in City Parks and Recreational Areas

10 § 9.11.120 Other Prohibitions and Requirements

11 § 9.11.125 Exemptions

12 § 9.11.130 Penalties and Enforcement

13 § 9.11.135 Conflict of Provisions

14 **§ 9.11.100 PURPOSE.**

15 It is the intent of the City Council of the City of Culver City to control
16 exposure to secondhand smoke by prohibiting smoking at certain locations, in
17 addition to those places where smoking is prohibited by state law. The California Air
18 Resources Board has identified environmental tobacco smoke, or secondhand
19 smoke, as a Toxic Air Contaminant, which may cause and contribute to death or
20 serious illness, including increased risks of cancer, and is especially hazardous to
21 children and people with asthma and other respiratory problems. The intent and
22 purpose of prohibiting smoking at the locations identified in this Chapter is to protect
23 the public health, safety, and welfare by reducing the number of locations in the City
24 where exposure to secondhand smoke can occur. The provisions of this Chapter
25 are intended to be a supplement to existing state law smoking prohibitions and
26 restrictions.

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1 Tobacco Product, lighted Tobacco Paraphernalia, or any other lighted weed
2 or plant, including a lighted pipe, cigar, hookah pipe, or cigarette of any kind;
3 and the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other
4 weed or plant, including a pipe, cigar, hookah pipe, or cigarette of any kind.

5 **Tobacco Paraphernalia** shall mean cigarette papers or wrappers,
6 pipes, holders of smoking materials of all types, cigarette rolling machines,
7 and any other item designed for the smoking, preparation, storing, or
8 consumption of Tobacco Products.

9 **Tobacco Product** shall mean:

10 A. any substance containing tobacco leaf, including but not
11 limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing
12 tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and

13 B. any product or formulation of matter containing
14 biologically active amounts of nicotine that is manufactured, sold, offered for
15 sale, or otherwise distributed with the expectation that the product or matter
16 will be introduced into the human body, but does not include any product
17 specifically approved by the United States Food and Drug Administration for
18 use in treating nicotine or tobacco dependence.

19 **§ 9.11.110 SMOKING PROHIBITED IN OUTDOOR DINING**
20 **AREAS.**

21 A. *Prohibition.* Smoking is prohibited in all Outdoor Dining Areas
22 located on private or public property, including the public right-of-way.
23 Smoking is further prohibited in all non-enclosed areas within five (5) feet of
24 any Outdoor Dining Area, except while actively passing on the way to another
25 destination. Bars are exempted from the provisions of this Section, provided
26 the smoke does not enter adjacent areas in which smoking is prohibited by
27 law or by the owner, lessee, or licensee of the adjacent property.
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1 B. *Posting of Signs.* Every Outdoor Dining Area subject to the
2 prohibition set forth in subsection (A) above must have one or more
3 conspicuously displayed signs stating that smoking is prohibited in the
4 Outdoor Dining Area. Such signs must have text and/or graphics to clearly
5 indicate that smoking is prohibited in the Outdoor Dining Area and include an
6 appropriate Culver City Municipal Code citation. Any text must be clearly
7 contrasted with the background and must be a minimum of one inch in
8 height. The text must state "No Smoking," "Smoke Free Area," or another
9 phrase to clearly indicate that smoking is prohibited. Any graphics must be
10 substantially similar to the international "No Smoking" symbol, consisting of a
11 pictorial representation of a burning cigarette enclosed in a red circle with a
12 red bar across it. Such signs shall be posted in a quantity and manner
13 reasonably likely to inform individuals occupying the Outdoor Dining Area that
14 smoking is prohibited within the Outdoor Dining Area and must be made of
15 permanent, weather resistant materials.

16 C. *Time of Posting.* Every business or property subject to subsection
17 (A) above shall post the signs required by this Section within thirty (30) days
18 of the effective date of this Chapter. Every business or property which
19 becomes subject to the provisions of this Chapter after its effective date shall
20 post the required signs immediately upon commencing operations.

21 **§ 9.11.115 SMOKING PROHIBITED IN CITY PARKS AND**
22 **RECREATIONAL AREAS.**

23 A. *Prohibition.* Smoking within any Park or Recreational Area is
24 Prohibited.

25 B. *Tobacco Waste.* The disposal of any Tobacco Product or
26 Tobacco Paraphernalia within any Park or Recreational Area is prohibited,
27 except in a City-designated waste receptacle, or unless being done as part of
28 a scene in a film, television or live performance production.

1 C. *Posting of Signs.* The City shall cause the installation of "No
2 Smoking" signs, with letters of no less than one inch in height and including
3 the international "No Smoking" symbol consisting of a pictorial representation
4 of a burning cigarette enclosed in a red circle crossed by a red bar. Such
5 signs shall be clearly and conspicuously posted and maintained at all main
6 entrances to a Park or Recreational Area and additional signs shall be posted
7 in a quantity and manner reasonably likely to inform individuals occupying the
8 Park or Recreational Area that smoking is prohibited within the area.

9 **§ 9.11.120 OTHER PROHIBITIONS AND REQUIREMENTS.**

10 A. Nothing in this Chapter shall be construed to prohibit Smoking
11 in any area in which Smoking is already prohibited by state or federal law
12 unless the applicable state or federal law permits additional local regulation.

13 B. Nothing in this Chapter shall be construed to grant any person
14 an affirmative right to Smoke or permit Smoking in any area in which
15 Smoking is otherwise prohibited by this Chapter or state or federal law, or
16 prohibited by a person with property rights in the no-Smoking area.

17 C. No person shall Smoke or knowingly permit Smoking in
18 an area under the person's legal or de facto control in which Smoking is
19 prohibited by this Chapter or state or federal law except a person
20 who is already compelled to act under state or federal law unless the
21 applicable state or federal law permits additional local regulation.

22 D. No person shall willfully mutilate or destroy any sign required by
23 this Chapter.

24 E. Signs required by this Chapter are exempt from the sign
25 requirements in Chapter 17.330 of this Code.

26 F. The absence of signs required by this Chapter shall not be a
27 defense to a violation of any provision of this Chapter.
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1 G. No person shall intimidate, threaten any reprisal, or effect any
2 reprisal, for the purpose of retaliating against another person who seeks to
3 attain compliance with this Chapter.

4 **§ 9.11.125 EXEMPTION.**

5 The provisions of this Chapter shall not apply to any person acting in a
6 scene of a live performance production or a film or television production, as
7 long as a Film Permit has been obtained, if required pursuant to the
8 provisions of Chapter 11.14 of this Code.

9 **§ 9.11.130 PENALTIES AND ENFORCEMENT.**

10 A. The remedies provided by this Chapter are cumulative and
11 in addition to any other remedies available at law or in equity.

12 B. A violation of this Chapter is subject to a civil action brought
13 by the City Attorney, punishable by a civil fine not less than one hundred
14 dollars (\$100) and not exceeding one thousand dollars (\$1,000) per
15 violation.

16 C. A violation of any provision of this Chapter may, in the
17 discretion of the City Attorney, be prosecuted as an infraction or
18 misdemeanor. The City Council shall, by resolution, establish the penalties
19 for a violation of this Chapter, but in no event shall such penalties exceed
20 the maximum penalties permitted under State law.

21 D. Causing, permitting, aiding, abetting, or concealing a violation of
22 any provision of this Chapter shall also constitute a violation of this
23 Chapter.

24 E. Any violation of this Chapter is hereby declared to be a
25 public nuisance. In addition, any violation of this Chapter involving
26 Smoking is hereby declared to be a private nuisance.

27 G. Any person acting for the interests of itself, its members, or the
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Attachment 2

Meeting Date: 07/28/08		Item Number: A-4	
AGENDA ITEM: Introduction of an Ordinance Amending Chapter 9.11 of the Culver City Municipal Code Relating to Smoking Regulations to 1) Add New Regulations Prohibiting Smoking in Outdoor Dining Areas; 2) Relocate Existing Regulations Prohibiting Smoking in City Parks from Subchapter 9.10.500, et seq. to Chapter 9.11; and 3) Update Existing Regulations Contained in Chapter 9.11 to be Consistent with State Law.			
Contact Person/Dept.: Shelly Wolfberg/City Manager's Office; or Heather Baker/City Attorney		Phone Number: (310) 253-6008 or (310) 253-5660	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☒ No ☐	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Public Notification: County of Los Angeles Department of Health Services; Culver City Chamber of Commerce; Downtown Business Association; Restaurant owners; Individuals who spoke at prior Council Meetings; Master E-Mail Notification List (07/24/08); Coalition for a Tobacco Free LA County (comprised of over 70 organizations – this notification was emailed courtesy of the County of Los Angeles Department of Health Services) (07/14/08 and 07/23/08).			
Department Approval: Jerry B. Fulwood (07/24/08)		City Attorney Approval: Carol Schwab (by H. Baker) (07/24/08)	
Chief Financial Officer Approval: Jeff Muir (by M. Noller) (07/24/08)		City Manager Approval: Jerry B. Fulwood (07/24/08)	
<u>RECOMMENDATION:</u> Staff recommends the City Council: (1) Introduce an Ordinance (Attachment 1) amending Chapter 9.11 of the Culver City Municipal Code relating to smoking regulations to 1) add new regulations prohibiting smoking in outdoor dining areas; 2) relocate existing regulations prohibiting smoking in City parks from Subchapter 9.10.500, et seq. to Chapter 9.11; and 3) update existing regulations contained in Chapter 9.11 to be consistent with state law; OR (2) Provide further direction to staff regarding this issue. <u>BACKGROUND:</u> At the December 10, 2007 City Council meeting, discussion ensued between the City Council and staff regarding other cities' smoking findings and ordinances;			

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enforcement issues; other pressing health issues; whether restaurant owners, apartment building owners, and condo associations have the right to prohibit outdoor smoking; government's role in legislating behavior; and the economic impact of a smoking ban within 20-feet of a City facility. Resulting from the discussion, the City Council voted 3-2 to direct staff to draft an ordinance to ban smoking in outdoor dining areas.

In addition to the direction of the City Council with regard to the ban on smoking in outdoor dining areas, staff has also taken this opportunity to update the City's existing general smoking regulations to be consistent with state law and relocate the existing regulations prohibiting smoking in the City's parks to the same part of the Culver City Municipal Code (CCMC) as other smoking regulations.

DISCUSSION:

Ban on Smoking in Outdoor Dining Areas:

Existing Law

Currently, CCMC provisions do not include any prohibitions or restrictions relating to smoking in outdoor dining areas. There are also no such prohibitions or regulations under state law in this regard.

City's Authority to Regulate

Although currently there are no prohibitions contained in state law against smoking in outdoor dining areas, the City is not preempted from establishing regulations, including a total ban on smoking in outdoor dining areas. There is no fundamental right to smoke, nor are laws that prohibit smoking considered discriminatory against smokers as a particular group. Therefore, in adopting such laws, the City need only have a rational basis that is related to a legitimate governmental purpose.

In this case, as stated in the proposed Ordinance, providing for the "public's health, safety, and welfare by discouraging the inherently dangerous activity of tobacco use around non-consenting individuals" and declaring that these regulations are "necessary to protect the public from the hazards of smoking and secondhand smoke, particularly in City outdoor dining areas, which are intended as a safe environment for the use and enjoyment of Culver City residents and the general public," is a sufficient, rational basis for establishing a prohibition against smoking in outdoor dining areas.

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This basis for establishing a ban on smoking in outdoor dining areas was emphasized by members of the public during Council's consideration of its options at its December 10th meeting. Two members of the public, representing Smoke Free Air For Everyone (SAFE) and the American Lung Association of California were present and spoke about the health effects of secondhand smoke.

Other Cities' Regulations

In preparing the proposed Ordinance, staff looked at various other cities' regulations regarding smoking bans in outdoor dining areas. On the Westside, the Cities of Beverly Hills and Santa Monica have in place ordinances which prohibit smoking in various public areas (such as outdoor dining areas).

Enforcement

Should a smoking ban in outdoor dining areas be approved by the City Council, staff recommends the restaurants be required to post a sign prohibiting smoking in outdoor dining areas, referencing the CCMC Section setting forth the regulation, and a telephone number to report a violation. Los Angeles-area cities that have made business owners liable in this area all require such signage. The City of Calabasas requires such signs be conspicuously posted at each entrance and include letters of at least one inch in height or the universal no-smoking symbol. Burbank requires that signs be conspicuously displayed including multiple signs as appropriate for larger areas to ensure that signs be readily visible to all diners. The City of Beverly Hills and Santa Monica have a similar requirement to the City of Burbank.

In considering whether to adopt a ban on smoking in outdoor dining areas, City staff has discussed the issue of enforcement of such a law. The enforcement and penalty provisions of the proposed Ordinance are written to provide several options for enforcement and encourage and promote self-regulation and compliance (i.e. clear, conspicuously posted "no smoking" signs; providing the public with a right of private civil action). It is staff's understanding that similar no-smoking laws, such as the one in the City of Beverly Hills, have been self-regulating for the most part. In the event the City would need to take enforcement action, it would be handled as resources permit, taking into consideration the existing work plans of the Police Department and City Attorney's Office. Should the City Council determine it wishes to make enforcement of this proposed Ordinance a higher priority, additional resources would need to be dedicated to this effort.

Staff recommends the enforcement of a smoking ban in outdoor dining areas be enforced by the Police Department. It is anticipated that the Police Department would provide ongoing education efforts by speaking with outdoor dining patrons who are in violation of the smoking ordinance but unaware of its existence. Many of

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these individuals could be tourists or come from outside Culver City's boundaries. While most individuals will likely comply with the law once officers explain the CCMC requirements, those who are resistant would be requested to comply or be subject to citation (see Penalties below).

Depending on the nature and level of the enforcement efforts of a smoking ban in outdoor dining areas, it could require additional resources from the Police Department and City Attorney's Office. Funding has not been budgeted for FY 08/09 for additional enforcement services for a smoking ban in outdoor dining areas.

Penalties

According to research, some California cities impose initial fines on businesses of \$100 for violating outdoor smoking regulations with fines increasing to \$200 and \$500 respectively for subsequent violations, as does the state indoor smoking law. The proposed Ordinance provides the City Council shall, by resolution, establish the penalties for a violation of the outdoor smoking regulations, but in no event shall such penalties exceed the maximum penalties permitted under state law. If the proposed Ordinance is introduced this evening, such a resolution will be presented to the City Council for consideration at the time the Ordinance is brought back for adoption.

Definition of an Outdoor Dining Area

During the course of two community meetings that were held on July 9 and July 15, 2008 to discuss the potential smoking ban in outdoor dining areas, concerns were expressed by members of the business community with regard to the type of outdoor areas that would be covered by the proposed smoking ban.

Per the City Council's prior direction, the proposed Ordinance defines an "outdoor dining area" broadly as follows:

"...any non-enclosed area located on private or public property made available to or customarily used by the general public that is designed, established or regularly used for consuming food and/or beverages or where food and/or beverages are served whether or not for compensation. This includes but is not limited to restaurants, hotels, bar standing and seating areas, patios, and coffee shops."

The above definition of an outdoor dining area is based on language in the City of Beverly Hills Municipal Code. The Council could consider other options for defining

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an outdoor dining area as it deems appropriate. Some examples include, but are not limited to, the following:

1. "...any non-enclosed area open to the public in a non-residential zone or adjacent right-of-way, or in a residential zone or adjacent right-of-way and utilized for non-residential purposes, where food or beverages are served, whether or not for compensation, or where food or beverages are routinely consumed by customers. This includes but is not limited to restaurant and bar standing and seating areas and patios." (City of Burbank)
2. "...a non-residential location where food or beverages are served by a business or routinely consumed by customers. This includes but is not limited to restaurant or bar seating areas and patios." (City of Santa Monica)
3. "...any non-enclosed area located on private or public property made available to or customarily used by the general public that is designed, established or regularly used for consuming food and/or beverages, where such area is regularly serviced or maintained by employees of the business while customers are consuming food and/or beverages, including but not limited to wait-staff and bus persons. This includes but is not limited to restaurants, hotels, bar standing and seating areas, patios, and coffee shops."

With regard to Option No. 3 above, the rational basis for distinguishing those establishments where the outdoor dining area is regularly serviced or maintained by employees is consistent with the purpose of the state law prohibition against smoking in an enclosed workplace (Labor Code Section 6404.5) — to protect the employees. However, such a restriction could be difficult to enforce and confusing for the public. Staff was unable to find any other cities with a similar restriction.

Other Options

The Council may consider other options related to prohibiting smoking in outdoor dining areas.

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- Perimeter surrounding outdoor dining area.

“Smoking is further prohibited in all non-enclosed areas within five (5) feet of any outdoor dining area.” (City of Burbank); OR

“Smoking is further prohibited in all non-enclosed areas within five (5) feet of any outdoor dining area, except while actively passing on the way to another destination.” (City of Beverly Hills)

- Smoking prohibition during certain hours.

The City could restrict smoking in outdoor dining areas during certain hours (i.e. no smoking until 9 p.m.). However, such a restriction could be difficult to enforce and confusing to the public. Staff has been unable to find any other cities with such a restriction.

- Designated smoking areas.

The City could allow businesses to have a designated smoking area in an outdoor dining area. This law is in effect in the City of Burbank. The City of Burbank requires all designated smoking areas meet certain criteria and have signs to clearly designate the specific smoking areas.

- Exception for bar patios.

“...bars are exempted from the outside smoking requirements of this section, provided the smoke does not enter adjacent areas in which smoking is prohibited by law or by the owner, lessee, or licensee of the adjacent property.” (City of Oakland)

“...except unenclosed areas of a bar that does not serve food. Smoking in an unenclosed area of a bar is only permitted provided the smoke does not enter adjacent areas in which smoking is prohibited by any law or by the owner, lessee or licensee of the adjacent property; and providing that any door or opening to the business remains closed.” (City of Blue Lake)

“...except unenclosed areas of a bar that does not serve food. If smoking is permitted in the unenclosed area of a bar that does not serve food, the entire smoking section

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must be limited to one clearly designated area prominently marked with signs, and must be located at least five (5) feet from any doorway or opening into an enclosed area. Smoking in an unenclosed area of a bar is only permitted provided the smoke does not enter adjacent areas in which smoking is prohibited by any law or by the owner, lessee or licensee of the adjacent property." (excerpt from Technical Assistance Legal Center Model Comprehensive Secondhand Smoke Ordinance)

Publicity, Outreach and Education

If the City Council approves a ban on smoking in outdoor dining areas, staff proposes the following methods of publicity and community outreach and education:

1. Mail a letter to all permittees of outdoor dining permits, businesses with private outdoor dining areas, the Chamber of Commerce and the Downtown Business Association, providing a copy of the adopted ordinance, and instructions for posting a sign in the outdoor dining area.
2. Distribute a press release to area newspapers, Culver City Living, Sanitation Bill inserts and the City's website to inform the public of the new ordinance.
3. Provide a cable crawler to be run during official City meetings.
4. Create a downloadable smoking ban sign on the City's website for business owners.

Reorganization and Update to Existing Smoking Regulations:

Smoke-free Parks Regulations

The existing regulations prohibiting smoking in all City parks are located in Chapter 9.10 of the CCMC. All other smoking regulations are located in Chapter 9.11 of the CCMC. The proposed Ordinance will relocate the smoke-free parks regulations to Chapter 9.11 for organizational purposes and ease of reference for the public.

Update Existing Smoking Regulations to be Consistent with State Law

Many of the existing smoking regulations as set forth in Chapter 9.11 are duplicative of or in conflict with state law. State law preempts local governments in the area of smoking regulations, except to the extent that such regulations are not in conflict with or are stricter than state law. The proposed Ordinance updates the existing regulations to be consistent with state law.

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FISCAL ANALYSIS:

There is no fiscal impact to the introduction of the proposed ordinance this evening. If the ordinance were to be eventually adopted by the Council, the additional regulations prohibiting smoking in sidewalk dining areas may require increased enforcement activity by City staff, the Police Department and the City Attorney's Office. Additional staff time will be attributed to work by the City Manager's office to prepare and disseminate public information about the smoking ban. These costs cannot be easily quantified. If compliance becomes an issue, staff will return to the City Council with options on additional enforcement and public outreach to encourage compliance with the smoking ban ordinance, along with associated costs.

ATTACHMENTS:

1. Proposed Ordinance
2. Chapter 9.11

MOTIONS:

That the City Council:

1. Introduce an Ordinance amending Chapter 9.11 of the Culver City Municipal Code relating to smoking regulations to 1) add new regulations prohibiting smoking in outdoor dining areas; 2) relocate existing regulations prohibiting smoking in City parks from Subchapter 9.10.500, et seq. to Chapter 9.11; and 3) update existing regulations contained in Chapter 9.11 to be consistent with state law;

OR

2. Provide further direction to staff.