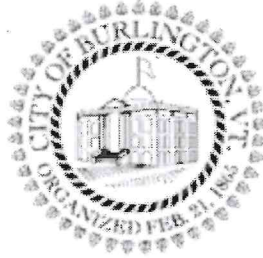
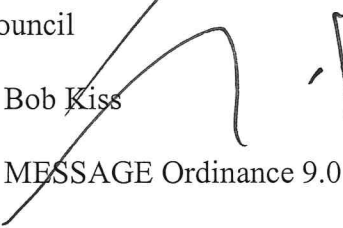


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**MEMORANDUM**

To: City Council  
From: Mayor Bob Kiss   
Re: VETO MESSAGE Ordinance 9.0  
Date: January 13, 2012

VETO MESSAGE Ordinance 9.0  
Adoption Action, January 9, 2012  
Veto Message, January 13, 2012

An Ordinance in Relation to Health—Smoking in outdoor place prohibited

This veto message responds to the Ordinance Committee proposal passed by the City Council at its meeting on January 9, 2012 regarding smoking in outdoor places related to the Church Street Marketplace. At that meeting, I recommended against passage of the proposal before the City Council because it is a compromise proposal that in its details ultimately shapes up as bad public policy.

The City's Department of Parks and Recreation—in response to a similar issue of outdoor smoking—participated with the Ordinance Committee in the creation of a policy that banned smoking in places where people congregate and when signs are posted. This means sporting events, North Beach, and picnic areas managed by Parks and Recreation are routinely protected—but it does not restrict someone from smoking as they walk their dog alone at Roosevelt Park on a Thursday afternoon. As a policy in the parks, I believe this policy is effective and generally enforceable.

What was passed for the Marketplace on the subject of outdoor smoking assumes too large an area for non-smoking, but then riddles the smoking restriction with an OK to smoke on private property (in the alleyways behind stores, bars, and restaurants, and wherever private property is available for use), or in outdoor cafes on land leased for this use by the City, or from 9 p.m. to 9

a.m. every night. This is a long way from a prohibition of smoking—especially if the basis of the proposal is for the protection of people from second hand smoke.

The proposed ordinance does nothing to protect the employees of businesses from second hand smoke where the owner allows outdoor café smoking—an issue that was central to the elimination of smoking indoors. And, for people who smoke and work in the restricted smoking area, it's a long walk for some of them to an area outside the restricted smoking area, or to private property probably belonging to someone else, in order to legally smoke (something many of us don't need to care about as non-smokers, but has real implications for people as employees and employers).

Some of the driving force for the outdoor café smoking option is a concern by outdoor café owners and others that without the opportunity to smoke, the Marketplace will lose business, particularly from Canadian visitors. I haven't seen the facts to seriously support this claim.

This proposed ordinance, given its expanse and with all of its exceptions, is difficult to enforce. This smoking ordinance opens the door to difficult, inconsistent and selective enforcement by law enforcement officers. This is a bad result for everyone.

All in all, this ordinance is not a step forward. The argument that it represents a compromise, or “the best compromise possible”, in order to get everyone to agree to something just isn't good enough. Compromise is no excuse for bad public policy.

The Ordinance Committee needs to stay at the drawing board and put something together that isn't hypocritical and works. As I see it, in terms of good public policy we are not there yet. Please see this statement as a mayoral veto of Ordinance 9.0.