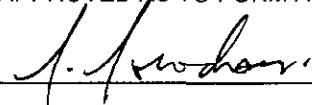


FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER 2007 OCT 25 PM 2:00



City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

ADOPT AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 8.30, "SMOKING" TO (1) PROHIBIT SMOKING AT BUS STOPS AND OTHER AREAS WHERE THE PUBLIC WAITS FOR SERVICE, (2) AT OUTDOOR DINING AREAS, PUBLIC TRAILS, PARKS AND CITY-OWNED GOLF COURSES, (3) FAMILY CHILDCARE CENTERS, (4) COMMON OUTDOOR AREAS IN MULTI-UNIT HOUSING; (5) ESTABLISH POLICY FOR SMOKING OUTSIDE BARS; (6) REQUIRE NEW RENTAL AND SALE AGREEMENTS FOR MULTI-UNIT HOUSING TO DISCLOSE NONSMOKING PROHIBITIONS

WHEREAS, scientific studies have concluded that cigarette smoking causes chronic lung disease, coronary heart disease, stroke, cancer of the lungs, larynx, esophagus, mouth, and bladder, and contributes to cancer of the cervix, pancreas, and kidneys; and

WHEREAS, more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death; and

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide; and

WHEREAS, the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and neither separating smokers from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke; and

WHEREAS, the United States Environmental Protection Agency (EPA) has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and

WHEREAS, the California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant; and

WHEREAS, the California Office of Environmental Health Hazard Assessment has included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm; and

WHEREAS, exposure to secondhand smoke is the third leading cause of preventable death in this country, killing over 52,000 non-smokers each year, including 3,000 deaths from lung cancer; and

WHEREAS, secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight, and increased risk of Sudden Infant Death Syndrome (SIDS) in infants of mothers who smoke; and

WHEREAS, secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight, and increased risk of Sudden Infant Death Syndrome (SIDS) in infants of mothers who smoke; and

WHEREAS, the total cost of smoking in California was estimated to be \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone; and

WHEREAS, the medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke are nearly \$6 billion per year in the United States;

WHEREAS, almost 90% of adult smokers started smoking at or before age 18; and

WHEREAS, cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States, causing an estimated 31,200 structure fires and 830 deaths in 2001; and

WHEREAS, most Californians do not smoke and a majority favor limitations on smoking in multi-unit residences, as evidenced by the following:

- 86% of Californians are non-smokers; and
- 70% of Californians surveyed approve of apartment complexes requiring at least half of rental units be non-smoking, and
- 67% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings; and

WHEREAS, secondhand smoke can seep under doorways and through wall cracks; and

WHEREAS, creating smokefree areas helps protect the 86% of Californians who are non-smokers; and

WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

- in 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarette butts; and
- children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging; and

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- it is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year; and
- cigarette butts are often cast onto sidewalk and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean; and
- *cigarette butts, made of plastic cellulose acetate, take approximately 15 years to decompose; now, therefore*

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. It is the intent of the City Council, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of tobacco use around non-tobacco users; by protecting children from exposure to smoking and tobacco while they play; by reducing the potential for children to associate smoking and tobacco with a healthy lifestyle; by protecting the public from smoking and from tobacco-related litter and pollution; and by affirming and promoting the family atmosphere of the City's public places.

SECTION 2. The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 3. The City Council finds and determines that the adoption of this Ordinance is exempt from CEQA under Sections 15061(b)(3) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

SECTION 4. The Oakland Municipal Code is hereby amended as set forth below, additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of ordinances not cited or not shown in underscoring or strike-through type are not changed:

8.30.030 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Bar" means an area or a room utilized primarily for the sale of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is incidental to the consumption of such beverages.

"Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes.

"City Manager" means the city of Oakland City Administrator or his or her designee.

"Employee" means any person who is employed by any employer, as defined in this section, in the consideration for direct or indirect monetary wages or profit and any person who volunteers his or her services for a nonprofit entity.

"Employer" means any person, partnership, corporation, or nonprofit entity which employs the service of one or more persons, and includes the city of Oakland.

"Dining Area" means any area available to or customarily used by the general public or employees, that is designed, established, or regularly used for consuming food and drink.

"Enclosed" means closed in by a roof and four or more connected walls with appropriate openings for ingress and egress.

"Multi-housing" complex" means any housing complex with two or more separate units.

"Multi-housing Common Area" means any common area of a Multi-housing complex accessible to and usable by more than one residence, including but not limited to halls and paths, lobbies, laundry rooms, common cooking areas, outdoor dining areas, play areas, swimming pools, and parking lots.

"Nonprofit entity" means any organization exempt from federal income taxation under Section 501 of the Internal Revenue Code or any organization exempt from State Income Taxation under Section 23708 of the California Revenue and Taxation Code.

"Place of employment" means any enclosed area under the control of any employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, breakrooms, and restrooms, conference and classrooms, cafeterias, and hallways, employer-owned vehicles used in employment or for business purposes, hotel and motel lobbies, meeting rooms, and banquet rooms, and warehouses. A private residence is not a place of employment unless ~~and during such times that~~ it is used as licensed health care or a licensed child or adult care facility.

~~Restaurant:~~

- ~~1. "Restaurant" means any commercial eating establishment, including any coffee shop, cafeteria, tavern, cocktail lounge, sandwich stand, soda fountain, and any other eating establishment, organization, club, boardinghouse or guesthouse which customarily offers food for sale to the general public, guests, patrons or employees.~~
- ~~2. The term "restaurant" shall not include facilities, areas or rooms used for private functions, or any tavern or cocktail lounge if said tavern or cocktail lounge is a bar as defined in this section.~~

"Recreational Area" means any outdoor area, owned or operated by the City of Oakland, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not limited to: parklands, including portions of parks, such as picnic areas, playgrounds, or sports fields; walking paths; gardens; hiking rails; bike paths; horseback riding trails; athletic fields; skateboard parks; and amusement parks.

"Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and tobacco accessories and in which the sale of other products is merely incidental.

~~"Semi-private room" means a room in a public or private health care facility containing two or more beds for patients of the facility.~~

~~"Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.~~

"Service Area" means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, waiting rooms, and cab stands.

"Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance.

8.30.040 Application of chapter to city-owned facilities.

All enclosed facilities owned by the city shall be subject to the provisions of this chapter.

8.30.050 Prohibition of smoking in enclosed places and notices for Multi-housing.

A. Smoking shall be prohibited in the following enclosed places:

1. Places of employment;

2. New and existing Multi-housing Common Areas;

3. Service Areas:

~~A. All enclosed areas available to and customarily used by the general public and all businesses patronized by the public, including but not limited to, the public areas of retail stores, banks, multihousing complexes, hotels, and motels. This provision shall not apply to Oakland International Airport, and nonpublic areas of hotels and motels, such as guest or private banquet rooms;~~

~~B. Elevator, public restrooms, indoor service lines, and in ticket, boarding, and waiting areas of public transit depots; provided however that this prohibition shall not prevent (1) the establishment of separate waiting areas for smokers and nonsmokers, or (2) the establishment of at least fifty percent (50%) of a given waiting area as a nonsmoking area;~~

~~C. Retail food marketing establishments, including grocery stores and supermarkets;~~

~~D. Public areas of aquariums, libraries, and museums;~~

~~E. Enclosed theaters, auditoriums, and convention halls, which are used for motion pictures, stage dramas, lectures, musical performances, indoor sporting events, ballets, or other exhibitions. This prohibition shall not apply when smoking is part of any such production or whenever the manager of the theater, auditorium, or convention hall designates a separate room for smoking;~~

~~F. Every room, chamber, and place of meeting or public assembly, including school buildings under the control of any board or commission of the city during such times as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;~~

~~G. Waiting rooms, hallways, wards, and semi-private rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices. Smoking is permitted in semi-private rooms of health facilities if all patients within the room are smokers and all patients in the room request in writing upon the health care facility's admission forms to be placed in a room where smoking is permitted;~~

~~H. Polling places;~~

~~I. Restaurants:~~

~~1. Smoking Policy. All restaurants must provide at least sixty percent (60%) of their seating capacity for nonsmoking patrons by August 1, 1992. Effective August 1, 1993, eighty percent (80%) seating shall be set aside for nonsmoking patrons. Effective August 1, 1994, all shall ban smoking one hundred percent (100%). Restaurants which seat twenty-nine (29) or less persons shall have the discretion to~~

~~determine the size of their no-smoking area depending upon the demands of their patrons. The area set aside for nonsmoking patrons shall be a contiguous area. Notwithstanding the above requirements, a restaurant may establish a greater area for nonsmoking patrons or establish the entire restaurant as smoke-free.~~

~~2. All restaurants shall post signs reflecting that "No Smoking" sections are available. The manner of such posting, including the wording, size, color, design, and place of posting shall be at the discretion of the owner/operator. However, the signs shall be clearly, sufficiently, and conspicuously posted.~~

~~If a host or hostess is available to seat patrons, the host or hostess shall ask patrons their preference for nonsmoking or smoking seating.~~

~~3. All restaurant owner/operators should promote smoking cessation programs for their smoking employees and contact local health organizations for information and materials in this effort.~~

~~4. Exemption. An owner or operator of a restaurant may apply to the City Manager or appropriate designees for an exemption from this provision due to financial hardship. Exemptions granted by the City Manager shall be valid for a period not to exceed twelve (12) months, and may be renewed upon application to the City Manager. Applications for renewal shall be reviewed in the same manner as applications for exemption.~~

~~5. Annual Review by Ad Hoc Citizens' Committee. An annual review to assess the economic impact of the increase in nonsmoking seating in restaurants shall be conducted by an ad hoc committee. Based upon its review, the ad hoc committee shall submit its findings and recommendations to the Health, Human Services and the Family Committee no later than July 1, 1993 and July 1, 1994.~~

~~If the Ad Hoc Citizens' Committee annual report discloses that the smoking pollution control ordinance has caused substantial adverse economic impact upon local businesses, the City Council may, in the exercise of its discretion, amend this chapter to alter the phase-in schedule in subsection (1)(1) of this section.~~

B. Disclosure of smoking policy in new and existing Multi-housing

1. All landlords in Multi-housing complexes are required to disclose to prospective tenants whether smoking is permitted in the unit to be rented and which units are designated smoking units and the smoking policy for the complex.

2. All sellers of condominium units are required to disclose to prospective buyers respectively whether smoking is permitted in the unit and the smoking policy for the complex.

8.30.055 Prohibition of smoking in unenclosed places

Smoking shall be prohibited in the following unenclosed places:

A. Service Areas;

B. Dining areas;

C. Recreational Areas, except in parking areas used for parking vehicles of persons accessing the Recreational Area.

D. Multi-housing Common Areas, except that the landlord may designate a portion of the outdoor area of the premises as a smoking area as provided in subsection 1.

1. A designated smoking area:

- a. must be located at least 25 feet from any indoor area where smoking is prohibited;
- b. must not include and must be at least 25 feet from outdoor areas primarily used by children, including, but not limited to, areas improved or designated for play or swimming;
- c. must be no more than 25% of the total outdoor area of the premises of the Multi-housing complex;
- d. must have a clearly marked perimeter;
- e. must be identified by conspicuous signs; and
- f. must not overlap with any area in which smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law.

8.30.060 Smoking policy requirements.

A. Smoking shall not be permitted in places of employment and employers shall post "No Smoking" or "Smoke Free" signs in accordance with Section 8.30.090.

Employers should promote smoking cessation programs for smoking employees and contact local health organizations for assistance and materials in this effort.

B. Smoking outside of the work building any enclosed place where smoking is prohibited shall occur at a minimum distance of twenty-five (25) feet from any building entrance, exit, window and air intake vent of the building, except that 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, to insure that smoke does not enter the building and affect occupants therein.

~~C. Exception. In places of employment, employers may provide specific smoking areas for employees provided all of the following conditions are met:~~

~~1. The smoking area shall be provided with a heating, ventilation and air conditioning (HVAC) system designed such that none of the air from the smoking area will be recirculated into other areas of the building.~~

~~2. The smoking area shall be completely separated from the remainder of the building by solid partitions or glazing without openings other than doors, and all doors leading to the smoking area shall be self-closing. The doors shall be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top.~~

~~3. If the HVAC system is part of a smoke removal system or pressurization system, any modification to these systems to provide smoking areas will require approval from the Oakland Fire Marshal, and written verification of this approval shall be provided to the City Manager or appropriate designee.~~

CD. This provision shall not apply to exempted governmental and educational agencies with facilities located in the city.

8.30.070 Power to adopt more restrictive smoking policies.

Notwithstanding any other provisions of this chapter, any owner, operator, manager or employer or other person who controls any establishment or place of employment or Multi-housing complex regulated by this chapter, may adopt policies relating to smoking which are more restrictive than those provided herein.

8.30.080 Smoking optional areas.

Notwithstanding any other provision of this chapter, to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

~~A. Bars;~~

~~AB. Enclosed areas of private, detached, single family residences, except when used as a those used as licensed child care, adult care, or health care facilities;~~

~~C. Unenclosed areas of private, detached, single family residences except, during their hours of operation, those used as licensed child care care, adult care, or health care facilities .~~

~~C. Hotels and motels;~~

~~BD. Retail tobacco stores;~~

~~E. The Oakland International Airport.~~

~~C.D. By performers during theatrical productions, if smoking is an integral part of the story.~~

8.30.090 Posting of signs.

A. "No Smoking" or "Smoke Free" signs, with letters of no less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this chapter, by the owner, operator, manager or other person having control of such building or other place, except that signs are not required inside non-smoking units of Multi-housing complexes. For purposes of this chapter, the City Manager Administrator or appropriate designee shall be responsible for the posting of signs in regulated facilities of the city.

~~B. Every theater or auditorium owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.~~

~~C. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.~~

8.30.100 Enforcement.

- A. Enforcement of this chapter shall be implemented by the City ~~Manager~~ Administrator, or his or her designee.
- B. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the City ~~Manager~~ Administrator or his or her designees.
- C. Any owner, manager, operator or employee of any establishment regulated by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions thereof.
- D. Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter.

8.30.110 Violations and penalties.

- A. *It is unlawful for any persons to smoke in any area where smoking is prohibited by the provisions of this chapter.*
- B. Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;
 - 2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of this chapter within one year;
 - 3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of this chapter within one year.

8.30.120 Nonretaliation.

No person shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

No person shall intimidate, harass, or otherwise retaliate against any person who seeks to attain compliance with this chapter. Moreover, no person shall intentionally or recklessly expose another person to secondhand smoke in response to that person's effort to achieve compliance with this chapter.

8.30.130 Public education.

The City ~~Manager~~ Administrator shall engage in a continuing program to explain and clarify the purposes of this chapter to citizens affected by it, and to guide owners, operators, and managers in their compliance with it.

8.30.140 Governmental agency cooperation.

The City Manager Administrator shall annually request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this chapter. The City Manager shall urge federal, state, county, and special school district agencies to enforce their existing no smoking regulations and to comply voluntarily with this chapter.

8.30.150 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 5. Severability. If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

SECTION 6. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California