



DAN KALB

City Councilmember – District One

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TO: Oakland City Council and Members of the Public
FROM: Councilmember Dan Kalb
SUBJECT: No-Smoking Ordinance
DATE: **November 1, 2024**

RECOMMENDATION

Adopt an

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 8.30, “THE SMOKING POLLUTION CONTROL ORDINANCE,” TO (1) PROHIBIT VAPING IN ALL PLACES WHERE SMOKING IS PROHIBITED BY THE ORDINANCE; (2) PROHIBIT SMOKING IN DWELLING UNITS IN MULTI-UNIT HOUSING; (3) REQUIRE OWNERS OF DWELLING UNITS IN MULTI-UNIT HOUSING TO DISCLOSE SMOKING PROHIBITIONS TO PROSPECTIVE PURCHASERS AND PROSPECTIVE TENANTS AND TO POST SIGNAGE IN COMMON AREAS STATING THAT SMOKING IS PROHIBITED IN DWELLING UNITS; AND (4) PROHIBIT SMOKING IN UNENCLOSED AREAS OF BARS

EXECUTIVE SUMMARY

This proposed legislation will make two major changes to existing no-smoking policy in the City of Oakland. First, this legislation will prohibit smoking in dwelling units in multi-unit housing complexes—multi-unit rental properties and condominium complexes—and impose a lower-level fine of just \$50 for tenant infractions (smoking is already prohibited in common areas). Importantly, property owners will be required to update signage in common areas to note that smoking is also prohibited in dwelling units. Second, this legislation will prohibit smoking in the outdoor areas of bars. Smoking is already prohibited in the outdoor and indoor areas of restaurants, and in the indoor areas of bars.

BACKGROUND/LEGISLATIVE HISTORY

California law prohibits smoking in most enclosed workplaces as well as within 25 feet of playgrounds and other recreational areas for children, as well as within 250 feet of youth sports events. Oakland law provides additional smoking prohibitions.

The Oakland City Council adopted our Smoking Pollution Control Ordinance in 1986 and

amended the ordinance in 1992, 2005, and 2007. In terms of housing, previously adopted legislation prevented smoking of combustible substances in all common areas of multi-unit complexes, except in specially-designated outdoor smoking areas (more common in large condominium complexes). Previous legislation also requires rental property owners to disclose whether a unit is smoking or nonsmoking and what the policy is for the housing complex. Previous legislation also sets forth requirements for no-smoking signage in common areas.

As of October 1st, 85 municipalities have enacted a law at the city or county level that prohibits smoking in 100% of private units of rental multi-unit housing properties. Of these municipalities, 78 have laws that prohibit smoking in 100% of private units of both rental *and* owner-occupied multi-unit housing properties.¹

Before now, Oakland law has not limited smoking in the outdoor (unenclosed) areas of bars. Restaurants, on the other hand, cannot allow smoking either the indoor or outdoor areas of their establishments. 88% of people who enjoy Oakland or San Francisco nightlife support smoke-free bar patios and semi-enclosed areas.² Other cities and counties have already taken action. 105 cities and counties in California, including 50 in the Bay Area have chosen to protect their residents and workers from secondhand smoke exposure by adopting policies requiring all outdoor dining *and* bar patio areas to be smoke-free.³

ALTERNATIVE POLICY OPTIONS

At the Community and Economic Development Committee, the committee requested this legislation go forward with two potential alternatives to consider. They are 1) to remove the cannabis exemption and 2) only exempt medical cannabis. Below are the changes that would be made to the ordinance if the specific alternative was adopted.

Option 1: Adopt the supplemental version forwarded from the Community and Economic Development Committee (on Oct. 22nd), which includes the cannabis exemption in dwelling units.

Option 2: Remove the Cannabis Exemption from the smoking prohibition in dwelling units in multi-unit buildings.

WHEREAS, the City Council wishes to extend the prohibition of smoking to dwelling units in multi-unit housing, ~~but to make an exception for cannabis~~; and

WHEREAS, nothing in this ordinance prohibits owners of residential rental property from imposing smoking prohibitions more restrictive than those provided herein, ~~including prohibiting smoking cannabis in a dwelling unit~~;

¹ American Nonsmokers Rights Foundation. "US Laws for 100% Smokefree Multi-Unit Housing." <https://no-smoke.org/wp-content/uploads/pdf/smokefreemuh.pdf>

² LGBTQ Minus Tobacco, "LGBTQ+ Bars Should Be Safe Spaces for Everyone." <https://www.lgbtqminustobacco.org/smoke-free-bar-patios>

³ LGBTQ Minus Tobacco, "LGBTQ+ Bars Should Be Safe Spaces for Everyone."

SECTION 3. Addition of Oakland Municipal Code Section 8.30.045 (Prohibition of Smoking in Multi-Unit Housing). Section 8.30.045 is hereby added to the Oakland Municipal Code as set forth below (additions are show as double underline)

8.30.045 Prohibition of Smoking in Multi-Unit Housing

- A. Smoking, except for the legal smoking of cannabis, shall be prohibited in all dwelling units of all multi-unit housing complexes. At the discretion of the owner, or homeowner's association, smoking of cannabis may also be prohibited in dwelling units.
- B. All owners of dwelling units in multi-unit housing complexes are required to disclose all applicable smoking restrictions to prospective tenants and prospective purchasers of the dwelling unit.
- C. This section shall not apply to the following multi-unit housing complexes:
- a. Detached dwelling units on a parcel that do not share any enclosed common areas.
 - b. Owner occupied duplexes where no tenants reside in either dwelling unit.

Option 3: Incorporate into the ordinance only a Medical Cannabis Exemption

WHEREAS, the City Council wishes to extend the prohibition of smoking to dwelling units in multi-unit housing, but to make an exception for medical cannabis; and

WHEREAS, nothing in this ordinance prohibits owners of residential rental property from imposing smoking prohibitions more restrictive than those provided herein, including prohibiting smoking medical as well as recreational cannabis in a dwelling unit;

SECTION 3. Addition of Oakland Municipal Code Section 8.30.045 (Prohibition of Smoking in Multi-Unit Housing). Section 8.30.045 is hereby added to the Oakland Municipal Code as set forth below (additions are show as double underline)

8.30.045 Prohibition of Smoking in Multi-Unit Housing

- A. Smoking, except for the legal smoking of medical cannabis, shall be prohibited in all dwelling units of all multi-unit housing complexes. At the discretion of the owner, or homeowner's association, smoking of all cannabis products may also be prohibited in dwelling units.
- B. All owners of dwelling units in multi-unit housing complexes are required to disclose all applicable smoking restrictions to prospective tenants and prospective purchasers of the dwelling unit.
- C. This section shall not apply to the following multi-unit housing complexes:
- a. Detached dwelling units on a parcel that do not share any enclosed common areas.
 - b. Owner occupied duplexes where no tenants reside in either dwelling unit.

All options retain the proposed restriction on smoking in the outdoor (unenclosed) areas of bars.

ANALYSIS

Health Impacts

We all know the dangers of smoking. More than 440,000 people die in the United States from tobacco-related disease every year, making it the nation's leading cause of preventable death.⁴ Smoking is also the leading cause of lung cancer and can cause cancer in many other parts of the body, including the throat, mouth, nose, larynx, and tongue. Given the danger, it is incumbent on local governments to enact policies to discourage smoking and to protect nonsmokers from the harmful effects of second-hand smoke.

According to the U.S. Surgeon General⁵, exposure to secondhand smoke (SHS) from burning tobacco products causes sudden infant death syndrome (SIDS), respiratory infections, ear infections, and asthma attacks in infants and children, and coronary heart disease, stroke, and lung cancer in adult nonsmokers.

Vaping products, otherwise known as e-cigarettes, are products used to turn nicotine, cannabis (THC, CBD), flavorings, chemicals, and other substances, into vapor without combustion. According to Harvard Health, e-cigarettes contain harmful and potentially harmful substances like nicotine, ultra-fine particles that can be inhaled deep into the lungs, flavorings linked to serious lung disease, heavy metals, and more.⁶ Inhalation of these products has been linked to serious lung injuries known as "E-cigarette, or Vaping product, Use Associated Lung Injuries" (EVALI). While preliminary research indicates vaping may be somewhat less harmful than smoking due to the lack of combustion, secondhand inhalation of these products is possible, and is associated with increased risk of bronchitis symptoms and shortness of breath. By effectively adding vaping to the definition of smoking, vaping would be prohibited where smoking is already prohibited. While this legislation does not create an outright ban on vaping of cannabis in dwelling units, rental property owners and condominium HOAs may choose to do so.

Inside Dwelling Units

This legislation will prohibit smoking inside dwelling units of multi-unit complexes. This is because research shows that smoke may travel through walls, cracks and holes, ventilation systems and HVAC vents and that there is no safe level of exposure to second-hand smoke.⁷

⁴ Johns Hopkins University. "Smoking and Cardiovascular Disease." [https://www.hopkinsmedicine.org/health/conditions-and-diseases/smoking-and-cardiovascular-disease#:~:text=The%20American%20Heart%20Association%20\(AHA,for%20heart%20disease%20and%20stroke.](https://www.hopkinsmedicine.org/health/conditions-and-diseases/smoking-and-cardiovascular-disease#:~:text=The%20American%20Heart%20Association%20(AHA,for%20heart%20disease%20and%20stroke.)

⁵ https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf

⁶ Harvard Health. "Can vaping damage your lungs? What we do (and don't) know."

<https://www.health.harvard.edu/blog/can-vaping-damage-your-lungs-what-we-do-and-dont-know-2019090417734>

⁷ Centers for Disease Control. Smoking and Tobacco Use, "Preventing Exposure to Secondhand Smoke in the Home," <https://www.cdc.gov/tobacco/secondhand->

Residents of multi-unit housing complexes deserve to live safely, free of second-hand smoke.

Fines

There are already fines laid out in our municipal code. This legislation adds a lower level fine of \$50 for tenants in order to not punish low-income individuals who may be smokers. **Nothing in this ordinance creates new grounds for eviction for tenants who are currently allowed to smoke in their rental units.** However, going forward new tenants must fully comply with the smoking prohibition.

Outside Bars

This legislation also will prohibit smoking in unenclosed areas of bars. This is because second-hand smoke can also affect individuals—including bar employees—in unenclosed areas. The organization LGBTQ Minus Tobacco conducted a study in which air quality measurements were taken at 13 bars in San Francisco and Oakland in 2022. At 8 of 13 bars that allowed smoking on patios or in semi-enclosed areas, the measurements reached EPA “Unhealthy” levels over the course of an hour.⁸

A Note on Cannabis

The new prohibition on smoking inside dwelling units in multi-family buildings does not mandate a prohibition against smoking cannabis. That being said, nothing in this ordinance prevents rental property owners or condominium homeowner associations from prohibiting cannabis smoking in their residential units, as they already can do today. Many property owners already create leases that specify no-smoking of both tobacco and cannabis. Note that while smoking tobacco is legal in a number of publicly accessible outdoor locations more than 25 feet from a building, the same cannot be said of smoking cannabis, which has more restrictions in state law on allowable types of public locations.

The prohibition on smoking in unenclosed areas of bars *does* include a ban on smoking/vaping any combustible substance, including cannabis.

Recommendation for Property Owners

As this legislation changes the rules around apartments that could be rented by tenants, we recommend that rental property owners and property management companies of multi-family rental buildings that are covered by this ordinance include specific language in any future lease stating what is and is not legal in terms of smoking (including vaping) in dwelling units and common areas.

FISCAL IMPACT

This ordinance may increase the number of complaints received by the City and thus potentially the workload of the Code Enforcement Division. It is difficult to determine the extent of any increase ahead of time, but it is not expected to be significant given how few complaints the city receives on smoking matters. Despite this likelihood, public support for and self-

[smoke/home.html#:~:text=It%20can%20travel%20through%20doorways,good%20example%20for%20young%20people](https://www.lgbtqminus.com/home.html#:~:text=It%20can%20travel%20through%20doorways,good%20example%20for%20young%20people).

⁸ LGBTQ Minus Tobacco, “LGBTQ+ Bars Should Be Safe Spaces for Everyone.”

enforcement of this legislation stands to accomplish most of the compliance needed to see important public health benefits.

PUBLIC OUTREACH/INTEREST

Our office contacted the Oakland Chamber of Commerce, the African American Chamber of Commerce, the Oakland Latino Chamber of Commerce, the Oakland Vietnamese Chamber of Commerce, the Oakland Chinatown Chamber of Commerce, the Oakland BID Alliance, Bridge Association of Realtors, and LGBTQ Minus Tobacco. Not all groups yet responded (as of the publishing of this staff report), but those who did expressed strong support for this legislation. We also meet with a handful of leaders in the cannabis community in Oakland.

While many public health groups strongly support the ban on smoking in outdoor areas of bars as well as a ban on smoking in residential dwelling units, some have expressed concern that cannabis is not included in the outright prohibition in dwelling units.

COORDINATION

Our office worked with the Oakland City Attorney's Office to create this legislation. The proposal to ban all smoking in bars was presented to us by LGBTQ Minus Tobacco, a nonprofit public health advocacy group. Many constituents have asked for a smoking ban in multi-family dwelling units over the past several years.

For questions, please contact D1 staff Keara O'Doherty, 510-238-7014, kodoherty@oaklandca.gov, or Matt Malsin, 510-238-3557, mmalsin@oaklandca.gov.

Best,



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