



DAN KALB

City Councilmember – District One

CITY HALL • ONE FRANK OGAWA PLAZA • 2ND FLOOR • OAKLAND, CA 94612

(510) 238-7001 • dkalb@oaklandca.gov

TO: Oakland City Council and Members of the Public
FROM: Councilmember Dan Kalb
SUBJECT: No-Smoking Ordinance
DATE: October 22, 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 (smoking is already prohibited in common areas) and impose a lower-level fine of just \$50 for tenant infractions. 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 outdoor 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, previous legislation prevented smoking of combustible substances in all common areas of multi-unit complexes,

except in specially-designated outdoor smoking areas. Previous legislation also requires rental property owners to disclose whether a unit is smoking or nonsmoking and the policy 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

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

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."

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

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

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-smoke/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.”

FISCAL IMPACT

This ordinance may increase the number of complaints received by the City and thus the workload of the Code Enforcement Division. It is difficult to determine the extent of this 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 this legislation stands to do 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.

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.

For questions, please contact Keara O'Doherty, Chief of Staff to Dan Kalb, (510) 238-7014, kodoherty@oaklandca.gov.

Best,



Dan Kalb
Councilmember, District 1