

**CITY OF OAKLAND**  
COUNCIL AGENDA REPORT

OFFICE OF THE CITY CLERK  
2005 SEP 15 PM 2:41

To: Chair Laurence E. Reid and Members of the Oakland City Council Public Safety Committee  
From: Council President Ignacio De La Fuente  
Date: September 27, 2005  
RE: **ORDINANCE AMENDING OAKLAND MUNICIPAL CODE, TITLE 8, CHAPTER 8.30, SMOKING, TO DEFINE THE SMOKE-FREE AREA REQUIRED OUTSIDE WORK BUILDINGS AS 25 FEET FROM ANY ENTRANCE, EXIT, WINDOW, AND AIR INTAKE VENT OF BUILDINGS THAT SERVE AS PLACES OF EMPLOYMENT**

---

**SUMMARY OF PROPOSED CHANGE TO THE EXISTING ORDINANCE**

Currently, our Oakland Municipal Code (OMC) states that “smoking outside of the work building shall occur at a reasonable distance from the building to insure that smoke does not enter the building and affect occupants therein” [OMC Section 8.30.060(B)]. This Oakland law already applies to places of employment, including private sector businesses, nonprofit organizations, and City of Oakland government buildings.

**The purpose of this proposal is simply to clarify our existing law** by clarifying that a “reasonable distance” is at least 25 feet. This is the distance the City Administrator already uses for our city government buildings. The American Lung Association of the East Bay and the Alameda County Public Health Department are asking the City Council to enact this change to provide clarity to the general public, employers, employees, and the customers of businesses and nonprofits in Oakland.

**BACKGROUND**

California’s smoking policy is contained in at least 3 different laws affecting workers, government buildings, and the health of the general public. In 1994, the California state legislature led the nation by passing Assembly Bill 13 to prohibit smoking in most enclosed workplaces. AB 13 is codified in California Labor Code, Section 6404.5.

Since that time, the State has passed two pieces of legislation addressing outdoor areas. In 2002, the state legislature and governor enacted Assembly Bill 1867 (introduced by Assembly Member Juan Vargas) to prohibit smoking within 25 feet of a playground or tot lot. This is codified in California Health and Safety Code, Section 104495. In 2003, the state legislature and governor enacted Assembly Bill 846 (introduced by Vargas) to prohibit smoking within 20 feet of a main exit, entrance, or operable window of a building occupied and owned (or leased) by the state, a county, a city, or a California Community College District. This is codified in California Government Code Sections 7596-7598.

Oakland adopted its original “Smoking Pollution Control Ordinance” in 1986 as Chapter 8.30 of the Oakland Municipal Code. In 1992, Oakland made extensive amendments to the original ordinance becoming the *first* city in California to limit smoking in front of places of employment by requiring smokers to stand at a “reasonable distance.”

In 1998, the City issued Administrative Instruction Number 4001 to define reasonable distance as 25 feet for city government buildings. When other employers have asked for a definition of “reasonable distance” for their places of employment, the City’s Hearing Officer has cited the policy for city government buildings and encouraged the employer also to use 25 feet. In a letter dated July 22, 2005, the American Lung Association and the Alameda County Public Health Department asked the City Council to define “reasonable distance” as 25 feet in the ordinance so that the policy is clear city-wide.

The cities of Berkeley, Davis, and Palo Alto currently define reasonable distance as 20 feet for all workplaces. Section 6.72.070 of the Alameda County General Code defines reasonable distance as 15 feet, but this applies only to the un-incorporated areas of the county. The Port of Oakland defines reasonable distance as 20 feet which is posted at all pedestrian entrances to Oakland International Airport. Matt Davis, in the Governmental Affairs office of the Port, confirmed with their legal department and with the Airport that they will increase it to 25 feet once Council approves this proposal.

If approved by the City Council, Section 8.30.060(B) would be amended in the following manner:

“Smoking outside of the work building shall occur at a reasonable minimum distance of 25 feet from the building entrance, exit, window and air intake vent of the building to insure that smoke does not enter the building and affect occupants therein...”

Then we would delete the vague reference to “reasonable distance” as follows:

#### Section 8.30.030 Definitions

~~“‘Reasonable distance’ means any distance necessary to insure that occupants of a building are not exposed to secondhand smoke created by smokers outside of the building. The determination of the City Manager or appropriate designee shall be final in any disputes relating to reasonable distance for smoking outside of buildings regulated by this chapter.”~~

The American Lung Association and the Alameda County Public Health Department support these changes.

Please note that Section 8.30.100 of the existing OMC will continue to designate the City Administrator or her designee as the enforcement entity for the ordinance. The additional reference to the City Administrator in Section 8.30.030 (Definitions) had been needed only because “reasonable distance” had not been defined as a specific number. By improving the existing ordinance with the specific distance of 25 feet, the reference to the City Administrator is no longer needed in the Section 8.30.030 (Definitions) because her enforcement powers are still covered by Section 8.30.100.

The proposed changes also clarify that “City Manager” means “City Administrator.”

The City Administrator’s Hearing Officer and the head of the Alcohol Beverage Action Team unit (ABAT) of the Oakland Police Services Agency both enforce this law. Both Barbara Killey, the Hearing Officer, and Sergeant Leonard White, the head of ABAT, agree that inserting the distance of 25 feet into the ordinance will make it easier to educate businesses and residents about the city’s policy and to enforce the law. Our office also contacted the staff of the Oakland Metropolitan Chamber of Commerce who agreed that this proposal to clarify existing law is appropriate.

## **FISCAL IMPACT**

There should be no new cost to the City of Oakland to implement this change. Due to limited staff and financial resources, enforcement of this ordinance will continue to be “complaint-driven,” according to the City’s Hearing Officer and ABAT. Therefore, the City’s Hearing Officer and Oakland Police will continue to respond to citizens who complain about smokers standing in front of exterior doorways, but the agencies are not planning to expand existing efforts to cite smokers who might be violating this ordinance.

## **ENVIRONMENTAL IMPACT**

*The purpose of Oakland’s existing law to restrict smoking is “to protect the public health and welfare.”*

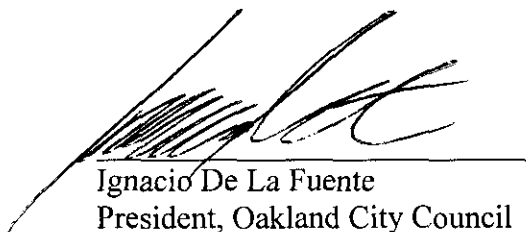
In January 1993, the United States Environmental Protection Agency (EPA) declared that secondhand tobacco smoke can cause cancer in humans. In October 1997, the California Environmental Protection Agency published a report entitled “Health Effects of Exposure to Environmental Tobacco Smoke,” which concluded that secondhand smoke can cause 11 major health problems in non-smokers including lung cancer, heart disease, and various respiratory illnesses such as asthma attacks among children.

Oakland’s existing law already requires smokers to stand at a reasonable distance from buildings “...to insure that occupants of a building are not exposed to secondhand smoke...” By clarifying that smokers must stand at a specific distance (at least 25 feet) from a building’s entrances, exits, windows, and air intake vents, this amendment could reduce exposure to harmful secondhand smoke.

## **ACTION REQUESTED OF THE CITY COUNCIL**

I am asking the City Council to clarify the smoke-free area already required by city law for all places of employment by defining it as at least 25 feet from any entrance, exit, window and air intake vent of the building, as shown in the proposed ordinance language (attached).

Thank you for your consideration.



Ignacio De La Fuente  
President, Oakland City Council

INTRODUCED BY COUNCIL PRESIDENT IGNACIO DE LA FUENTE

ORDINANCE NO. \_\_\_\_\_

2005 SEP 15 PM 2:41  
C.M.S.

**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE, TITLE 8, CHAPTER 8.30, SMOKING, TO DEFINE THE SMOKE-FREE AREA REQUIRED OUTSIDE WORK BUILDINGS AS 25 FEET FROM ANY ENTRANCE, EXIT, WINDOW AND AIR INTAKE VENT OF BUILDINGS THAT SERVE AS PLACES OF EMPLOYMENT**

WHEREAS, the Oakland City Council enacted in 1986 and amended in 1992 a “smoking pollution control ordinance” as Chapter 8.30 of the Oakland Municipal Code to, among other things, limit smoking at places of employment “to protect the public health and welfare”; and

WHEREAS, people with respiratory disabilities have a right to safe and reasonable access to public facilities and places of employment under Title III of the federal Americans With Disabilities Act; and

WHEREAS, Section 8.30.060 of Oakland’s Municipal Code currently provides that, “Smoking outside of the work building shall occur at a reasonable distance from the building to insure that smoke does not enter the building and affect occupants therein”; and

WHEREAS, “Reasonable distance” is broadly defined in Section 8.30.030 of Oakland’s Municipal Code as “any distance necessary to insure the occupants of a building are not exposed to secondhand smoke created by smokers outside of the building” as determined by the City Administrator; and

WHEREAS, the City Administrator issued Administrative Instruction Number 4001 defining a reasonable distance for smoke-free areas outside city-owned buildings to be 25 feet from entrances, exits, windows and air intake vents; and

WHEREAS, to further reduce the harmful effects of tobacco smoke on the public and employees, the American Lung Association has proposed that the City of Oakland establish a similar 25 foot smoke-free area for buildings that serve as places of employment, citywide; and

WHEREAS, the City Council finds that compliance will be more likely and enforcement easier if the smoking prohibition is defined as a specific distance; now, therefore,

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

**SECTION 1. Smoke Free Zone Amended.** Title 8, Chapter 8.30, Sections 8.30.030 and 8.30.060 of the Oakland Municipal Code are amended to delete the general definition “Reasonable distance” and to define the City’s requirement for smoke-free areas outside of work buildings as 25 feet from any entrance, exit, window and air intake vent of buildings that serve as places of employment as follows:

**8.30.030 Definitions.**

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

... “Reasonable distance” means any distance necessary to insure that occupants of a building are not exposed to secondhand smoke created by smokers outside of the building. The determination of the

~~City Manager or appropriate designee shall be final in any disputes relating to reasonable distance for smoking outside of buildings regulated by this chapter. . . .~~

**8.30.060 Smoking policy requirements.**

. . . **B.** Smoking outside of the work building shall occur at a ~~reasonable~~minimum distance of 25 feet ~~from any building entrance, exit, window and air intake vent of the building~~ to insure that smoke does not enter the building and affect occupants therein. . . .

**SECTION 2. Outdated References to City “Manager” Corrected.** Title 8, Chapter 8.30, Section 8.30.030, Definitions, of the Oakland Municipal Code is amended to change outdated references to the “City Manager” to “City Administrator” as follows:

**8.30.030 Definitions.**

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

. . . “City Manager” means the City of Oakland City Administrator or his or her designee.

**SECTION 3. Remaining Provisions Unchanged.** Except as amended herein, all provisions, articles, sections, subsections, sentences, clauses or phrases of Oakland Municipal Code Chapter 8.30, shall remain unchanged and in full force and effect.

**SECTION 4. Severability.** If any article, section, subsection sentence, clause or phrase of this ordinance 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 5. 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.

347083

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2005

**PASSED BY THE FOLLOWING VOTE:**

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

NOES-

ABSENT-

ABSTENTION-

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



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND, CALIFORNIA

2005 SEP 15 PM 5:26

## NOTICE AND DIGEST

**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE, TITLE 8, CHAPTER 8.30, SMOKING, TO DEFINE THE SMOKE-FREE AREA REQUIRED OUTSIDE WORK BUILDINGS AS 25 FEET FROM ANY ENTRANCE, EXIT, WINDOW AND AIR INTAKE VENT OF BUILDINGS THAT SERVE AS PLACES OF EMPLOYMENT**

This Ordinance amends Oakland Municipal Code Chapter 8.30 to define the smoke-free area required outside work buildings as 25 feet from any entrance, exit, window and air intake vent of buildings that serve as places of employment.