

DRAFT

INTRODUCED BY COUNCILMEMBER DAN KALB

CITY ATTORNEY'S OFFICE

AMENDED

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

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

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 disease 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, according to the Centers for Disease Control, there is no safe level of exposure to secondhand smoke. Research shows that smoke may travel through walls, cracks and holes, ventilation systems and HVAC vents, and more; and

WHEREAS, according to the CDC, 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; and

WHEREAS, according to Harvard Health, e-cigarettes contain harmful and potentially harmful substances including nicotine, ultra fine particles that can be inhaled deep in the lungs, flavorings linked to serious lung disease, heavy metals, and more; and

WHEREAS, according to Yale Medicine, vaping can cause severe lung injuries known as “E-cigarette, or Vaping product, Use Associated Lung Injuries” (EVALI); and

WHEREAS, according to the American Heart Association, secondhand aerosols from e-cigarettes are associated with increased risk of bronchitis symptoms and shortness of breath among young adults, especially among those who don't smoke or vape themselves; and

WHEREAS, residents of multi-unit complexes deserve to be safe, healthy, and free of second-hand smoke in their places of residence; and

WHEREAS, other Bay Area cities like Berkeley, Richmond, Concord, Walnut Creek, and El Cerrito already ban smoking in apartment complexes and condominiums (American Nonsmokers’ Rights Foundation); and

WHEREAS, the LGBTQ Minus Tobacco advocacy group reports that 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; and

WHEREAS, bar customers can choose whether or not to spend time in these spaces, but bar employees have no choice. 1 in 3 young adults in Alameda and San Francisco counties are exposed to secondhand smoke on the job, and these workers are disproportionately low-income and Latinx (LGBTQ Minus Tobacco); and

WHEREAS, the LGBTQ Minus Tobacco advocacy group reports that 88% of people who enjoy Oakland or San Francisco nightlife support smoke-free bar patios and semi-enclosed areas; 84% of people who enjoy Oakland or San Francisco nightlife use bar patios for recreation, socializing, or fresh air, but never for smoking; and 91% of people who enjoy Oakland or San Francisco nightlife would go to bars more often or the same if those cities required bar patios to be smoke-free; and

WHEREAS, 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 (LGBTQ Minus Tobacco); and

WHEREAS, the City Council adopted the Smoking Pollution Control Ordinance (“Smoking Ordinance”) in 1986 for the purpose of protecting public health, and has amended the ordinance several times to expand the areas where smoking is prohibited; and

WHEREAS, the Smoking Ordinance, codified in Chapter 8.30 of the Oakland Municipal Code, already prohibits smoking in common areas of multi-unit housing complexes, childcare centers, bus stops, public trails and parks, and establishes rules for smoking outside bars; and

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, the current smoking ordinance prohibits smoking in places of employment but contains an exception for outdoor areas of bars; and

WHEREAS, the City Council wishes to extend smoking prohibitions to the outdoor area of bars; and

WHEREAS, it is already required by section 8.30.090 to post signage in places where smoking is prohibited, it is the desire of this body that the signage at bar patios also include on it the name and phone number for the statewide tobacco cessation program funded by the California Department of Public Health; and

WHEREAS, the Alameda County Public Health Department has offered to provide or pay for proper signage for relevant businesses to ensure that there is no additional costs incurred by these Oakland businesses as a result of this ordinance; and

WHEREAS, serious or habitual violations of this chapter may be considered a public nuisance; and

WHEREAS, the Alameda County Public Health Department by mutual agreement already engages in educational outreach and complaint-based enforcement in the cities of Alameda and Emeryville, and has offered to do the same in Oakland.

WHEREAS, the Just Cause for Eviction Ordinance restricts landlords from unilaterally imposing new terms to an existing rental agreement and nothing in this ordinance shall create grounds for eviction for tenants who are currently allowed to smoke in their rental units; 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;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals: The City Council of the City of Oakland hereby determines that the preceding recitals are true and correct and an integral part of the Council's decision to enact this legislation, and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Amendment of Oakland Municipal Code Section 8.30.030 (Definitions). Oakland Municipal Code 8.30.030 is hereby amended as set forth below (additions are show as double underline and deletions are show as ~~strike through~~).

8.30.030 Definitions.

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

"Bar" means any enclosed or unenclosed 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~~ their designee.

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

"Dwelling Unit" includes both enclosed and unenclosed areas of a living unit such as balconies and patios.

"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~~ their 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.

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

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

"Multi-unit housing common area" means any common area of a multi-unit 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, 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 it is used as licensed health care or a licensed child or adult care facility.

"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 trails; bike paths; horseback riding trails; athletic fields; skateboard parks; and amusement parks. For the purposes of this Chapter, "recreational area" does not include outdoor areas of city-owned golf courses.

"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.

"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, heated, or ignited cigar, cigarette, pipe, weed, or other combustible substance. For purposes of this Chapter,

smoking also includes using an electronic device that creates an aerosol or vapor, also known as vaping.

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.

SECTION 4. Amendment of Chapter 8.30.050 (Prohibition of smoking in enclosed places ~~and notices for multi-unit housing~~). Oakland Municipal Code 8.30.050 is hereby amended as set forth below (additions are show as double underline and deletions are show as ~~strikethrough~~)

8.30.050 Prohibition of smoking in enclosed places ~~and notices for multi-unit 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.

~~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.~~

SECTION 5. Amendment of Chapter 8.30.060 (Smoking policy requirements)
Oakland Municipal Code 8.30.060 is hereby amended as set forth below (additions are show as double underline and deletions are show as ~~strikethrough~~).

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 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.~~
- C. This provision shall not apply to ~~exempted~~ governmental and educational agencies ~~exempted by state or federal law. with facilities located in the city.~~

SECTION 6. Amendment of Chapter 8.30.090 (Posting of Signs) Oakland Municipal Code 8.30.090 is hereby amended as set forth below (additions are show as double underline and deletions are show as ~~strikethrough~~).

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~~ In multi-unit housing complexes, signs are not required in dwelling units. However, signs in common areas must state that smoking is prohibited in dwelling units. For purposes of this Chapter, the City Administrator or appropriate designee shall be responsible for the posting of signs in regulated facilities of the city.
- B. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this Chapter.

SECTION 7. Amendment of Chapter 8.30.100 (Enforcement) Oakland Municipal Code 8.30.100 is hereby amended as set forth below (additions are show as double underline and deletions are show as ~~strikethrough~~).

8.30.100 Enforcement.

- A. Enforcement of this Chapter shall be implemented by the City Administrator, or ~~his or her~~ their designee.
- B. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the City Administrator or ~~his or her~~ their 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.

SECTION 8. Amendment of Chapter 8.30.110 (Violations and Penalties) Oakland Municipal Code 8.30.110 is hereby amended as set forth below (additions are show as double underline and deletions are show as ~~strikethrough~~).

- 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.
- C. Notwithstanding the penalties set forth above, a tenant who violates the prohibition against smoking in the tenant's dwelling unit shall be subject to a fine not exceeding \$50. A tenant shall receive a written warning for the first violation prior to issuance of any fine.

SECTION 9. Signage Requirements. Notwithstanding the effective date of this ordinance, no property owner shall be penalized for failure to comply with new signage requirements until after March 1, 2025.

SECTION 10. CEQA Compliance. The legislation contains no provisions modifying the physical design, development, or construction of residential or nonresidential structures. Accordingly, it can be seen with certainty that there is no possibility that it: (1) may have a significant effect on the environment and/or (2) would result in any physical changes to the environment. As a result, this action is exempt from the CEQA pursuant to the following CEQA Guidelines, taken together and each as a separate and independent basis: Section 15301 (existing facilities), Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), and Section 15061(b)(3) (no significant environmental impact).

SECTION 11. Regulations. The City Administrator may promulgate regulations as needed to assist in the interpretation and enforcement of this Ordinance, including signage requirement specifications.

SECTION 12. No Conflict with Federal or State Law. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 13. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 14. 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~~ January 2, 2025.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

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

This Ordinance would amend the existing “Smoking Pollution Control Ordinance” (Oakland Municipal Code Chapter 8.30) to add vaping to the definition of smoking and thereby prohibit vaping in all places where smoking is prohibited by the ordinance. This Ordinance would additionally prohibit smoking in dwelling units of multi-unit housing complexes, except for the legal smoking of cannabis. It would require owners of dwelling units in multi-unit housing to disclose all applicable smoking prohibitions to prospective tenants and purchasers and further require such owners to post signage in the common areas indicating that smoking is prohibited in dwelling units. This Ordinance would also extend the existing prohibition against smoking in bars to the unenclosed areas as well as enclosed areas of bars.