

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: John A. Russo
City Manager

Date: November 15, 2011

Re: Adopt an Ordinance to Amend the City of Alameda Municipal Code By Repealing Section 24-5 (Smoking Control) of Section XXXIV (Public Health) and By Adding Section 24-11, Smoking Prohibitions in Places of Employment and Public Unenclosed Places, and By Adding Section 24-12, Smoking Prohibitions in Multi-Unit Housing

BACKGROUND

California has long been considered a pioneer with its statewide initiatives to reduce the harmful effects of smoking. In 1994, the State passed Assembly Bill (AB) 13, the California Smoke-Free Workplace Act. This landmark bill created a 100% smoke-free environment for most workplaces. The passage of AB 13 was heralded as a groundbreaking replacement for a "patchwork of local laws," but it was also criticized for its negative effect upon local tobacco control initiatives because it was limited to workplace protections. Since 1994, many local jurisdictions have chosen to implement additional protections beyond those provided by AB 13. Local governments that have chosen to enact tobacco control ordinances that are stronger than the protections provided by the State have generally focused their efforts in four areas: protections for indoor or enclosed places; protections for outdoor public places; secondhand smoke housing policies; and regulation of sales.

In late 2010, members of the community approached the City Council to express their interest in improving the City of Alameda's secondhand smoke and tobacco control policies. Rather than presenting the City Council with an ordinance that might not meet the City Council's interests in this area, staff brought forth a menu of options for the City Council's consideration. That report was presented on April 5, 2011. Upon review and discussion, the City Council directed staff to return with an ordinance that would significantly strengthen the City of Alameda's secondhand smoke and tobacco control policies. The City Council's goals were two-fold: improve public health protections for the Alameda community and earn an "A+" from the American Lung Association, which grades local jurisdictions on their tobacco control efforts.

DISCUSSION

To develop the proposed ordinance, staff relied on model ordinances and guidance provided by the Public Health Law and Policy's Technical Assistance and Legal Center, the American Lung Association's Center for Tobacco Policy and Organizing, and Americans for Nonsmokers' Rights. The ordinance presented for first reading on November 1, 2011, would add Chapter 24-11, Smoking Prohibitions in Places of Employment and Public Unenclosed Places, and add Section 24-12, Smoking Prohibitions in Multi-Unit Housing, to the Alameda Municipal Code.

Provisions Related to Places of Employment:

The ordinance would prohibit smoking in the following places of employment:

1. Hotel/motel lobbies, meeting and banquet facilities
2. Ninety percent (90%) or more of hotel/motel guest rooms
3. Retail and wholesale tobacco shops and hookah bars
4. Taxi cabs, cabs of trucks, tractors, or other vehicles used for work
5. Warehouse facilities
6. Theatrical production sites
7. Medical research sites
8. Private residences licensed as child care, adult care, and health care facilities
9. Small businesses with fewer than five employees
10. Owner-operated businesses open to the public
11. Outdoor worksites, including construction sites, arenas, and convention halls, or anywhere where working crews may be

Provisions Related to Outdoor Public Places:

The ordinance would prohibit smoking in the following outdoor public places:

1. Dining areas: defined as outdoor seating at restaurants
2. Entryways (reasonable distance): defined as within 20 feet of doors, windows, and other openings into enclosed areas
3. Public events: defined as farmers' markets, fairs, concerts, etc.
4. Recreation areas: defined as parks, trails, sports fields, etc.
5. Service areas: defined as bus stops, ticket lines, ATM lines, taxi stands, etc.
6. Shopping malls: defined as public walkway or hall areas that connect retail or professional establishments
7. Commercial-area sidewalks: defined as public sidewalks in downtown shopping and business areas designated with a "C" prefix on the City's official Zoning Map

During the discussion of outdoor public places, the City Council directed staff to remove language specifically pertaining to off-street outdoor patios of bars and taverns, thereby maintaining the status quo under State law.

The City Council also directed staff to research whether beaches in Alameda can be included in the ordinance. Should this prove feasible, staff will return at a subsequent date with an amendment to the secondhand smoke ordinance.

Provisions Related to Multi-unit Housing:

The ordinance would establish the following smoking prohibitions and regulations in multi-unit housing:

1. Smoking is prohibited in 100% of units in multi-unit rental complexes, including balconies and porches.
2. Smoking is prohibited in 100% of units of common interest complexes, including balconies and porches.
3. Smoking is prohibited in common areas of both multi-unit rental complexes and common interest complexes, except that designated smoking areas meeting certain criteria in outdoor common areas may be established.
4. Smoking within 20 feet of enclosed areas is prohibited (smoking buffer zones).
5. Disclosure requirements revealing the precise locations of designated smoking areas are required.
6. Smoking prohibition clauses must be included in lease and rental agreement terms.
7. Signs identifying designated smoking areas must be posted.

For purposes of the ordinance, "rental complexes" are defined as multi-unit residences (two or more units) where 51 percent or more of the units are rented by the same landlord. Rental complexes include market rate apartment complexes, affordable apartment complexes, and senior housing facilities. "Common interest complexes" are defined as multi-unit residences that are condominium projects, stock cooperatives, or planned developments as defined by California Civil Code section 1351.

Miscellaneous Provisions:

The City Council directed staff to delete electronic cigarettes from the definition of smoking. In addition, the City Council also directed staff to include a nuisance provision in the ordinance. A nuisance declaration makes it easier for an individual to seek the redress of grievances through the civil court system, because a nuisance declaration lessens the burden of proof for an individual seeking private civil action. In the housing context, declaring secondhand smoke a nuisance is helpful because it eliminates the need to prove that some particular level of exposure has occurred and then to prove that such exposure is an unjustified intrusion or hazard. Staff has added a nuisance provision to Section 24-12 on housing.

Effective Dates, Enforcement, and Education:

The provisions related to workplace smoking and smoking in outdoor public places will become effective 30 days after adoption of the ordinance. Those related to smoking in rental complexes and common interest complexes would be phased in more gradually, with an implementation date of January 1, 2013.

Violations are punishable as infractions and subject to fines, and may also be enforced through civil and private enforcement. The Alameda Police Department, the Fire Marshal, and Code Enforcement are primarily responsible for enforcing the Ordinance. Remedies are also available through the civil court system, which may be brought by the City Attorney or by private parties.

Staff would enforce requirements for landlords and homeowners' associations to install signage and maintain diagrams during mandatory inspections. Secondhand smoke laws in other communities are typically complaint-driven and self-enforcing. Thus, violations of the ordinance will be enforced on a complaint basis, as staff resources allow, and allegations of violations of smoking in individual units would be handled through the civil enforcement process by aggrieved parties (neighboring tenants, owners, or landlords).

Outreach and education will be key components to obtaining compliance. Staff has initiated the following actions to support educating the public regarding the provisions of the ordinance:

- A page on the City's website has been created to provide information regarding the new ordinance including links to the ordinance, staff report, and minutes and video of City Council meetings; a FAQ; downloadable "no-smoking" signs; and links to other information and resources that will be helpful to the public.
- Notice of the ordinance requirements will be included in the packet of information distributed with business license renewal forms.

FINANCIAL IMPACT

Costs associated with implementing the ordinance include the purchase and installation of signs; the development and purchase of necessary forms; and increased staff time for education and outreach, mandatory inspections, and increased complaints.

Proper signage is considered a critical component for obtaining compliance with the ordinance, and staff will evaluate the most effective use of signage to support compliance efforts. Other cities implementing similar regulations have estimated signage costs at \$15,000. This money is currently unbudgeted but could come from the Non-Departmental program in the General Fund or from potential grants. The costs for forms and staff time will be absorbed by existing departments involved with implementing and enforcing the ordinance.

RECOMMENDATION

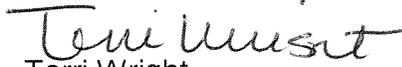
Adopt an ordinance amending the City of Alameda Municipal Code by repealing section 24-5 (Smoking Control) of Section XXXIV (Public Health) and by adding Section 24-11, Smoking Prohibitions in Places of Employment and Public Unenclosed Places, and by adding Section 24-12, Smoking Prohibitions in Multi-Unit Housing.

Respectfully submitted,



Lisa Goldman
Assistant City Manager

By:



Terri Wright
Senior Management Analyst

EXTERNAL CORRESPONDENCE

The City Clerk's Office received the attached external correspondence regarding
**Agenda Item #6-C on the
11-15-11 Regular City Council Agenda**

From: L Z Gmail <leslieannz@gmail.com>
To: "lweisige@ci.alameda.ca.us" <lweisige@ci.alameda.ca.us>
Date: 11/1/2011 11:17 PM
Subject: Cigarette Smoke is Air Pollution

The topic of smoke free Alameda (televised and I thank you for that!) is a hot one.

Keep it to the accountability and responsibility for public health, period, and it becomes much clearer.

I'm very dissatisfied that the open patios and ten percent condo/multi unit exceptions, were modified (or dropped.)

The sector of the business community that encourages and invites smoking as a means of generating taxable income (bars) as well as the case of rental units and multi-unit dwellings (apartments and condo units are also income/tax based) must be _required_ to implement an air cleansing/purifying solution, such as can be found below:

<http://www.breathepureair.com/commercial-smoke-eaters.html>

Or some reasonably effective effort made to clean up after the patrons invited to pollute.

No mention of any air cleaning was discussed. I heard no mention of controlling the pollution released (as required of any industrial/commercial smokestack.) open air wafts about, therefore it must be contained, like the trash that it IS.

The open patio is simply unacceptable, as is smoking at open air public events.

Any smoking area needs to be enclosed, and the air cleaned, prior to its release back into the public domain.

No specific language would be required, only a simple certification of the cleaning mechanism and the enclosure as a SYSTEM, along with its efficacy to return the quality of air back to something acceptably safe.

Perhaps a grandfathering clause will ease the pain of transition.

Second hand smoke is not a mere "nuisance", but a public health HAZARD, and proven carcinogen.

Also, the concept of "public or common areas" need more clearly defined.

I thank the council for clarifying the silence on the topic of medical cannabis, since it is a completely different topic and is largely unproven to have ANY negative health effects.

I don't own property (to tax) nor do i operate a business, but I have lived here since 1996 and appreciate your advocacy on behalf of those who cannot protect themselves: the very young or infirm, in our community.

Thank you,
Leslie Zingarelli
955 Shorepoint ct #310
Alameda Ca 94501

From: Carol Denney <carol.denney@no-smoke.org>
To: <mgilmore@ci.alameda.ca.us>, <bjohnson@ci.alameda.ca.us>, <ltam@ci.alame...>
Date: 11/2/2011 10:50 AM
Subject: smokefree protections

Dear Mayor and Council members,

Thank you in advance for anything you can do to assist with improving smokefree protections for workers, customers, and residents who want to enjoy a longer, healthier life in Alameda.

I am a frequent visitor, and find that I encounter secondhand smoke consistently while shopping or strolling in Alameda. Many people don't seem to realize that secondhand smoke is a serious health issue, and end up inadvertently discouraging people from enjoying the parks or the nightlife throughout town.

Smokefree policies help business in several ways; by allowing nonsmokers to enjoy the city's amenities, and also by cutting health care costs dramatically even in the first year of implementation.

Your forward thinking health policy will inspire other cities to take steps to protect the public's health.

Thank you,

Carol Denney
1970 San Pablo Avenue #4
Berkeley, Ca 94702
(510) 548-1512

**BRUCE FIEDLER
6589 Hemlock Street
Dublin, CA 94568**

November 2, 2011

**Alameda City Council
2263 Santa Clara Avenue
Alameda, CA 94501**

Dear Mayor Gilmore and Council Members:

Thank you for taking a strong stand to protect the health and safety of local residents, workers and visitors to Alameda. I will not be able to attend your November 15 meeting, but I urge you to move ahead with your second reading without watering down your hard-fought progress.

And when your staff returns with the additional research you requested, I hope that you will also be able to take action on e-cigarettes, back patios of bars, the beach, and "nuisance".

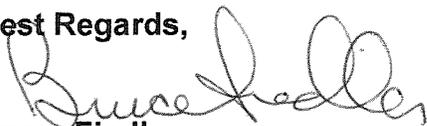
Although East Bay Regional Parks handles routine management for you, it seems to me that the City's relationship with the park district may be similar to that with any other contractor. They work for you and you call the tune. You still have the authority (and final responsibility) to protect the beach and those who frequent it.

The second item that I again offer for your consideration is a declaration of nuisance. Different municipalities have a series of situations that they have declared a public nuisance. They might be: barking dogs; dangerous or dilapidated homes, derelict vehicles sitting on the front lawn and the like. And second hand tobacco smoke should be included as it has a serious effect on others. It was such a declaration in Dublin and later in Belmont that made enforcement in residences easier and gave individual citizens a way to get relief.

As Chief Noonan expressed last night, enforcement of these ordinances would be mostly complaint-driven. A declaration of public nuisance takes away the need for an individual citizen to go through a long (and expensive) process to prove that they were harmed by secondhand tobacco smoke; they only have to demonstrate that they experienced it. All the recitations present in the ordinance that will come back to you in two weeks give adequate basis for such action.

Best Regards,

Bruce Fiedler



cc: file/American Lung Association

Lara Weisiger - Smokefree Ordinance

From: Amy T Raffle <araffle@gmail.com>
To: <clerk@ci.alameda.ca.us>
Date: 11/2/2011 4:52 PM
Subject: Smokefree Ordinance

Dear Mayor Gilmore & City Council Members,

Thank you once again for your hard work toward eliminating harmful secondhand smoke in Alameda. When considering the thousands of communities that have enacted similar protections in the East Bay, across California, and the U.S. , this action is neither cutting edge or provocative, but it is most certainly welcome and it has been a long time coming in Alameda.

I applaud your decision and leadership in protecting us from secondhand smoke exposure in our homes and public areas. **I implore you to maintain these provisions.** It is unacceptable to continue to violate the right of our community to smokefree air in order to support the convenience of a small, vocal minority (10%) of smokers in Alameda.

I support Alameda's business community, including retailers, restaurants, and bars, and they, as well as you, need to be aware that the amount of time and money I spend is at times directly affected by dangerous secondhand smoke I encounter at South Shore Shopping Center and along the Historic Park Street District. And I am not alone, research consistently shows the smokefree laws have no effect or actually increase revenue in communities (including stand alone bars) where they exist (<http://no-smoke.org/document.php?id=210>).

I hope that you will fully consider the weight of your upcoming decision with respect to patio areas of bars and electronic cigarettes.

No employee or nearby resident should be forced to breathe someone else's secondhand smoke from a neighboring bar. Given the housing density and

proximity of residences to many of the bars along Park Street, it seems impossible to allow this to continue without endangering the health and well-being of those nearby. Additionally, no employee should have to risk their health for a paycheck in having to clean these areas and confront second- or third-hand smoke (<http://www.mayoclinic.com/health/third-hand-smoke/AN01985>).

With respect to Electronic Cigarettes, please do not let a manufacturer's unproven claims form the basis of our public policy. **E-cigarettes are NOT considered to be a viable smoking cessation strategy by any credible public health group.** E-cigarettes are already banned on commercial airline flights and have been shown to have harmful emissions to both the smoker and bystanders. Additionally, it seems like allowing e-cigarettes, but not other tobacco products, will ultimately lead to an enforcement nightmare, undermining whatever law is passed.

Thank you once again for your action on this issue.

Sincerely,

Amy Raffle

Lara Weisiger - smokefree ordinance

From: Jeanine Sidran <jsidran@gmail.com>
To: "clerk@ci.alameda.ca.us" <clerk@ci.alameda.ca.us>
Date: 11/2/2011 5:01 PM
Subject: smokefree ordinance

Dear Mayor Gilmore & City Council,

I am glad to hear that you are finally moving to protect Alameda from secondhand smoke. As a resident and mother, I am looking forward to shopping and going to parks in Alameda without the constant exposure to harmful secondhand smoke.

Thank you for protecting my rights to smokefree air.

Sincerely,

Jeanine Sidran

Honorable Mayor Marie Gilmore
Alameda City Council
2263 Santa Clara Ave., 3rd Floor
Alameda, CA 94501

November 2, 2011

Dear Mayor Gilmore and Alameda City Council,

Americans for Nonsmokers' Rights, on behalf of our Alameda members, supports the City Council's efforts to expand smokefree air protections in workplaces, outdoor public places, and multi-unit housing. In particular, ANR strongly encourages the City Council to **cover outdoor bar areas**, and include electronic cigarettes in the definition of smoking, both of which were removed from the proposed ordinance following the public hearing at the November 1 City Council meeting.

Bar Patios

ANR strongly recommends that both restaurant AND bar patios be included in the ordinance because these venues can have very high levels of exposure to secondhand smoke, and are worksites for restaurant and bar employees.

Nonsmokers and smokers are in close proximity on patios, and it is not easy to move away from smoke when working in these areas or patronizing these businesses. The employees who often have to work in both the smokefree indoor areas of the establishment and the patios cannot escape the smoke when working their outdoor tables.

People outdoors that are near secondhand smoke for extended periods of time, such as wait staff or patrons on restaurant and bar patios, can be exposed at levels that exceed the U.S. EPA limit on fine particulate air pollution, according to a 2007 Stanford University study.

Alameda would not be alone in protecting workers and the public from secondhand smoke exposure in outdoor patio areas. **More than 30 California communities have enacted ordinances prohibiting smoking on outdoor bar patios**, including Hayward, Emeryville, Union City in Alameda County, plus Belmont, Martinez, Sebastopol, Richmond, Pasadena and Santa Monica. Likewise, all bar patios are smokefree in Hawaii, Maine, Michigan, Washington State, and Puerto Rico, as well as numerous cities and counties around the country.

Smokefree restaurant and bar laws do not harm business. Hawaii's smokefree workplace law eliminated smoking in restaurants and bars, as well as all patios areas. An [economic impact report](#) found that the smokefree law did not have a negative impact on Hawaii's important hospitality and tourism businesses. The report found that "Employment in the 'Accommodation' and 'Food Services and Drinking Places' industries is up after the smokefree law and total visitor spending is comparable before and after the law. These findings are consistent with the published scientific literature that indicates that smokefree laws do not harm hospitality industries."

More than six years ago, the California Air Resources Board identified secondhand smoke as a toxic air contaminant, which is an **outdoor** air pollutant that may cause or contribute to an increase in deaths or in serious illness, or which may pose a present or potential hazard to human health.

Highlighting that bar patios are important to include in smokefree laws, a 2009 study by the University of Toronto found that bartenders working inside smokefree bars are still exposed to secondhand smoke if smoking is permitted in the outdoor bar patio areas, and are not fully protected from exposure unless bar patios do not permit smoking.

Electronic Cigarettes

We are very concerned with the decision at last night's City Council hearing to omit electronic cigarettes from the definition of "smoking" in the proposed ordinance to prohibit smoking in specified locations in Alameda.

ANR's priority is protecting workers and the public from secondhand smoke exposure in workplaces and public places. We are also, along with other major health organizations, opposed to the use of e-cigarettes in places where smoking is prohibited because serious questions remain about the safety of the vapor released during the use of those products.

E-cigarettes are an unregulated and largely untested product whose components raise health concerns, and they should not be permitted in smokefree spaces unless & until they're proven safe to bystanders. Nicotine replacement products—like patches, gums, and inhalers—are tested and regulated to be safe and effective; the same should go for e-cigarettes. The U.S. Food and Drug Administration (FDA) and other health experts warn consumers about potential health risks associated with electronic cigarettes.

Americans for Nonsmokers' Rights is concerned that the manufacturers of electronic cigarettes are promoting them as something that smokers can use in workplaces and public places where the smoking of tobacco products is prohibited. Absent any proof that e-cigarettes are harmless to people exposed to the vapors they emit, their use in workplaces and public places would be a great disservice to public health. Research funded by e-cigarette companies and their front groups should not be viewed as legitimate or unbiased.

Health concerns exist about the safety of the e-cigarette to nonsmokers. A study published in February 2010 found that nicotine causes the formation of carcinogens when it reacts with nitrous acid - a common component of indoor air. Most e-cigarettes contain nicotine, which is exhaled by the user in a vapor cloud. Nicotine is a sticky substance that remains on surfaces for days and weeks, so the hazardous carcinogens continue to be created over time, which are then inhaled, absorbed or ingested.

The lack of available research on e-cigarettes and the potential health risks posed by the use of this product, both to the user and to the people around them, is of grave concern. The burden to prove their products are safe rests on the manufacturers of e-cigarettes. At this time, Americans for Nonsmokers' Rights recommends that e-cigarettes not be used in areas where people will be exposed to the vapors they emit. The national norm and the ANR model smokefree ordinance used by communities around the U.S. is to include e-cigarettes in smokefree laws to fully protect public health.

Thank you for your leadership and desire to make Alameda the best place to live, work, and visit. Please feel free to contact us at 510-841-3032 if you have any questions, comments, or feedback.

Sincerely,



Liz Williams
Project Manager

Americans for Nonsmokers' Rights is a national membership not-for-profit organization dedicated to clearing the air of secondhand smoke and exposing tobacco industry interference tactics.

Lara Weisiger - secondhand smoke is a nuisance

From: Karen Fong <karen.fong@sbcglobal.net>
To: <clerk@ci.alameda.ca.us>
Date: 11/2/2011 5:09 PM
Subject: secondhand smoke is a nuisance
CC: Serena Chen <Serena.Chen@lung.org>

November 2, 2011

To the Alameda City Council and City Clerk,

First of all, thank you for including and approving that smoking should not be permitted in multi-unit housing areas. I am proud of the due diligence and stand that you all took at last night's city council meeting.

Please take one more step in considering a ban on smoking in back patios and adding secondhand smoke as a public nuisance.

While the non-smoking issue remains a contentious one and that many business owners, including the Southshore manager, are opposed to banning smoking near their establishments, I think they are being very short sighted as there are many more non-smokers in Alameda than there are smokers. It only stands to reason that their customer base would be increased if they went smoke free.

Also, if every business owner voluntarily adopted a non-smoking rule in their establishment, they would in effect discourage the use of cigarettes, cigars and pipes and instill in their patrons how detrimental smoking is to everyone and in turn would become socially responsible. They would encourage our youth to not start smoking and show support of those attempting to stop smoking. The long term effects of this would be a healthier, longer living customer base who can feel at ease that they can enjoy our city without having to shy away from places that have drifting smoke. After all, we all know the smoke does not know how to stay in the smoking section.

This is a very opportune time for the City of Alameda to show everyone and other cities how socially forward and responsible we can be.

Sincerely,

Karen Fong

11 Eclipse Court

Alameda, CA 94501

510-821-1617

Lara Weisiger - Fwd: I think the anti smoking ordinance is absolutely ridiculous, and Iam a non-smoker

From: Terri Wright
To: Weisiger, Lara
Date: 11/3/2011 9:00 AM
Subject: Fwd: I think the anti smoking ordinance is absolutely ridiculous, and Iam a non-smoker
CC: Nguyen, Alex

FYI. t.

>>> Peter Holmes <pholmes@sterlinghomeloan.com> 11/3/11 8:54 AM >>>

I have never smoked cigarettes in my life, nor do I live in an apartment or condo, and I believe that this ordinance is completely ill-founded, and is an invasion on the liberties of our citizens.

Please do not pass such an ordinance, as it is un-constitutional in my opinion.

Second hand smoke of this nature is not, in my opinion, a big enough item to eclipse individual choice and freedom.

Thank you,

Peter Holmes

1129 Post Street

Alameda, CA 94501

AMENDING THE CITY OF ALAMEDA MUNICIPAL CODE BY REPEALING SECTION 24-5 (SMOKING CONTROL) OF SECTION XXIV (PUBLIC HEALTH) AND BY ADDING SECTIONS 24-11 (SMOKING PROHIBITIONS IN PLACES OF EMPLOYMENT AND PUBLIC UNENCLOSED PLACES) AND 24-12 (SMOKING PROHIBITIONS IN MULTI-UNIT HOUSING)

Approved as to Form
City Attorney

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

WHEREAS, the U.S. 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, 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, there is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke; and

WHEREAS, employees who work in smoke-filled businesses suffer a twenty-five to fifty percent (25-50%) higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function; and

WHEREAS, studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in New York City hospitality workers find dramatic reductions in the levels of these biomarkers after a smoke free law takes effect. Average cotinine levels of these restaurant and bar workers decreased by eighty-five percent (85%) after the city's smoke free law went into effect; and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. The Americans with Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability; and

WHEREAS, California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Alameda that:

Section 1. The Alameda Municipal Code is hereby amended by repealing Section 24-5 (Smoking Control) of Section XXIV (Public Health) in its entirety and by adding Section 24-11 (Smoking Prohibitions in Places of Employment) and Section 24-12 (Smoking Prohibitions in Multi-Unit Housing), as follows:

24-11 SMOKING PROHIBITIONS IN PLACES OF EMPLOYMENT AND UNENCLOSED PUBLIC PLACES

24-11.1 Definitions

For the purposes of this Section, the following definitions shall govern, in accord with state statute, unless the context clearly requires otherwise:

(a) “Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(b) “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

(c) “City” means the City of Alameda.

(d) “Commercial-Area Sidewalks” means any sidewalk in front of or abutting any property designated on the City’s official Zoning Map appended to the City’s Zoning Ordinance with a “C” prefix, which districts are listed on the Map as the Neighborhood Business District, Central Business District, Community-Commercial District, and Commercial-Manufacturing District.

(e) “Dining Area” means any area available to or customarily used by the general public, which is designed, established, or regularly used for consuming food or drink. The term “Dining Area” shall not include a Bar with a rear or outside area.

~~(f) “E-cigarette” means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates Smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.~~

(fg) “Employee” means a person who is employed by an Employer, in consideration for direct or indirect monetary wages or profit, including independent contractors, or any person who volunteers his or her services for a non-profit entity.

(gh) “Employer” means a Person, Business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons, or utilizes volunteers.

(hi) “Enclosed Area” means an area in which outside air cannot circulate freely to all parts of the area, and includes:

(1) Any covered or partially covered space having more than fifty percent (50%) of its perimeter area closed to the outside such as, for example, a covered porch with more than two walls; or

(2) Any space open to the sky (hereinafter “uncovered”) having more than seventy-five (75%) of its perimeter area closed to the outside such as, for example, a courtyard;

(3) Notwithstanding subsections (2) and (3) above, an uncovered space of three thousand (3000) square feet or more, such as, for example, a field in an open-air arena, is not an Enclosed Area.

(ij) “Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

(jk) “Hookah Bar” means any facility or location whose Business operation, whether as its primary use or as an accessory use, is denoted by the smoking of tobacco through one or more pipes (commonly known as hookah, shisha, or narghile) designed with a tube passing through an urn of water that cools the smoke.

(kl) "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

(lm) "No Smoking Sign" means a sign with letters of no less than one inch in height or which contains the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar).

(ma) "Openings" shall include main entrances, exits, operable windows, and ventilation intake systems.

(ne) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity and including government agencies.

(op) "Place of Employment" or "Workplace" means an area under the legal or actual control of a public or private Employer, including sole proprietor, that an Employee or member of the public may enter during the normal course of operations, regardless of hours of operation, including but not limited to, work areas, private offices, Employee lounges, restrooms, conference rooms, meeting rooms, classrooms, Employee cafeterias, hallways, construction sites, temporary offices, vehicles, and private residences that are used as a child care, adult day care, or Health Care Facility, and are subject to licensing.

(pe) "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City grounds.

(qf) "Public Events" means occurrences where people are seated or congregate in close proximity including, but not limited to, parades, fairs, farmers' markets, concerts, and ceremonies.

(rs) "Reasonable distance" means a distance of at least twenty feet (20').

(st) "Recreation Areas" means any outdoor area that is open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes but is not limited to playing fields, playgrounds, parks, picnic areas, golf courses, walking paths, gardens,

hiking trails, bike paths, swimming pools, and skateboard parks, sports arenas, and amusement parks.

~~(u) "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or Employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "Restaurant" shall include a Bar area within a restaurant.~~

(tv) "Service Line" means an indoor or outdoor line in which one or more Persons waits for or receives service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, sporting event lines, payphones, newsstands, bus stops, and taxi-cab stands.

(uw) "Shopping Mall" means a collection of retail or professional establishments and includes the public walkways or hall areas that serve to connect them.

~~(x) "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the resulting byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine. The term "Smoke" includes tobacco smoke and electronic tobacco-based cigarette vapors.~~

(vy) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, hookah, or pipe, or any other lighted or heated tobacco intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Section.

(wz) "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

(xaa) "Unenclosed Area" means any area that is not an Enclosed Area.

24-11.2 Prohibition of Smoking in Enclosed and Unenclosed Places of Employment

Smoking shall be prohibited in all enclosed and unenclosed places of employment as follows:

1. Hotel/Motel lobbies, meeting and banquet facilities;
2. Ninety percent (90%) or more of hotel/motel guest rooms;
3. Retail or wholesale tobacco shops and hookah bars;
4. Taxi cabs, cabs of trucks, tractors, or other vehicles;
5. Warehouse facilities;
6. Theatrical production sites;
7. Medical research sites;
8. Private residences licensed as child care, adult care, and health care facilities;
9. Small Businesses with fewer than five (5) Employees;
10. Owner-operated Businesses that are open to the public;
11. Outdoor worksites, including construction sites, arenas, and convention halls, or anywhere where working crews may be.

Nothing in this subsection shall be construed to prohibit Smoking in any area in which such Smoking is already prohibited by state or federal law unless the applicable state or federal law does not preempt additional regulation.

24-11.3 Prohibition of Smoking in Unenclosed Public Places

Except as otherwise expressly authorized by state or federal law, Smoking shall be prohibited in the following Unenclosed Public Places within the City:

Dining Areas;
Recreation Areas;
Public Events;
Service Lines;
Commercial-Area Sidewalks; and
Shopping Malls.

24-11.4 Reasonable Smoking Distance Required – 20 Feet

Smoking that is not otherwise prohibited in Unenclosed Areas shall be prohibited within a Reasonable Distance from any entrance, window, opening, or vent into an Enclosed Area in which Smoking is prohibited, except while actively passing on the way to another destination and so long as Smoke does not enter any Enclosed Area in which Smoking is prohibited.

24-11.5 Duty of Person, Employer, Business, or Non-Profit

(a) The owner, operator, manager, or other Person in control of a public place or place of employment where Smoking is prohibited by this Section shall:

1. Clearly and conspicuously post "No Smoking" signs within or adjacent to Unenclosed Dining Areas, or by other means necessary to clearly indicate that Smoking is prohibited in the Dining Area.
2. Remove all ashtrays from any area where Smoking is prohibited by this Section, except for ashtrays displayed for sale and not for use on the premises.

(b) No Person, Employer, Business, or Nonprofit Entity shall knowingly permit the Smoking of Tobacco Products in an area which is under the legal or de facto control of the Person, Employer, Business, or Nonprofit Entity and in which Smoking is prohibited by law and the Person, Employer, Business or Nonprofit Entity is not otherwise compelled to act under state or federal law.

(c) No Person, Employer, Business, or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area which is under the legal or de facto control of the Person, Employer, Business, or Nonprofit Entity and in which Smoking is prohibited, including, without limitation, inside the perimeter of any Reasonable Distance required by this Section.

(d) Notwithstanding any other provision of this Section, any owner, Employer, Business, Nonprofit Entity, or other Person who controls any property, establishment, or Place of Employment regulated by this Section may declare any part of such area in which Smoking would otherwise be permitted to be a non-smoking area.

24-11.6 Violations, Penalties and Enforcement

The remedies provided by this subsection are cumulative and in addition to any other remedies available at law or in equity.

(a) Enforcement of this Section shall be the responsibility of the Alameda Police Department, although any peace officer, or Fire or Code Enforcement Officer, may also enforce this Section.

(b) While an establishment is undergoing otherwise mandatory inspections, Fire and Code Enforcement officers shall inspect for compliance with this Section.

(c) Notice of this Section will be provided to all applicants for a business license or renewal thereof; provided, however, lack of such notice shall be no defense to a violation of this Section.

(d) It shall be unlawful for any Person to smoke in any area where Smoking is prohibited under this Section.

(e) It is unlawful for any Person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Section to refuse to comply with any of its provisions, or to permit any Employee or patron to violate this Section.

(f) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this Section.

(g) Any Person who violates any provision of this Section shall be deemed guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100.00) for the first violation.
2. A fine not exceeding two hundred dollars (\$200.00) for a second violation within one year.
3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of this Section within one year.

(h) Violations of this Section are subject to a civil action brought by the City Attorney, punishable by a civil fine not less than two hundred fifty dollars (\$250.00) and not exceeding one thousand dollars (\$1,000.00) per violation.

(i) Notwithstanding any other provision of this Section, a private citizen may bring legal action to enforce the requirements of this Section.

24-11.7 Non-retaliation

No Person or Employer shall discharge or in any manner retaliate against any Employee because such Employee exercises any right to a Smoke-free environment afforded by the Section.

24-12 SMOKING PROHIBITIONS IN HOUSING

24-12.1 Definitions

For the purposes of this Section, the following definitions shall govern, in accord with state statute, unless the context clearly requires otherwise:

(a) "Common Area" means every Enclosed Area or Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities

and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

(b) "Common Interest Complex" means a Multi-Unit Residence that is a condominium project, a stock cooperative, or a planned development as defined by California Civil Code section 1351.

(c) "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes:

(1) Any covered or partially covered space having more than fifty percent (50%) of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or

(2) Any space open to the sky (hereinafter "uncovered") having more than seventy-five (75%) of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard.

(d) "Landlord" means any Person who owns property let for residential use, any Person who lets residential property, and any Person who manages such property, except that "Landlord" does not include sublessors.

(e) "Multi-Unit Residence" means any premises that contains two (2) or more Units.

(f) "New Unit" means a Unit that is issued a certificate of occupancy after the effective date of this ordinance.

(g) "Non-smoking Area" means any Enclosed Area or Unenclosed Area of a Multi-Unit Residence in which Smoking is prohibited by: (1) this Section or other law; (2) by binding agreement relating to the ownership, occupancy, or use of real property; or (3) by designation of a person with legal control over the area. In the case of a Smoking prohibition established only by private agreement or designation and not by this Section or other law, it shall not be a violation of this section for a person to engage in Smoking or to allow Smoking in that area unless: (1) the person knows that Smoking is not permitted; or (2) a reasonable person would know that Smoking is not permitted.

(h) "No Smoking Sign" means a sign with letters of no less than one inch in height or which contains the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar).

(i) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

(j) "Premises" means a piece of land and any improvements upon it such as is usually described in a deed, deed of trust or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same natural person or by legal persons under common control, with the exception of contiguous parcels that each have only one detached single-family residence.

(k) "Rental Complex" means a Multi-Unit Residence for which fifty-one percent (51%) or more of the Units are let by or on behalf of the same Landlord.

~~(l) "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the resulting byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine. The term "Smoke" includes tobacco smoke and electronic tobacco-based cigarette vapors.~~

~~(lm) "Smoking" means possessing a lighted tobacco product or lighted tobacco paraphernalia, including but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, or lighted cigarette, but does not include what is commonly referred to as electronic, or e-cigarettes.inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, hookah, or pipe, or any other lighted or heated tobacco intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Section.~~

~~(mn) "Unenclosed Area" means any area that is not an Enclosed Area.~~

(ne) "Unit" means: (1) a dwelling space consisting of a group of rooms and including one (1) kitchen, a bath and sleeping quarters designed for and not occupied by more than one (1) family, and any private outdoor spaces like balconies and patios; and (2) senior citizen housing and single room occupancy hotels, as defined in California Health and Safety Code Section 50519(b)(1), even where lacking private cooking facilities or private plumbing facilities. "Unit" does not include lodging in a hotel or motel that meets the requirements set forth in California Civil Code Section 1940(b)(2).

24.12.2 Secondhand Smoke a Nuisance

For all purposes within the City, nonconsensual exposure to secondhand smoke occurring on or drifting into any Multi-Unit Residence is a nuisance.

24-12.32 Smoking Restrictions in Multi-Unit Residential Rental Complexes

- (a) All New Units in Multi-Unit Residential Rental Complexes are hereby designated **Non-smoking Units**.
- (b) All Existing Units in Multi-Unit Rental Complexes are hereby designated **Non-smoking Units** effective January 1, 2013, or when the legal occupants after the effective date of this ordinance vacate a Unit, whichever occurs first.
- (c) Smoking is prohibited in any associated exclusive-use Enclosed or Unenclosed Areas of a designated Non-smoking Unit, such as, for example, a private balcony, porch, deck, or patio.
- (d) Smoking in a designated Non-smoking Unit, on or after January 1, 2013, is a violation of this subsection;
- (e) Smoking is prohibited in all Common Areas except that a Person with legal control over a Common Area, such as, for example, a Landlord, may designate a portion of the Common Area as a designated Smoking area provided that at all times the designated Smoking area complies with Section 24-12.54(b) below;
- (f) Required Lease Terms. Every lease or other agreement for the occupancy of a unit in a Multi-Unit Rental Complex shall include by January 1, 2013:
 - 1. A clause stating that Smoking is prohibited in the Non-smoking Unit; and
 - 2. A clause stating that it is a material breach of the lease or agreement to:
 - i. Violate any law regulating Smoking while on the Premises;
 - ii. Smoke in the Non-smoking Unit;
 - iii. Smoke in any Common Areas in which Smoking is prohibited.
- (g) Whether or not a Landlord complies with subsection (f) above, the clauses required by that subsection shall be implied and incorporated by law into every agreement to which they apply.
- (h) A tenant who breaches the Smoking regulations of a lease or knowingly allows another Person to do so shall be liable to: (i) the landlord; and (ii)

any occupant of the Multi-Unit Residence who is exposed to secondhand Smoke as a result of that breach. A landlord shall not be liable to any Person for a tenant's breach of Smoking regulations if the landlord has fully complied with the requirements of this Section;

- (i) Failure to enforce any Smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this Section and shall not prevent future enforcement of any such Smoking regulation on another occasion;

24-12.43 Smoking Restrictions in Common Interest Complexes

(a)a In every new Common Interest Complex that receives a certificate of occupancy after the effective date of this Section, one hundred percent (100%) of the units (including private outdoor spaces associated with such units, such as balconies, patios and decks), shall be Non-smoking Units by law.

(b) All existing units of a Common Interest Complex, including private outdoor spaces associated with such units, such as balconies, patios and decks, are hereby designated Non-smoking Units as of January 1, 2013.

(b)c Smoking is prohibited in all Common Areas, except that a Person with legal control over a Common Area, such as, for example, a homeowner's association, may designate a portion of the Common Area as a designated Smoking area provided that at all times the designated Smoking area complies with SubsSection 24-12.54 (b) below.

24-12.54 No Smoking Buffer Zones and Designated Smoking Areas

(a) Smoking is prohibited in Unenclosed Areas of a Multi-Unit Residence, including balconies, porches, decks, patios, and courtyards, within twenty feet (20') in any direction of any doorway, window, opening, or other vent into an Enclosed Area that is a Non-smoking Area.

(b) A Person with legal control over a Common Area, such as, for example, a Landlord or homeowners' association, may designate a portion of the Common Area as a designated Smoking Area provided that at all times the designated Smoking Area complies with the following provisions:

- (1) Must be an Unenclosed Area.
- (2) Must be located at least twenty feet (20') from any Enclosed Area

that is a Non-smoking Area. A Person with legal control over a Common Area in which a designated Smoking Area has been designated shall modify, relocate or eliminate that designated Smoking Area so as to maintain compliance with the requirements of this Section as laws change, as binding agreements are created, and as Non-smoking Areas on neighboring property are established.

(3) Must be at least twenty feet (20') from Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, and swimming pools.

(4) Must be no more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated.

(5) Must have a clearly marked perimeter.

(6) Must be identified by conspicuous signs.

(7) The Person with legal control over a Common Area in which a Smoking Area has been designated by this Section may permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of Smoking waste within the Area.

(8) Clear and unambiguous "No Smoking" signs shall be posted in sufficient numbers and locations to make Common Areas where Smoking is prohibited by this Section or other law obvious to a reasonable person. Such signs shall be maintained by the Person or Persons with legal control over the Common Areas. The absence of signs shall not be a defense to a violation of any provision of this Section.

24-12.65 Disclosure of Designated Non-smoking Units & Designated Smoking Areas

(a) All Landlords of Rental Complexes are required to disclose to prospective tenants whether smoking is permitted in the unit to be rented, which units are designated smoking units, if any, and the smoking policy for the complex. On and after January 1, 2013, all Landlords of Rental Complexes are required to disclose to prospective tenants that smoking is prohibited in the Units effective January 1, 2013, and the smoking policy for the complex.

(b) All sellers of units within a Common Interest Complex are required to disclose to prospective buyers that smoking is prohibited in the Units effective January 1, 2013, whether smoking is permitted in the unit and and the smoking policy for the complex.

(c) Every Person with legal control over a Multi-Unit Residence, such as, for example, a Landlord or homeowners' association, shall maintain a diagram that illustrates the ~~following information:~~

~~(1) The precise location of designated Non-smoking Units; and
(2) The precise location and configuration of the premises' designated Smoking area. This diagram shall accompany every lease or other agreement for the occupancy of a Unit in a Multi-Unit Residence executed on or after January 1, 2013.;~~

~~This diagram shall accompany every lease or other agreement for the occupancy of a Unit in a Multi-Unit Residence executed after January 1, 2013.~~

24-12.7 6 Prohibitions and Duties Generally

(a) Smoking is prohibited in any non-smoking area of a Multi-Unit Residence established by this Section.

(b) No Person shall knowingly permit Smoking in an area of the premises under his or her legal or de facto control in which Smoking is prohibited by this Section, this Code, or any other state or federal law provided, however, that this prohibition shall not apply to a Person who is already compelled to act under state or federal law.

(c) No Person shall knowingly permit the presence or placement of ash trays, cans, or other receptacles within Multi-Unit Residence Common Areas under his or her legal or de facto control in which Smoking is prohibited by this Section, this Code, or any other state or federal law.

(d) "No Smoking" signs shall be clearly and conspicuously posted in Multi-Unit Residence Common Areas, at every entrance, and on every floor where Smoking is prohibited by this Section or by other law. Such signs shall be maintained by the Person or Persons with legal control over the Multi-Unit Residence Common Areas, entrances and floors. Signs must be posted in sufficient numbers and locations in the Multi-Unit Residence Common Areas and at entrances and floors to make areas where Smoking is prohibited obvious to a reasonable person. Signs are not required at the individual entrance of each Multi-Unit Residence. The absence of signs shall not be a defense to a violation of any provision of this Section.

(e) This Section shall not create additional liability for a landlord for a Person's violation of this Section, provided that the Landlord has fully complied with the required disclosures, sign posting, and other provisions of this Section.

(f) The provisions of this Section are restrictive only and establish no new rights for a smoker.

(g) Notwithstanding any provision of this Section or other provisions of this Code, or failure to restrict Smoking under this Section, including any explicit or implicit provision that allows Smoking, nothing in this Section shall operate to limit any Person's legal rights under other laws with regard to Smoking, including, for example, claims of nuisance, trespass, property damage, and personal injury.

24-12.87 Enforcement

The remedies provided by this Section are cumulative and in addition to any other remedies available at law or in equity.

(a) Enforcement of this Section shall be the responsibility of the Alameda Police Department, although any peace officer, or Fire or Code Enforcement Officer, may also enforce this Section.

(b) While a premises is undergoing otherwise mandatory inspections, Fire and Code Enforcement officers shall inspect for compliance with this Section.

(c) Notice of this Section will be provided to all applicants for a business license or renewal thereof; provided, however, lack of such notice shall be no defense to a violation of this Section.

(d) It shall be unlawful for any Person to smoke in any area where Smoking is prohibited under this Section.

(e) It is unlawful for any Person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Section to refuse to comply with any of its provisions, or to permit any employee or patron to violate this Section.

(f) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this Section.

(g) Any violation of this Section 24-12 is hereby declared to be a nuisance.

(h) Any Person who violates any provision of this Section shall be deemed guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100.00) for the first violation.
2. A fine not exceeding two hundred dollars (\$200.00) for a second violation within one year.

3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of this Section within one year.

(h) Violations of this Section are subject to a civil action brought by the City Attorney, punishable by a civil fine not less than two hundred fifty dollars (\$250.00) and not exceeding one thousand dollars (\$1,000.00) per violation.

24-12.9 8 Private Enforcement

(a) Any Person, including a legal entity or organization or a government agency, acting for the interests of itself, its members, or the general public, may bring a civil action to enforce this Section 24-12. Upon proof of a violation, a court shall award the following:

- (1) Damages in the amount of either:

- (i) upon proof, actual damages; or

- (ii) with insufficient or no proof of damages, five hundred dollars (\$500) for each violation of this Section (hereinafter "statutory damages). Unless otherwise specified in the Section, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this Section, no Person suing on behalf of the general public shall recover statutory damages based upon a violation of this Section if a previous claim brought on behalf of the general public by another Person or the City for statutory damages and based upon the same violation has been adjudicated, whether or not the Person bringing the subsequent claim was a party to the prior adjudication.

- (2) Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, retaliation, or a conscious disregard for the public health.

(b) A Person may also bring a civil action to enforce this Section by way of an injunction or a conditional judgment. Upon proof of a violation, a court shall issue an injunction or a conditional judgment.

(c) Nothing in this Section prohibits a Person from bringing a civil action in small claims court to enforce this section, so long as the amount in demand and the type of relief sought are within the jurisdictional requirements set forth in California Code of Civil Procedure Section 116.220.

Section 2. This ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Section 3. Severability Clause. It is the declared intent of the City Council of Alameda that if any section, subsection, sentence, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by Council of the City of Alameda in regular meeting assembled on the _____ day of _____, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____ day of _____, 2011.

Lara Weisiger, City Clerk
City of Alameda