

CITY OF ALAMEDA ORDINANCE NO. 3038

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, the Alameda Municipal Code at Section 1-5.3(a) provides that any condition existing in violation of the code is deemed to be a public 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) “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.

(g) "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.

(h) "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.

(i) "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.

(j) "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.

(k) "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.

(l) "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).

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

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

(o) "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.

(p) "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.

(q) "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.

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

(s) "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, amusement parks, and beaches.

(t) "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.

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

(v) "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. (w) "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.

(x) "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) "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.

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

(n) "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 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 24-12.5(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) The California Apartment Association's Form 34.0, revised 1/11, meets the requirements required by subsection (f) above, and is an option for use to comply with this subsection.
- (h) 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.

- (i) 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;
- (j) 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;

24-12.3 Smoking Restrictions in Common Interest Complexes

- 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.
- 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 Subsection 24-12.5 (b) below.

24-12.4 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.

24-12.5 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 2, 2012, 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, 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 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.

24-12.6 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.

24-12.7 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.

(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.

(i) 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.

24-12.8 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 beginning on January 2, 2012.

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.

Mari L. Gilmore
Presiding Officer of the City Council

Attest:

Lara Weisiger
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 15th day of November, 2011, by the following vote to wit:

AYES: Councilmembers Bonta, deHaan, Johnson, Tam and Mayor Gilmore – 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 16th day of November, 2011.

Lara Weisiger
Lara Weisiger, City Clerk
City of Alameda