

## CITY OF ALAMEDA

### Memorandum

To: Honorable Mayor and  
Members of the City Council

From: John A. Russo  
City Manager

Date: November 1, 2011

Re: Introduce 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 Sections 24-11 (Smoking Prohibitions in Places of Employment and Public Unenclosed Places), and 24-12 (Smoking Prohibitions in Multi-Unit Housing)

### BACKGROUND

Numerous studies conclude that secondhand smoke is harmful to individuals, including a report from the California Air Resources Board declaring secondhand smoke as a toxic air contaminant and a report from the U.S. Surgeon General stating that there is no risk-free level of exposure to secondhand smoke. A 2007 study conducted by researchers from Stanford University found that outdoor secondhand smoke exposure can be comparable to indoor secondhand smoke levels when an individual is near a smoker outdoors.

Secondhand smoke in multi-unit housing poses health problems for non-smoking residents when it drifts from neighboring units, balconies, and outdoor spaces. The Surgeon General has determined that the dangers from secondhand smoke cannot be controlled by ventilation, air cleaning, or the separation of smokers from non-smokers. Several studies have concluded that smoking in multi-unit housing also contributes to higher maintenance and insurance costs. Many cities in California have begun to address the health dangers and additional costs related to secondhand smoke by implementing secondhand smoke housing policies.

In response to community concerns regarding the public health effects of secondhand smoke exposure, the City Council received a report on April 5, 2011, on efforts that many local jurisdictions are taking to strengthen secondhand smoke protections enacted by the State of California. The report discussed four policy areas that local governments use to strengthen tobacco control. They include: protections for places of employment, protections for outdoor public places, secondhand smoke housing policies, and the regulation of tobacco sales.

After receiving the report and listening to public comment, the City Council directed staff to prepare an ordinance to strengthen Alameda's policies.

**City Council**  
**Agenda Item #6-B**  
**11-01-11**

## DISCUSSION

The proposed ordinance would add Section 24-11, Smoking Prohibitions in Places of Employment and Public Unenclosed Places, and Section 24-12, Smoking Prohibitions in Multi-Unit Housing, to the Alameda Municipal Code. These sections if adopted, will address three of the four policy areas presented to the City Council. Staff will return with a report seeking guidance from the City Council on the fourth policy area, regulation of tobacco sales.

### *1) Protections for Places of Employment*

AB 13, codified in California Labor Code Section 6404.5, prohibits smoking in most indoor workplaces, but exempts certain workplace environments. If enacted, Section 24-11 would supplement the protections codified in Labor Code Section 6404.5 and prohibit smoking in the following locations:

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

### *2) Protections for Outdoor Public Places*

The majority of cities in Alameda County have extended some level of protection from secondhand smoke to outdoor public places. Fifty-four cities and counties in California have passed what are considered to be comprehensive outdoor secondhand smoke ordinances, including the cities of Concord, San Leandro, Dublin, Hayward, Albany, Berkeley, Emeryville, and Union City.

In addition to extending workplace protections from secondhand smoke, Section 24-11 would require the posting of "No Smoking" signs and prohibits smoking in the following outdoor public places:

1. Dining areas: defined as outdoor seating at restaurants, bars, etc.
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

It is anticipated that the adoption of these outdoor smoking provisions may present a conflict with bar owners concerned that their business will be affected if patrons are prohibited from smoking in outdoor seating areas and at the entrances of their establishments. Smokers are faced with many other situations where they cannot smoke, sometimes for several hours, including at work and other public indoor places. While this is an inconvenience for smokers, these provisions are being recommended in spite of this potential conflict because non-smoking patrons also frequent these areas and deserve protection from the harmful effects of secondhand smoke.

### *3) Secondhand Smoke Housing Policies*

As of January 2011, 101 communities in California have adopted some form of secondhand smoke housing policy, including the neighboring cities of Albany, Dublin, Oakland, Emeryville, and Union City. In 2008, the Alameda Housing Authority (AHA) adopted a smoke-free housing policy that has become effective in eight of 13 complexes owned or managed by AHA. The policy has received widespread support from tenants, including from those in complexes yet to transition. Based on the support expressed by tenants for smoke-free complexes, AHA will be scaling back its normal outreach plan in order to more quickly transition the remaining complexes.

Section 24-12, Smoking Prohibitions in Multi-Unit Housing, would establish the following smoking prohibitions and regulations:

1. Smoking will be prohibited in 100% of units (new and existing) in multi-unit rental complexes, including balconies and porches.
2. Smoking will be prohibited in 100% of new units of common interest complexes.
3. Smoking will be 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 will be prohibited (smoking buffer zones).
5. Disclosure requirements revealing the precise locations of non-smoking units and designated smoking areas will be required.
6. Smoking prohibition clauses must be included in lease and rental agreement terms.
7. Signs identifying designated smoking areas must be posted.

The housing portion of the ordinance would apply to "rental complexes," 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 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.

As noted in item number one above, staff recommends that the ordinance prohibit smoking in 100% of existing multi-unit rental complexes for a number of reasons. People living in multi-unit properties are more susceptible to the negative health effects of drifting secondhand smoke as a result of proximity and the sharing of common walls and ventilation systems. In addition, landlords and property management firms are increasingly adopting smoke-free leasing policies for business reasons. Finally, cities that have adopted ordinances that allow for smoking units have found complaints surrounding the smoking units have increased. As a result, the Public Health Law and Policy's Technical Assistance and Legal Center, which developed a model housing ordinance for cities, will be removing this provision from the model housing ordinance.

As noted above, the draft ordinance requires that 100% of existing multi-unit rental complexes become smokefree. However, the draft ordinance also includes alternative language for the City Council's consideration that enables landlords to designate up to 10% of existing units to be smoking units. (This alternative language is included in the highlighted text box at the bottom of page 9 of the ordinance).

Staff is not recommending that individual unit prohibitions be extended to existing common interest complexes at this time because such prohibitions will infringe on the individual interests and rights of these property owners. While staff acknowledges that non-smoking neighbors are contending with the same health risks as non-smoking bar patrons, the issue is more complex than inconveniencing someone for a few hours.

Homeowners' associations have the authority to prohibit smoking in individual units; they do not need a local law to adopt smokefree provisions. Additionally, the ordinance includes several provisions, such as disclosure requirements for prospective buyers, buffer zones, and private enforcement.

#### *Effective Dates, Enforcement, and Education*

The provisions related to workplace smoking and smoking in outdoor public places would become effective 30 days after adoption of the ordinance. Those related to smoking in rental complexes would be phased in more gradually, with landlords afforded 14 months to implement the no-smoking provisions for existing units in rental complexes and to include smoking prohibitions in leases and rental agreements.

Violations will be 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. Since secondhand smoke laws in other communities are typically complaint-driven and self-enforcing, rental agreement terms 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).

Since secondhand smoke laws are typically self-enforcing, outreach and education is a key component to obtaining compliance. Staff will initiate the following actions to support educating the public regarding the provisions of the ordinance:

- In addition to standard public noticing, a press release was issued advising of the Public Hearing on the ordinance.
- Business and housing associations, and several property management firms were contacted and provided a copy of the ordinance and staff report.
- A page on the City's website will be created to provide information regarding the new laws, 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

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

Respectfully submitted,



Lisa Goldman  
Assistant City Manager

By:



Terri Wright  
Senior Management Analyst

cc: Park Street Business Association  
West Alameda Business Association  
Greater Alameda Business Association  
Alameda Chamber of Commerce  
East Bay Rental Housing Association

## EXTERNAL CORRESPONDENCE

The City Clerk's Office received the attached external correspondence regarding  
**Agenda Item #6-B on the  
11-1-11 Regular City Council Agenda**

To: Mayor Gilmore, Vice Mayor Bonta, and Council Members DeHaan, Johnson, and Tam:

Thank you for your support in April for agreeing to new secondhand smoke protections and making Alameda a more **family-friendly** place to **live**, work, and **play**.

Please support the strongest protections possible in public outdoor areas and in attached housing where all of us, especially our children and our senior citizens deserve healthy air to breathe.

Sincerely,

NAME *Veronica Mendoza*  
CITY *Alameda*  
DATE *10/15/11*

Sincerely,

NAME *John Kelly*  
CITY *Alameda*  
DATE *10/14/2011*

Sincerely,

NAME *Karen Fong*  
CITY *Alameda, CA*  
DATE *10/15/11*

Sincerely,

NAME *Grace Ricci*  
CITY *Alameda*  
DATE *10/15/11*

Sincerely,

NAME *Diana Gue*  
CITY *Alameda CA*  
DATE *10/15/11*

Sincerely,

NAME *Alesia Glandon*  
CITY *Alameda*  
DATE *10/14/2011*



To: Mayor Gilmore, Vice Mayor Bonta, and Council Members DeHaan, Johnson, and Tam:

Thank you for your support in April for agreeing to new secondhand smoke protections and making Alameda a more **family-friendly** place to **live, work, and play**.

Please support the strongest protections possible in public outdoor areas and in attached housing where all of us, especially our children and our senior citizens deserve healthy air to breathe.

Sincerely,

NAME MILK DUŠEVIĆ  
CITY ALAMEDA  
DATE 10/15/11

Sincerely,

NAME Robert Kirk  
CITY Alameda  
DATE 10/15/11

Sincerely,

NAME JULIEN BEA  
CITY ALAMEDA  
DATE 10/15/11

Sincerely,

NAME Kathy Fong  
CITY Alameda  
DATE 10-15-11

Sincerely,

NAME Paula Wujek  
CITY Alameda, CA  
DATE 10/15/11 94501

To: Mayor Gilmore, Vice Mayor Bonta, and Council Members DeHaan, Johnson, and Tam:

Thank you for your support in April for agreeing to new secondhand smoke protections and making Alameda a more **family-friendly** place to **live**, work, and **play**.

Please support the strongest protections possible in public outdoor areas and in attached housing where all of us, especially our children and our senior citizens deserve healthy air to breathe.

Sincerely,  
NAME Carol Menz  
CITY Alameda  
DATE 10-15-11

Keep Alameda a family city - let's protect everyone from 2ND hand smoke and keep our air clean! Alameda can do it!

Sincerely,  
NAME Annie Chi  
CITY Alameda  
DATE 10/15/11

Connie Jones

Sincerely,  
NAME  
CITY  
DATE

Sincerely,  
NAME MIKE CHONG  
CITY Alameda, CA  
DATE 10/15/11

our children and our senior citizens deserve healthy air to breathe.

Sandy Kell

Sincerely,  
NAME Sandy Kell  
CITY Alameda  
DATE 10/15/11

To: Mayor Gilmore, Vice Mayor Bonta, and Council Members DeHaan, Johnson, and Tam:

Thank you for your support in April for agreeing to new secondhand smoke protections and making Alameda a more **family-friendly** place to live, work, and play.

Please support the strongest protections possible in public outdoor areas and in attached housing where all of us, especially our children and our senior citizens deserve healthy air to breathe.

Sincerely,

NAME

CITY

DATE

Barbara Shea  
Alameda, CA  
10/15/11

Sincerely,

NAME

CITY

DATE

Aneesh Rana  
Alameda  
10/15/11

Sincerely,

NAME

CITY

DATE

Ed Lowe  
Berkeley  
15 Oct 2011

Sincerely,

NAME

CITY

DATE

Barbara Reynolds  
Livermore, CA  
10/15/11

Sincerely,

NAME

CITY

DATE

Jane Stewart  
Novato  
10/15/11

To: Mayor Gilmore, Vice Mayor Bonta, and Council Members DeHaan, Johnson, and Tam:

Thank you for your support in April for agreeing to new secondhand smoke protections and making Alameda a more **family-friendly** place to **live**, work, and **play**.

Please support the strongest protections possible in public outdoor areas and in attached housing where all of us, especially our children and our senior citizens deserve healthy air to breathe.

Sincerely,  
NAME Jessica Tabares  
CITY Oakland  
DATE 10-15-11

Sincerely,  
NAME Terriann Wong  
CITY San Lorenzo  
DATE 10-15-11

Sincerely,  
NAME Marilyn Castro  
CITY Mollaga  
DATE 11-15-11

Sincerely,  
NAME Stephanie Moreno  
CITY San Jose  
DATE 10-15-11

Sincerely,  
NAME Karen Lynn  
CITY Richmond CA  
DATE 10-15-2011

To: Mayor Gilmore, Vice Mayor Bonta, and Council Members DeHaan, Johnson, and Tam:

Thank you for your support in April for agreeing to new secondhand smoke protections and making Alameda a more **family-friendly** place to **live, work, and play**.

Please support the strongest protections possible in public outdoor areas and in attached housing where all of us, especially our children and our senior citizens deserve healthy air to breathe.

Sincerely,

NAME

CITY

DATE

Debra Carrigan  
Pittsburg  
10/15/11

Sincerely,

NAME

CITY

DATE

Stephanie DeHerrera  
Oakland  
10/15/11

Sincerely,

NAME

CITY

DATE

SETH MARBIN  
OAKLAND (MOVING TO ALAMEDA)  
10/15/11

Sincerely,

NAME

CITY

DATE

Jillian Puppenstein  
San Anselmo, CA  
10/15/11

Sincerely,

NAME

CITY

DATE

Matt Faber  
Moraga  
10/15/11

To: Mayor Gilmore, Vice Mayor Bonta, and Council Members DeHaan, Johnson, and Tam:

Thank you for your support in April for agreeing to new secondhand smoke protections and making Alameda a more family-friendly place to live, work, and play.

Please support the strongest protections possible in public outdoor areas and in attached housing where all of us, especially our children and our senior citizens deserve healthy air to breathe.

Sincerely,

NAME CHIA SCARBOROUGH  
CITY BK SEWRANTE, CA  
DATE 10/15/11

Sincerely,

NAME Charlotte Smith  
CITY San Leandro  
DATE 10/15/2011

Sincerely,

NAME Deaphne Williams  
CITY Antioch, CA  
DATE 10/15/11

Sincerely,

NAME Angela Landrey  
CITY Oakland, CA  
DATE October 15, 2011

Sincerely,

NAME Nick Fuvoi  
CITY So. SF  
DATE 10/15/11

To: Mayor Gilmore, Vice Mayor Bonta, and Council Members DeHaan, Johnson, and Tam:

Thank you for your support in April for agreeing to new secondhand smoke protections and making Alameda a more **family-friendly** place to **live, work, and play**.

Please support the strongest protections possible in public outdoor areas and in attached housing where all of us, especially our children and our senior citizens deserve healthy air to breathe.

*wants to get involved in Clean Air Oakland*

Sincerely,  
NAME  
CITY  
DATE

*PW Ujek @hnhsoakland.org  
(925) 487-6061*

*Paula*

Sincerely,  
NAME  
CITY  
DATE

*Janice Louie  
Oakland, CA  
Oct 17, 2011*

Sincerely,  
NAME *Tally T*  
CITY *San Leandro*  
DATE *10/15/11*

*Laura Lyviken*

Sincerely, LAURA MILLER  
NAME  
CITY *BERKELEY*  
DATE *17th Oct. 2011*

Sincerely,  
NAME *Yesenia Molinar*  
CITY *Union City*  
DATE *10/17*

To: Mayor Gilmore, Vice Mayor Bonta, and Council Members  
DeHaan, Johnson, and Tam:

Thank you for your support in April for agreeing to new  
secondhand smoke protections and making Alameda a more  
**family-friendly** place to live, work, and play.

Please support the strongest protections possible in public  
outdoor areas and in attached housing where all of us, especially  
our children and our senior citizens deserve healthy air to  
breathe.

Sincerely,  
NAME *Chris Ouyang*  
CITY *Alameda*  
DATE *10/15/11*

Sincerely,  
NAME *Paul Cummings*  
CITY *Albany*  
DATE *10/17/11*

Sincerely,  
NAME *J. ALDON PRUGE*  
CITY *ALAMEDA*  
DATE *10/15/11*

Sincerely,  
NAME *Lisa Fasano*  
CITY *Alameda*  
DATE *10/15/11*

breathe.

Sincerely,  
NAME *ADRIAN BLAKEY*  
CITY *ALAMEDA*  
DATE *10/15/11*



To: Mayor Gilmore, Vice Mayor Bonta, and Council Members DeHaan, Johnson, and Tam:

Thank you for your support in April for agreeing to new secondhand smoke protections and making Alameda a more **family-friendly** place to **live, work, and play**.

Please support the strongest protections possible in public outdoor areas and in attached housing where all of us, especially our children and our senior citizens deserve healthy air to breathe.

Sincerely,

NAME

CITY

DATE

Kevin Va  
Alameda  
10/15/11

Sincerely,

NAME

CITY

DATE

Tracy Lee  
Alameda, CA

Sincerely,

NAME

CITY

DATE


Kate & Rick Frantz  
10-15-11

Sincerely,

NAME

CITY

DATE

  
10/15/11

our children and our seniors  
breathe.

Sincerely,

NAME

CITY

DATE

Cheryl Swore 10/15/11

To: Mayor Gilmore, Vice Mayor Bonta, and Council Members DeHaan, Johnson, and Tam:

Thank you for your support in April for agreeing to new secondhand smoke protections and making Alameda a more family-friendly place to live, work, and play.

Please support the strongest protections possible in public outdoor areas and in attached housing where all of us, especially our children and our senior citizens deserve healthy air to breathe.

Sincerely,  
NAME Fern Kruger  
CITY  
DATE fern.kruger@yahoo.com  
Teacher at Island High - talk w/kids re: City Council

Sincerely,  
NAME Elizabeth Wong  
CITY 10/15/11 Alameda, CA  
DATE

Sincerely,  
NAME Sam Wong  
CITY Alameda  
DATE October 15, 2011

Sincerely,  
NAME Edward Flores  
CITY Alameda, California  
DATE October 17, 2011

Approved as to Form

  
City Attorney

CITY OF ALAMEDA ORDINANCE NO. \_\_\_\_\_

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)

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.

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.

(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.

(g) "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.

(h) "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.

(i) "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.

(j) "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.

(k) "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.

(l) "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.

(m) "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).

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

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

(p) "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.

(q) "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.

(r) "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.

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

(t) "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.

(v) "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.

(w) "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.

(y) "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.

(z) "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.

(aa) "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.

(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.

(m) "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.

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

(o) "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;

*provided, however, that a Landlord may designate up to ten percent (10%) of said existing Units to be Smoking Units if he or she fully complies with the following subsections:*

- 1. The Landlord permanently designates no fewer than ninety percent (90%) of the existing Units to be non-smoking units.*
- 2. To the maximum extent possible, non-smoking Units must be grouped together both horizontally and vertically and physically separated from Units where Smoking may be allowed. Where possible, all Units where Smoking may be allowed shall be in a single building of a multi-building Multi-Unit Residence.*
- 3. The Landlord provides all tenants written notice of the Unit designations clearly stating that Smoking in a designated non-smoking Unit will be illegal as of January 1, 2013 and 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, if any.*

- (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 24-12.4(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;

### **24-12.3 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) 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 Section 24-12.4 (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.

(b) All sellers of units within a Common Interest Complex are required to disclose to prospective buyers whether smoking is permitted in the unit 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 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.

(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.

#### **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. 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