

ACTION CALENDAR October 1, 2013

To: Honorable Mayor and Members of the City Council

From: 🥠 Christine Daniel, City Manager

Submitted by: Jane Micallef, Director, Health, Housing & Community Services

Subject: Tobacco Free Multi-Unit Housing: Amending Berkeley Municipal Code

Chapter 12.70

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 12.70 to make tobacco smoking, which exposes neighbors to secondhand smoke in all multi-unit residences in the City, subject to private right of action; to require that all new leases include a non-smoking clause; to require offering voluntary non-smoking lease addenda to all existing leases; and to permit any tenant who is involuntarily exposed to tobacco smoke to terminate his or her lease without penalty if the landlord fails to include or enforce the non-smoking clause. Proposed ordinance revisions also include routine cleanup language to aid enforcement in workplaces and to clarify that smoking is banned in all commercial zones.

FISCAL IMPACTS OF RECOMMENDATION

Outreach and education costs and increased cessation services related to implementing these ordinance amendments can be funded through ongoing state and county tobacco grants in the Public Health Division and Rent Board resources. Shifting tobacco grant dollars to cover the costs of these new activities will mean a reduction in other activities currently carried out with these grant funds providing education and enforcement of current tobacco laws, particularly Public Health staffs' ability to respond to general smoking-complaint calls regarding smoking on streets, at bus stops, and other public places.

CURRENT SITUATION AND ITS EFFECTS

On May 28, 2013, City Council considered an Ordinance amending Berkeley Municipal Code Chapter 12.70 to address tobacco smoking which involuntarily exposes neighbors to secondhand smoke in all multi-unit housing in the City. After public comment and discussion, Council directed staff to return with changes to the Ordinance.

Public comment during the Council discussion as well as communications the Department has since received indicate that there is confusion over the exact prohibitions in the Ordinance. Key elements of the Ordinance are:

No one may expose his or her neighbor to secondhand tobacco smoke in any multi-unit residence in Berkeley, including units subject to rent control and those that are owner occupied.

The **two remedies** available for residents exposed to secondhand tobacco smoke are:

- 1) Private right of action in **ALL** multi-unit residences, including those units that are subject to rent control and those that are owner occupied, and including private areas such as balconies and decks. This remedy is available to residents in all multi-unit residences in Berkeley regardless of whether the tenant has a lease with a provision that prohibits smoking.
- 2) Enforcement of lease terms prohibiting smoking in units;
 - a) All new initial leases must include a non-smoking clause:
 - b) All tenants with existing leases must be given the opportunity to voluntarily add a non-smoking clause to their existing lease.

The proposed Ordinance mandates landlords to disclose the following to every tenant applicant at the time of application:

- 1) That all legal residents in the multi-unit housing complex have a private right of action remedy if residents are exposed to secondhand tobacco smoke; and
- 2) Which units do not have a non-smoking clause in their lease.

The changes made to the proposed Ordinance in response to Council direction on May 28, 2013 are as follows:

- No resident may be exposed to more than \$1,500 in damages awarded through private right of action during a one year period.
- Mediation is encouraged prior to the initiation of a private right of action, but is not mandatory.
- Sales contracts for condominiums must include disclosure of the requirements of the Tobacco Free Multi-Unit Housing Ordinance.
- Clarification that the requirement of a non-smoking clause applies only to initial leases or rental agreements.
- All common areas must have signage indicating that smoking is prohibited in that area.
- Applications for tenancy must include disclosure of the Tobacco Free Multi-Unit Housing Ordinance including that it applies to all units and that it prohibits smoking in common areas.
- Applications for tenancy must indicate which units in the multi-unit residence have a lease clause prohibiting smoking in that unit.
- Landlords must offer all current tenants a voluntary lease addendum prohibiting smoking in their unit.

Council raised an additional concern, which has been addressed as follows:

The Public Health Division will offer smoking cessation classes and education about the Tobacco Free Multi-Unit Housing Ordinance no later than July 1, 2014 and continuing to December 31, 2016. This recommendation will be addressed by including this work in the Division's scopes of work in its Tobacco grant contracts with the County and State, rather than including it in the Ordinance.

BACKGROUND

The United States Environmental Protection Agency 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. The only way to fully protect nonsmokers from secondhand smoke is to completely eliminate smoking in indoor spaces. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely eliminate exposure to secondhand smoke. As research has increasingly shown the damaging effects of exposure to secondhand smoke, Berkeley has implemented bans on smoking in public places such as restaurants, bars, grocery stores, and parks. This same type of extensive protection is not yet widely available for people living in multi-unit housing in Berkeley.

On May 28, 2013 Council reviewed extensive background information on this topic in the Council reports accompanying the proposed ordinance addressing smoking in multi-unit housing.

RATIONALE FOR RECOMMENDATION

The proposed ordinance achieves the goal of protecting Berkeley residents of multi-unit housing from involuntary exposure to secondhand smoke in their homes while meeting all criteria identified by staff:

- Protect Berkeley residents from non-consensual secondhand tobacco smoke exposure in their homes;
- Include an enforcement mechanism to ensure implementation that aligns with available resources;
- Ensure compatibility with the Rent Stabilization Ordinance;
- Neither encourage evictions nor create barriers to housing formerly homeless individuals.

The proposed ordinance provides maximum protection to tenants seeking to limit their exposure to second hand smoke in their homes given the constraints of available resources and the legal limitations that exist in a city with a strict rent control ordinance. Since the City could not mandate an existing tenant to amend his or her lease to include

¹U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Exposure to Environmental Tobacco Smoke and Cotinine Levels – Fact Sheet (2004) available at http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed March 23, 2005).

² U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006), *available at* http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter1.pdf (last accessed February 22, 2013).

a no smoking clause, a non-smoking ordinance in multi-unit housing which relies solely on enforcement of lease provisions does not achieve a smoke free environment for all residents of multi-unit housing. It would take years to achieve 100% smoke free housing. Therefore, staff recommends the proposed ordinance creating a private right of action in response to tobacco smoking which involuntarily exposes neighbors to secondhand smoke in <u>all</u> Berkeley multi-unit housing and in addition requires that landlords include a non-smoking clause in all new leases.

ALTERNATIVE ACTIONS CONSIDERED

At the May 28 meeting, Council considered but did not recommend a number of additional actions:

- Mandating mediation
- More aggressively enforcing the Ordinance
- Defining smoking in multi-unit housing as a nuisance
- Requiring a registry of units with non-smoking clauses in their leases
- Including medical cannabis smoking

Staff carefully examined many alternatives in the process of developing a recommendation compatible with the priorities identified above.

Most cities with smoke-free multi-unit housing ordinances mandate smoke free housing via lease provisions. This strategy would not work well in Berkeley because Berkeley's tenant protection laws make it impossible to mandate smoke free lease addendums for existing leases. While tenants could voluntarily adopt a smoke free lease addendum, a sitting tenant could not be compelled to agree to this new lease provision. An approach linked to a non-smoking lease provision would result in the continued exposure of Berkeley residents to secondhand smoke where their smoking neighbor holds a lease pre-dating the ordinance.

The table below presents the key options staff considered for the ordinance before arriving at this report's recommendation.

Options Considered	Reason for Rejection
A. Model an ordinance on the City's excessive dog barking ordinance, which requires two neighbors filing a written complaint (citizen's arrest) and subjects violators to an infraction citation.	This model best fit the staff's priorities regarding addressing non-consensual second hand tobacco smoke, a practical enforcement mechanism, compatibility with the Rent Stabilization Ordinance, and avoiding eviction. Staff estimated the annual cost of enforcement at \$120,000. Staff was unable to identify a feasible funding mechanism.
B. Define non-consensual secondhand tobacco smoke exposure in multi-unit housing as a "nuisance".	Nuisance violations are potential grounds for eviction. This approach was rejected because it would probably result in evictions.

Options Considered	Reason for Rejection
C. Solely prohibit tobacco smoking in all newly constructed multi-unit rental housing.	This approach would leave the large numbers of tenants in older rental housing unprotected from nonconsensual exposure to secondhand tobacco smoke.
D. Solely require a no-tobacco- smoking clause in 100% of new leases. Existing tenants covered under rent control would be exempt from the requirement but would be asked to voluntarily sign a lease addendum that designates their unit non-smoking.	This approach would continue exposing other tenants to non-consensual secondhand tobacco smoke. The City's Rent Stabilization Ordinance makes it impossible to adopt mandatory lease addendums. The resulting exceptions would make the ordinance nearly impossible to enforce. It would be logistically burdensome and financially prohibitive to enforce. It would incur a significant paperwork burden on landlords and city staff to track "smoking prohibited" and "smoking permitted" units.

CONTACT PERSON

Janet Berreman, Health Officer, HHCS, 981-5301 Kate Clayton, Health Services Supervisor, HHCS, 981-5314

Attachments:

- 1: Ordinance (clean version)
- 2: Ordinance (track changes version)

ORDINANCE NO #,### - N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 12.70.010, 12.70.020, 12.70.030, 12.70.050 AND 12.70.120, AND ADDING SECTIONS 12.70.035 AND 12.70.037, TO PROHIBIT SMOKING IN ADDITIONAL LOCATIONS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

<u>Section 1.</u> That Berkeley Municipal Code Section 12.70.010 is hereby amended to read as follows:

12.70.010 Legislative findings.

- A. The City Council does hereby find that:
- 1. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.
- 2. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, bronchoconstriction, and broncho-spasm.
- 3. More than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death; and the United States Environmental Protection Agency 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.
- 4. The U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke;³
- 5. Just 30 minutes of exposure to secondhand smoke is sufficient to damage blood vessels in a healthy nonsmoker;⁴
- 6. The California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;⁵

¹ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Annual Smoking – Attributable Mortality*, Years of Potential Life Lost, and Economic Costs – United States 1995-1999 Morbidity and Mortality Weekly Report at 51(14):300-303 (2002), (last accessed March 23, 2005).

² U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels* — *Fact Sheet* (2004), (last accessed March 23, 2005).

³ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006), (last accessed Sept. 19, 2006).

⁴ Christian Heiss, MD, Dr Med_{*}, Nicolas Amabile, MD_{*}, Andrew C. Lee, MD, et al. *Brief Secondhand Smoke Exposure Depresses Endothelial Progenitor Cells Activity and Endothelial Function*, J Am Coll Cardiol, 2008; 51:1760-1771,jacc.2008.01.040

⁵ Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006), (last accessed Oct. 6, 2006).

- 7. Secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome in infants of mothers who smoke:⁶
- 8. In the United States, secondhand smoke is thought to cause about 46,000 heart disease deaths each year; ⁷
 - 9. Secondhand smoke can seep under doorways and through wall cracks;8 and
- 10. The only way to fully protect nonsmokers from secondhand smoke is to completely eliminate smoking in indoor spaces. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely eliminate exposure to secondhand smoke;⁹
- B. Accordingly, the City Council finds and declares that the purposes of this chapter are (1) to protect the public health and welfare by prohibiting smoking in public places, places of employment, and specially designated public play areas where small children are at risk of choking on or ingesting cigarette butts and other toxic tobacco litter, (2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke, and (3) to promote self-enforcement through educational outreach regarding smoking prohibitions.

<u>Section 2.</u> That Berkeley Municipal Code Section 12.70.020 is hereby amended to read as follows:

12.70.020 Definitions.

A. "Bar" means any area or a room utilized primarily for the sale of alcoholic beverages for consumption by patrons on the premises and in which the serving of food and the provision of entertainment is merely incidental to the sale of alcoholic beverages. Although a restaurant may contain a bar, the term bar shall not include a restaurant or any dining area. Although a nightclub may contain a bar, the term bar shall not include a place of entertainment commonly known as a nightclub irrespective of the fact that payment for entertainment may be made through the purchase of alcoholic beverages.

B. "Business" means a sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

⁶ Office of Envtl. Health Hazard Assessment, Cal. Envtl. Prot. Agency, *Health Effects of Exposure to Environmental Tobacco Smoke, Final Report* at 4-30 (1997), (last accessed February 28, 2005).

⁷ California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant: Part B Health Effects, 2005

⁸ J. Wagner et al., *Environmental Tobacco Smoke Leakage from Smoking Rooms*, Journal of Occupational and Environmental Hygiene, 1:110–118 (2004), (last accessed April 7, 2005).

⁹ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006), (last accessed February 22, 2013).

- C. "Commercial area sidewalk" means any sidewalk in front of or adjoining any property designated on the City's Official Zoning Map appended to the City's Zoning Ordinance with a "C" prefix.
- D. "Common area of multi-unit residence" means any enclosed area or unenclosed area that may be used by more than the residents of a single unit or room, including but not limited to shared lobbies, courtyards, lounges, hallways, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, living and dining areas, kitchens, bathrooms, laundry rooms, lobbies, waiting rooms, and television rooms.
- E. "Contract employee" means any person who performs work for a business or non-profit entity, but who is paid by an agency which contracts with said business or non-profit entity to supply such workers.
- F. "Dining area" means an enclosed area containing a counter or table upon which meals are served.
- G. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity. Employees include those employed full-time, part-time, temporary or contracted for from a third party.
- H. "Employer" means any person, partnership, corporation, including a municipal corporation, business entity or non-profit entity, who employs the services of one or more individual persons.
- I. "Enclosed" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping or similar structures.
- J. "Health care facility" means all public and private health care facilities, including, but not limited to, hospitals, health clinics, mental health clinics, physician's offices, and dentist's offices.
- K. "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.
- L. "Multi-unit residence" means a building or portion thereof that contains more than one dwelling unit as defined in Chapter 23F.04, including but not limited to apartments, common interest developments such as condominiums, townhouses and tenants-in-common, group living accommodations as defined in Chapter 23F.04, senior citizen residences, nursing homes, dormitories, and single room occupancy hotels, as well as any exclusive-use enclosed or unenclosed areas associated with the dwelling units, including but not limited to a private balcony, porch, deck, or patio.
- M. "Non-profit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political social or other similar purposes, the net proceeds of which are committed to the portion of objects or purposes of the organization and not for private gain.
- N. "Open to the public" means available for use by or accessible to the general public during the normal course of business conducted by either private or public entities.
- O. "Place of employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment,

including, but not limited to, conference and class rooms, employee cafeterias, employee lounges and restrooms, hallways, and work areas. A private residence is not a place of employment unless it is used as a childcare or health care facility.

- P. "Public place" means any enclosed or designated outdoor areas in Section 12.70.030 to which the public is invited or in which the public is permitted, including but not limited to:
 - 1. Banks.
 - 2. Educational facilities.
 - 3. Health care facilities.
 - 4. Public transportation facilities.
 - 5. Reception areas.
 - 6. Restaurants.
 - 7. Retail stores.
 - 8. Retail service establishments.
 - 9. Retail food production and marketing establishments.
 - 10. Waiting rooms.
- 11. A private residence is not a public place unless used as a licensed childcare, licensed adult care or health care facility.
- Q. "Recreational area" means any outdoor area, owned or operated by the City of Berkeley, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not limited to: parklands, including portions of parks, such as picnic areas, tot play areas, playgrounds, or sports fields, walking paths, gardens, hiking trails, bike paths, athletic fields, skateboard parks and amusement parks;
- R. "Restaurant" means any coffee shop, cafeteria, short order cafe, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or catering establishment, and any other eating establishment, organization, club (including veterans club), boardinghouse, guest house or political subdivision, the primary function of which is to give, sell or offer for sale, food to the public, guests, patrons, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions, except that the term restaurant shall not include a tavern or cocktail lounge if said tavern or cocktail lounge is a "bar" as defined in subsection A of this section.
- S. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and tobacco accessories and in which the sale of other products is merely incidental.
- T. "Service area" means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, waiting rooms, and cab stands.
- U. "Smoke" or "smoking" means and includes inhaling or exhaling upon, burning, or carrying any lighted smoking equipment for tobacco, or any other plant or product used for personal habit commonly known as smoking.
- V. "Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where

members of the general public assemble to either engage in physical exercise, participate in athletic competition or witness sports events.

- W. "Senior citizen residence" means an apartment house, retirement home, boarding house, or residence hall which is developed for or substantially rehabilitated or renovated for senior citizens.
- X. "Tot play area" means a designated play area within a public park designed for use by children under five years of age. Where such areas are not contained by a fence, the boundary of a tot play area shall be considered ten feet from the perimeter of the play area as defined by the edge of the resilient surface safety material surrounding the sand area.
- Y. "Work area" or "workplace" means any area of a place of employment, including outdoor construction sites, in which two or more employees are assigned to perform work for an employer.

<u>Section 3.</u> That Berkeley Municipal Code Section 12.70.030 is hereby amended to read as follows:

12.70.030 Locations where smoking is prohibited.

Smoking shall be prohibited in all public places including but not limited to the following unless otherwise provided and in all places where the owner or person in charge of the establishment has posted a nonsmoking sign:

- A. Restaurants, including any outdoor seating area provided by or attached to a restaurant;
- B. Elevators in buildings generally open to the public, including elevators in apartment buildings, irrespective of the number of living units in such apartment buildings:
- C. In all rooms, wards, waiting rooms, lobbies and public hallways of every health care facility. The exemptions set forth in Section 12.70.050 shall not apply to this subsection;
- D. Within every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City during such time as a public meeting is in progress;
- E. In waiting rooms, lobbies, public hallways and all other areas of every building under direct or indirect control of the City;
- F. Within all parts of any buildings which are primarily used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance, including nightclubs, and within any room, hall or auditorium that is occasionally used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance during the time that said room, hall or auditorium is open to the public for such exhibition; provided, however, that smoking is permitted on a stage when such smoking is part of a stage production;
 - G. In museums, libraries, aquariums and galleries;
- H. In all enclosed parts of hotels, motels and resorts open to the general public, including, but not limited to guest rooms, registration areas, lobbies, hallways and conference rooms; provided, however, that 25 percent of the rooms rented to guests may be maintained as fixed smoking rooms;

- I. In buses, trains, taxicabs and other means of public transit while operating within the boundaries of the City, and in ticket areas and waiting rooms of transit terminals and stations:
 - J. In sports arenas and outdoor theaters;
- K. Within all areas open to the public in business establishments dealing in goods or services and not otherwise mentioned in this section, including, but not limited to food and grocery stores, drugstores, supermarkets, automobile showrooms, banks, savings and loan offices, insurance offices, and attorneys offices;
 - L. Public restrooms:
 - M. Service areas:
- N. All enclosed areas available to and customarily used by the general public in all businesses or non-profit entities patronized by the public, including, but not limited to, attorney offices and other offices, banks, laundromats, hotels and motels;
- O. In all enclosed common areas in senior citizen residences, including but not limited to, laundry rooms, lobbies, lounges, hallways, waiting rooms, television rooms and dining areas. The City Council finds that smoking should be prohibited in senior citizen residences in particular in light of the increased health risks and discomfort which secondhand smoke may create for senior citizens who may be confined to limited areas within their residences:
 - P. Bars:
- Q. Video arcades, card rooms, game rooms, pool halls, dance halls, bingo parlors and other amusement centers;
 - R. Parking garages;
- S. All outdoor areas used for public seating in conjunction with any retail or food establishment in an exclusively pedestrian area that is enclosed on at least three sides, whether or not provided by or attached to a restaurant;
 - T. Recreational areas:
- U. Within 50 feet of any entrance, exit, operational window, or air intake vent to any building that is used as a health care facility, licensed child or adult care facility, or senior center, and within 25 feet of any entrance, exit, operational window, or air intake vent to any other building that is open to the public, except while passing on the way to another destination. For purposes of this section, entrance or exit shall mean an opening into a building from a contiguous street, sidewalk, walkway or parking area, and "air intake vent" shall mean an opening into a building that draws in air from the outside as part of a building ventilation system;
 - V. Within 25 feet of any bus stop;
 - W. Commercial area sidewalks;
 - X. Licensed child and adult care facilities;
 - Y. Senior centers: and
 - Z. Common areas of multi-unit residences.

<u>Section 4.</u> That Berkeley Municipal Code Section 12.70.035 is hereby added to read as follows:

12.70.035 Exposure to smoke in multi-unit residences.

A. Effective January 1, 2015, any person who smokes in any portion of a multi-unit residence or any common area of a multi-unit residence shall be liable to any other legal

resident of the multi-unit residence who is exposed to the smoke for damages in the amount of not less than one hundred dollars (\$100) and not exceeding two hundred fifty dollars (\$250) for each occasion on which he or she exposes the other legal resident to smoke and not exceeding total liability of \$1,500 in a calendar year.

- B. Prior to the initiation of a private right of action, either party may propose mediation in writing to the other party.
- C. Use of marijuana by a person for whom using marijuana is not a crime under California law shall be exempt from this section.
- D. Violations of this section are enforceable only by private action filed in a court of competent jurisdiction.
- E. Violation of this section is not a misdemeanor or infraction, and the enforcement of this section shall be by private parties only. Nothing in this section may be used as grounds to terminate a tenancy.
- F. Sales contracts for condominiums shall disclose the requirements of Section 12.70.035 and 12.70.037.

<u>Section 5.</u> That Berkeley Municipal Code Section 12.70.037 is hereby added to read as follows:

12.70.037 Required Lease Term for New and Renewed Leases

- A Every initial lease or other rental agreement for the occupancy of a new or existing unit in a multi-unit residence entered into after January 1, 2015, shall include a clause providing that it is a material breach of the lease or other rental agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any of the following areas: (a) the unit; (b) any exclusive-use enclosed or unenclosed area associated with the unit, including but not limited to a private balcony, porch, deck, or patio; or (c) any common area of the multi- unit residence. All common areas of multi-unit residences shall have signage indicating that smoking is prohibited consistent with the signposting requirements of Section 12.70.060.A.
- B. A tenant exposed to smoke may terminate his or her tenancy without penalty or liability if: (1) his or her landlord has failed to enforce the clause required by subsection A against the person who has exposed the tenant to smoke; (2) his or her landlord was required to include the nonsmoking clause in subsection A in the lease or other rental agreement of the person who has exposed the tenant to smoke and failed to include the nonsmoking clause; or (3) his or her landlord failed to provide notice as provided in subsection D.
- C. For any tenancy initiated on or after January 1, 2015, a tenant who smokes at the time of initiating the lease tenancy may terminate his or her tenancy within the first ninety days of tenancy without penalty or liability if his or her landlord did not include the nonsmoking clause required by subsection A in the lease or other rental agreement, unless that tenant represented to the landlord that he or she was not a smoker prior to signing the lease. This subsection will expire on December 31, 2016.
- D. Applications for tenancy shall include information from the landlord regarding Sections 12.70.035 and 12.70.037, and indicating which units in the multi-unit residence do not have a lease clause prohibiting smoking in that unit.

- E. Landlords shall offer all current tenants a voluntary lease addendum providing that it is a material breach of the lease or other rental agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any of the following areas: (a) the unit; (b) any exclusive-use enclosed or unenclosed area associated with the unit, including but not limited to a private balcony, porch, deck, or patio; or (c) any common area of the multi-unit residence.
- F. Use of marijuana by a person for whom using marijuana is not a crime under California law shall not constitute a violation of the clause in subsection A.

<u>Section 6.</u> That Berkeley Municipal Code Section 12.70.050 is hereby amended to read as follows:

12.70.050 Where smoking is not regulated.

- A. This chapter is not intended to regulate smoking in the following places and under the following conditions within the City:
 - 1. Retail tobacco stores;
- 2. Private residences, which may serve as a place of employment except when used as a childcare or health care facility and except as stated in sections 12.70.035 and 12.70.037.
- B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls a business or other establishment may declare that entire establishment as a nonsmoking establishment.

<u>Section 7.</u> That Berkeley Municipal Code Section 12.70.120 is hereby amended to read as follows:

12.70.120 Enforcement.

- A. The Health, Housing, and Community Services Department shall enforce the provisions of this chapter as to facilities inspected and permitted by the Division of Environmental Health.
- B. The Health, Housing, and Community Services Department shall enforce the smoke-free workplace provisions in Section 12.70.040 of this Chapter and Section 6404.5 of the California Labor Code.
- C. Any owner, manager, operator or employee of any establishment controlled by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions thereof.
- D. Notwithstanding any provision of this chapter, a private citizen may bring legal action to enforce this chapter.
- E. Nothing in this chapter shall be construed to preclude enforcement of any provision by the Police Department or by any other law enforcement agency.
- <u>Section 8</u>. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO #,### - N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 12.70.010, 12.70.020, 12.70.030, 12.70.050 AND 12.70.120, AND ADDING SECTIONS 12.70.035 AND 12.70.037, TO PROHIBIT SMOKING IN ADDITIONAL LOCATIONS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

<u>Section 1.</u> That Berkeley Municipal Code Section 12.70.010 is hereby amended to read as follows:

12.70.010 Legislative findings.

- A. The City Council does hereby find that:
- 1. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.
- <u>2.</u> Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, bronchoconstriction, and broncho-spasm.
- 3. More than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death; and the United States Environmental Protection Agency 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.
- 4. The U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke;³

¹ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Annual Smoking – Attributable Mortality*, Years of Potential Life Lost, and Economic Costs – United States 1995–1999 Morbidity and Mortality Weekly Report at 51(14):300-303 (2002), (last accessed March 23, 2005).

² U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), (last accessed March 23, 2005).

³ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006), (last accessed Sept. 19, 2006).

- <u>5. Just 30 minutes of exposure to secondhand smoke is sufficient to damage blood</u> vessels in a healthy nonsmoker;⁴
- 6. The California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;⁵
- 7. Secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome in infants of mothers who smoke;⁶
- 8. In the United States, secondhand smoke is thought to cause about 46,000 heart disease deaths each year; ⁷
 - 9. Secondhand smoke can seep under doorways and through wall cracks;8 and
- 10. The only way to fully protect nonsmokers from secondhand smoke is to completely eliminate smoking in indoor spaces. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely eliminate exposure to secondhand smoke;⁹
- B. Accordingly, the City Council finds and declares that the purposes of this chapter are (1) to protect the public health and welfare by prohibiting smoking in public places, places of employment, and specially designated public play areas where small children are at risk of choking on or ingesting cigarette butts and other toxic tobacco litter, (2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke, and (3) to promote self-enforcement through educational outreach regarding smoking prohibitions.

<u>Section 2.</u> That Berkeley Municipal Code Section 12.70.020 is hereby amended to read as follows:

12.70.020 Definitions.

⁴ Christian Heiss, MD, Dr Med, Nicolas Amabile, MD, Andrew C. Lee, MD, et al. *Brief Secondhand Smoke Exposure Depresses Endothelial Progenitor Cells Activity and Endothelial Function*, J Am Coll Cardiol, 2008; 51:1760-1771,jacc.2008.01.040

⁵ Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006), (last accessed Oct. 6, 2006).

⁶ Office of Envtl. Health Hazard Assessment, Cal. Envtl. Prot. Agency, *Health Effects of Exposure to Environmental Tobacco Smoke, Final Report* at 4-30 (1997), (last accessed February 28, 2005).

⁷ California Environmental Protection Agency, Office of Environmental Health Hazard Assessment.

Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant: Part B Health

Effects, 2005

⁸ J. Wagner et al., *Environmental Tobacco Smoke Leakage from Smoking Rooms*, Journal of Occupational and Environmental Hygiene, 1:110–118 (2004), (last accessed April 7, 2005).

⁹ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006), (last accessed February 22, 2013).

- A. "Bar" means any area or a room utilized primarily for the sale of alcoholic beverages for consumption by patrons on the premises and in which the serving of food and the provision of entertainment is merely incidental to the sale of alcoholic beverages. Although a restaurant may contain a bar, the term bar shall not include a restaurant or any dining area. Although a nightclub may contain a bar, the term bar shall not include a place of entertainment commonly known as a nightclub irrespective of the fact that payment for entertainment may be made through the purchase of alcoholic beverages.
- B. "Business" means a sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- C. "Commercial area sidewalk" means any sidewalk in front of or adjoining any property designated on the City's Official Zoning Map appended to the City's Zoning Ordinance with a "C" prefix, which are listed on the Map as General Commercial, Central Commercial, Elmwood Commercial, North Shattuck Commercial, South Area Commercial, Solano Avenue Commercial, Telegraph Commercial, and West Berkeley Commercial.
- D. "Common area of multi-unit residence" means any enclosed area or unenclosed area that may be used by more than the residents of a single unit or room, including but not limited to shared lobbies, courtyards, lounges, hallways, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, living and dining areas, kitchens, bathrooms, laundry rooms, lobbies, waiting rooms, and television rooms.
- <u>E.</u> "Contract employee" means any person who performs work for a business or non-profit entity, but who is paid by an agency which contracts with said business or non-profit entity to supply such workers.
- <u>EF</u>. "Dining area" means an enclosed area containing a counter or table upon which meals are served.
- <u>FG</u>. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity. Employees include those employed full-time, part-time, temporary or contracted for from a third party.
- <u>GH</u>. "Employer" means any person, partnership, corporation, including a municipal corporation, business entity or non-profit entity, who employs the services of one or more individual persons.
- \(\frac{\mathbb{H}}{\text{.}}\). "Enclosed" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping or similar structures.

- ↓. "Health care facility" means all public and private health care facilities, including, but not limited to, hospitals, health clinics, mental health clinics, physician's offices, and dentist's offices.
- <u>JK</u>. "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.
- L. "Multi-unit residence" means a building or portion thereof that contains more than one dwelling unit as defined in Chapter 23F.04, including but not limited to apartments, common interest developments such as condominiums, townhouses and tenants-in-common, group living accommodations as defined in Chapter 23F.04, senior citizen residences, nursing homes, dormitories, and single room occupancy hotels, as well as any exclusive-use enclosed or unenclosed areas associated with the dwelling units, including but not limited to a private balcony, porch, deck, or patio.
- MK. "Non-profit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political social or other similar purposes, the net proceeds of which are committed to the portion of objects or purposes of the organization and not for private gain.
- <u>N</u>L. "Open to the public" means available for use by or accessible to the general public during the normal course of business conducted by either private or public entities.
- OM. "Place of employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, conference and class rooms, employee cafeterias, employee lounges and restrooms, hallways, and work areas. A private residence is not a place of employment unless it is used as a childcare or health care facility.
- NP. "Public place" means any enclosed or designated outdoor areas in Section 12.70.030 to which the public is invited or in which the public is permitted, including but not limited to:
 - 1. Banks.
 - 2. Educational facilities.
 - 3. Health care facilities.
 - 4. Public transportation facilities.
 - 5. Reception areas.
 - 6. Restaurants.
 - 7. Retail stores.
 - 8. Retail service establishments.
 - 9. Retail food production and marketing establishments.

- 10. Waiting rooms.
- 11. A private residence is not a public place unless used as a licensed childcare, licensed adult care or health care facility.
- QQ. "Recreational <u>a</u>Area" means any outdoor area, owned or operated by the City of Berkeley, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not limited to: parklands, including portions of parks, such as picnic areas, tot play areas, playgrounds, or sports fields, walking paths, gardens, hiking trails, bike paths, athletic fields, skateboard parks and amusement parks;
- RP. "Restaurant" means any coffee shop, cafeteria, short order cafe, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or catering establishment, and any other eating establishment, organization, club (including veterans club), boardinghouse, guest house or political subdivision, the primary function of which is to give, sell or offer for sale, food to the public, guests, patrons, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions, except that the term restaurant shall not include a tavern or cocktail lounge if said tavern or cocktail lounge is a "bar" as defined in subsection A of this section.
- <u>SQ</u>. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and tobacco accessories and in which the sale of other products is merely incidental.
- R. "Semiprivate room" means a room in a health care facility containing two beds for patients of the facility.
- <u>TS</u>. "Service area" means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, waiting rooms, and cab stands.
- \underline{U} \mp . "Smoke" or "smoking" means and includes inhaling or exhaling upon, burning, or carrying any lighted smoking equipment for tobacco, or any other plant or product used for personal habit commonly known as smoking.
- $\underline{\lor}\underline{\lor}$. "Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble to either engage in physical exercise, participate in athletic competition or witness sports events.
- <u>W</u>√. "Senior citizen residence" means an apartment house, retirement home, boarding house, or residence hall which is developed for or substantially rehabilitated or renovated for senior citizens.

- \underline{X} W. "Tot play area" means a designated play area within a public park designed for use by children under five years of age. Where such areas are not contained by a fence, the boundary of a tot play area shall be considered ten feet from the perimeter of the play area as defined by the edge of the resilient surface safety material surrounding the sand area.
- YX. "Work area" or "workplace" means any area of a place of employment, including outdoor construction sites, in which two or more employees are assigned to perform work for an employer.

<u>Section 3.</u> That Berkeley Municipal Code Section 12.70.030 is hereby amended to read as follows:

12.70.030 Locations where smoking is prohibited.

Smoking shall be prohibited in all public places including but not limited to the following unless otherwise provided and in all places where the owner or person in charge of the establishment has posted a nonsmoking sign:

- A. Restaurants, including any outdoor seating area provided by or attached to a restaurant;
- B. Elevators in buildings generally open to the public, including elevators in apartment buildings, irrespective of the number of living units in such apartment buildings;
- C. In <u>semiprivate all</u> rooms, wards, waiting rooms, lobbies and public hallways of every health care facility. The exemptions set forth in Section 12.70.050 shall not apply to this subsection:
- D. Within every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City during such time as a public meeting is in progress;
- E. In waiting rooms, lobbies, public hallways and all other areas of every building under direct or indirect control of the City;
- F. Within all parts of any buildings which are primarily used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance, including nightclubs, and within any room, hall or auditorium that is occasionally used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance during the time that said room, hall or auditorium is open to the public for such exhibition; provided, however, that smoking is permitted on a stage when such smoking is part of a stage production;
- G. In museums, libraries, aquariums and galleries;
- H. In all enclosed parts of hotels, motels and resorts open to the general public, including, but not limited to guest rooms, registration areas, lobbies, hallways and

conference rooms; provided, however, that 25 percent of the rooms rented to guests may be maintained as fixed smoking rooms;

- I. In buses, trains, taxicabs and other means of public transit while operating within the boundaries of the City, and in ticket areas and waiting rooms of transit terminals and stations;
- J. In sports arenas and outdoor theaters;
- K. Within all areas open to the public in business establishments dealing in goods or services and not otherwise mentioned in this section, including, but not limited to food and grocery stores, drugstores, supermarkets, automobile showrooms, banks, savings and loan offices, insurance offices, and attorneys offices;
- L. Public restrooms;
- M. Service areas;
- N. All enclosed areas available to and customarily used by the general public in all businesses or non-profit entities patronized by the public, including, but not limited to, attorney offices and other offices, banks, laundromats, hotels and motels;
- O. In all enclosed common areas in senior citizen residences, including but not limited to, laundry rooms, lobbies, lounges, hallways, waiting rooms, television rooms and dining areas; provided further, that this prohibition does not prevent the designation of a separate room or area where smoking is permitted so long as said smoking rooms are not common passages through the senior citizen residence. The City Council finds that smoking should be prohibited in senior citizen residences in particular in light of the increased health risks and discomfort which secondhand smoke may create for senior citizens who may be confined to limited areas within their residences;
- P. Bars:
- Q. Video arcades, card rooms, game rooms, pool halls, dance halls, bingo parlors and other amusement centers;
- R. Parking garages;
- S. All outdoor areas used for public seating in conjunction with any retail or food establishment in an exclusively pedestrian area that is enclosed on at least three sides, whether or not provided by or attached to a restaurant;
- T. Recreational areas:
- U. Within 50 feet of any entrance, exit, operational window, or air intake vent to any building that is used as a health care facility, licensed child or adult care facility, or senior center, and within 25 feet of any entrance, exit, operational window, or air intake vent to any other building that is open to the public, except while passing on the way to another destination. For purposes of this section, entrance or exit shall mean an opening into a building from a contiguous street, sidewalk, walkway or parking area, and

"air intake vent" shall mean an opening into a building that draws in air from the outside as part of a building ventilation system;

- V. Within 25 feet of any bus stop;
- W. Commercial area sidewalks;
- X. Licensed child and adult care facilities;
- Y. Senior centers; and
- Common areas of multi-unit residences.

<u>Section 4.</u> That Berkeley Municipal Code Section 12.70.035 is hereby added to read as follows:

12.70.035 Exposure to smoke in multi-unit residences.

- A. Effective January 1, 2015, any person who smokes in any portion of a multi-unit residence or any common area of a multi-unit residence shall be liable to any other legal resident of the multi-unit residence who is exposed to the smoke for damages in the amount of not less than one hundred dollars (\$100) and not exceeding two hundred fifty dollars (\$250) for each occasion on which he or she exposes the other legal resident to smoke and not exceeding total liability of \$1,500 in a calendar year.
- B. Prior to the initiation of a private right of action, either party may propose mediation in writing to the other party.
- C. Use of marijuana by a person for whom using marijuana is not a crime under California law shall be exempt from this section.
- D. Violations of this section are enforceable only by private action filed in a court of competent jurisdiction.
- E. Violation of this section is not a misdemeanor or infraction, and the enforcement of this section shall be by private parties only. Nothing in this section may be used as grounds to terminate a tenancy.
- F. Sales contracts for condominiums shall disclose the requirements of Section 12.70.035 and 12.70.037.

<u>Section 5.</u> That Berkeley Municipal Code Section 12.70.037 is hereby added to read as follows:

12.70.037 Required Lease Term for New and Renewed Leases

- A Every initial lease or other rental agreement for the occupancy of a new or existing unit in a multi-unit residence entered into after January 1, 2015, shall include a clause providing that it is a material breach of the lease or other rental agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any of the following areas: (a) the unit; (b) any exclusive-use enclosed or unenclosed area associated with the unit, including but not limited to a private balcony, porch, deck, or patio; or (c) any common area of the multi- unit residence. All common areas of multi-unit residences shall have signage indicating that smoking is prohibited consistent with the signposting requirements of Section 12.70.060.A.
- B. A tenant exposed to smoke may terminate his or her tenancy without penalty or liability if: (1) his or her landlord has failed to enforce the clause required by subsection A against the person who has exposed the tenant to smoke; (2) his or her landlord was required to include the nonsmoking clause in subsection A in the lease or other rental agreement of the person who has exposed the tenant to smoke and failed to include the nonsmoking clause; or (3) his or her landlord failed to provide notice as provided in subsection D.
- C. For any tenancy initiated on or after January 1, 2015, a tenant who smokes at the time of initiating the lease tenancy may terminate his or her tenancy within the first ninety days of tenancy without penalty or liability if his or her landlord did not include the nonsmoking clause required by subsection A in the lease or other rental agreement, unless that tenant represented to the landlord that he or she was not a smoker prior to signing the lease. This subsection will expire on December 31, 2016.
- D. Applications for tenancy shall include information from the landlord regarding Sections 12.70.035 and 12.70.037, and indicating which units in the multi-unit residence do not have a lease clause prohibiting smoking in that unit.
- E. Landlords shall offer all current tenants a voluntary lease addendum providing that it is a material breach of the lease or other rental agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any of the following areas: (a) the unit; (b) any exclusive-use enclosed or unenclosed area associated with the unit, including but not limited to a private balcony, porch, deck, or patio; or (c) any common area of the multi-unit residence.
- F. Use of marijuana by a person for whom using marijuana is not a crime under California law shall not constitute a violation of the clause in subsection A.

<u>Section 6.</u> That Berkeley Municipal Code Section 12.70.050 is hereby amended to read as follows:

12.70.050 Where smoking is not regulated.

- A. This chapter is not intended to regulate smoking in the following places and under the following conditions within the City:
 - 1. Retail tobacco stores;
 - 2. Private residences, which may serve as a place of employment except when used as a childcare or health care facility and except as stated in sections 12.70.035 and 12.70.037.
- B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls a business or other establishment may declare that entire establishment as a nonsmoking establishment.

<u>Section 7.</u> That Berkeley Municipal Code Section 12.70.120 is hereby amended to read as follows:

12.70.120 Enforcement.

- A. The Health, <u>Housing</u>, and <u>CommunityHuman</u> Services Department shall enforce the provisions of this chapter as to facilities inspected and permitted by the Division of Environmental Health.
- B. The Health, Housing, and Community Services Department shall enforce the smoke-free workplace provisions in Section 12.70.040 of this Chapter and Section 6404.5 of the California Labor Code. The Public Safety Department or Health and Human Services Department shall perform a checklist evaluation for compliance with all requirements of this chapter while an establishment is undergoing otherwise mandated inspections.
- C. Any owner, manager, operator or employee of any establishment controlled by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions thereof.
- D. Notwithstanding any provision of this chapter, a private citizen may bring legal action to enforce this chapter.
- E. Nothing in this chapter shall be construed to preclude enforcement of any provision by the Police Department or by any other law enforcement agency.
- <u>Section 8</u>. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.