ORDINANCE NO. 2017-01

AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING CHAPTER XVII, PUBLIC HEALTH - SMOKING POLLUTION CONTROL OF THE ALBANY MUNICIPAL CODE

WHEREAS, in 2008 the Albany City Council adopted Ordinance No. 08-03, Smoking In or Around Workplaces, Recreational Areas, and other places, and Amending the Albany Municipal Code, which was incorporated into Chapter XVII of the Albany Municipal Code; and

WHEREAS, adoption of Ordinance No. 08-03 intended to protect the public health and welfare by prohibiting smoking in public places, places of employment, and specifically designated public play areas where small children are at risk of choking on or ingesting cigarette butts and other toxic tobacco litter, 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

WHEREAS, updates to Chapter XVII of the Albany Municipal Code, Public Health – Smoking Pollution Control are necessary to keep regulations current to include evolving tobacco-related products, and to help ensure enhanced smoking pollution control within the City of Albany; and

WHEREAS, the proposed changes to Chapter XVII of the Albany Municipal Code, Public Health – Smoking Pollution Control generally include the following:

(a) expanding the definition of smoking and tobacco products to include electronic smoking devices and related items;
(b) prohibiting smoking in all new units of a Multi-Unit Residence including any associated exclusive-use Enclosed Areas or Unenclosed areas as of the effective date of this ordinance;

(c) prohibiting smoking in all Units of a Multi-Unit Residence that are not New Units including any associated exclusive-use Enclosed Areas or Unenclosed areas one year following the effective date of this ordinance;

(d) prohibiting smoking in unenclosed areas of a bar; and

NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS AS FOLLOWS:

SECTION 1: CHAPTER XVII PUBLIC HEALTH OF THE ALBANY MUNICIPAL CODE, SECTION 17-1.2 TITLED "DEFINITIONS" IS HEREBY AMENDED AS FOLLOWS:

17-1.2 Definitions.
For the purposes of this section the following definitions shall govern unless the context clearly requires otherwise:

a. Bar shall mean any area utilized primarily for the sale of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is merely incidental to the sale and consumption of alcoholic beverages and in which persons younger than twenty-one (21) years of age are at all times excluded. Although a restaurant may contain a bar, the term "bar" shall not include a restaurant dining area.

b. Business shall mean any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee, as defined in this section.

c. Dining area shall mean any area available to or customarily used by the general public, that is designed, established, or regularly used for consuming food or drink.

d. Electronic Smoking Device shall mean an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device” includes...
any such device, whether manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

d. Employee shall mean any person who is employed; retained as an independent contractor by any employer, as defined in this section; or any person who volunteers his or her services for an employer, association, nonprofit, or volunteer entity.

e.f. Employer shall mean any person, partnership, corporation, municipal corporation, association, nonprofit or other entity who employs or retains the service of one or more persons, or supervises volunteers.

f.g. Enclosed shall mean:

1. Any covered or partially covered space having walls, privacy fences, tents, windbreaks, or other structures or fixtures causing it to be closed to the outside that are five (5) feet or taller surrounding more than fifty (50%) percent of its perimeter area such as, for example, a covered porch with more than two (2) walls; or

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

g.h. Multi-unit residence shall mean a premises that contains two (2) or more units. A single-family house shared by roommates is not a multi-unit residence for purposes of this section.

h.i. Multi-unit residence common area shall mean any indoor or outdoor common area of a multi-unit residence accessible to and usable by residents of different units, including but not limited to halls and paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, swimming pools, and parking areas.

i.j. "New Unit" means a Unit that is issued a certificate of occupancy on or after March 24, 2017, and also means a Unit that is let for residential use for the first time on or after March 24, 2017.

k. Nonprofit entity shall mean 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.

j.l. Place of employment shall mean any area under the legal or de facto control of an employer, business or nonprofit entity that an employee or the general public may have cause to
enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, buses, employee lounges, conference and banquet rooms, bars, restaurants, bingo and gaming facilities, long-term health facilities, warehouses, and private residences that are used as childcare or healthcare facilities subject to licensing requirements.

(km) Playground shall mean any park or recreational area designed in part to be used by children that has play or sports equipment installed or 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.

(lm) Reasonable distance shall mean a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty-five (25') feet.

(mn) Recreational area shall mean any area, public or private, open to the general public for recreational purposes regardless of any fee or age requirement, including, for example, parks, picnic areas, beaches, gardens, walking paths, bike paths, hiking trails, sporting facilities and sports fields, stadiums, and playgrounds.

(np) Service area shall mean any area designed to be or regularly used by one (1) 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, and cab stands.

(oq) Significant tobacco retailer shall mean any tobacco retailer that derives seventy-five (75%) percent or more of gross sales receipts from the sale or exchange of tobacco products and tobacco paraphernalia.

(pr) Smoking shall mean inhaling, exhaling, burning or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device or any plant product intended for human inhalation, possessing a lighted tobacco product, lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a tobacco product, pipe, cigar, or cigarette of any kind, including, but not limited to, tobacco, or any other weed or plant.

(qs) Tobacco product shall mean:

(1) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether Smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and

(2) Any Electronic Smoking Device.

(3) Notwithstanding any provision of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, or accessory of a Tobacco Product, whether or
not sold separately, "Tobacco Product" does not include any product that has been approved by
the United States Food and Drug Administration for sale as a tobacco cessation product or for
other therapeutic purposes where such product is marketed and sold solely for such an approved
purpose, any substance containing tobacco leaf, including but not limited to cigarettes, cigars,
pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of
tobacco.

\[\text{Unit}\] shall mean: (1) a dwelling space consisting of essentially complete
independent living facilities for one (1) or more persons, including, for example, permanent
provisions for living and sleeping, 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).
(Ord. #08-03, §1)

SECTION 2: CHAPTER XVII PUBLIC HEALTH OF THE ALBANY MUNICIPAL
CODE, SECTION 17-1.3 TITLED "PROHIBITION OF SMOKING IN PLACES OF
EMPLOYMENT AND CERTAIN OTHER AREAS" IS HEREBY AMENDED AS
FOLLOWS:

17-1.3 Prohibition of Smoking in Places of Employment and Certain Other Areas.

a. Enclosed Places. Smoking shall be prohibited in the following enclosed places
within the City except in places listed in paragraph d. below, and except in such places in which
smoking is already prohibited by State or Federal law in which case the State or Federal law
applies:

1. Places of Employment;
2. Multi-Unit Residence Common Areas;
3. New and Existing Units of Multi-Unit Residences

(a) Smoking is prohibited in all New Units of a Multi-Unit Residence,
including any associated exclusive-use Enclosed Areas or Unenclosed
Areas, such as, for example, a private balcony, porch, deck, or patio.
Smoking in a New Unit of a Multi-Unit Residence, on or after March
24, 2017.
(b) Smoking is prohibited in all Units of a Multi-Unit Residence that are not New Units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio. Smoking in a Unit of a Multi-Unit Residence that is not a New Unit, on or after March 24, 2018.

3-4. Enclosed areas adjacent to an enclosed area in which smoking is prohibited by any other section of this Code, State law, or Federal law and that have a common or shared air space such as, without limitation, openings, cracks, air ventilation systems, doorways, hallways, and stairways. Notwithstanding any other provision, the fact that smoke enters one enclosed area from another enclosed area is conclusive proof that the areas share a common or shared air space;

4-5. Enclosed areas that have a common or shared ventilation, air conditioning or heating system with an enclosed area in which smoking is prohibited. Notwithstanding any other provision, the fact that smoke enters one enclosed area from another enclosed area is conclusive proof that the areas share a common or shared air space.

b. Unenclosed Places. Smoking shall be prohibited in the following unenclosed places within the City except in such places in which smoking is already prohibited by State or Federal law in which case the State or Federal law applies:

1. Places of Employment;
2. Service Areas;
3. Recreational Areas and Playgrounds;

4. Dining and bar areas. However, dining and bar areas which commenced business operations prior to March 24, 2017 may continue to allow smoking in unenclosed areas of a bar that does not serve food, with the exception of the unenclosed areas of any bars where food had been served for at least ninety (90) days prior to the passage of Ordinance No. 08-03. If smoking is permitted in such an unenclosed area, the entire smoking section must be limited to one (1) clearly designated area prominently marked with signs, and must be located at least five feet (5') from any doorway or opening into an enclosed area. Smoking in an unenclosed area of a bar is only permitted provided the smoke does not enter adjacent enclosed or unenclosed areas, excluding public sidewalks, in which smoking is prohibited by any law or by the owner, lessee or lessee of the adjacent property; except unenclosed areas of a bar that does not serve food, with the exception of the unenclosed areas of any bars where food has been served for at least ninety (90) days prior to the passage of this ordinance. If smoking is permitted in such an unenclosed area, the entire smoking section must be limited to one (1) clearly designated area prominently marked with signs, and must be located at least five (5') feet from any doorway or opening into an enclosed area. Smoking in an unenclosed area of a bar is only permitted provided the smoke does not enter adjacent enclosed or unenclosed
areas, excluding public sidewalks, in which smoking is prohibited by any law or by the owner, lessee or licensee of the adjacent property;

5. Multi-Unit Residence Common Areas:

(a) Smoking is prohibited in all multi-unit residence common areas except that a landlord may designate a portion of the outdoor area of premises as a smoking area as provided in paragraph (b) below.

(b) A designated smoking area:

(1) Must be located a reasonable distance from any indoor area where smoking is prohibited;

(2) Must not include, and must be a reasonable distance from, outdoor areas primarily used by children including, but not limited to, areas improved or designated for play or swimming;

(3) Must constitute no more than twenty-five (25%) percent of the total outdoor area of the premises for which it is designated;

(4) Must have a clearly marked perimeter;

(5) Must be identified by conspicuous signs; and

(6) Must not overlap with any area in which smoking is otherwise prohibited by this section or other provisions of this Code, State law, or Federal law.

6. Sidewalks adjacent to any public or private school property;

7. The sites of public events during the events including, for example, sports events, theatrical performances, speeches, ceremonies, pageants, farmers' markets, parades, and fairs; and

8. Sidewalks on Solano Avenue, between San Pablo Avenue and the City of Berkeley jurisdictional border.

c. No person shall dispose of smoking waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any reasonable distance required by this section.

d. Unless otherwise prohibited by law, smoking is permitted in the following enclosed places:
1. Significant tobacco retailers, if at all times minors are prohibited from entering the store;

2. By performers during theatrical productions, if smoking is an integral part of the story in the theatrical production;

3. Private single family residential units homes, except those used as a child care or health care facility subject to licensing requirements; and

4. Up to twenty (20%) percent of hotel and motel guest rooms, if the hotel or motel permanently designates particular guest rooms as nonsmoking rooms such that eighty (80%) percent or more of its guest rooms are nonsmoking and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent "no smoking" signage shall be posted in nonsmoking rooms.

5. In a unit of a multi-unit residential building, if the unit is occupied by a person who has an ownership interest in the property.

(Ord. #08-03, §2)

SECTION 3: CHAPTER XVII PUBLIC HEALTH OF THE ALBANY MUNICIPAL CODE, SECTION 17-1.5 TITLED “DUTY OF PERSON, EMPLOYER, BUSINESS, LANDLORD OR NONPROFIT ENTITY” IS HEREBY AMENDED AS FOLLOWS:

17-1.5 Duty of Person, Employer, Business, Landlord or Nonprofit Entity.

a. No person, employer, business, landlord, 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, landlord, or nonprofit entity and in which smoking is prohibited by this section, this Code, or any other State or Federal law provided, however, that this prohibition does not apply to a person, employer, business, landlord, or nonprofit entity already compelled to act under State or Federal law.

b. No person, employer, business, landlord, 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, landlord, or nonprofit entity and in which smoking is prohibited, including, without limitation, inside the perimeter of any reasonable distance required by this section.

c. Notwithstanding any other provision of this section, any owner, landlord, 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 nonsmoking area.

d. "No Smoking" or "Smoke Free" signs, with letters of no less than one (1") inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every enclosed and unenclosed place in which smoking is prohibited by this section, by the person, employer, business, landlord, or nonprofit entity that has legal or de facto control of such place. At least one (1) sign with the City phone number where complaints can be directed must be conspicuously posted in every place in which smoking is prohibited. In addition, signs shall be posted in sufficient numbers and locations in the Multi-Unit Residence to indicate that Smoking is prohibited in all Units. For purposes of this section, the City Administrator or designee shall be responsible for the posting of signs in regulated facilities owned or leased in part by the City. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this section.

e. Disclosure of Smoking Policy in New and Existing Multi-Unit Housing.

1. Every Landlord shall deliver a written notice on or before six months following the effective date of this ordinance, to each Unit of a Multi-Unit Residence and to any prospective tenants stating the following:

   (a) All New Units are designated nonsmoking Units and Smoking will be illegal in a Unit, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of March 24, 2017;

   (b) All Units that are not New Units are designated nonsmoking Units and Smoking will be illegal in a Unit, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example a private balcony, porch, deck or patio, as of March 24, 2018;

   (c) Smoking in all Common Areas, except for specifically designated Smoking areas, will be a violation of this chapter as the effective date of this ordinance.

2. As of September 1, 2017, every seller of a Unit in a Multi-Unit Residence shall provide prospective buyers with written notice clearly stating that:

   (a) Smoking is prohibited in Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of September 1, 2017; and
(b) Smoking is prohibited in all Common Areas, except for specifically
designated Smoking areas, as of the effective date of the ordinance.

Every landlord of a multi unit residence shall maintain a list of designated
nonsmoking units, a list of designated smoking units, and a floor plan identifying
the relative position of smoking and nonsmoking units. The floor plan also shall
identify the location of any designated smoking areas. At the time the lease is
signed, the tenant shall also initial or sign that they received these documents.
The list and plan shall be incorporated as exhibits into the lease signed by the
tenant and landlord.

2.3. All sellers of condominium units are required to disclose to prospective
buyers in writing whether smoking has been permitted in the unit and the smoking
policies for the complex.
(Ord. #08-03, §2)

SECTION 4: PUBLICATION AND EFFECTIVE DATE.
This ordinance shall be posted at three public places within the City of Albany and shall
become effective thirty days after the date of its posting.

PASSED AND ADOPTED by the City Council of the City of Albany at its meeting on
the 21st day of February 2017, by the following vote:
AYES: Council mbrs: Barnes, Maass, Nason, Pilcher, Mayor McQuaid
NOES:
ABSENT:
ABSTAIN:

[Signature]
PEGGY MCQUAID, MAYOR
ORDINANCE NO. 2017-01

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,
the 21st day of February, 2017 by the following votes:

AYES: Council Members Barnes, Maass, Nason, Pilch, Mayor McQuaid

NOES: none

ABSTAINED: none

ABSENT: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this
22nd Day February, 2017.

Eileen Harrington
DEPUTY CITY CLERK

The City of Albany is dedicated to maintaining its small town ambiance, responding to the needs of a diverse community, and providing a safe, healthy and sustainable community.