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*Berkeley, CA*

ORDINANCE NO. 4983 -N.S.

BERKELEY SMOKING POLLUTION CONTROL ACT OF 1977.

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

Section 1.01. LEGISLATIVE FINDINGS.

The City Council of the City of Berkeley finds and declares that tobacco smoke or smoke from any other plant in enclosed places is harmful to the health of nonsmokers with allergies or with respiratory or cardiovascular disease; that there is strong evidence that tobacco smoke in enclosed places is harmful to the health of nonsmokers without allergies or respiratory or cardiovascular disease; that tobacco smoke or smoke from any other plant in enclosed public places or in outdoor theatres or stadiums is a public nuisance and a cause of material annoyance, discomfort and physical irritation to nonsmokers; that nonsmokers have no adequate means to protect themselves from the damages inflicted upon them when they involuntarily inhale tobacco smoke or smoke from other plants; that smoking is a potential cause of fires; that cigarette and cigar burns and ash stains on merchandise and fixtures cause losses to Berkeley businesses; and that regulation of smoking in certain public places is necessary to protect the health, welfare, comfort and environment of nonsmokers and the property of Berkeley businesses.

Section 1.02. DEFINITIONS.

(a) "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 the personal habit commonly known as smoking.

(b) "Bar" means any area or a room utilized primarily for the sale of intoxicating liquors for consumption by guests on the premises and in

which the sale of food and the provision of entertainment is merely incidental to the sale of intoxicating liquors. Although a restaurant may contain a bar, the term "bar" shall not include a restaurant or any dining area. Although a night club may contain a bar, the term "bar" shall not include a place of entertainment commonly known as a night club irrespective of the fact that payment for entertainment may be made through the purchase of intoxicating liquors.

(c) "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.

(d) "Dining area" means an enclosed area containing tables upon which meals are served.

(e) "Restaurant" means any coffee shop, cafeteria, short-order cafe, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, and any other eating establishment, organization, club, including veterans' club, boardinghouse, guesthouse, or political subdivision, which gives, sells, or offers 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 a cocktail lounge if said tavern or cocktail lounge is a "bar" as defined in Section 1.02(b).

(f) "Enclosed" means closed in by a roof and by walls on at least three (3) sides.

(g) "Smoking victim" means any person present in a place where smoking is prohibited pursuant to Sections 1.03 and 1.04 of this Ordinance at the time that smoking occurs in such a place.

(h) "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.

(i) "Semi-Private Room" means a room in a public or private health care facility containing two (2) beds for patients of the facility.

Section 1.03. PROHIBITION IN CERTAIN PLACES OPEN TO THE PUBLIC.

Except as provided in Section 1.04, smoking shall be prohibited in the following places within the City of Berkeley:

(a) Elevators in buildings generally open to and used by the public, including elevators in apartment buildings, irrespective of the number of living units in such apartment buildings.

(b) In semi-private rooms, wards, waiting rooms, lobbies and public hallways of every public and private health care facility including, but not limited to, hospitals, clinics, and physicians' and dentists' offices; provided, however, that smoking may be permitted in a semi-private room when both patients assigned to such room are smokers and request in writing upon the health care facility's admission forms to be placed in a room where smoking is permitted; and provided, further, that this prohibition does not prevent a facility from establishing separate waiting room(s) in which smoking is permitted so long as said smoking room(s) are physically separated by walls or partitions from the remainder of the facility so that smoke does not permeate into the areas in which smoking is prohibited and said smoking room(s) contain no more than fifty percent (50%) of the waiting room space in said facility. The exceptions set forth in Subsection 104(d) shall not apply to this Subsection.

(c) In hearing rooms, courtrooms, or places of public assembly in which the business of any governmental body or agency is conducted.

(d) In waiting rooms, lobbies and public hallways of every building under direct or indirect control of the City; provided, however, that this prohibition does not prevent the establishment of separate waiting room(s) in a

building in which smoking is permitted as long as said smoking room(s) are physically separated by walls or partitions from the remainder of the facility so that smoke does not permeate into the areas in which smoking is prohibited and said smoking room(s) contain no more than fifty percent (50%) of the waiting room space in the building.

(e) Within all parts of any building which is primarily used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance 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; and provided, further, that smoking may be permitted in a designated portion of a lobby containing no more than fifty percent (50%) of the total lobby area in the building if said portion is physically separated by walls or partitions from the remainder of the building so that smoke does not permeate into the areas where smoking is prohibited.

(f) In museums, libraries, aquariums and galleries; provided, however, that smoking may be permitted in a designated portion of the reading area in a library if said designated smoking area contains no more than twenty percent (20%) of the reading area in the library and said designated smoking area is physically separated by walls or partitions from the remainder of the library so that smoke does not permeate into the areas where smoking is prohibited.

(g) In all enclosed parts of hotels, motels and resorts open to the general public, including, but not limited to, registration areas, lobbies, hallways, and conference rooms; provided, however, that smoking may be permitted in those rooms rented to guests; and provided, further, that smoking may be permitted in a designated portion of a lobby which contains no more than fifty percent (50%)

of the total lobby area in the establishment if said portion is physically separated by walls or partitions from the remainder of the establishment so that smoke does not permeate into the areas where smoking is prohibited.

(h) 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; provided, however, this prohibition does not prevent the establishment of separate waiting room(s) in a terminal or station in which smoking is permitted so long as said smoking room(s) are physically separated by walls or partitions from the remainder of the terminal or station so that smoke does not permeate into the areas in which smoking is prohibited and said smoking room(s) contain no more than fifty percent (50%) of the waiting room space in the station or terminal; and provided, further, that smoking shall not be prohibited in taxicabs when not carrying passengers for hire.

(i) In gymnasiums, fieldhouses, stadiums and outdoor theaters; provided, however, that smoking may be permitted in unenclosed portions of outdoor theaters commonly known as Drive-In Movie Theaters; and provided, further, that smoking may be permitted in designated portions of an outdoor stadium or outdoor theater containing no more than fifty percent (50%) of the total seating capacity of the stadium or theater and so located as to afford seating of no more than equal quality to the seating in the nonsmoking portions of the stadium or theater.

(j) 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, drug stores, supermarkets, automobile showrooms, banks, savings and loan offices, insurance offices, and attorneys' offices, provided that restaurants are not included in this provision.

(k) In any area of any business, governmental or charitable establishment which has been designated by the owner or person in charge of such

establishment as a nonsmoking area and marked with a no smoking sign or signs. The exception set forth in Subsection 1.04(d) shall not apply to this Subsection.

Section 1.04.      **EXCEPTIONS.**

Smoking shall not be prohibited in the following places within the City of Berkeley:

- (a) Bars.
- (b) Retail tobacco stores.
- (c) An entire room or hall which is used for a private social function which function is under the control of the sponsor of the function and not under the control of the owner or manager of the room or hall, but only while such room or hall is used for a private social function. The fact that the owner or manager of the room or hall provides food or entertainment to the participants of a private social function does not mean that said owner or manager has control of the function.
- (d) Areas not generally open to the public if said areas are physically separated by walls or partitions from those areas where smoking is prohibited so that smoke does not permeate into the public areas where smoking is prohibited.
- (e) Any property owned or leased by state or federal governmental entities.

Section 1.05.      **POSTING OF SIGNS.**

- (a) Except as provided in Section 1.05(b) or in facilities owned or leased by state or federal governmental entities, clearly legible signs which include the words "Smoking Prohibited by Law" with letters of not less than two (2) inches in height shall be conspicuously posted in all places generally open to the public where smoking is prohibited by this Ordinance, by the owner, operator, manager, or other person having control of such place, and

signs of equivalent size and character reading "Smoking Permitted" may be posted where legally applicable. Alternative means of notification (individual place cards, film clips, etc.) may be employed, provided they are equivalent to the aforementioned signs in their effect. In all motion picture theatres, illuminated "No Smoking" signs shall be installed by no later than September 1, 1977, so as to be readily visible from all seats. All other signs required by this Subsection shall be posted within thirty (30) days of the effective date of this Ordinance.

(b) Except in facilities owned or leased by state or federal governmental entities, a conspicuous and clearly legible sign shall be posted at every public entrance to a restaurant indicating the policy of the restaurant with respect to whether it:

- (1) allows smoking throughout the dining area of the restaurant;
- (2) prohibits smoking throughout the dining area of the restaurant; or
- (3) divides the dining area of the restaurant into smoking and nonsmoking sections and, if so, stating the percentage of available seats in each such section.

(c) All public advertising by a restaurant, on or after the thirtieth (30th) day following the effective date of this Ordinance, shall include a statement clearly indicating the restaurant's policy with respect to the provisions of Section 1.05(b).

Section 1.06. VIOLATIONS.

(a) It is unlawful for any person to smoke in a place within the City of Berkeley where smoking is prohibited.

(b) It is unlawful for any person who owns, manages, or otherwise controls the use of any premises subject to the prohibition of this Or-

dinance to fail to post signs as required by Section 1.05 of this Ordinance.

Section 1.07.           INFRACTIONS AND PENALTIES.

(a) Any person violating any of the provisions of this ordinance shall be guilty of an infraction and shall be fined Fifty Dollars (\$50.00) per violation.

(b) Each day on which a violation of Section 1.05 of this Ordinance occurs shall be a separate and distinct offense and punishable as such.

(c) Enforcement under this Section shall be by citation as provided by Penal Code Sections 853.5, 853.6 and not by arrest.

Section 1.08.           SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

Section 2.01.           REVIEW BY CITY COUNCIL.

No earlier than six (6) months after the effective date of this Ordinance, but no later than one (1) year thereafter, the City Council shall hold a public hearing to determine to what extent the right of nonsmokers to eat in restaurants without attendant health hazards, nuisance or discomfort from tobacco smoke or smoke from any other plant is being protected by the measures provided for in Section 1.05.

Section 3.01.           EDUCATIONAL PROGRAM.

The City Manager shall direct the Department of Public Health to undertake the following:

(a) Request all governmental, educational and private agencies and firms located or doing business in Berkeley which are affected by this Or-

dinance to cooperate and comply with this Ordinance.

(b) Request and use all reasonable methods to persuade appropriate state and federal officials to post signs stating that smoking is prohibited by law in state or federal facilities.

Section 3.02. REVIEW OF APPLICABILITY.

Any interested party may obtain review of the applicability of this Ordinance to any particular premises by means of a public hearing before the Health Advisory Board, which shall be held within a reasonable time after receipt by the Board of a written request therefor. The Board shall make a determination as to the applicability of this Ordinance to the premises in question no later than the date of the first regularly scheduled meeting of the Board following such hearing.

Section 3.03. VARIANCES.

The owner or manager of any establishment affected by this Ordinance may apply for a variance from the provisions of the Ordinance by means of a public hearing before the Health Advisory Board, which shall be held within a reasonable time after receipt by the Board of a written request therefor. The Board may, in its discretion, grant a variance upon a finding that there are not sufficient members of the general public visiting such establishment to warrant the regulation of smoking therein. The Board must grant or deny the variance no later than the date of the first regularly scheduled meeting of the Board following such hearing.

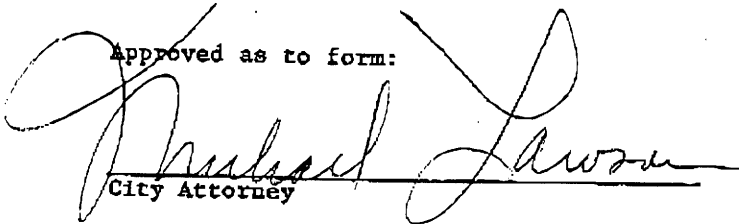
Section 3.04. REVIEW OF ORDINANCE.

No earlier than six (6) months after the effective operational date of this Ordinance, as determined by the City Manager, but no later than one (1) year thereafter, the City Council shall review the operation and effectiveness of the Ordinance.

Section 3.05. PUBLICATION AND EFFECTIVE DATE.

Copies of this Ordinance are hereby ordered published by posting with the vote thereon for two (2) days at the ten (10) prominent places in the City of Berkeley as designated by Ordinance No. 2032-N.S., and upon its final adoption, this Ordinance shall be effective on and after July 1, 1977.

Approved as to form:

  
City Attorney

ANRF Information Center

FEB 05 2004

Received