

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: 3/3/08  
Reviewed by: *BP*

**SUBJECT:** Recommendations from Social and Economic Justice Commission (SEJC) regarding Smoke-Free Ordinance Provisions

**REPORT BY:** Judy Lieberman, Assistant City Administrator

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**COMMISSION RECOMMENDATION**

Direct the City Attorney to draft an ordinance which includes provisions to 1) update or replace the City's existing smoking regulation ordinance to be in compliance with State Law; and 2) add a variety of provisions to prohibit smoking in public places, per the SEJC recommendations at their February 13, 2008 meeting, which are attached to this report.

**BACKGROUND**

The Smoke-Free proposal was first introduced to Council at its meeting of October 1, 2008, by Albany resident Ira Sharenow. Council members stated their overall support for making Albany's smoking regulations stronger, but referred the issue to the Social and Economic Justice Commission for recommendations.

The issue was first presented to the SEJC at its meeting of October 10, 2007. At that time Mr. Sharenow presented his proposals for additional smoke free regulations, including prohibitions on smoking in a variety of public places; and a smoke-free housing proposal. (See Attachment #1.) At the October meeting the Commission discussed a variety of issues and concerns and continued the item to the November meeting. At subsequent meetings from November through February, the Commissioners reviewed various issues, heard a variety of public testimony, and developed specific issue related recommendations. Attached to this staff report as Attachment#2 is the TALC (Technical Assistance Legal Center) draft ordinance and an annotated TALC draft with additions provided by Mr. Sharenow (Attachment #3). The discussion section below includes the SEJC recommendations, as well the issues of concern raised by the Commissioners.

## **DISCUSSION**

### **Commission Recommendations:**

- 1) Upgrade the ordinance to include all provisions of State Law.
- 2) Upgrade the “Whereas” clauses to include language regarding nuisance, cigarette butts as littering; second-hand smoke as a carcinogen, etc.
- 3) Exclude smoking in the following additional unenclosed places:  
Recreational areas (parks, playground, sports fields, gardens, walking paths, etc.); Public Events: (sports/music events, parades, fairs, Solano Stroll, etc.); Service lines; outdoor dining areas
- 4) Add defined reasonable distance from doorway of 25 feet
- 5) Add 80% of hotel rooms
- 6) Allow outdoor smoking at bars, particularly the Pub.
- 7) Add landlords to those (business owners, managers, etc.) to those who can declare their entire establishment as non-smoking.
- 8) Do not prohibit smoking on San Pablo Avenue
- 9) Prohibit smoking on Solano Avenue on a one year trial basis; only if language can be developed to ensure that this does not impact The Pub on Solano Avenue
- 10) Prohibit smoking in indoor common areas of multi-family housing
- 11) Prohibit smoking at outdoor common areas of multi-family housing as long as landlords can provide a designated outdoor space where smoking is permitting
- 12) Require landlords in multi-family housing and in condominiums to disclose in writing to prospective tenants/buyers the smoking policy in the unit and for the complex.
- 13) The Commission did not recommend that the City be responsible for developing and posting questionnaires from landlords/condominium owners on the City web site.
- 14) Recommend that the Albany School Board adopt a policy prohibiting smoking on the sidewalk adjacent to Albany public schools.
- 15) Do not recommend language automatically categorizing second hand smoke as a nuisance that would trigger the city’s Nuisance Abatement ordinance

### **Commission Concerns:**

Although the Commission has recognized the dangers of second-hand smoke, particularly in enclosed spaces, and has recommended a fairly comprehensive set of recommendations (although perhaps not everything the original proposer would like), they also felt strongly that their concerns be represented as well. They specifically expressed concerns regarding the following:

- Restrictions related to multi-family housing fall predominantly on lower income households and individuals, who live in multi-family housing
- Impacts to existing small businesses should be considered, in particular The Pub on Solano, which is a community institution; The Mallard Club, which also has an outdoor smoking area; and The Ivy Room.

- Smoking in outdoor public places in Albany may not be a significant issue that would require additional government regulation
- Enforcement should not be punitive; but should involve mediation and referral to smoking cessation services.

### **FINANCIAL IMPACT**

At this time, no financial impact has been assessed. Issues regarding additional signage, enforcement, and/or public education may have a financial impact.

### **Attachments:**

- 1) Smoke-free proposal from 10/1/07 Council meeting, presented by Mr. Ira Sharenow
- 2) TALC model ordinance
- 3) TALC model ordinance, with Mr. Sharenow's comments
- 4) SEJC minutes, October 2007 – January 2008