

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

Agenda Date: 5/18/09  
Reviewed by: BP

**SUBJECT:** One Year Review of Ordinance #08-03, Prohibiting Smoking in or around workplaces, recreational areas, and other places and amending the Albany Municipal Code

**REPORT BY:** Marc McGinn, Fire Chief  
Judy Lieberman, Assistant City Administrator

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**STAFF RECOMMENDATION**

Receive one-year review report.

**BACKGROUND**

In May of 2008, City Council passed Ordinance #08-03, substantially revising and strengthening the City's laws regarding second hand smoke. At that time, Council also requested a review of how the ordinance was working after one year. The main highlights of the ordinance were as follows:

- 1) Upgraded the Albany Municipal Code to include all provisions of State Law, and added a findings and purpose section that includes the health hazards of second-hand smoke and the right of non-smokers to breathe smoke-free air.
- 2) Prohibited smoking in enclosed spaces such as places of employment, multi-unit residence common areas, enclosed areas that are adjacent to areas in which smoking is prohibited, and enclosed areas that share a common ventilation system with areas in which smoking is prohibited.
- 3) Prohibited smoking in unenclosed places including the following:
  - a. Places of employment
  - b. Service areas (such as ATMs, Bus stops, etc.)
  - c. Recreational areas and playgrounds (includes parks, sports fields, gardens, hiking paths, etc.);
  - d. Dining Areas, with the exception of Bars that do not serve food, and with the exception of Bars that have been serving food over the past 90 day period (allows The Pub and The Mallard Club to maintain smoking in their courtyards.)

- e. Multi-Unit Residence Common Areas, except that the landlord may designate a portion of the outdoor area as a smoking area
  - f. Sidewalks adjacent to Albany public or private schools.
  - g. Public Events, such as sports events, parades, fairs, etc.
  - h. Solano Avenue
- 4) Added a definition of reasonable distance of 25 feet (State law is 20 feet)
  - 5) Added 80% of hotel rooms (should Albany have a hotel.)
  - 6) Required landlords in multi-family housing to maintain a list of designated non-smoking and smoking units, including a floor plan that shows designated smoking area. The list and plan is to be incorporated into the lease document signed by both landlord and tenant. Requires condominium seller to disclose whether smoking has been permitted in the unit and the smoking policies of the condominium complex.

## **DISCUSSION**

City Actions: The passage of the ordinance was placed on the front page of the City's web site as a significant news item. The ordinance, a one page summary, and list of resources were also permanently posted on the City's web-site, under "*I want to/Learn more/About Smoke Free Albany.*"

- 1) The city ordered "No Smoking on Solano" stickers to be made available at no charge to businesses on Solano Avenues. In July a group of Albany High School student volunteers put together a packet that included a one-page summary of the ordinance and the sticker, and individually distributed this information to all of the Solano Avenue merchants. Any business that did not receive a sticker and notice in person received one via the mail. (264 businesses total)
- 2) The city ordered "No Smoking within 25 feet of doorway" stickers for merchants on San Pablo Avenue or other commercial locations that are not on Solano Avenue. The same group of student volunteers also distributed these stickers (with the letter) to businesses on San Pablo Avenue and to locations not on San Pablo Avenue. Any business that did not receive a sticker and notice in person received one via the mail. (220 businesses total)
- 3) "Smoke-free" stickers were also ordered for all city parks, and these were placed on existing park signs over the summer.
- 4) On July 29, 2008, the City also sent a mailing to all Albany landlords and to the Condominium Associations, informing them of the new laws. (248 properties) Staff received 10 phone calls from landlords with inquiries about the ordinance, mostly wanting additional stickers.
- 5) From the months of September through November 2008, the Fire Department attempted to make personal contact with each business. We were successful in making Solano and San Pablo Ave. 80-90% compliant with displaying "No Smoking" signs. Annual company inspections will encourage businesses to comply with the requirement to post/maintain "No Smoking" signage. A business may post its own notice, and does not have to use the City sticker. Additionally, the Fire Department worked with AC Transit to post permanent metal signs on all of the AC Transit bus shelters, which was completed in April 2009.

The Albany Chamber of Commerce and the Solano Avenue Association report little or no comment from Albany merchants, although the Chamber notes that initially their membership was mixed on the overall proposal. The Chamber notes that they have the stickers available for free for merchants to use, although some merchants do not like the stickers on their doors/windows. The Solano Avenue Association notes that their Solano Stroll web page has been updated to reflect that the Solano Avenue Stroll is now "Alcohol and tobacco free." Over the course of the past year, staff has received two complaints about people smoking on Solano Avenue.

The Police Department reports that between June 19, 2008 and April 8, 2009, there were three calls for service relating to violations of this ordinance. All three reported violations were located on Solano between San Pablo and Masonic. The first was on June 24th, 2008; police responded and advised those in violation of the new, one week old ordinance (warning given). The second was in March 2009 and was related to contractors working in the area. The third was also in March 2009 and was reported a day after the offense was to have occurred.

One comment has been received requesting modification to the ordinance to allow "private right to action". The stated goal of this request is that if a tenant smokes in a non-smoking area of an apartment building, including possibly his/her own unit (if that is supposed to be non-smoking) or allows house guests to smoke, then a tenant that has been exposed to the smoke will have a private right of action that the offender committed a nuisance.

Attached is language under consideration as well as language in place in other cities on the issue of smoking policy in multi-family housing and private right to action provided by the requesting resident for Council consideration.

Also attached is a 2008 State of Tobacco Control "report card" presented at the last Council meeting by a representative of the American Lung Association that grades Alameda county cities on their smoking and tobacco regulations. Albany was graded an "A" in the category of "Smokefree Outdoor Air", and a "C" in "Smokefree Housing." It was graded an "F" in "Reducing Sales of Tobacco Products" but this was prior to City Council passage of the tobacco sales regulation ordinance in early 2009.

### **SUSTAINABILITY IMPACT**

Reduction in use of tobacco products and in exposure to second-hand smoke and cigarette butts reduces risks to public health.

### **FINANCIAL IMPACT**

The costs for stickers, signage and mailing costs have been approximately \$2,500.

#### **Attachments**

1. Ordinance No. 08-03

2. Options for language on private right to action in multi-family housing
3. 2008 State of Tobacco Control – Local Grades