

CITY OF ALAMEDA ORDINANCE NO. _____

New Series

AMENDING SECTIONS 24-11 (SMOKING PROHIBITIONS IN PLACES OF EMPLOYMENT AND UNENCLOSED PUBLIC PLACES) AND 24-12 (SMOKING PROHIBITIONS IN HOUSING) OF ALAMEDA MUNICIPAL CODE

WHEREAS, the City of Alameda's smoking regulations in Chapters 24-11 and 24-12 of the Alameda Municipal Code have not been updated since 2011; and

WHEREAS, the state laws, including the Adult Use of Marijuana Act (AUMA) and Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) have been enacted since the City's adoption of Chapters 24-11 and 24-12 to decriminalize the use and possession of Cannabis; and

WHEREAS, the City Council desires to update Chapters 24-11 and 24-12 of the Alameda Municipal Code so that it is consistent with state law and to regulate, in addition to tobacco products, electronic smoking devices and the smoking of Cannabis or Cannabis Products; and

WHEREAS, state law expressly declares its intent not to preempt the field of regulation of smoking pursuant to section 11362.79 of the Health and Safety Code, which does not authorize a qualified patient to smoke Cannabis in a place where smoking is prohibited by law and pursuant to section 11362.3 of the Health and Safety Code, which does not permit any person to smoke Cannabis where smoking tobacco is prohibited; and

WHEREAS, this Ordinance is adopted pursuant to the City's police powers, afforded by the state constitution and state law, and as recognized by the Adult Use of Marijuana Act (AUMA) and Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to protect the health, safety, and welfare of the public.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: Section 24-11 (SMOKING PROHIBITIONS IN PLACES OF EMPLOYMENT AND UNENCLOSED PUBLIC PLACES) of the Alameda Municipal Code is hereby amended to read as follows:

24-11.1 – Definitions.

Cannabis means any and all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from

cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Section, "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code."

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, hookah, or pipe, or any other lighted or heated tobacco or Cannabis intended for inhalation, in any manner or in any form, including what is commonly referred to as electronic or e-cigarettes, or any device or product that delivers nicotine (or other substances in tobacco) or Cannabis. Smoking shall also include any nicotine-containing product, such as flavored tobacco, or any Cannabis-containing product unless in accordance with State and local law, or any paraphernalia of any device or product that delivers nicotine (or other substances in tobacco) or Cannabis, including cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of any device or product that delivers nicotine (or other substances in tobacco) or Cannabis.

24.11.5 – Duty of Person, Employer, Business, or Non-Profit.

b. No person, employer, business, 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, or nonprofit entity and in which smoking is prohibited by law and the person, employer, business or nonprofit entity is not otherwise compelled to act under state or federal law.

Section 2: Section 24-12 (SMOKING PROHIBITIONS IN HOUSING) of Chapter XXIV (PUBLIC HEALTH) of the Alameda Municipal Code is hereby amended to read as follows:

24-12.1 – Definitions.

Cannabis means any and all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Section, "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code."

Smoking means possessing a lighted tobacco or Cannabis product or lighted tobacco or Cannabis paraphernalia, including but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, or lighted cigarette, including what is commonly referred to as electronic or e-cigarettes, or any device or product that delivers nicotine or Cannabis. Smoking shall also include any nicotine-containing product, such as flavored tobacco, or any Cannabis-containing product unless in accordance with State and local law, or any paraphernalia of any device or product that delivers nicotine (or other substances in tobacco) or Cannabis, including cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of any device or product that delivers nicotine (or other substances in tobacco) or Cannabis.

Section 3: CEQA DETERMINATION

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Business and Professions Code section 26055(h) as discretionary review and approval, which shall include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code, shall be required in order to engage in commercial cannabis activity within the City of Alameda under such Ordinance. Adoption of this Ordinance is additionally exempt from CEQA pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

Section 4: SEVERABILITY

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 5: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ____ day of _____, 2017, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ____ day of _____, 2017.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Janet C. Kern, City Attorney
City of Alameda