

ORDINANCE NO. 1352 C.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ
REPEALING AND REPLACING MARTINEZ MUNICIPAL CODE TITLE 8
“HEALTH AND SAFETY,” CHAPTER 8.05, “PROHIBITION OF SMOKING” TO
REGULATE SECONDHAND SMOKE AND PROHIBIT SMOKING
IN CERTAIN PUBLIC PLACES**

WHEREAS, Chapter 8.05 of the City’s Municipal Code regarding the prohibition of smoking was adopted in 1992 to prohibit smoking in public places, workplaces, and restaurants before State law mandated smoke-free workplaces; and

WHEREAS, Assembly Bill 3037 was passed in 1994 and became effective on January 1, 1998, to amend California Labor Code 6404.5 and ban smoking in most enclosed places of employment; and

WHEREAS, Assembly Bill 846 went into effect on January 1, 2004, to amend California Government Code sections 7596 – 7598 and prohibit smoking within 20 feet of main entrances, exits, and operable windows at all public buildings owned, occupied, or leased and occupied by State, County, or City governments, and

WHEREAS, the City’s existing Code is outdated, having been superseded by the aforementioned State laws, and does not currently address or regulate the problem of secondhand smoke in outdoor areas or multi-unit residences; and

WHEREAS, numerous other public agencies in Northern California and throughout California have strengthened their smoking ordinances in recent years to better protect the public from exposure to secondhand smoke; and

WHEREAS, the City Council finds that it is in the public interest and in furtherance of the health, safety, and welfare of the residents of Martinez to reduce the possibility of exposure to secondhand smoke and its contaminants by establishing smoke-free outdoor spaces within areas of public use, including, but not necessarily limited to, public and private parks, building entrances, plazas, bus stops and shelters, transportation centers, and multi-unit housing complexes.

WHEREAS, the City Council held a hearing on the proposed ordinance on April 15, 2009 where all interested parties could be heard.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Martinez does ordain as follows:

SECTION 1. Title 8. Chapter 8.05 is hereby repealed and replaced to read as follows:

Chapter 8.05 PROHIBITION OF SMOKING

- 8.05.010 Purpose and Findings.
- 8.05.020 Definitions.
- 8.05.030 City-owned Vehicles and Enclosed Facilities.
- 8.05.040 Vehicles Used for Work-Related Purposes.
- 8.05.050 Prohibition of Smoking in Designated Enclosed Areas.
- 8.05.060 Prohibition of Smoking in Certain Unenclosed Areas.
- 8.05.070 Prohibition of Smoking in Multi-unit Residence Common Areas and Private Outdoor Spaces.
- 8.05.080 Smoking Optional Areas.
- 8.05.090 Duty of Person, Employer, Business or Non-profit Entity.
- 8.05.100 Posting Requirements.
- 8.05.110 Enforcement.
- 8.05.120 Violations and Penalties.
- 8.05.130 Nonretaliation.
- 8.05.140 Public Education.
- 8.05.150 Governmental Agency Cooperation.
- 8.05.160 Secondhand Smoke – Declaration of Nuisance.
- 8.05.170 Other Applicable Laws.

8.05.010 Purpose and Findings.

The City Council of the City of Martinez hereby finds and declares as follows:

A. Tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs, as evidenced by the following:

- 1.** More than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death according to the U.S. Department of Health and Human Services Centers for Disease Control and Prevention; and
- 2.** The National Cancer Institute has found that secondhand smoke is responsible for an estimated 38,000 deaths among nonsmokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease; and
- 3.** The U.S. Department of Health and Human Services has found that secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis; exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children; and
- 4.** The United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and

5. The U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke; and
6. The California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure; and
7. The California Environmental Protection Agency has included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm; and
8. The American Academy of Actuaries has determined that the medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke are nearly \$6 billion per year in the United States; and
9. The total cost of smoking in California was estimated as \$475 per resident, or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone, according to a California Department of Health Services study.

B. Cigarette butts pose a health threat to young children, as evidenced by the following:

1. In 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarette butts; and
2. Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging.

C. Cigarette butts are a major and persistent source of litter, as evidenced by the following:

1. It is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year; and
2. Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons, and ultimately the ocean; and
3. Cigarette butts, made of plastic cellulose acetate, take approximately 15 years to decompose.

D. Most Californians do not smoke and a majority favors limitations on smoking in multi-unit residences, as evidenced by the following statistics from the California Department of Health Services and the American Lung Association of California:

1. 86% of Californians are nonsmokers; and
2. 67% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings.

- E. Secondhand smoke can seep under doorways and through wall cracks.
- F. There is no Constitutional right to smoke.

Accordingly, the City Council finds that the health, safety and general welfare of the residents of, persons employed in, and persons who frequent the City of Martinez will be benefited regulating exposure to secondhand smoke.

8.05.020 Definitions.

The following words and phrases, whenever used in this section, shall have the following meanings to be interpreted in accord with State statute if a contradiction appears:

- A. "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a Bar, the term "Bar" shall not include the restaurant dining area.
- B. "Business" means any sole proprietorship, partnership, joint venture, corporation or other Business entity formed for profit-making purposes.
- C. "City" means the City of Martinez.
- D. "Employee" means any Person who is employed, or retained as an independent contractor, by any Employer or Business in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer, Business, or Nonprofit Entity.
- E. "Employer" means any Person, partnership, association, corporation, including a municipal corporation, or Nonprofit Entity, which employs or retains the services of one or more Employees.
- F. "Enclosed" means:
 - 1. Any covered or partially covered space having more than 50% of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or
 - 2. Any space open to the sky having more than 75% of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard;
 - 3. Except that, an area open to the sky of three thousand (3,000) square feet or more is not enclosed, for example, a field in an open-air arena.
- G. "Landlord" means any Person who owns real property leased or rented as residential property, any Person who lets residential property, or any Person who manages such property, except that "Landlord" does not include sublessors.

H. "Minor" shall mean any individual who is less than eighteen years old.

I. "Multi-Unit Common Area" means any Enclosed or Unenclosed area of a Multi-Unit Residence or Multi-Unit commercial facility (such as hotels, motels, mobile home parks, shopping centers, and office buildings) accessible to and usable by more than one resident, tenant, Employee, Employer, or member of the public, including but not limited to areas such as halls and paths, lobbies, elevators, laundry rooms, common areas, outdoor eating areas, swimming pools, and parking areas. Multi-Unit Common Areas do not include private parks or playgrounds which are included in the definition of Public Place.

J. "Multi-Unit Residence" means a Premises such as an apartment, co-op, condominium building, senior citizen or nursing home, or building site that contains four (4) or more attached dwelling Units. This definition excludes detached and attached single-family homes.

K. "Nonprofit Entity" means any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations 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.

L. "Openings" shall include entrances, exits, operable windows and ventilation intake systems.

M. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

N. "Place of Employment" means any area under the legal or actual control of an Employer, Business or Nonprofit Entity that an Employee may have cause to enter during the normal course of operations, but regardless of hours of operation, including, but not limited to, Enclosed and Unenclosed work areas, construction sites, vehicles used for work-related purposes, taxis, Employee lounges and breakrooms, conference and banquet rooms, classrooms, bingo and gaming facilities, long term health care facilities, warehouses, and private residences used as child/elder care or health care facilities subject to licensing requirements.

O. "Premises" means a piece of land and any improvements upon it such as is usually described in a deed, deed of trust or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same natural Person or by legal Persons under common control.

P. "Private Outdoor Space" means any outdoor area associated with a Unit that is used solely by the resident of that Unit, including but not limited to balconies, patios, decks, entry porches, and carports.

Q. "Public Place" means any place, public or private (excluding streets and sidewalks), open to members of the general public regardless of any fee or age requirement, including but not limited to, bars, restaurants, clubs, stores, stadiums, amphitheaters, sports events, public or private parks, common areas of common interest developments, public plazas, playgrounds, taxis, buses, bus shelters, public transportation facilities, hotels and motels, fairs, farmers' markets, parades and theaters. Public Place does not mean on the premises of private clubs, so

long as there are no Employees and/or volunteers; or within private vehicles in or on Public Places, so long as no Minor is present, pursuant to State law.

R. "Reasonable Distance" means a distance of at least twenty (20) feet in any direction from an area in which Smoking is prohibited.

S. "Service Area" means any area at which one or more Persons are waiting for a transaction, entry or service of any kind, whether or not such service involves the exchange of money, including, but not limited to ATM's, bank teller windows, telephones, ticket lines, bus stops and shelters, cab stands, and other hubs of transportation such as the AmTrak/Intermodal Station.

T. "Smoking" means possessing a lighted Tobacco Product, lighted Tobacco Paraphernalia, or any other lighted weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).

U. "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of Smoking materials of all types, and any other item designed for the Smoking, preparation, storing, or consumption of Tobacco Products.

V. "Tobacco Product" means (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body by inhalation; but does not include any cessation product specifically approved by the U. S. Food and Drug Administration for use in treating nicotine or tobacco dependence.

W. "Tobacco Store" means a Business that primarily sells Tobacco Products and Tobacco Paraphernalia; does not permit any Person under 18 years of age to be present or enter at any time; and does not sell beverages or food for consumption in or around the store.

X. "Unenclosed" means any area that is not Enclosed.

Y. "Unit" means: (1) a dwelling space consisting of essentially complete independent living facilities for one or more Persons, including, for example, permanent provisions for living and sleeping, and (2) a dwelling space that may lack private cooking facilities or private plumbing facilities, including, for example, senior citizen housing, long-term health care facilities, or single room occupancy hotels, as defined in California Health and Safety Code section 50519(b)(1). "Unit" does not include lodging in a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2).

8.05.030 City-owned Vehicles and Enclosed Facilities.

All City-owned vehicles and all Enclosed facilities owned or controlled by the City, shall be subject to the provisions of this Chapter.

8.05.040 Vehicles Used for Work-Related Purposes

Smoking in vehicles used for work-related purposes is prohibited pursuant to the provisions of this Chapter. Enforcement of smoking regulations in such vehicles shall be the responsibility of the Employer, and/or the Employee by legal action if necessary.

8.05.050 Prohibition of Smoking in Designated Enclosed Areas.

- A.** Except as otherwise provided, Smoking shall be prohibited in the following Enclosed areas:
- 1.** Places of Employment, as defined in Section 8.05.020;
 - 2.** Public Places, as defined in Section 8.05.020;
 - 3.** Buses, taxicabs, and other means of public transit under the authority of the City;
 - 4.** Service Areas, as defined in Section 8.05.020;
 - 5.** Areas that have a common or shared air space with other Enclosed areas in which Smoking is prohibited such as, without limitation, air conditioning systems, heating systems, ventilation systems, entries, doorways, hallways, and stairways;
 - 6.** Any facility which is primarily used for exhibiting motion pictures, stage productions, lectures, musical recitals or other similar performances, except for Smoking which is an integral part of such production; and
 - 7.** A designated nonsmoking guest room of any hotel, motel, or bed-and-breakfast facility.
- B.** A minimum of eighty percent (80%) of guest rooms in every hotel and motel, and bed-and-breakfast facilities must be permanently designated as completely nonsmoking.

8.05.060 Prohibition of Smoking in Certain Unenclosed Areas.

- A.** Except as otherwise expressly authorized by State or Federal law, Smoking shall be prohibited in any place where food and/or drink is offered for sale, including but not limited to outdoor dining areas of restaurants, Bars and farmers' markets.
- B.** Smoking is prohibited within the following Unenclosed areas:
- 1.** Places of Employment, as defined in Section 8.05.020;
 - 2.** Public places, as defined in Section 8.05.020;
 - 3.** Public events including but not limited to, sports events, entertainment, speaking performances, ceremonies, pageants and parades;
 - 4.** A Reasonable Distance from any Opening of any Enclosed or Unenclosed area within which Smoking is prohibited, except while passing on the way to another

destination;

5. Service Areas, as defined in Section 8.05.020;
6. Courtyards and other areas where air circulation may be impeded by architectural, landscaping or other barriers; and
7. A Reasonable Distance from road, building, and construction crews, while working;

8.05.070 Prohibition of Smoking in Multi-Unit Residence Common Areas and Private Outdoor Spaces.

A. Effective June 1, 2010, Smoking is prohibited in all Multi-Unit Residence Common Areas and Private Outdoor Spaces (including but not limited to balconies, patios, decks, entry porches, carports, and pool areas), and within 20 feet of any entrance, exit, or operable windows and ventilation intake systems of a Multi-Unit Residence, except that a Landlord may designate a portion of the outdoor area of the 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 be no more than 25% 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 a minimum of one conspicuous sign at the designated smoking area, and one conspicuous sign elsewhere on the premises; and
6. Must not overlap with any area in which Smoking is otherwise prohibited by this chapter or other provisions of this Code, State law, or Federal law.

C. Required Lease Terms:

1. Every lease, renewal of a lease, lease extension or other agreement for the occupancy of a Unit in a Multi-Unit Residence shall, by June 1, 2010, include:
 - (a) A clause stating that Smoking is prohibited in all Multi-Unit Residence Common Areas and Private Outdoor Spaces, except for those designated smoking areas identified by the Landlord pursuant to Section 8.05.070 (B) of this Ordinance; and

- (b) A clause stating that it is a material breach of the lease or other agreement, and grounds for termination of the lease or other agreement, to (i) violate any law regarding Smoking while on the Premises; or (ii) Smoke in any Multi-Unit Residence Common Area or Private Outdoor Space in which Smoking is prohibited by the Landlord; and
 - (c) A clause stating that all lawful occupants of the Multi-Unit Residence are express third-party beneficiaries of the above required clauses.
- 2. The California Apartment Association's form 34.0, revised 1/07, meets the requirements for lease terms as outlined and is an option for use to comply with this section.
- 3. The lease or agreement terms required by subsection C(1) are hereby incorporated by force of law into any lease, renewal of a lease, lease extension or other agreement for the occupancy of a Unit in a Multi-Unit Residence made on or after June 1, 2010.
- 4. A tenant who breaches the Smoking regulations of a lease or knowingly allows another person to do so shall be liable to: (i) the Landlord; and (ii) to any lawful occupant of the Multi-Unit Residence who is exposed to secondhand smoke as a result of that breach. A Landlord shall not be liable to any person for a tenant's breach of Smoking regulations if the Landlord has fully complied with subsection C(1); however, Landlords with knowledge of violations shall take reasonable steps to enforce the regulations, such as informing the tenant of Landlord's knowledge of the violation, and the course of action to be taken if the violation is not corrected. Tenants may bring legal action to enforce this Chapter, but tenants do not have the authority to evict.
- 5. Failure to enforce any Smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this ordinance and shall not prevent future enforcement of any such Smoking regulation on another occasion.

D. Prohibitions and Duties Generally:

- 1. No Person shall Smoke or knowingly permit Smoking in an area of the Premises under his or her legal or de facto control in which Smoking is prohibited by law or a lease or agreement term, by this Chapter, this Code, or any other State or Federal law, provided, however, that this prohibition does not apply to a Person who is already compelled to act under State or Federal law.
- 2. No Person shall knowingly permit the presence or placement of ash trays, cans, or other receptacles within Multi-Unit Residence Common Areas under his or her legal or de facto control in which Smoking is prohibited by this Chapter, this Code, or any other State or Federal law, including, for example and without limitation, within a Reasonable Distance of any non-smoking area.

3. The Person with legal or actual control of a Multi-Unit Residence subject to this Chapter shall clearly and conspicuously post "No Smoking" signs in every Multi-Unit Residence Common Area on the Premises in which Smoking is prohibited by this Chapter or by the Person in control, except that signs are not required in Private Outdoor Spaces of individual units. Signs must be sufficient to make areas where Smoking is prohibited obvious to a reasonable person.
4. The absence of signs shall not be a defense to a violation of any provision of this Chapter.
5. Notwithstanding any other provision of this Section, nothing shall prevent a Landlord from designating units as nonsmoking, or establishing smoke-free regulations more restrictive than otherwise provided for in this Chapter.

E. Disclosure by Landlords: Every Landlord shall maintain a list of designated nonsmoking 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. A copy of this list and floor plan, and a copy of procedures for addressing Smoking-related complaints, shall accompany every new lease or other agreement for the occupancy of a Unit in a Multi-Unit Residence entered into on or after June 1, 2010. If a copy of the list and floor plan is not supplied, the Unit subject to the lease shall be a nonsmoking Unit.

8.05.080 Smoking Optional Areas.

A. Except as otherwise prohibited by State or Federal law, the following areas shall not be subject to the Smoking restrictions of this section:

1. Private, detached and attached single-family homes, except when used as a child care or health care facility; and
2. Tobacco Stores, but only if the facility is freestanding, and no smoke from such stores enters an adjacent Enclosed area where Smoking is not permitted.

B. Nothing in this Section shall be construed to prevent any Business, Employer, Nonprofit Entity, Landlord or other Person who controls any establishment or facility from declaring and enforcing a nonsmoking policy in the entire establishment or facility, or from posting signs as described by Section 8.05.100.

8.05.090 Duty of Person, Employer, Business, or Nonprofit Entity.

A. No Person, Employer, Business, or Nonprofit Entity shall knowingly permit the Smoking of Tobacco Products in an area which is under the legal or actual control of the Person, Employer, Business, or Nonprofit Entity and in which Smoking is prohibited by law or lease, and the Person, Employer, Business or Nonprofit Entity is not otherwise compelled to act under State or Federal law.

B. No Person, Employer, Business, or Nonprofit Entity shall knowingly or intentionally place, cause to be placed, or permit the presence or placement of ash receptacles, such as, for example, ashtrays or ash cans, within an area which is under the legal or actual control of the Person, Employer, Business, or Nonprofit Entity and in which Smoking is prohibited.

C. No Person, Employer, Business, or Nonprofit Entity shall dispose of Smoking waste within the boundaries of an area in which Smoking is prohibited, including inside the perimeter of any Reasonable Distance requirement. Littering on public or private property, including but not limited to littering of tobacco products, cigarette butts, or cigars, is expressly prohibited by California Penal Code 374.4.

8.05.100 Posting Requirements.

A. The Person, Employer, Business or Non-Profit Entity with legal or actual control of a building subject to this Chapter shall clearly and conspicuously post "No Smoking" signs at the entrances of every building, as well as at every other place where Smoking is prohibited under this Chapter. "No Smoking" signs will have letters of no less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a bar).

B. Multi-Unit Residence Posting requirements shall be made pursuant to Section 8.05.070 D(3) of this Chapter.

C. The absence of "No Smoking" signs shall not be a defense to a violation of any provision of this Chapter.

D. Every Tobacco Store and every vendor of Tobacco Products shall visibly post Business and Professions Code Section 22952 signage that expressly references Penal Code Section 308 at the entrance of any premises subject to regulation under Sections 8.05.050 and 8.05.060 of this Chapter; Section 8.06.050 of the Martinez Municipal Code; and applicable State and/or Federal law.

8.05.110 Enforcement.

A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

B. Notice of this Chapter will be provided to all applicants for a Business license or renewal thereof. However, lack of such notice shall be no defense to a violation of this Chapter.

C. Any Business, Employer, Landlord, or Nonprofit Entity of any establishment controlled by this Chapter shall have the right to inform Persons violating this Chapter of the appropriate provisions thereof.

D. Enforcement of sections 8.05.050 and 8.05.060 of this Chapter shall be implemented by the City Manager or his/her designee, and may be enforced by any peace officer or code enforcement official. Prohibition of Smoking in Multi-Unit Residence Common Areas and Private Outdoor Spaces shall be enforced by the Landlord and/or tenant pursuant to Section 8.05.070 C(4).

E. Any citizen who desires to register a complaint under sections 8.05.050 and 8.05.060 of this Chapter may initiate enforcement with the City Manager or his/her designee.

F. Notwithstanding any other provision of this Chapter, a private citizen may bring legal action to enforce this Chapter.

8.05.120 Violations and Penalties.

A. The remedies provided by this Chapter are not intended to preclude any other remedy available at law or inequity.

B. It is unlawful for any Person, Employer, Business, or Nonprofit Entity who owns, manages, operates or otherwise controls the use of any property subject to regulation under this Chapter to refuse to comply with any of its provisions, or to permit any Employee or patron to violate this Chapter.

C. It shall be unlawful for any Person to smoke in any area where Smoking is prohibited under this Chapter.

D. Any Person, Employer, Business, Nonprofit Entity, or tobacco retailer who violates any provision of sections 8.05.050 and 8.05.060 of this Chapter shall be deemed guilty of an infraction, punishable by:

- 1.** A fine, not exceeding one hundred (\$100.00) dollars and/or five (5) days of community service, for the first violation.
- 2.** A fine, not exceeding two hundred (\$200.00) dollars and/or ten (10) days of community service, for a second violation of this section within one year.
- 3.** A fine not exceeding five hundred (\$500.00) dollars and/or 15 (15) days of community service, for a third violation or any subsequent violation of this section within one year.

E. Violations of Section 8.05.070 of this Chapter shall be enforced by the Landlord and/or tenant.

8.05.130 Non-retaliation.

No Person, Employer, Business, Landlord or Nonprofit Entity shall discharge or in any manner retaliate against any Person, tenant, or Employee because such individual exercises any right to a smoke free environment afforded by this Chapter.

8.05.140 Public Education.

A. The City Manager or his/her designee will engage in a continuing educational program to explain and clarify the purposes and requirements of this Chapter, and help guide Businesses, Employers, Landlords, and Nonprofit Entities with compliance. However, lack of such education shall be no defense to a violation of this Chapter.

B. The City Manager shall leave the responsibility of conducting a public education campaign regarding the health consequences of smoking to other governmental and health agencies equipped with the needed expertise to conduct such campaigns.

8.05.150 Governmental Agency Cooperation.

The City Manager or his/her designee may annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this section. This includes urging all Federal, State, County and School District agencies to update their existing Smoking control regulations to be consistent with current health findings regarding environmental tobacco smoke.

8.05.160 Secondhand Smoke – Declaration of Nuisance

Secondhand smoke constitutes a nuisance. Notwithstanding any other provisions of this Chapter, a private citizen may bring a legal action to abate secondhand smoke as a nuisance.

8.05.170 Other Applicable Laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 3. Effective Date. This ordinance shall become effective thirty (30) days after its adoption.

SECTION 4. Posting. The City Clerk shall cause this ordinance to be published within fifteen (15) days after its adoption, at least once, with the names of those City Council members voting for or against this Ordinance, in a newspaper of general circulation published and circulated in the City of Martinez.

APPROVED: _____
Rob Schroder, Mayor

ATTEST: _____
Deputy City Clerk

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was duly and regularly introduced at a Regular Meeting of the City Council of the City of Martinez held on the 15th day of April, 2009, and duly passed and adopted at a Regular Meeting of said City Council held on the 6th day of May, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ