

## ORDINANCE NO. 7,736 -N.S.

## AMENDING BERKELEY MUNICIPAL CODE CHAPTER 12.70 SMOKING POLLUTION CONTROL

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

Section 1. That Berkeley Municipal Code Subsection 12.70.020.V is amended to read as follows:

**12.70.020 Definitions**

V. "Smoke" or "smoking" means and includes either (1) inhaling or exhaling upon, burning, or carrying any lighted smoking equipment for tobacco, nicotine, cannabis or any other plant or product used for personal habit commonly known as smoking or (2) inhaling or exhaling upon, vaporizing, or otherwise using any electronic smoking device.

Section 2. That Berkeley Municipal Code 12.70.035 is amended to read as follows:

**12.70.035 Smoking prohibited in multi-unit residences**

- A. Effective May 1, 2014, smoking is prohibited in all units of multi-unit residences and all common areas of multi-unit residences.
- B. All common areas of multi-unit residences shall have signage indicating that smoking is prohibited consistent with the signposting requirements of Section 12.70.060.A.
- C. If the City receives a complaint of a violation of subdivision A, it may issue a notice to the person(s) responsible, informing them of the requirements of this Section. The tenant(s) of a unit, or owner-occupant(s) of an owner-occupied unit, shall be deemed the person(s) responsible for the violation where the violation was caused by the tenant(s) or owner-occupant(s) of the unit, or one or more persons subject to the control of, or present by invitation or permission of, the tenant(s) or owner-occupant(s).
- D. If within a six month period following issuance of a notice under subdivision C, the City receives at least two complaints from residents of at least two separate units of the same multi-unit residence, or in the case of a two-unit multi-unit residence, from a resident of the other unit of a violation of subdivision A by the same person(s) provided notice under subdivision C, the person(s) responsible for the violation shall be guilty of an infraction as provided for in Berkeley Municipal Code Chapter 1.20. In addition, the City may employ any other remedies permitted by law, including but not limited to Chapter 1.28. In order for the City to initiate enforcement under this Section, each person who makes a claim of a violation of this Section must lodge the complaint on a form specified by the City.
- E. Sales contracts for condominiums entered into on or after May 1, 2014 shall disclose the requirements of Sections 12.70.035 and 12.70.037.

Section 3. That Berkeley Municipal Code 12.70.037 is amended to read as follows:

**12.70.037 Required Lease Term for New Leases**

- A. Every lease or other rental agreement for the initial occupancy of a new or existing unit in a multi-unit residence entered into on or after May 1, 2014, shall include a clause providing that it is a material breach of the lease or other rental agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to engage in smoking in any unit of the multi-unit residence or any common area of the multi-unit residence.
- B. Landlords shall offer all current tenants a voluntary lease addendum providing that it is a material breach of the lease or other rental agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to engage in smoking in any unit of the multi-unit residence or any common area of the multi-unit residence.
- C. Applications for tenancy shall include information from the landlord regarding Sections 12.70.035 and 12.70.037.
- D. Landlords shall provide written notice to all existing tenants of the requirements of Sections 12.70.035 and 12.70.037 no later than March 1, 2014.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on October 27, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.