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Public Hearing, Amended & Passed on 9/3/08 7-2 (Donoghue, Marshall)

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CITY OF PORTLAND
IN THE CITY COUNCIL

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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 17, ARTICLE V
(REGULATION OF TOBACCO - OUTDOOR EATING AREAS)
RE: SECONDHAND SMOKE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Chapter 17, Article V (Regulation of Tobacco) of the Portland City Code is hereby amended by adding the following new Division 6 to read as follows:*

**DIVISION 6. SECONDHAND SMOKE
OUTDOOR EATING AREAS**

Sec. 17-93. Purposes.

The purpose of this regulation is to decrease the exposure of individuals to secondhand smoke in their outdoor environment. The Environmental Protection Agency categorizes secondhand smoke, or environmental tobacco smoke, as a Class A known human lung carcinogen, the most dangerous category reserved for substances including radon, benzene, and asbestos. The California EPA issued a final regulation on February 8, 2007 identifying environmental tobacco smoke as a toxic air contaminant. Researchers from Tufts University and Stanford University have recently concluded that non-smokers in close proximity to a person actively smoking may be subjected to high levels of secondhand smoke related air pollution. These levels may equal or exceed those smoke levels measured in indoor, fully enclosed environments. In addition, the U.S. Surgeon General declared in a 2006 report that "The debate is over. The science is clear; secondhand smoke is not a mere annoyance, but a serious health hazard... for which there is no safe level of exposure". In fact, according to the Maine Center for Disease Control and Prevention, one non-smoker a day in Maine dies from secondhand smoke exposure.

Sec. 17-94. Smoking Prohibited in Outdoor Eating Areas.

(a) Notwithstanding anything in division 2 of this chapter to the contrary, smoking is prohibited until 10:00 p.m. within the outdoor eating areas provided by restaurants and bars while such outdoor eating areas, or any portion thereof, are open and available for dining and beverage service.

(b) "Outdoor eating areas" shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.

(c) "Smoking" as used herein shall mean inhaling, exhaling, burning, carrying or having in one's possession any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.

Sec. 17-95. Enforcement.

(a) It shall be the responsibility of restaurants and bars to notify its customers of this prohibition and to request that customers comply with it.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer shall issue one verbal warning to an individual and the restaurant. If the individual or restaurant or bar fails to comply after one warning, said individual or restaurant or bar shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.