

## Chapter 6.15

### PROHIBITION OF SMOKING IN MULTIUNIT RESIDENCES

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#### **6.15.010 Purpose and intent.**

The purpose of this chapter is to prohibit the smoking of tobacco, or any other weed or plant, in multiunit residences. This chapter protects the public from nonconsensual exposure by reducing the number of locations in the city where exposure to secondhand smoke may occur.

#### **6.15.020 Definitions.**

For the purposes of this chapter the following definitions shall govern unless the context clearly requires otherwise:

“Common area” means every enclosed area and unenclosed area of a multiunit residence that residents of more than one unit are entitled to enter or use, including halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

“Common interest development” means:

1. A community apartment project as defined in California Civil Code section 4105, or any successor legislation;
2. A condominium project as defined in California Civil Code section 4125, or any successor legislation;
3. A planned development as defined in California Civil Code section 4175, or any successor legislation; and
4. A stock cooperative as defined in California Civil Code section 4190, or any successor legislation.

“Designated smoking area” shall mean an area where smoking is permitted, as designated by a landlord, HOA or other person with legal control of the premises and has been established and maintained in accordance with the provisions of this chapter.

“Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

“Enclosed area” means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

“Existing unit” means a unit in existence on or before January 1, 2025.

“Homeowners’ association” or “HOA” means an organization or entity established for the purpose of managing or maintaining a common interest development. A homeowners’ association shall also mean “association” as defined in California Civil Code section 4080, or any successor legislation.

“Landlord” means any person or agent of a person who owns, manages, or is otherwise legally responsible for a unit in a multiunit residence leased to a residential tenant. For purposes of this ordinance, a tenant who sublets their unit (e.g., a sublessor) is not a landlord.

“Multiunit residence” means property containing three or more units, including apartment buildings, common interest developments, senior and assisted living facilities, and long-term health care facilities. Multiunit residences do not include the following:

1. a hotel or motel that meets the requirements of California Civil Code section 1940(b)(2);
2. a mobile home park;
3. a campground;
4. a single-family home, except if used as a health care facility subject to licensing requirements; and
5. a single-family home with an accessory dwelling unit or junior accessory dwelling unit permitted pursuant to California Government Code sections 65852.1, 65852.2, or 65852.22 or Section 21.10.030 of this code, except where the accessory dwelling unit or junior accessory dwelling unit is rented or is used as a health care facility subject to licensing requirements.

“New lease” means any lease or rental agreement that allows a person to occupy a unit that is entered into on or after January 1, 2025.

“New unit” means a unit that is issued a certificate of occupancy and approved for occupancy after January 1, 2025, or any unit that is leased or rented for residential use for the first time after January 1, 2025.

“Nonsmoking area” means any area in which smoking is prohibited by

1. this chapter or another law;
2. binding agreement relating to the ownership, occupancy, or use of real property; or
3. a person with legal control over the area.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

“Smoke” or “smoking” means and includes (1) inhaling, exhaling, or burning, any tobacco, nicotine, cannabis or plant product, whether natural or synthetic; (2) carrying any lighted, heated or activated tobacco, nicotine, marijuana, or plant product, whether natural or synthetic, intended for inhalation; or (3) using an “electronic smoking device.”

“Unenclosed area” means any area that is not an enclosed area.

“Unit” means a personal dwelling space, even one lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use area, such as a private balcony, porch, deck, or patio.

“Unit” includes, without limitation, an apartment; a condominium; a townhouse; a room in a senior facility; a room in a long-term health care facility, assisted living facility, community care facility, or hospital; a room in a hotel or motel; a dormitory room; a room in a single-room occupancy facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an accessory dwelling unit or junior accessory dwelling unit.

#### **6.15.030 Smoking restrictions.**

A. Effective January 1, 2025, smoking is prohibited anywhere on the premises of a multiunit residence as follows:

1. In all new units,
2. In all existing units governed by a new lease, and

3. In all common areas.
- B. Notwithstanding subsection A, smoking is permitted in designated smoking areas if they meet the following conditions:
1. Are not an enclosed area;
  2. Are at least twenty-five feet from any:
    - a. doorway, window, opening, or other vent into an enclosed area, including an enclosed area not regulated by this chapter;
    - b. enclosed or unenclosed recreation area such as a tennis court, swimming pool, and picnic area; or
    - c. enclosed or unenclosed area primarily used by children such as a playground.
  3. Have a clearly marked perimeter;
  4. Are identified by conspicuous signs installed and maintained by the landlord, HOA or other person with legal control over the designated smoking area; and
  5. Have receptacles designed for and primarily used for disposal of smoking waste and that are maintained free of smoking-related litter, including cigarette butts.
- C. No person with legal control over any nonsmoking area of a multiunit residence shall permit smoking in the nonsmoking area, except as provided in subsection B.
- D. No person with legal control over a common area in which smoking is prohibited by this chapter or other law shall permit the presence of ashtrays, ashcans, or other receptacles designed for or primarily used for disposal of smoking waste within the area.

**6.15.040 Lease agreement requirements.**

- A. After January 1, 2025, every lease or other rental agreement for the occupancy of a unit in a multiunit residence entered into, renewed, or continued month-to-month shall include the following provisions:
1. A clause providing that it is a material breach of the agreement for the tenant to knowingly and intentionally allow, or engage in, smoking in the unit, including exclusive-use areas such as balconies, porches, or patios. The clause shall be substantially similar to the following:

It is a material breach of this agreement for tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios. Moreover, it is a material breach of this agreement for tenant to knowingly or intentionally allow any other person subject to the control of the tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios.
  2. A clause providing that it is a material breach of the agreement for tenant to knowingly and intentionally allow, or engage in, smoking in any common area of the multiunit residence, including entryways, playgrounds, pool areas, walking paths, or sitting areas, except in an outdoor designated smoking area. The clause shall be substantially similar to the following:

It is a material breach of this agreement for tenant to engage in smoking in any common area of the property, including entryways, playgrounds, pool areas, walking paths, or sitting areas, except in an outdoor designated smoking area, if one exists. In addition, it is a material breach of this agreement for tenant to knowingly or intentionally allow any other person subject to the control of the tenant to engage in smoking in any common area of the property, including entryways, playgrounds, pool areas, walking paths, or sitting areas, except in an outdoor designated smoking area, if one exists.
  3. A clause providing that it is a material breach of the agreement for tenant to violate any law regulating smoking while anywhere on the property, or to allow any other person subject to the control of the tenant to engage in such behavior. The clause shall be substantially similar to the following:

It is a material breach of this agreement for tenant to violate any law regulating smoking while anywhere on the property. Moreover, it is a material breach of this agreement for tenant to knowingly or intentionally allow any other person subject to the control of the tenant to violate any law regulating smoking while anywhere on the property. Tenant will inform tenant's guests of the smoke-free policy. Tenant will also promptly give landlord a written statement of any incident where tenant observes smoking not allowed by this policy or believes smoke is migrating into the tenant's unit from sources outside the tenant's unit.

4. A clause expressly conveying third-party beneficiary status to all occupants of the multiunit property as to the smoking provisions of the lease or other rental agreement. The clause shall be substantially similar to the following:

Other occupants of the property are express third-party beneficiaries of the provisions in this agreement regarding smoking. As third-party beneficiaries, other occupants of the property may enforce the smoking provisions by any lawful means, including by bringing a civil action in a court of law.

- B. Whether or not a landlord complies with subsection A above, the clauses required by subsection A shall be implied and incorporated by law into every agreement to which subsection A applies as of January 1, 2025.
- D. A tenant or occupant who breaches, or allows any other person subject to the control of the tenant or occupant to breach, a smoking provision of a lease or other rental agreement for the occupancy of a unit in a multiunit residence shall be liable for the breach to (1) the landlord or HOA; and (2) any occupant of the multiunit residence who is exposed to smoke or who suffers damages as a result of the breach.
- E. Failure to enforce any smoking provision required by this chapter shall not affect the right to enforce the provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

#### **6.15.050 Noticing requirements for rental properties.**

The following requirements apply to multiunit residences other than units in a common interest development that are not being rented:

- A. On or before January 1, 2025, every landlord shall deliver to each unit a copy of this chapter and a written notice clearly stating:
  1. All new units and existing units governed by a new lease are designated nonsmoking units and smoking is prohibited in a unit, including any associated private balcony, porch, deck, or patio, as of January 1, 2025; and
  2. Smoking in all common areas or outdoor areas except for specifically designated smoking areas, is a violation of this chapter as of January 1, 2025.
- B. As of January 1, 2025 every landlord shall provide prospective tenants with written notice clearly stating that:
  1. Smoking is prohibited in units, including any associated private balcony, porch, deck, or patio, as of January 1, 2025; and
  2. Smoking is prohibited in all common areas and outdoor areas except for specifically designated smoking areas, as of January 1, 2025.
- C. As of January 1, 2025, the person or persons with legal control over common areas shall post and maintain clear and unambiguous "No Smoking" signs at entrances and exits, in common areas, and in conspicuous places adjoining the property grounds. In addition, as of January 1, 2025, the person or persons with legal control over the multiunit residence shall post and maintain signs in sufficient numbers and locations in the multiunit residence to indicate that smoking is prohibited in all units. The absence of signs shall not be a defense to a violation of any provision of this chapter. "No Smoking" signs are not required inside or on doorways of units.

- D. Landlords with knowledge of violations shall take reasonable steps to investigate and enforce the regulations, including a written notice to the resident of the landlord's knowledge of the violation, a request to cease the violation, and the course of action to be taken if the violation is not corrected. The landlord shall also provide resources provided for free by the city to assist with nicotine dependence, such as referrals to a quitline or online resources.

**6.15.060 Requirements for common interest developments.**

The following requirements apply to common interest developments:

- A. On or before January 1, 2025, the HOA shall provide to all owners of units a copy of this chapter and written notice clearly stating that:
1. Smoking is prohibited in units, including any associated private balcony, porch, deck, or patio, as of January 1, 2025; and
  2. Smoking is prohibited in all common areas, except for specifically designated smoking areas, as of January 1, 2025.
- B. As of January 1, 2025, every seller of a unit shall provide prospective buyers or renters, a copy of this chapter and written notice clearly stating that:
1. Smoking is prohibited in units, including any associated private balcony, porch, deck, or patio, as of January 1, 2025; and
  2. Smoking is prohibited in all common areas, except for specifically designated smoking areas, as of January 1, 2025.
- C. Every covenant, condition and restriction (CC&R) applicable to a multiunit residence adopted or amended after January 1, 2025, shall include the conditions set forth below:
1. A clause providing that it is a material breach of the CC&Rs to allow or engage in smoking in the new unit, including exclusive-use areas, such as balconies, porches, or patios;
  2. A clause providing that it is a material breach of the CC&Rs for an occupant or any other person subject to the control of the occupant to engage in smoking in any common area of the multiunit residence other than a designated smoking area;
  3. A clause providing that it is a material breach of the CC&Rs for an occupant or any other person subject to the control of the occupant to violate any law regulating smoking while anywhere on the property; and
  4. A clause expressly conveying third-party beneficiary status to all occupants of the multi-unit residence as to the smoking provisions of the CC&Rs.
- D. As of January 1, 2025, the HOA, or any person having legal ownership or control over common areas, shall post and maintain clear and unambiguous "No Smoking" signs in sufficient numbers and locations in the common interest development to make it obvious to a reasonable person that smoking is prohibited throughout the common interest development. The absence of signs shall not be a defense to a violation of any provision of this chapter.
- E. HOAs with knowledge of violations shall take reasonable steps to investigate and enforce the regulations, including a written notice to the resident of the HOA's knowledge of the violation, a request to cease the violation, and the course of action to be taken if the violation is not corrected. The HOA shall also distribute resources provided for free by the city to assist with nicotine dependence, such as referrals to a quitline or online resources.

**6.15.070 Nuisance.**

- A. Any violation of this chapter is a public nuisance.
- B. Nonconsensual exposure to smoke from smoking occurring on or drifting into residential property is a nuisance.

**6.15.080 Private enforcement.**

- A. Any person, including a legal entity, organization, or a government agency, acting for the interests of itself, its members, or the general public, may bring a civil action against any person violating the provisions of this chapter. Upon proof of a violation, a court shall award the following:
1. Damages in the amount of either:
    - a. Upon proof, actual damages; or
    - b. With insufficient or no proof of actual damages, \$500 for each violation of this chapter ("Statutory Damages"). Each day of a continuing violation is a separate violation. Notwithstanding any other provision of this chapter, no person suing on behalf of the general public shall recover Statutory Damages based upon a violation of this chapter if a previous claim brought on behalf of the general public by another person for Statutory Damages and based upon the same violation has been adjudicated, whether or not the person bringing the subsequent claim was a party to the prior adjudication.
  2. Exemplary damages, where it is proven by clear and convincing evidence that the defendant (i.e., person violating this chapter) is guilty of oppression, fraud, malice, retaliation, or conscious disregard for the public health.
- B. The person may also bring a civil action to enforce this chapter by way of a conditional judgment or an injunction. Upon proof of a violation, the court shall issue a conditional judgment or an injunction.
- C. Notwithstanding any legal or equitable bar against a person seeking relief on their own behalf, a person may bring an action to enforce this chapter solely on behalf of the general public. When a person brings an action solely on behalf of the general public, nothing about such an action shall act to preclude or bar the person from bringing a subsequent action based upon the same facts but seeking relief on their own behalf
- D. Nothing in this chapter shall prohibit a person from bringing a civil action in small claims court to enforce this chapter, so long as the amount in demand and the type of relief sought are within the jurisdiction of that court.
- E. No person may bring an action pursuant to this section unless that person has first made a good faith attempt to resolve the situation informally with the offending party, including written notice of this section to the offending party and a written request to cease smoking in the multiunit residence at least 30 days before filing suit.
- F. No person shall intimidate, harass, or otherwise retaliate against any person who seeks compliance with this chapter.

**6.15.090 Limitations and exceptions.**

Nothing in this chapter shall limit or preclude the enforcement of any other applicable laws or limit the remedies available for violations of this chapter, including the enforcement provisions of Chapter 1.10 of this code. Nothing in this chapter shall create a right of action in any person against the city or its agents to compel public enforcement of this chapter against private parties.

**6.15.100 Rules of construction.**

The provisions of this chapter shall be liberally construed to protect the public health to the maximum extent possible. Notwithstanding (1) any provision of this chapter or of this code, (2) any failure by any person to restrict smoking under this chapter, or (3) any explicit or implicit provision of this code that allows smoking in any place, nothing in this code shall be interpreted to limit any person's legal rights under other laws with regard to smoking, including rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.

**6.15.110 Severability.**

If any portion of this chapter, or its application to particular persons or circumstances, is held to be invalid or unconstitutional by a final decision of a court of competent jurisdiction, the decision will not affect the validity of the remaining portions of this chapter or the application of this chapter to persons or circumstances not similarly situated.

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