

ORDINANCE NO. 1543

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CARLOS
AMENDING SAN CARLOS MUNICIPAL CODE, TITLE 8 – HEALTH AND SAFETY; ADDING
CHAPTER 8.03, REGULATION OF SMOKING IN MULTI-UNIT HOUSING.**

SECTION 1. Findings. The City Council of the City of San Carlos hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year; and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth; and
- Some of the most common types of cancers, including stomach, liver, uterine cervix, and kidney cancers, are related to tobacco use; and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke; and
- The California Air Resources Board placed 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
- The California Environmental Protection Agency 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

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 73,000 deaths among nonsmokers each year in the United States; and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent; and

- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year; and exacerbates childhood asthma; and

WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed; and

WHEREAS, tobacco use and exposure to secondhand smoke impose great economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is \$193 billion; and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately \$96 billion; and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10 billion per year in the United States in 2005; and
- The total annual cost of smoking in California was estimated at \$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; and
- California's Tobacco Control Program saved the state and its residents \$86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly; and

WHEREAS, smoking is the primary cause of fire-related injuries and deaths in the home, as evidenced by the following:

- Cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States, causing an estimated 142,900 smoking-related fires, 780 deaths, 1,600 injuries, and \$606 million in direct property damage in 2006; and
- One in four fatalities from home fires caused by smoking is NOT the smoker whose cigarette started the fire, and 25% of those deaths were of neighbors or friends of the smoker; and
- Smoking in a residence where long-term oxygen therapy takes place is very dangerous as oxygen is a fire accelerant, and 27% of fatalities due to smoking during long-term oxygen therapy occurred in multifamily dwellings; and
- The United States Fire Administration recommends that people smoke outdoors; and

WHEREAS, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

- Secondhand smoke can seep under doorways and through wall cracks; and
- Persons living in apartments near smokers can be exposed to elevated pollution levels for 24 hours a day, and at times, the particulate matter exposure can exceed the U.S. Environmental Protection Agency's 24-Hour Health Based Standard; and
- The Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure; and

WHEREAS, most Californians do not smoke and a majority favor limitations on smoking in multi-unit residences, as evidenced by the following:

- Nearly 87% of Californians and 91% of California women are nonsmokers; and
- 74% of Californians surveyed approve of apartment complexes requiring at least half of rental units be nonsmoking; and
- 69% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings and 78% support laws that create nonsmoking units; and
- 62% of California renters feel that there is a need for laws to limit smoking in apartments; and
- In 2013, Breathe California, Youth Leadership Institute and the Sunset Tobacco Education Project conducted a survey with over 400 people in San Mateo County that showed that 100% of tenants believe secondhand smoke is harmful and 95% would be bothered by the smell of tobacco in their apartments. Residents throughout San Mateo County were overwhelmingly (75-79%) in support of smoke-free multi-unit housing policies.
- A Shape San Carlos online town hall forum was open for 5.5 weeks and received 153 responses, 78 of which were registered residents. The survey was advertised on the City website, across social media and Nextdoor and forwarded to the Shape San Carlos subscriber list. Results showed that: 21.8% of respondents live in multi-unit housing and 88.5% support a ban on smoking in multi-unit housing. 89.7% of responses support a ban on smoking near building entrances and exits at the following distances: 25.7% 20-50 feet; 18.9% 50-75 feet; 35.1% 75-100 feet; with 20.3% unsure. Participants also shared their concerns about smoking in multi-family housing in San Carlos.

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by California law; and

WHEREAS, there is no Constitutional right to smoke; and

WHEREAS, California law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke; and

WHEREAS, California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance; and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance.

WHEREAS, this Chapter is adopted (1) to protect the public health, safety, and welfare of lawful occupants of multi-unit residences by discouraging the inherently dangerous behavior of smoking around non-smokers; (2) to decrease the nonconsensual exposure of secondhand smoke to the public in and around their homes; (3) to protect children from inhaling secondhand smoke and from choking or ingesting butts or other toxic tobacco litter where children live and play; and (4) to strike a reasonable balance between the need of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air has priority.

WHEREAS, this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, as it is not a "project" as it has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (14 Cal. Code Regs. § 15378(a)). Further, the ordinance is exempt from CEQA as there is no possibility that the ordinance or its implementation would have a significant effect on the environment. (14 Cal. Code Regs. § 15061(b)(3)). The ordinance is also categorically exempt because it is an action taken by a regulatory agency to assume the maintenance, restoration, enhancement or protection of the environment. (14 Cal. Code Regs. § 15308). The Director of Community Development shall cause a Notice of Exemption to be filed as authorized by CEQA and the CEQA guidelines.

SECTION 2. A new Chapter 8.03 is hereby added to Title 8 of the San Carlos Municipal Code to be numbered and entitled and to read as follows:

CHAPTER 8.03 REGULATION OF SMOKING IN AND AROUND MULTI-UNIT RESIDENCES.

8.03.010 Application of Chapter; Declaration of Nuisance.

- (a) The provisions of this Chapter shall apply to all multi-unit residences in the City of San Carlos and to multi-unit residences.

- (b) Smoke produced in violation of this Code or state law is a nuisance, and the uninvited presence of such smoke on property is a nuisance and a trespass.

8.03.020 Definitions.

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

- (a) *Common area* means every enclosed area or unenclosed area of a multi-unit residence accessible and usable by residents of different units including, but not limited to, halls and paths, lobbies, courtyards, elevators and stairs, community rooms, playground areas, gym facilities, swimming pool areas, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.
- (b) *Common interest development* means a development as defined in California Civil Code Section 4100 et seq. or successor statute, as said provisions may be amended or succeeded, which includes a “condominium project,” a “community apartment project,” a “stock cooperative,” and a “planned development” and also includes a townhouse.
- (c) *Enclosed area* means:
 - 1) Any full or partially covered area having more than fifty percent (50%) of its perimeter walled or otherwise closed to the outside with appropriate openings for ingress or egress ventilation, or
 - 2) Any space open to the sky having more than seventy-five (75%) of its perimeter walled in or otherwise closed to the outdoors.
- (d) *Existing unit* means any unit that is not a new unit, including any associated exclusive use enclosed or unenclosed areas.
- (e) *Landlord* means any person who owns property let for residential use, any person who lets residential property, and any person who manages such property, except that “landlord” does not include a master tenant who sublets a unit as long as the master tenant sublets only a single unit of a multi-unit residence.
- (f) *Multi-unit residence* or *multi-family dwelling* means residential property containing two or more units with one or more shared or abutting walls, floors, ceilings or shared ventilation systems including, but not limited to, a common interest development, condominium, townhouse, duplex, triplex, and apartment or other rental complex. A multi-unit residence does not include property owned by the state or federal government or the following specifically excluded types of housing:
 - 1) A hotel or motel that meets the requirements set forth in California Civil Code section 1940 (b)(2);

- 2) A residential care facility or assisted living facility governed by federal or state community care licensing regulations;
 - 3) A detached, single-family residence; and/or
 - 4) A detached, single-family home with a detached or attached in-law or second unit when permitted pursuant to Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the County adopted pursuant to those sections.
- (g) *New unit* means a unit that is issued a certificate of occupancy more than 180 days after the effective date of this ordinance and also means a unit that is let for residential use for the first time more than 180 days after the effective date of this ordinance.
- (h) *Nonsmoking area* means any enclosed area or unenclosed area of a multi-unit residence in which smoking is prohibited by: (1) this Chapter or other law; (2) by binding agreement relating to the ownership, occupancy, or use of real property; or (3) by designation of a person with legal control over the area.
- (i) *Person* means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.
- (j) *Rental complex* means a property for which 50 percent or more of units are let by or on behalf of the same landlord.
- (k) *Smoke* (noun) means any vapors, gases, particles or other by-products released as a result of combustion or electrical ignition, when the apparent or usual purpose of the combustion or electrical ignition is human inhalation of the byproducts, except when the combusting or igniting material both contains no tobacco or nicotine and the usual purpose of inhalation is solely olfactory such as with the burning of incense. *Smoke* does not include combustion of substances regulated by the U.S. Food & Drug Administration and used for medical or therapeutic purposes. *Smoke* specifically includes but is not limited to gases, particles, vapors or other by-products released by electronic cigarettes, tobacco cigarettes, herbal cigarettes, marijuana cigarettes and any other type of cigarette, pipe or other implement for the purpose of inhalation of vapors, gases, particles or other by-products released as a result of combustion or ignition.
- (l) *Smoking* or to *smoke* (verb) means possessing a lighted or ignited tobacco or nicotine product or paraphernalia; or engaging in an act that generates smoke (including, but not limited to, possessing a lighted or ignited pipe, hookah pipe, cigar, or cigarette of any kind including but not limited to an electronic cigarette); or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind including but not limited to an electronic cigarette.
- (m) "*Tobacco or Nicotine Product*" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing

tobacco, dipping tobacco, or any other preparation of tobacco; and any electronic cigarette or other electronic device used to generate smoke; and 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, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

- (n) *Unenclosed area* means any area that is not an enclosed area. Unenclosed areas include balconies, porches, decks and patios.
- (o) *Unit* means a personal dwelling space for one or more persons, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area, such as, for example, a private balcony, porch, deck, or patio.

8.03.030 Smoking Prohibited in Common Areas Except Designated Smoking Areas.

- (a) Smoking is prohibited in all units and in any unenclosed and enclosed common area or any other area, of a multi-family dwelling or multi-unit residence, and within thirty feet (30) of any operable doorway, window, opening, or ventilation system, except that a person with legal control over a common area, or authorized representative of such person, may designate a portion of the common area as a designated smoking area provided that at all times the designated smoking area complies with subsection (b) below.
- (b) A designated smoking area:
 - 1) Shall be an unenclosed and clearly delineated area, as described in this subsection (b).
 - 2) Shall be located at least 30 feet in any direction from any operable doorway, window, opening or other vent into an enclosed area that is located at a multiunit residence and is a nonsmoking area;
 - 3) Shall have a clearly marked perimeter and be identified by conspicuous signs;
 - 4) Shall have receptacles designed for and primarily used for disposal of tobacco waste and shall be maintained free of tobacco related litter including but not limited to cigarette butts;
 - 5) Shall not include, and shall be at least 30 feet from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including playgrounds, swimming pools, and school campuses.
- (c) No person with legal control over a common or other area in which smoking is prohibited by this Chapter or other law shall knowingly permit the presence of ash trays, ash cans,

or other receptacles designed for or primarily used for disposal of smoking waste within the area. Such person with legal control over a common or other area in which smoking is prohibited by this Chapter or other law shall maintain such area free of tobacco litter or waste.

8.03.040 Smoking Prohibited in New and Existing Units of Multi-Unit Residences.

- (a) Smoking is prohibited and no person shall smoke in any new unit or common area of a multi-unit residence, except in a designated smoking area as provided herein.
- (b) Beginning 14 months after the effective date of this ordinance, smoking is prohibited and no person shall smoke in any existing unit or common area of a multi-unit residence, except in a designated smoking area as provided herein.

8.03.050 Additional Smoking-Related Prohibitions.

- (a) No person shall smoke in any nonsmoking area.
- (b) No person with legal control over any nonsmoking area, or authorized representative of such person, shall knowingly permit smoking in any nonsmoking area which is under the person's control. The person with legal control of the nonsmoking areas, or authorized representative of such person, shall keep the area free of any tobacco litter or waste.
- (c) No person shall intimidate or harass any person who seeks compliance with this Chapter. Moreover, no person shall intentionally or recklessly expose another person to smoke in response to that person's effort to achieve compliance with this Chapter. Violation of this subsection shall constitute a misdemeanor.
- (d) Causing, permitting, aiding, or abetting a violation of any provision of this Chapter shall also constitute a violation of this Chapter.

8.03.060 Required Signage.

"No smoking" signs or the international "no smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted on the outside of each enclosed building or unenclosed area where smoking is prohibited by this Chapter or other law, but are not required inside any unit of a multi-unit residence. Such signs shall be maintained by the person or persons with legal control over the common areas or the authorized representatives of such person. The absence of signs shall not be a defense to a violation of any provision of this Chapter.

8.03.070 Required and Implied Lease Terms for All New and Existing Units in Multi-Unit Residences.

- (a) Every lease or other rental agreement for the occupancy of a new unit or existing unit in a multi-unit residence entered into, renewed, or continued month-to-month after the effective date of this ordinance shall include the following:
- 1) A clause providing in substance that it is a material breach of the 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 (i) smoke in any common area of the property other than a designated smoking area, (ii) smoke in a new unit, (iii) smoke in an existing unit 14 months or more after the effective date of this ordinance, or (iv) violate any law regulating smoking anywhere on the property.
 - 2) A clear description of all areas on the property where smoking is allowed or prohibited.
 - 3) A clause expressly conveying third-party beneficiary status to all tenants and lawful occupants of the multi-unit residence as to the smoking provisions of the agreement.
- (b) Whether or not a landlord complies with subsection (a) above, the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection (a) applies and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection (a).
- (c) This Chapter shall not create liability in a landlord or property manager to any person for a tenant's breach of any smoking provision in a lease or other rental agreement for the occupancy of a unit in a multi-unit residence if the landlord has fully complied with subsection (a) of this section.
- (d) Failure to enforce any smoking provision required by this Chapter shall not affect the right to enforce such 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.

8.03.080 Medical Marijuana.

As stated in California Health and Safety Code section 11362.3 no person is permitted to smoke cannabis or cannabis products in a location where smoking tobacco is prohibited. Smoking or vaporizing of marijuana is not permitted in any Unit of a Multi-Unit Residence by this chapter. Such use of cannabis may be prohibited or regulated by other provisions of this Code, state law, or federal law.

8.03.090 Penalties and Enforcement.

- (a) Infractions. Any person who violates any provision of this Chapter shall be guilty of an infraction, punishable as follows:
- 1) A fine not exceeding \$100.00 for a first violation.
 - 2) A fine not exceeding \$200.00 for a second violation.

- 3) A fine not exceeding \$500.00 for each additional violation within one year.
- (b) Misdemeanors. Any person who violates any provision of this Chapter in excess of three times within one year, shall be guilty of a misdemeanor
- (c) Each day that a violation of this Chapter continues shall constitute a separate violation of this Chapter.
- (d) Enforcement of this Chapter shall be the responsibility of the Chief Building Official and his or her designees. In addition, any peace officer may also enforce this Chapter.
- (e) The remedies provided for by this Chapter are not intended to preclude or in otherwise limit any other remedy available by law or equity.

8.03.110 Interpretation.

- (a) The provisions of this Chapter are restrictive only. This Chapter establishes no new rights for a person who engages in smoking and shall in no way limit the application of Chapter 8.06 of Title 8 of this Code. Notwithstanding (i) any provision of this Chapter or other provisions of this Code, (ii) any failure by any person to restrict smoking under this Chapter, or (iii) 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, for example, rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles. This Chapter is intended and shall be interpreted to be consistent with and at least as stringent as any state statute prohibiting smoking in any unit, common area or other area of a new or existing multi-family dwelling, or any other place.
- (b) If any provision of this Chapter or the application thereof is held to be preempted, unconstitutional or otherwise invalid by a court of competent jurisdiction, such ruling shall not affect any other provision of this Chapter which is not specifically included in such ruling or which can be given effect without the preempted, unconstitutional, or invalid provision or application; and to this end, the provisions of this Chapter are declared severable.

SECTION 3: Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of San Carlos hereby declares that it would have adopted this ordinance and such section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

SECTION 4: Effective. Pursuant to Section 36937 of the Government Code of the State of California, this ordinance shall take effect and be in full force and effect thirty (30) days after its final passage.

SECTION 5: Publication. The City Clerk shall cause this ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

Introduced the 25th day of March, 2019. Passed and adopted as an Ordinance of the City Council of the City of San Carlos at a regular meeting thereof held on the 8th day of April, 2019 by the following vote:

AYES, COUNCILMEMBERS: COLLINS, MCDOWELL, PARMER-LOHAN, RAK, OLBERT

NOES, COUNCILMEMBERS: NONE

ABSENT, COUNCILMEMBERS: NONE


CITY CLERK of the City of San Carlos

APPROVED:


MAYOR of the City of San Carlos