

**AN ORDINANCE OF THE COUNTY OF YOLO PROHIBITING
SMOKING IN AND AROUND MULTIUNIT RESIDENCES AND
AMENDING THE [_____] MUNICIPAL CODE**

Sec. 1. DEFINITIONS. For the purposes of this [**article/chapter**] the following definitions shall govern unless the context clearly requires otherwise:

(A) “Common Area” means every area of a multiunit residence that residents of more than one unit are entitled to enter or use, including, but not limited to, 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.

(B) “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.

(C) “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, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

(D) “Home owners’ 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.

(E) “Landlord” means any person or agent of a person who owns, manages, or is otherwise

legally responsible for a unit in a multiunit residence that is leased to a residential tenant. For purposes of this ordinance, a tenant who sublets their unit (e.g., a sublessor) is not a landlord.

(F) “Multiunit Residence” means property containing two or more units, including, but not limited to, apartment buildings, common interest developments, senior and assisted living facilities, and long-term health care facilities. 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 marina or port;
5. a single-family home, except if used as a health care facility subject to licensing requirements; and
6. a single-family home with an accessory dwelling unit or second unit permitted pursuant to California Government Code sections 65852.1, 65852.2, or 65852.22 or an ordinance of the [city/county] adopted pursuant to those sections, except where the accessory dwelling unit or second unit is rented or is used as a health care facility subject to licensing requirements.]

(G) “Nonsmoking Area” means any area in which smoking is prohibited by

- (1) this [article/chapter] or other law;
- (2) binding agreement relating to the ownership, occupancy, or use of real property; or
- (3) a person with legal control over the area.

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

(I) “Smoking” means: inhaling, exhaling, or burning, any tobacco, nicotine, cannabis, or plant product, whether natural or synthetic; carrying any lighted, heated, or activated tobacco, nicotine, marijuana, or plant product, whether natural or synthetic, intended for inhalation; or using an “electronic smoking device.”

(J) “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 second unit.

Sec.2. SMOKING RESTRICTIONS

- (A) Effective (90 days,6 months,12 months, 18 months) from [effective date], smoking is prohibited anywhere on the premises of a multiunit residence, including units, common areas, and other outdoor areas.
- (B) No person with legal control over any multiunit residence shall permit smoking anywhere on the premises of the multiunit residence.
- (C) No person with legal control over a common area in which smoking is prohibited by this [article/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.

Sec. 3. REQUIRED AND IMPLIED LEASE TERMS FOR ALL NEW AND EXISTING UNITS IN MULTIUNIT RESIDENCES.

(A) After [effective date], 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 be amended to include the following provisions:

- (1) A clause providing that as of [effective date + 90 days], it is a material breach of the agreement to smoke or allow smoking:
 - (a) in the unit, including exclusive-use areas such as balconies, porches, or patios; and
 - (b) in any common area of the multiunit residence [other than a designated smoking area].
- (2) 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.
- (3) A clause expressly conveying third-party beneficiary status to all occupants of the A multiunit residence as to the smoking provisions of the lease or other rental agreement.

(B) Whether or not a landlord complies with subsection (A) above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which subsection (A) applies as of [effective date + 90 days].

(C) A tenant who breaches, or allows any other person subject to the control of the tenant 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; and (2) any occupant of the multiunit residence who is exposed to smoke or who suffers damages as a result of the breach.

(D) Failure to enforce any smoking provision required by this [article/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.

Sec. 4. NOTICE AND SIGNAGE REQUIREMENTS.

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

- (A) On or before [effective date + 90 days], every landlord shall deliver to each unit a copy of this [article/chapter] and a written notice clearly stating:
- (1) All units are designated nonsmoking units and smoking is prohibited in a unit, including any associated private balcony, porch, deck, or patio, as of [effective date +90 days]; and
 - (2) Smoking in all common areas or outdoor areas [, except for specifically designated smoking areas,] is a violation of [this article/chapter] as of [effective date + 90 days].
- (B) As of [effective date], every landlord shall provide prospective tenants with written notice clearly stating that:
- Smoking is prohibited in units, including any associated private balcony, porch, deck, or patio, as of [effective date + 90 days]; and
- Smoking is prohibited in all common areas and outdoor areas [, except for specifically designated smoking areas,] as of [effective date + 90 days].
- (C) As of [effective date + 90 days], 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 [effective date + 90 days], 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 [article/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 distribute resources provided for free by the Yolo County Tobacco Prevention Program to assist with cessation resources.

~~Sec.5. REQUIREMENTS FOR COMMON INTEREST DEVELOPMENTS.~~

~~The following requirements apply to common interest developments:~~

- ~~(A) On or before [effective date + 90 days], the HOA shall provide to all owners of units a copy of this [article/chapter] and written notice clearly stating that:~~

- ~~(1) Smoking is prohibited in units, including any associated private balcony, porch, deck, or patio, as of [effective date + 90 days]; and~~
- ~~(2) Smoking is prohibited in all common areas and outdoor areas [, except for specifically designated smoking areas,] as of [effective date + 90 days].~~
- ~~(B) As of [effective date] every seller of a unit shall provide prospective buyers or renters, a copy of this [article/chapter] and written notice clearly stating that:~~

- ~~(1) Smoking is prohibited in units, including any associated private balcony, porch, deck, or patio, as of [effective date + 90 days]; and~~
- ~~(2) Smoking is prohibited in all common areas and outdoor areas [, except for specifically designated smoking areas,] as of [effective date + 90 days].~~
- ~~(C) As of [effective date + 90 days], 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.~~
- ~~(D) 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 Yolo County Tobacco Prevention Program to assist with cessation resources.~~

Sec. 6. NUISANCE; OTHER

- (A) The provisions of this [article/chapter] shall be liberally construed to protect the public health to the maximum effect possible. Notwithstanding (1) any provision of **this [article/ chapter]** or of this code, (2) any failure by any person to restrict smoking under this [article/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.
- (B) Any violation of this [article/chapter] is hereby declared to be a public nuisance.
- (C) Nonconsensual exposure to smoke from smoking occurring on or drifting into residential property is a nuisance.

Sec. 7. PENALTIES AND ENFORCEMENT.

- (A) Enforcement of this Chapter shall be implemented by the [Insert Appropriate Governing body here (i.e. County Administrator, Public Health Official, etc.)], or his or her designee.
- (B) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the [Insert Appropriate Governing body here (i.e. County Administrator, Public Health Official, etc.)] or his or her designees.
- (C) Any owner, manager, operator or employee of any establishment regulated by this Chapter shall have the right to inform persons violating this Chapter of the appropriate provisions thereof.
- (D) Notwithstanding any other provision of this Chapter, a private citizen may bring legal action to enforce this Chapter.
- (E) Notwithstanding any other provision of this Chapter, enforcement for violations by multi-housing residents shall be governed by this section.
- (F) No person shall intimidate, harass, or otherwise retaliate against any person who seeks compliance with this [article/chapter]. Any person in violation of this subsection is subject to a civil fine not less than [two hundred fifty dollars (\$250)] and not exceeding [one thousand dollars (\$1,000)] per violation.
- (G) Any person who desires to register a complaint under this section may initiate enforcement with the [Insert Appropriate Governing body here (i.e. County Administrator, Public Health Official, etc.)]
- (H) Upon a finding that a Person has violated any provision of this Chapter, the enforcement officer designated by the Department shall give written notice of the violation to the Person in possession of the Unit; or to an owner, Landlord, or homeowners' association for a violation of Sections [article/chapter],]. Such notice shall be provided in person or by pre-paid certified mail, return receipt requested and shall include a copy of this Chapter and a statement describing the section(s) found to be violated.
- (I) The enforcement officer designated by the Department may impose the following administrative penalties, which penalties may be assessed at the time of the notice of violation:
 - (1) The department shall not impose administrative penalties upon a person unless the [Insert Appropriate Governing body here (i.e. County Administrator, Public Health Official, etc.)] has issued at least three written warnings to the person and given resources to cessation services.
 - (2) A \$100 fine upon finding the first violation within any three-year period.
 - (3) A \$200 fine upon finding a second violation within any three-year period
 - (4) A \$500 fine upon finding a third or subsequent violation within any three-year period.
- (J) In addition to other remedies provided by this [article/chapter] or otherwise available at law or in equity, any violation of this [article/chapter] may be remedied by a civil action brought by the [city attorney/county counsel], including, without limitation, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.