

## **ORDINANCE NO. NS-625.6**

### **AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ADDING CHAPTER VIII TO DIVISION B13 OF THE COUNTY OF SANTA CLARA ORDINANCE CODE RELATING TO SMOKING POLLUTION CONTROL IN MULTI-UNIT RESIDENCES**

#### **Summary**

This ordinance adds Chapter VIII to Division B13 of the County of Santa Clara Ordinance Code to reduce exposure to secondhand smoke in multi-unit residences by (1) prohibiting smoking in common areas (except designated smoking areas), all units within multi-unit residences, and within 30 feet of any enclosed, nonsmoking area of a multi-unit residence, and (2) requiring certain lease terms for future lease agreements.

#### **THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ORDAINS AS FOLLOWS:**

Division B13 of the County of Santa Clara Ordinance Code is amended by adding a new Chapter to be numbered and titled and to read as follows:

#### **CHAPTER VIII. SMOKING POLLUTION CONTROL IN MULTI-UNIT RESIDENCES**

##### **Section B13-105. Findings and intent.**

The findings of Section B13-79 of Chapter V of Division B13 in Title B of this Code are adopted by reference and made a part of this chapter. In addition, the Board of Supervisors of the County of Santa Clara also finds the following:

(a) Smoking is the primary cause of fire-related injuries and deaths in the home, as evidenced by the following:

(1) Cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States and produced an estimated 140,700 smoking-related fires, 720 deaths, 1,580 injuries, and \$530 million in direct property damage in 2007.

(2) One in four fatalities from home fires caused by smoking is NOT the smoker whose cigarette started the fire; smokers' neighbors and friends account for 25 percent of all fire deaths (not including the fire deaths of the smokers responsible for starting the fires) caused by smoking.

(3) Smoking at a residence where long-term oxygen therapy takes place is very dangerous as oxygen is a fire accelerant. In a study of fatalities resulting from residential fires caused by smoking during long-term oxygen therapy, 27 percent of the fatalities occurred in multifamily dwellings.

(4) The United States Fire Administration recommends that people smoke outdoors.

(b) Nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

(1) Secondhand smoke can seep under doorways and through wall cracks, open windows, open doorways and heating, ventilation and air conditioning systems.

(2) The U.S. 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.

(c) Most Californians do not smoke and a majority favor limitations on smoking in multi-unit residences, as evidenced by the following:

(1) In 2008, approximately 87 percent of Californians and 91 percent of California women were nonsmokers.

(2) Seventy-four percent of Californian voters surveyed in 2008 approved of apartment complexes requiring that half of rental units be nonsmoking.

(3) Sixty-nine percent of California voters surveyed in 2008 favored limiting smoking in outdoor common areas of apartment buildings, and 78 percent supported laws that create nonsmoking sections in apartment buildings, where all the apartments, balconies and patios in that section would be smoke-free.

(4) Sixty-two percent of California renters surveyed in 2004 felt that there was a need for laws to limit smoking in apartment buildings.

(d) 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.

(e) There is no constitutional right to smoke.

This chapter is adopted (1) to protect the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users; by protecting children from exposure to smoking where they live and play; and by protecting the public from nonconsensual exposure to secondhand smoke in and around their homes and (2) 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, where these needs conflict, the need to breathe smoke-free air has priority.

#### **Section B13-106. 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 that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, but not limited to, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pool areas, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

(b) "Common Interest Complex" means a "condominium project," a "community apartment project," a "stock cooperative," or a "planned development," as such terms are defined by Civil Code Section 1351.

(c) "Enclosed Area" means any area that is "enclosed," as such term is as defined in Section B13-81(e) of Division B13 of this Code.

(d) "Existing Unit" means any Unit that is not a New Unit.

(e) "Hotel" is as defined in Section B13-81(f) of Division B13 of this Code.

(f) "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.

(g) "Multi-Unit Residence" means a Common Interest Complex or Rental Complex that is located within the unincorporated area of the County and contains two or more Units. 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;

(2) a mobile home park;

(3) a marina or port;

(4) a detached, single-family home; and

(5) 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.

(h) "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.

(i) "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.

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

(k) "Rental Complex" means a property for which 50 percent or more of Units are let by or on behalf of the same Landlord.

(l) "Smoke" is as defined in Section B13-81(j) of Division B13 of this Code.

(m) "Smoking" is as defined in Section B13-81(l) of Division B13 of this Code.

(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, 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. "Unit" includes without limitation: an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel 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; a room in a single-family home; and an in-law or second unit. Unit includes a New Unit.

**Section B13-107. Smoking Prohibited in Common Areas Except Designated Smoking Areas.**

(a) Smoking is prohibited in all Common Areas, except that a Person with legal control over a Common Area, such as a Landlord or homeowners' association, 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 Area;

(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 Multi-Unit Residence and is a Nonsmoking Area;

(3) Shall have a clearly marked perimeter; and

(4) Shall be identified by conspicuous signs.

(c) The Smoking prohibition in subsection (a) shall not apply to a Person who is Smoking in an Unenclosed Area while actively traveling on the way to another destination.

(d) No Person with legal control over a Common 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.

**Section B13-108. Smoking Prohibited in New and Existing Units of Multi-Unit Residences.**

(a) Smoking is prohibited in any New Unit of a Multi-Unit Residence.

(b) Beginning 14 months after the effective date of this ordinance, Smoking is prohibited in any Existing Unit of a Multi-Unit Residence.

**Section B13-109. Additional Smoking-Related Prohibitions.**

(a) No Person shall engage in Smoking in any Nonsmoking Area.

(b) No Person with legal control over any Nonsmoking Area shall permit Smoking in any Nonsmoking Area.

(c) No Person shall intimidate, harass, or otherwise retaliate against 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.

#### **Section B13-110. 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 at every enclosed building and unenclosed area where smoking is prohibited by this chapter or other law. Such signs shall be maintained by the Person or Persons with legal control over the Common Areas. The absence of signs shall not be a defense to a violation of any provision of this chapter.

#### **Section B13-111. 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 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 fourteen 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 of the Multi-Unit Residence as to the Smoking provisions of the agreement. Such clause shall provide that any tenant of the Multi-Unit Residence may sue another tenant to enforce the Smoking provisions of the agreement but that no tenant shall have the right to evict another tenant for a breach of 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 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 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.

### **Section B13-112. Penalties and Enforcement.**

(a) **Infractions.** Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

(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 deemed guilty of a misdemeanor.

(c) Each day that a violation of this chapter continues shall constitute a separate violation of this chapter.

(d) The County Executive or designee is authorized to institute and pursue, in the name of the County, pursuant to the provisions of Government Code Section 25132, civil actions for the recovery of fines for violations of this chapter.

(e) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the County, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

**Section B13-113. Interpretation.**

The provisions of this chapter are restrictive only. This chapter establishes no new rights for a Person who engages in Smoking and shall not limit application of Chapter V of Division B13 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.


PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, this 9<sup>th</sup> day of November, 2010, by the following vote:

**AYES:** CORTESI, GAGE, KNISS, SHIRAKAWA, YEAGER

**NOES:** NONE

**ABSENT:** NONE

**ABSTAIN:** NONE

  
KEN YEAGER, President  
Board of Supervisors

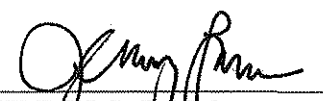
Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:



MARIA MARINIS  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

  
JENNY S. LAM  
Deputy County Counsel