

ORDINANCE NO. NS-224

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTE SERENO  
AMENDING CHAPTER 6.18 – SMOKING IN PUBLIC PLACES TO ENACT SMOKING  
RESTRICTIONS IN MULTI-FAMILY RESIDENCES**

**WHEREAS**, the City of Monte Sereno has existing restrictions on smoking codified in Monte Sereno Municipal Code Chapter 6.18, and

**WHEREAS**, the Surgeon General of the United States has documented that breathing secondhand smoke is a significant health hazard, particularly to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, and

**WHEREAS**, breathing secondhand smoke has been determined to be a health hazard by increasing the incidence of lung cancer, bronchitis, and respiratory infection while decreasing exercise tolerance and respiratory function, and

**WHEREAS**, secondhand smoke exposure causes as many as three hundred thousand children in the United States to suffer from lower respiratory tract infections, exacerbates childhood asthma, and increases the risk of acute chronic, middle ear infections, and

**WHEREAS**, non-smokers who suffer from allergies, respiratory diseases, or the negative effects of breathing secondhand smoke or aerosol emissions from electronic cigarettes may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions, and

**WHEREAS**, aerosol emissions from electronic cigarettes have been found to contain as least ten chemicals that are on California's list of chemicals known to cause cancer, birth defects, or other reproductive harm, including acetaldehyde benzene, cadmium, formaldehyde, isoprene, lead, nickel, nicotine, N-nitrosornicotine, and toluene, secondhand exposure to e-cigarette aerosol is a health concern, and people exposed to aerosol emissions from electronic cigarettes absorb nicotine, a substance that can cause cancer, birth defects, or reproductive harm, at levels comparable to secondhand smoke, and are also exposed to volatile organic compounds and other particulate matter that can lead to tissue inflammation, and

**WHEREAS**, persons, particularly employees and tenants in multi-unit buildings, have a right to a smoke free environment if they desire, and

**WHEREAS**, it is within the city's authority under its police power to implement and enforce the provisions of this chapter, and the City Council desires to extend prohibitions on smoking to apply to multi-unit residential complexes,

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTE SERENO DOES ORDAIN AS FOLLOWS:**

**SECTION 1. AMENDED.** Chapter 6.18 of the Monte Sereno Municipal Code is re-titled "Smoking Regulations" and amended to read in its entirety as follows:

"Chapter 6.18

SMOKING REGULATIONS

- 6.18.010 Findings and Purpose
- 6.18.020 Definitions
- 6.18.030 Prohibition of Smoking in Public Places
- 6.18.040 Posting Signs
- 6.18.050 Penalties

**Section 6.18.010 Findings and Purpose.**

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are minors, elderly people, pregnant women, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Additionally, studies have found a number of dangerous chemicals in electronic smoking devices emissions and cartridge contents. At least ten (10) chemicals listed as carcinogens and reproductive toxins have been identified in mainstream or secondhand electronic smoking device aerosol.

Health hazards induced by breathing secondhand smoke/e-cigarette vapor and being in smoking environments include lung cancer, heart disease, respiratory infection, decreased respiratory function, birth defects, bronchoconstriction, and bronchi-spasm.

Accordingly, the City Council finds and declares that the purposes of this Chapter are (1) to protect the public health and welfare by prohibiting smoking on public property and multiunit residences; and (2) to guarantee the right of nonsmokers to breathe smoke-free and non-toxic air, and to recognize that the need to breathe

smoke-free air shall have priority over the desire to smoke.

**Section 6.18.020 Definitions.**

For the purposes of this section, the following definitions shall apply:

- (a) "Common Area" means any Enclosed Area or Unenclosed Area of a Multiunit Residence that residents of more than one Unit of that Multiunit Residence 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) "Electronic smoking device means electronic and/or battery operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of vapors including nicotine or other substances, including cannabis. "Electronic smoking device" includes any such electronic smoking devices, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment or prevention of diseases.
- (c) "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that, regardless of whether it has vents or other openings, has either:
  - (1) any type of overhead cover, and at least three (3) walls or other vertical constraints to airflow; or
  - (2) four (4) walls or other vertical constraints to airflow.
- (d) "Multiunit Residence" means property containing two (2) or more Units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multiunit Residences do not include a single-family home, whether it includes an attached or detached accessory dwelling unit or junior accessory dwelling unit, except such property is used as a health care facility subject to licensing requirements under state law.
- (e) "Public property" means any property owned, leased, or operated by the City of Monte Sereno.
- (f) "Smoking" means and includes (1) the act of inhaling/exhaling, burning or carrying any lighted tobacco product or by-product including cigarettes, cigars, pipes that burn tobacco or any other plant material, including

cannabis; or (2) Operating using an electronic smoking device or any other cannabis or nicotine delivery product.

- (g) "Unenclosed Area" means any area that is not an Enclosed Area.
- (h) "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to 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 ("SRO") facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit.

#### **Section 6.18.030 Prohibition of Smoking**

(a) Smoking is prohibited in the following enclosed areas, except in such places in which smoking is already prohibited by state or federal law, in which case the state or federal law shall apply:

- (1) All public property; and
- (2) Multiunit residences, including common areas.

(b) Smoking is prohibited in the following unenclosed areas, except in such places in which smoking is already prohibited by state or federal law, in which case the state or federal law shall apply:

- (1) All public property; and
- (2) Common areas of multiunit residences, except that a person with legal control over a Multiunit Residence, such as a landlord or homeowners' association, may allow a portion of the common area to be designated as a smoking area by obtaining a permit from the City Manager or designee. The City Manager or designee shall only issue a permit for a designated smoking area if the area shall meet all of the following requirements:
  - (i) Must be located at least twenty-five feet from any enclosed area where smoking is prohibited; and
  - (ii) Must not include, and must be at least twenty-five feet from any unenclosed area primarily used by children including, but not limited to, areas improved or designated for play or swimming; and
  - (iii) Must have a clearly marked perimeter and be identified by conspicuous signs.
  - (iv) Must be at least twenty-five feet from the property line with any

property adjacent to the multiunit residence.

A permittee shall abide by the above requirements at all times, and a permit for a designated smoking area issued under this subsection shall be subject to revocation by the City Manager for violating the above requirements, upon notice to the permittee. The permittee shall have the right to request a hearing before the City Manager to contest the revocation by submission of a written request within 15 days of the mailing of notice. The decision of the City Manager to revoke a permit shall be the final decision of the City.

(c) Nothing in this chapter shall be interpreted to diminish the authority of any person with legal control over any property from further restricting or prohibiting smoking on any such part of such property, even if smoking is not otherwise prohibited by this chapter.

#### **Section 6.18.040 Posting Signs and Further Restrictions.**

No smoking signs shall be clearly and conspicuously posted in every building or other place where smoking is regulated by this section, by the owner, operator, manager or other person having control of such building or other place.

#### **Section 6.18.050 Penalties.**

(a) Any person, who violates this section by failing to post signs or failing to establish policies and procedures, is guilty of a violation of the City Municipal Code and subject to a civil penalty of one hundred dollars (\$100.00) and the cost of enforcing this section which shall include all costs, staff and attorney time. Such persons shall be deemed to have committed a separate offense for each and every day during any portion of which any violation of this section is committed or permitted.

(b) Any person who smokes where smoking is prohibited when signs are posted in the required manner is guilty of an infraction."

**SECTION 2. EFFECTIVE DATE.** This Ordinance shall take effect thirty (30) days after the date of its passage, and the City Clerk is directed to publish and/or post this ordinance in the manner required by law.

**SECTION 3. CEQA.** The City Council finds and determines that the enactment of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code section 21065 and Section 15061 of the CEQA Guidelines, under the "common sense" exemption and also because it is not a "project" subject to CEQA because there is no possibility that enactment of this ordinance may cause either

a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

**SECTION 4. SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such Ordinance and shall not affect the validity of the remaining portions thereof.

This Ordinance was introduced at a regular meeting of the City Council held this 18th day of August, 2020, and thereafter, was passed and adopted at a regular meeting of the City Council held this 1st day of September, 2020, by the following roll call vote:

AYES: Council Member Ellahie, LaBouve, Turner, Mayor Pro Tempore Leuthold and Mayor Lawler

NOES:

ABSENT:

DocuSigned by:  
By Liz Lawler  
32A371ED9A7643C...  
Liz Lawler, Mayor

ATTEST:

Gloisy Gonzalez-Langarica  
Gloisy Gonzalez-Langarica, Deputy City Clerk