

ORDINANCE NO. 1457

AN ORDINANCE OF THE CITY OF SIERRA MADRE,
CALIFORNIA AMENDING CHAPTER 8.06 (SMOKING) OF
TITLE 8 (HEALTH AND SAFETY) OF THE SIERRA MADRE
MUNICIPAL CODE PROHIBITING SMOKING IN MULTI-
UNIT RESIDENCES

RECITALS

WHEREAS, according to the United State Environmental Protection Agency and the Center for Disease Control and Prevention, there is no risk-free level of exposure to second-hand smoke;

WHEREAS, in 2016, the California Air Resources Board identified environmental tobacco smoke, also known as secondhand smoke, to be a Toxic Air Contaminant; and

WHEREAS, the City Council desires to protect the safety of its residents by preventing the harmful exposure to second-hand smoke by limiting smoking in multi-unit residences.

THEREFORE, THE CITY COUNCIL OF THE CITY OF SIERRA MADRE DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The Recitals above are true and correct and incorporated herein by this reference.

SECTION 2. Amendment. Section 8.06.010 (Prohibited Where) of Chapter 8.06 (Smoking) of Title 8 (Health and Safety) of the Sierra Madre Municipal Code is amended to read as follows, with additions denoted by underlined text and deletions denoted by ~~strike through text~~:

8.06.010 – Prohibited where.

- A. No person shall smoke in any part of the Sierra Madre City Hall, library, police and fire departments, recreation facilities and city corporate facilities, council chambers, foyers, reception areas, counter areas, hallways, open work areas, employee lounge or any enclosed city hall meeting room, or private offices.
- B. No person shall smoke in any part of any restaurant, bar, café, deli, or other public place where food or beverage, or both, is sold, served, or offered for sale, or in any outdoor dining areas or patios serving said establishments.
- C. ~~"Smoke" or "smoking" as used in this section means the inhaling, exhaling, burning or carrying of any lighted pipe, lighted cigar, lighted cigarette, lighted weed, lighted plant, electronic cigarette, vaping product, or other combustible substance in any manner or in any form.~~
- C. Effective October 1, 2023, no person shall smoke in any multi-unit common area. Effective April 1, 2024, upon the commencement of a new lease, rental agreement, or change in occupancy, no person shall smoke in any multi-unit common area or unit of a multi-unit residence. Effective October 1, 2024, no person shall smoke in any multi-unit common area or unit of a multi-unit residence.

SECTION 3. Addition. Section 8.06.020 (Definitions) is added to Chapter 8.06 (Smoking) of Title 8 (Health and Safety) of the Sierra Madre Municipal Code as follows:

8.06.020 – Definitions. The following words, phrases, and terms, as used in this chapter, shall be construed as defined in this section:

"Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

"Electronic cigarette" 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.

"Homeowners' association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

"Landlord" means any person or agent of a person who owns, manages, or is otherwise legally responsible for a unit in a multi-unit residence that is leased or rented to a residential tenant. For purposes of this ordinance, a tenant who sublets their unit is not a landlord.

"Multi-unit residence" means a premises that contains four (4) or more renter-occupied or owner-occupied units within a single structure.

"Multi-unit common area" means any indoor or outdoor area of a multi-unit residence accessible to and usable by residents of more than one (1) unit, including, but not limited to, halls and paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, playgrounds, swimming pools, and parking areas.

"Private enforcer" means any person who acts within his or her interest, or of the general public, to enforce the terms of this chapter subject to the provisions of this chapter. Notwithstanding any legal or equitable bar, a private enforcer may bring an action to enforce this chapter solely on behalf of the general public.

"Smoking" means:

- (a) inhaling, exhaling, or burning any tobacco, nicotine, cannabis, or plant product, whether natural or synthetic;
- (b) carrying any lighted, heated, or activated tobacco, nicotine, marijuana, or plant product, whether natural or synthetic, intended for inhalation; or
- (c) using an "electronic cigarette".

"Tobacco product" includes, but is not limited to, a product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff, but does not include cigarettes. Tobacco products shall also include electronic cigarettes. Tobacco products shall not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and sold solely for such approved use.

SECTION 4. Addition. Section 8.06.030 (Aiding and Abetting Liability) is added to Chapter 8.06 (Smoking) of Title 8 (Health and Safety) of the Sierra Madre Municipal Code as follows:

8.06.030 – Aiding and abetting liability.

- A. No person shall knowingly permit smoking in an area under his, her, or its legal or de facto control where smoking is prohibited by this chapter.
- B. No person shall allow the placement or maintenance of a receptacle for smoking waste in an area under his, her, or its legal or de facto control where smoking is prohibited by this chapter.

SECTION 5. Addition. Section 8.06.040 (Notice) is added to Chapter 8.06 (Smoking) of Title 8 (Health and Safety) of the Sierra Madre Municipal Code as follows:

8.06.040 – Notice.

- A. Smoke-free multi-unit residences. On or before April 1, 2023:
 - 1. A landlord shall give written notice to every tenant(s) then in occupancy to inform the tenant(s) of the prohibitions under this chapter and to provide them with resources to treat an addiction to nicotine.
 - 2. A homeowners' association shall give written notice to every unit to inform residents of the prohibitions under this chapter and to provide them with resources to treat an addiction to nicotine.
- B. Required lease terms. Every new lease or other agreement entered into after the effective date of this section for the occupancy of a unit in a multi-unit residence shall include:
 - 1. A clause stating that smoking is prohibited in the unit and the multi-unit common areas;
 - 2. A clause stating that it is a material breach of the lease or agreement to smoke in the unit, in the multi-unit common areas, or within a reasonable distance of the unit or multi-unit common area; and
 - 3. A clause stating that all lawful occupants of units in the multi-unit residence are third-party beneficiaries of the clauses required by subsections (B)(1)(a) and (B)(1)(b) of this section and may have a private right of action against a violator.
- C. Signage. On or before the effective date of this ordinance, "No Smoking" or "Smoke Free" signs, with letters of not less than one inch in height 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) or any alternative signage approved by the city manager shall be conspicuously posted by the person, employer, business, or nonprofit entity who or which has legal or de facto control of such place at each entrance to a multi-unit residence or any other place where the city manager reasonably determines that smoking in violation of this chapter has occurred, or is likely to occur. Signage required by this subsection shall not be subject to Chapter 17.72 ("Signs") of this Code.

SECTION 6. Addition. Section 8.06.050 (Enforcement) is added to Chapter 8.06 (Smoking) of Title 8 (Health and Safety) of the Sierra Madre Municipal Code as follows:

8.06.050 – Enforcement.

- A. Landlord enforcement.
 - 1. A tenant who breaches the smoking regulations included in a lease pursuant to section 8.06.040(B) of this chapter, or who knowingly allows another person to do so shall be liable to the landlord.

2. A landlord shall not be liable to any person for a tenant's breach of smoking regulations if:
 - i. The landlord has fully complied with the requirements of this chapter, and
 - ii. Upon receiving a signed written complaint regarding prohibited smoking, the landlord provides a written warning to the offending tenant, stating that such tenant may be evicted if another complaint is received. Upon receipt of a second signed, written complaint against the offending tenant, the landlord may evict such tenant, but will not be held liable for the failure to do so.
3. Failure to enforce any smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this section and shall not prevent future enforcement of any such smoking regulation.

B. Private enforcement.

1. Any private enforcer may bring a civil action to enforce this chapter with the remedies specified below, if all of the following requirements are met:
 - a. The action is commenced more than sixty (60), but not more than one hundred (100) days, after the private enforcer has given written notice of an alleged violation of this chapter to the city attorney and to the alleged violator;
 - b. The city attorney has approved the commencement of the civil action; and
 - c. No person acting on behalf of the city or the state has commenced or is prosecuting an action regarding the violation(s) which was or were the subject of the notice on the date the private action is filed.
2. Upon settlement or judgment of an action brought pursuant to this section, the private enforcer shall give the city attorney a notice of that settlement or judgment and of the final disposition of the case. No private enforcer may settle such an action unless the city attorney determines the settlement to be reasonable in light of the purposes of this chapter and any settlement in violation of this requirement may be set aside upon motion to a court of competent jurisdiction by the city attorney.
3. Upon proof of a violation of this chapter, the court may award the following:
 - a. Actual damages;
 - b. With insufficient or no proof of actual damages, two hundred fifty dollars (\$250.00) for each violation of this chapter (hereinafter "statutory damages"). Unless otherwise specified in this chapter, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this chapter, no private enforcer 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 for statutory damages and based upon the same violation has been

adjudicated, whether or not the private enforcer was a party to that earlier adjudication. Statutory damages shall be capped at \$25,000;

- c. Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for the public health and safety;
- d. Attorney's fees and costs reasonably incurred by a successful party in prosecuting or defending an action; and
- e. An injunction against further violations of this chapter.

- C. Public enforcement. A violation of this chapter is a public nuisance under chapter 1.14 and may be prosecuted accordingly.

SECTION 7. Notice. The City Manager is directed to post on the City's website and to prepare a mailing to all the landlords and homeowners' associations in the City to inform them of their responsibilities under this Ordinance and its effective date.


SECTION 8. CEQA. The City Council finds that adoption and implementation of this Ordinance is not a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by the CEQA Guidelines in 14 CCR section 15378(b)(5). Alternatively, this ordinance is exempt from CEQA pursuant to Public Resources Code section 1561(b)(3) because it has no potential for causing a significant effect on the environment.

SECTION 9. Severability. If any sections, subsections, subdivisions, paragraph, sentence, clause or phrase of this Ordinance or any part hereof or exhibit hereto is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance or any part thereof or exhibit thereto. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that anyone or more sections, subsections, subdivisions, paragraph, sentences, clauses or phrases be declared invalid.

SECTION 10. Publication. The City Clerk shall cause this Ordinance to be published or posted in accordance with California Government Code Section 36933. She shall certify to the adoption of this Ordinance and her certification, together with proof of the publication, will be entered in the book of Ordinances of the City Council.

SECTION 11. Effective Date. This Ordinance shall take effect thirty days after its adoption pursuant to California Government Code Section 36937.

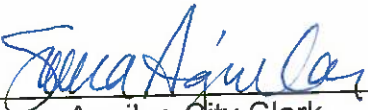
PASSED, APPROVED, AND ADOPTED this 25th day of October 2022.




Gene Goss, Mayor

ATTEST:

APPROVED AS TO FORM:



Laura Aguilar, City Clerk



Aleks R. Giragosian, City Attorney

I HEREBY CERTIFY that the foregoing Ordinance was introduced by first reading on the 11th day of October 2022 and duly adopted by the City Council of the City of Sierra Madre, California, at a regular meeting held on the 25th day of October 2022 by the following vote:

AYES:	Mayor Gene Goss, Mayor Pro Tem Edward Garcia, Council Member Rachelle Arizmendi, Council Member Kelly Kriebs
NOES:	None
ABSENT:	Council Member Robert Parkhurst
ABSTAINED:	None