

ORDINANCE 2019-###

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN PABLO AMENDING CHAPTER 8.36 OF THE SAN PABLO MUNICIPAL CODE AND ADDING SECTION 8.36.045 PROHIBITING SMOKING IN AND AROUND RENTAL MULTI-UNIT HOUSING

The City Council of the City of San Pablo does ordain as follows:

Section 1. The City Council makes the following findings:

- A. This ordinance was initiated by the City of San Pablo City Council in response to the City Council's adopted policy program under the FY 2019-2021 major policy goal to build a healthy community;
- B. A duly noticed meeting was held by the City Council on February 3, 2020, to consider this amendment to the Title 8, No-Smoking Regulations, of the Municipal Code of the City of San Pablo;
- C. As described in the City Council staff report accompanying this Ordinance, the Ordinance is consistent with the City of San Pablo General Plan, and meets the intent of the following policies in that reducing secondhand and third-hand smoke, as defined by this chapter, in rental multi-unit housing addresses the need to protect the public health of the residents of San Pablo:

Policy HEA – G-4: Promote health equity in San Pablo, including equal access to health facilities, goods, services, and economic and educational opportunities, helping to ensure wellbeing for resident of all ages, abilities, and incomes.

Policy HEA – I-23: Collaborate with Contra Costa Health Services to monitor and maintain data related to San Pablo health outcomes and risk factors, and to use these data to inform new County and City programs to serve the San Pablo community.

Policy HEA –I-37: Continue community policing and relationship building programs, including educational and mentoring initiatives with schools.

- D. Tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:
 - The World Health Organization (WHO) estimates that tobacco kills up to half of its users, amounting to more than seven million deaths each year worldwide, including nearly half a million people who die prematurely from smoking in the United States alone;
 - According to the U.S. Surgeon General, tobacco use can cause disease in nearly all organs of the body and is responsible for 87% of lung cancer deaths,

- 32% of coronary heart disease deaths, and 79% of all chronic obstructive pulmonary disease cases, in the United States;
- According to the U.S. Department of Health and Human Services, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness; and
 - According to the U.S. Department of Health and Human Services, the economic damage attributable to smoking and exposure to secondhand smoke in the United States has climbed to almost \$300 billion annually;
- E. According to the Centers for Disease Control and Prevention, tobacco use is the number one cause of preventable death in California and continues to be an urgent public health issue;
- F. Secondhand smoke has repeatedly been identified as a health hazard by the U.S. Surgeon General and as a toxic air contaminant by the California Air Resources Board;
- G. The American Heart Association has recommended all adults and children be protected from smoking in multiunit housing;
- H. Exposure to secondhand smoke causes death and disease, according to the Centers for Disease Control and Prevention, and the U.S. Department of Health and Human Services, as evidenced by the following:
- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;
 - Secondhand smoke was responsible for an estimated 34,000 heart disease–related and 7,300 lung cancer–related deaths among adult nonsmokers each year during 2005-2009 in the United States;
 - Exposure to secondhand smoke increases the risk of coronary heart disease by about 25% to 30% and increases the risk of stroke by 20% to 30%;
 - Secondhand smoke kills more than 400 infants every year;
- I. The City of San Pablo prohibited the sale of flavored tobacco pursuant to Ord. 2018-006 passed in December 17, 2018;
- J. Electronic Smoking devices (e.g., electronic cigarettes, e-cigarettes, vaping devices) may be considered a health hazard, and the U.S. Surgeon General supports inclusion of electronic smoking devices in regulations of smoking and other tobacco product use;
- K. Secondhand cannabis smoke has been identified as a health hazard, and the California EPA has included it on a list of chemicals known to the state of California to cause cancer;

- L. According to a number of peer-reviewed studies including scholarly articles by Schaller, K, et al. and Schripp, T., et al., nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke and residents of multi-unit housing have higher levels of cotinine (a biomarker for nicotine) in their blood and saliva than those living in detached houses;
- M. According to Kuschner, et al. Int. J Gen Med., harmful residues from tobacco smoke can be absorbed by and cling to indoor surfaces long after smoking has stopped and then be emitted back into the air, making this "third-hand smoke" a potential health hazard;
- N. Smoking is a leading cause of fire-related injury and death, and contributes to health inequities;
- O. Secondhand smoke in multi-unit housing is a significant threat to the health and safety of California children, as evidenced by the following:
- About a quarter of those who live in multiunit housing (25.2%) are under the age of 18, according to King BA, et al;
 - The home is the primary source of secondhand smoke for children; 56.4% of youth living in apartment units in which no one smokes have elevated blood cotinine levels above 0.05 ng/mL, indicating they have been exposed to potentially dangerous levels of secondhand smoke, according to the Centers for Disease Control and Prevention (CDC);
 - Children who live in apartments have mean cotinine levels that are 45% higher than cotinine levels in children who live in detached homes, according to Chambers C. et al;
- P. In 2016 the United States Department of Housing and Urban Development issued a final rule requiring all public housing agencies to adopt smoke-free policies to protect residents from secondhand smoke exposure, effective February 2017;
- Q. Children, low-income tenants of public housing, and members of racial and ethnic minority groups are disproportionately exposed to secondhand smoke; and smoke-free housing policies have shown potential to reduce exposure in these populations;
- R. California state law allows local governments to adopt ordinances that permit residential rental agreements to prohibit smoking within rental units;
- S. At least 90 California cities and counties have adopted some form of smoke-free multi-unit housing ordinances, and at least 51 of these jurisdictions have restricted smoking in at least 75% of units; and San Pablo is one of only two cities in West Contra Costa County that have yet to implement a smoke-free multi-unit housing ordinance;

- T. Pursuant to the California Environmental Quality Act, this Ordinance is Categorically Exempted based on Section 15308, Actions by Regulatory Agencies for Protection of the Environment. Class 8 exemptions consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.
- U. This Ordinance prohibits smoking in and around rental multi-unit housing including new and existing rental multi-unit residences. Multi-unit residences subject to this ordinance will be able to designate a smoking area;
- V. It is the intent of the City Council of the City of San Pablo in enacting this Ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around nontobacco users; by protecting children from exposure to smoking where they live and play; and by protecting the public from nonconsensual exposure to secondhand and third-hand smoke in and around their homes.

Section 2. Section 8.36.010, "Purpose and findings," of Chapter 8.36, "No-Smoking Regulation" of the San Pablo Municipal Code is amended as follows:

...

E. The smoking or vaping of tobacco, or any other weed or plant or substance, is a proven danger to health.

F. Third-hand smoke is a potential health hazard as harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air.

...

[Except as set forth above, all other provisions of this section remain the same]

Section 3. Section 8.36.020, "Definitions," of Chapter 8.36, "No-Smoking Regulation" of the San Pablo Municipal Code is amended as follows:

...

D. "Enclosed" means enclosed in by roof or four walls with appropriate opening for ingress and egress all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An enclosed space may have openings for ingress and egress, such as doorways or passageways. An enclosed space includes all areas within that space, such as hallways and areas screened by partitions that do not extend to the ceiling or are not solid.

F. "Smoking" means ~~the carrying or holding of a lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling of the smoke of a pipe, cigar, or cigarette of any kind. inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking devices, or any other device that delivers nicotine or other substances to a person.~~

...
[Except as set forth above, all other provisions of this section remain the same]

Section 4. Section 8.36.020, "Definitions," of Chapter 8.36, "No-Smoking Regulation" of the San Pablo Municipal Code is amended **to add** the following definitions:

"Cannabis" shall have the same meaning as "cannabis" in Health and Safety Code Section 11018, and the same meaning as "cannabis" in Business and Professions Code Section 26001(f). This definition includes but is not limited to all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

"Common Area" means every Enclosed area and every unenclosed area of a Multi-Unit 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.

"Electronic Smoking device" means an electronic device which can be used to deliver an inhaled dose of flavored tobacco, nicotine or other substance, including any component, part or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

"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 to a residential tenant. For purposes of this ordinance, a tenant who sublets their unit (e.g., a sublessor) is not a Landlord.

"Rental Multi-Unit Residence" means, except as specifically excluded below, any rental residential property containing two (2) or more units with one or more shared or abutting walls, floors, ceilings or shared ventilation systems, each with its own kitchen and bathroom facilities. A Rental Multi-Unit Residence does not include the following:

- (1) a detached single-family residence;

- (2) a single-family home with a detached or attached in-law accessory dwelling unit permitted pursuant to section 17.60.070 Accessory Dwelling Units of the San Pablo Municipal Code;
- (3) Condominiums and townhomes that are separately owned;
- (4) a hotel or motel that meets the requirements of California Civil Code section 1940(b)(2); or
- (5) a mobile home park.

“Reasonable Distance” means a distance of at least twenty-five (25) feet in any direction from an area in which smoking is prohibited.

“Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts of the combustion, ignition or vaporization, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, vapors from an electronic device, and Cannabis smoke.

Section 5. Section 8.36.045, entitled “Prohibition of Smoking in and Around Rental Multi-Unit Residence” is added to Chapter 8.36, “No-Smoking Regulation” of the San Pablo Municipal Code to read as follows:

8.36.045 Prohibition of Smoking in and Around Rental Multi-Unit Residence as defined by this Chapter.

- A. Smoking shall be prohibited in and around Rental Multi-Unit Residences, as defined in this chapter, within the city as indicated in this section.
- B. New Rental Multi-Unit Residences. In every new Rental Multi-Unit Residence that receives a certificate of occupancy after the effective date of this section, one hundred (100%) percent of the units (including private outdoor spaces associated with such units, such as balconies, patios and decks), shall be non-smoking units with no smoking permitted in the unit.
- C. In every existing Rental Multi-Unit Residence that received a certificate of occupancy before the effective date of this section, one hundred percent (100%) of the units (including private outdoor spaces associated with such units, such as balconies, patios and decks), shall be non-smoking units with no smoking permitted in the unit by July 1, 2021.
 1. A person with legal control over a Rental Multi-Unit Residence, such as, a Landlord or homeowners’ association, may make units non-smoking prior to July 1, 2021.

2. Landlords shall, by July 1, 2020 notify each existing and new tenant of its implementation schedule and plan for complying with this chapter.

D. No Smoking Common Areas; Designated Smoking Area

1. Smoking is prohibited in all Rental Multi-Unit Residence Common Areas except that a person with legal control over a Multi-Unit Residence Common Area, such as a Landlord or property manager, may designate a portion of the outdoor area of the premises as a Smoking area provided in section (2) below.
2. A designated Smoking area:
 - a. Must be located a Reasonable Distance from any indoor area where Smoking is prohibited by this Chapter or other law unless 25-feet is not feasible;
 - b. Must not include, and must be a Reasonable Distance from, outdoor areas primarily used by children including but not limited to, areas improved or designated for play or summing;
 - c. Must be no more than twenty-five percent (25%) of the total outdoor area of the premises for which it is designated;
 - d. Must have a clearly marked perimeter;
 - e. Must be identified by conspicuous signs; and
 - f. Must not overlap with any areas in which smoking is otherwise prohibited by this Chapter or other provisions of this Code, state law or federal law.

E. Required Lease Terms: Every lease or other agreement for the occupancy of a unit in a new Rental Multi-Unit Residence; and every lease or other agreement for the occupancy of a unit in an existing Rental Multi-Unit Residence as of July 1, 2021 shall include:

1. A clause stating that Smoking is prohibited in the unit;
2. A clause stating that it is a material breach of the lease or agreement to (i) violate any law regulating Smoking while on the premises; (ii) Smoke in the unit; or (iii) Smoke in any Multi-Unit Residence Common Area where Smoking is prohibited; and
3. A clause stating that all occupants of the Rental Multi-Unit Residence are express third-party beneficiaries of the above required clauses.

F. Notice and Signage:

"Smoking" or "No Smoking" signs, whichever are appropriate, 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), shall be conspicuously posted in every building or other place where Smoking is regulated by this Chapter by the owner, operator, manager or other person having control of the building or other place.

1. For new Rental Multi-Unit Residences, the signs shall be installed prior to the issuance of a Certificate of Occupancy.
2. For existing Rental Multi-Unit Residences, the signs shall be installed no later than July 1, 2021. This section does not require the posting of "No Smoking" signs inside or on the doorway of any dwelling unit in a Multi-Unit Residence as defined by this Chapter.

G. Enforcement and Penalties: Any person, including a legal entity or organization acting for the interests of itself, its members, or the general public, may bring a civil action to enforce this section by way of a conditional judgment or an injunction to prevent future such violations and may sue to recover such actual or statutory damages as he or she may prove.

Section 5. Section 8.36.060, "Smoking- Optional areas" of Chapter 8.36, "No-Smoking Regulation" of the San Pablo Municipal Code is amended **to read as follows:**

8.36.060 Smoking- Optional areas.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

- ~~A. Private residences;~~
- B. Bars;**
- ~~C.A. Hotel or motel rooms rented to guests; A hotel or motel that meets the requirements of California Civil Code section 1940(b)(2).~~
- ~~D.B.~~ Retail stores that deal exclusively in the sale of tobacco and smoking paraphernalia;
- ~~E.C.~~ Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions;
- ~~F. A private residence which may serve as a place of employment;~~
- ~~G.D.~~ A private enclosed place occupied exclusively by smokers, even though such a place may be visited by nonsmokers, and a private enclosed office, excepting places in which smoking is prohibited by the fire department or by any other law, ordinance or regulation.

Section 5. Severability. If any sections, subsections, sentences, clauses, phrases or portions of this ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or

clause of this ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

Section 6. Effective Date. This ordinance shall become effective thirty (30) days following its adoption.

Section 8. Publication. The City Clerk's Office shall publish and post the ordinance in accordance with California Government Code section 36933.

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First read at a regular meeting of the City Council of the City of San Pablo on February 3, 2020, and finally passed and adopted at a regular meeting of said City Council held on _____, 2020, by the following votes:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

ATTEST:

APPROVED:

Patricia Ponce, City Clerk

Arturo M. Cruz, Mayor