

ORDINANCE NO. 2356, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING CHAPTER 8.42 (“SMOKING IN MULTIUNIT BUILDINGS”) OF TITLE 8 (“HEALTH AND SAFETY”) TO THE MORGAN HILL MUNICIPAL CODE TO PROHIBIT SMOKING IN AND AROUND MULTIUNIT RESIDENCES

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 8.42 (“Smoking in Multiunit Buildings” of Title 8 (“Health and Safety”)) is hereby established to read as follows:

8.42.010 Definitions

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section or another portion of the Morgan Hill Municipal Code, shall have the meanings that are given them in this section:

- A. “Adjacent Unenclosed Property” means any unenclosed area of a property—publicly or privately owned—that is next to or has a common boundary with a multi-unit residence. This does not include a single-family home.
- B. “Common Area” means every enclosed and every unenclosed 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, recreational area, restrooms, laundry rooms, cooking areas, and eating areas.
- C. “Common Interest Development” as defined:
 - 1. A community apartment project as defined in California Civil Code section 4105, in this code, or any successor legislation;
 - 2. A condominium project as defined in California Civil Code section 4125, in this code, or any successor legislation;
 - 3. A planned development as defined in California Civil Code section 4175, in this code, or any successor legislation;
 - 4. A real property development as defined in California Civil Code section 1351(c), in this code; or any successor legislation;
 - 5. A stock cooperative as defined in California Civil Code section 4190, in this code, or any successor legislation;
- D. “Enclosed Area” means an area closed in by a roof and four walls with appropriate openings for air to enter and exit with appropriate ventilation. It encompasses all the space between a floor and a ceiling that is bounded by walls, doorways, or windows—

- whether open or closed—covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. It can additionally include an area that has:
1. Overhead cover, regardless of whether the area includes vents or other overhead openings, or at least 3 walls or vertical constraints; or
 2. 4 walls or other vertical wall constraints to airflow, regardless of composition; or as defined in the Code.
- E. “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.
- F. “Existing Unit” means any unit that is not a new unit by the effective date of this code.
- G. “Homeowners’ association” or “HOA” means a nonprofit or unincorporated 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, in this code, or any successor legislation.
- H. “Hotel” as defined by California Civil Code Section 1940 or elsewhere in this Code. It can but is not limited to meaning a similar establishment in which the operator has the status of an innkeeper (e.g. a motel, motor inn, bed and breakfast, boarding house, etc.)
- I. “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.
- J. “Lot” means a separate parcel of land shown and identified as such on the record of the county recorder, or in the final map of an approved and recorded subdivision.
- K. “Marijuana” or “Cannabis” as defined pursuant to Business and Professions Code Section 26001(f), in Section 9.16.020 of this Code, and by other state law. However, in all parts of this code is shall mean all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds of such plants. “Cannabis” does not mean “industrial hemp” as defined by Health and Safety Code Section 11018.5.
- L. “Marijuana or Cannabis product” means a product where the cannabis plant has undergone a process and been turned into a concentrate for the purpose of smoking.

- M. "Multiunit Residence" means a property containing two or more attached units, including, but not limited to, apartment buildings, common interest developments, senior and assisted living facilities, and long-term health care facilities.
1. Multiunit Residences do not include the following:
- a. a hotel or motel that meets the requirements of California Civil Code section 1940, established under our code, or other applicable state and local law;
 - b. mobile home park;
 - c. a campground;
 - d. a marina or port;
 - e. a single-family home with a detached or attached in law, except if used as a health care facility subject to licensing requirements; and
 - f. 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 municipal code of Morgan Hill 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.
- N. "New Unit" means a unit that is issued a certificate of occupancy more than 180 days after the effective date of this ordinance, or one that is now available for residential use 180 days for the first time more than 180 days after the effective date of this ordinance.
- O. "Nonsmoking Area" means any enclosed or unenclosed area that has been designated as an area in which smoking is prohibited in this chapter, elsewhere in this code, or by other applicable law.
- P. "Person" means any natural person, firm, partnership, corporation, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.
- Q. "Reasonable distance" as defined in this code, means twenty-five feet in any direction from an area in which smoking is prohibited.
- R. "Rental Complex" means a property where 50% of the units are rented by or on behalf of the same landlord.
- S. "Smoke" as defined in this code, but also means inhaling, exhaling, or burning, any tobacco, nicotine, marijuana, marijuana plant product, whether natural or synthetic.
- T. "Smoking" as previously enumerated by Section 8.44 of this Code, but also can mean:
1. carrying any lighted, heated, or activated tobacco, nicotine, marijuana, or plant product, whether natural or synthetic, intended for inhalation; or
 2. using an "electronic smoking device," that delivers nicotine or other substances;
- or

3. For purposes of this Code, smoking does not include the use of traditional, sacred tobacco as part of an Indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- U. “Unenclosed area” means any area that is not in an enclosed area as defined by this Code, including but not limited to a balcony, terrace, patios, or porch.
- V. “Unit” means a personal dwelling space, even one lacking cooking facilities or private plumbing facilities, and includes any associated exclusive use, enclosed or unenclosed area, such as a private balcony, porch, deck, or patio. “Unit” includes, without limitation, an apartment unit; a condominium unit; 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.
- W. “Wall” means any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

8.42.020 Smoking Restrictions.

- A. Effective 180 days from the effective date of this ordinance, smoking is prohibited in new and existing multi-unit residences.
- B. No person shall smoke inside any new or existing unit of a multi-unit residence including any associated or unassociated common area, with the exception of it being within a designated smoking area as defined by this code below.
 1. Designated smoking area is defined by this code in Morgan Hill Code Section 8.44.030, but it is defined as:
 - a. an unenclosed area;
 - b. at least twenty-five (25) feet from an adjacent or an unenclosed area primarily used by children, unenclosed areas of K-12 school campuses, or unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, and swimming pools;
 - c. has been clearly marked and with defined perimeter;
 - d. has conspicuous signage as defined in this chapter that includes text not less than one inch in height and with imagery relating to the international “no smoking” sign with the red circle and bar across it as defined in this chapter and elsewhere in this code;
 - e. located a reasonable distance from any enclosed area that is in a multi-unit residence, including an operable doorway, window, opening or vent that has been designated by this chapter;
 - f. shall have ashtrays, ashcans, or other receptacles designed for or primarily used for disposal of smoking waste within the area;
 - g. not more than 10% total of the outdoor area of designated property; and

- h. not within any enclosed or unenclosed area where smoking is otherwise prohibited by this chapter, state, or other law;
- C. The landlord will maintain and ensure that the designated smoking area remain free of smoking and tobacco waste by providing ash trays, trash cans, or other receptacles.
- D. The prohibitions contained in this Section do not apply to a person who is smoking while actively passing on the way to another destination.
- E. No person shall intimidate, harass, harm, threaten, or otherwise retaliate against any person who seeks compliance with this ordinance.
- F. Violation of this subsection shall effectuate penalties and relevant criminal charges.

8.42.030 Requirements for Rental Properties.

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

- A. Within one hundred eighty (180) days of the effective date of this ordinance codified in this chapter, every landlord shall deliver to each unit a copy of this 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 the effective date; and
 - 2. Smoking in all common areas or outdoor areas except for specifically designated smoking areas, is a violation of chapter as of the effective date.
- B. Within one hundred eighty (180) days of the effective date of this ordinance codified in this chapter, every landlord shall provide prospective tenants with written notice clearly stating that:
 - 1. Smoking is prohibited in units, including any associated unenclosed area including a private balcony, porch, deck, or patio, as of the effective date; and
 - 2. Smoking is prohibited in all common areas and outdoor areas, except for specifically designated smoking areas as defined above or by the Morgan Hill municipal code previously, as of the effective date.
- C. As of the effective date, 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.
 - 1. In addition, as of the effective date, 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.

2. The absence of signs shall not be a defense to a violation of any provision of this chapter.
 3. "No Smoking" signs shall be clearly, sufficiently, and conspicuously posted on the building or other places where smoking is regulated by this chapter by the owner, operator, manager or other person having control of such building or other places.
 - (i) They are not required inside or on doorways of units except for hotels or motels that meet the criteria listed in California Civil Code section 1940, subdivision (b)(2)
 4. As defined in this code, and this chapter, "No Smoking" signage shall include:
 - (i) letters not less than one inch in height and
 - (ii) 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)
- 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.

8.42.040. Requirements for Common Requirements for Common Interest Developments.

The following requirements apply to common interest developments:

- A. As of the effective date, the HOA shall provide to all owners of units a copy of this chapter and written notice clearly stating that:
 1. Smoking is prohibited in units, including any associated private balcony, porch, deck, or patio; and
 2. Smoking is prohibited in all common areas and outdoor areas except for specifically designated smoking areas as designated by this code or the persons with legal control over the property as defined by this Code.
- B. As of the effective date, every seller of a unit shall provide prospective buyers or renters, a copy of this chapter and written notice clearly stating that:
 1. Smoking is prohibited in units, including any associated private balcony, porch, deck, or patio; and
 2. Smoking is prohibited in all common areas and outdoor areas except for specifically designated smoking areas as designated by this code and/or the persons with legal control over the property as defined by this ordinance.
- C. As of the effective date, 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.
- E. The HOA shall also distribute resources provided for free by the City of Morgan Hill and/or the County of Santa Clara to assist with nicotine dependence, such as referrals to quitline or any other educational online resources.

18.24.050 Interpretation.

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

18.24.060 Violations and Penalties.

- A. No landlord, his or her designee, or person with legal control over any multiunit residence shall permit smoking anywhere on the premises of the multiunit residence outside of the designated smoking areas as stated in this code.
- B. Any person who violates any provision of this chapter shall be guilty of an infraction punishable by:
 - 1. A fine, not exceeding one hundred dollars (\$100), for the first violation;
 - 2. A fine, not exceeding two hundred fifty dollars (\$250), for a second violation of this chapter;
 - 3. A fine, not exceeding five hundred dollars (\$500), for each additional violation of this chapter.
- C. Every violation of this ordinance that occurs shall be considered a separate violation.
- D. If three violations occur in one calendar year, the person shall be found guilty of a misdemeanor. However, Title 1 of the Morgan Hill Municipal Code allows for the City Attorney and/or his designee to exercise discretionary authority.

- E. No person shall intentionally or recklessly expose another person to smoke in response to that person's effort to achieve compliance of this chapter. Causing, permitting, aiding, abetting, or supporting the actions of any person in this code shall also constitute a violation of this chapter.
- F. Any person may bring a civil action to enforce this article to prevent future violations and may sue to recover actual or statutory damages, including court costs, and attorney fees.

Section 2. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. Effective Date; Posting. This Ordinance shall take effect on the 31st day after adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 4th DAY OF SEPTEMBER, 2024, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF SEPTEMBER, 2024, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2356, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of September, 2024.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

MICHELLE BIGELOW, City Clerk