

ORDINANCE NO. 848-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA REPEALING AND REPLACING CHAPTER 15, "SMOKING PROHIBITIONS" OF TITLE 4 OF THE PACIFICA MUNICIPAL CODE TO PROHIBIT SMOKING IN CERTAIN AREAS OF THE CITY AND MULTI-UNIT RESIDENCES

WHEREAS, cigarette smoke contains more than 7,000 chemicals, including formaldehyde, cyanide, carbon monoxide, ammonia, and highly addictive nicotine, and more than 50 carcinogens; and

WHEREAS, breathing secondhand smoke is a significant health hazard, particularly to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function; and

WHEREAS, nonsmokers living in multi-unit properties are at elevated risk of exposure to secondhand smoke; and

WHEREAS, secondhand smoke can travel into an apartment from other apartments and common areas through doorways, cracks in walls, electrical lines, ventilation systems and plumbing; 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 contributes to approximately 41,000 deaths among nonsmoking adults and 400 deaths in infants each year. Secondhand smoke causes stroke, lung cancer, and coronary heart disease in adults. Children who are exposed to secondhand smoke are at increased risk for sudden infant death syndrome, acute respiratory infections, middle ear disease, more severe asthma, respiratory symptoms, and slowed lung growth; and

WHEREAS, cannabis smoke is also a source of secondhand smoke and is also toxic as the smoke contains twice as much tar and ammonia, eight times as much hydrogen cyanide and many of the chemicals and carcinogens as tobacco smoke; and

WHEREAS, people exposed to aerosol emissions from electronic cigarettes are exposed to harmful particulates, propylene glycol, nicotine, metals and other toxins which have been linked to cancer as well as respiratory and heart disease; and

WHEREAS, numerous studies have determined that smoking is a major contributor to indoor air pollution.

NOW, THEREFORE, the City Council of the City of Pacifica does hereby ordain as follows:

Section 1. Recitals. The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 2. Repeal and Replacement. Chapter 15, "Use of Tobacco Products in or Around Beaches and at the Pacifica Pier," of Title 4, "Public Safety" is hereby repealed in its entirety and replaced to read as follows:

"CHAPTER 15-SMOKING PROHIBITIONS

Section 4-15.01. - Findings and Purpose.

- (a) The purpose and intent of this chapter is to provide for the health, safety, and welfare of individuals residing in or visiting the City of Pacifica by limiting exposure of secondhand smoke, especially for children; by protecting the public from smoking and smoking-related litter and pollution; and, by affirming and promoting a healthy environment in the City.
- (b) Numerous studies and reports have determined that smoking is a major contributor to indoor air pollution and have found that secondhand smoke is a significant health hazard and carcinogen to smokers and nonsmokers; particularly to children and elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function.
- (c) The City is authorized, pursuant to the police power granted under the California Constitution, Article 11, to implement and enforce the provisions of this chapter.

Section 4-15-02. - Definitions.

For the purposes of this chapter, the following definitions shall govern unless the context clearly requires otherwise:

- (a) "Beach" means that land lying between State Highway 1 in the City and the line of ordinary tide of the Pacific Ocean. "Beach" shall also include any pier, jetty or structure on such land that is designated or designed to provide swimming, boating, fishing, sightseeing or other waterfront activities.
- (b) "Cannabis" shall have the meaning set forth in Health and Safety Code section 11018 and Business and Professions Code section 26001(f).
- (c) "Common area" means every enclosed area or unenclosed area of a multi-unit residence accessible and usable by residents of different units including, but not limited to, halls and paths, lobbies, courtyards, elevators and stairs, community rooms, playground areas, gym facilities, swimming pool areas, parking garages and parking

lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

- (d) "Common interest development" means a development as defined in California Civil Code section 4100 et seq. or successor statute, as said provisions may be amended or succeeded, which includes a "condominium project," a "community apartment project," a "stock cooperative," and a "planned development" and also includes a townhouse.
- (e) "Electronic smoking device" means an electronic and/or battery operated device, which can provide an inhalable dose of nicotine, cannabis, whether recreational or medicinal, or other vaporized liquids to the person inhaling the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration for the use in the mitigation, treatment, or prevention of disease.
- (f) "Enclosed area" means an area closed in by a roof and four walls (with the appropriate openings for egress and ingress). This would include but not be limited to lobbies, lounges, waiting areas, elevators, hallways, restrooms, stairwells, common areas (e.g., laundry and recreation rooms within a multi-unit building), that are a structural part of the building.
- (g) "Existing Unit" means any unit that is not a new unit.
- (h) "Landlord" means any person who has legal control over residential property including any person who owns or holds property being let for residential use, any person who lets residential property, and/or any person who manages such property. The term "Landlord" does not include a master tenant who sublets a unit as long as the master tenant sublets less than two (2) units of a multi-unit residence.
- (i) "Multi-unit residence" or "multi-family dwelling" means residential property containing two (2) or more units with one or more shared or abutting walls, floors, ceilings or shared ventilation systems including, but not limited to, a common interest development, condominium, townhouse, and apartment or other rental complex. 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 as defined by section 3-7.02(b) of the Pacifica Municipal Code;
 - (2) A residential care facility or assisted living facility governed by federal or state community care licensing regulations;
 - (3) A detached, single-family residence;
 - (4) A detached, single-family home with a detached or attached accessory dwelling unit when permitted pursuant to Article 4.5, of Title 9 of the Pacifica Municipal Code; and

- (5) A mobile home park.
- (j) "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.
- (k) "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 the landlord over the area.
- (l) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.
- (m) "Rental complex" means a property for which 50 percent (50%) or more of units are let by or on behalf of the same landlord.
- (n) "Smoke" means any vapors, gases, particles or other by-products released as a result of combustion or electrical ignition, when the apparent or usual purpose of the combustion or electrical ignition is human inhalation of the byproducts, except when the combusting or igniting material both contains no tobacco or nicotine product or cannabis and the usual purpose of inhalation is solely olfactory such as with the burning of incense. Smoke does not include combustion of substances regulated by the U.S. Food & Drug Administration and used for medical or therapeutic purposes. Smoke specifically includes but is not limited to gases, particles, vapors or other by-products released by electronic smoking device, tobacco cigarettes, herbal cigarettes, cannabis cigarettes and any other type of cigarette, pipe or other implement for the purpose of inhalation of vapors, gases, particles or other by-products released as a result of combustion or ignition.
- (o) "Smoking" means and includes inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco, cannabis, or any other weed or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic cigarette, electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.
- (p) "Tobacco or nicotine product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco; and any electronic cigarette or other electronic device used to generate smoke; and any product or formulation of matter containing biologically active amounts of nicotine that is

manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

- (q) "Unenclosed area" means any area that is not an enclosed area. Unenclosed areas include balconies, porches, decks and patios.
- (r) "Unit" means a personal dwelling space for one or more persons, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use unenclosed area, such as, for example, a private balcony, porch, deck, or patio.

Section 4-15.03. - Smoking and tobacco product use prohibited on beaches and Pacifica Pier.

- (a) No person shall smoke or use a tobacco product on any beach located within the City of Pacifica or on the Rev. Herschell Harkins Memorial Pier, also known as the Pacifica Pier.
- (b) Smoking is prohibited in all portions of all beaches within the jurisdiction of the City, including, but not limited to: sand, grassy areas, parking lots and picnic tables.
- (c) No person shall dispose of smoking waste or tobacco product waste on a beach or Pacifica Pier except in a designated waste disposal container.
- (d) "No smoking" or "smoke free" signs, with letters of no 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 clearly, sufficiently and conspicuously posted by the City Manager or appropriate designee.
- (e) The absence of signs required by subsection (d) above shall not be a defense to a violation of any provision of this chapter.

Section 4-15.04. - Smoking prohibited in common areas except designated smoking areas.

- (a) Smoking is prohibited and no person shall smoke in any unenclosed and enclosed common area of a multi-unit residence except that a landlord 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 shall comply with all of the following criteria:
 - (1) Shall be an unenclosed area and clearly delineated area, as described in this subsection (b);

- (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 be identified by conspicuous signs indicating it is a designated smoking area;
 - (4) Shall have receptacles designed for and primarily used for disposal of tobacco waste and shall be maintained free of tobacco related litter including but not limited to cigarette butts; and
 - (5) Shall not include, and shall be at least 30 feet from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including playgrounds, swimming pools, and school campuses.
- (c) No landlord shall knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of smoking waste within a common area or any other nonsmoking area. The landlord shall maintain a common or other area in which smoking is prohibited by this chapter or other law free of tobacco litter or waste.

4-15.05. - Smoking prohibited in new and existing units of multi-unit residences.

- (a) Smoking is prohibited and no person shall smoke in any new unit of a multi-unit residence, except in a designated smoking area as provided in section 4-15.04.
- (b) Beginning twelve (12) months after the effective date of this ordinance, smoking is prohibited and no person shall smoke in any existing unit of a multi-unit residence, except in a designated smoking area as provided in section 4-15.04.

4-15.06. - Additional smoking-related prohibitions.

- (a) Smoking of cannabis for medical purposes pursuant to California Health and Safety Code sections 11362.7 et seq. in any unit of a multi-unit residence is prohibited by this chapter.
- (b) No person shall smoke in any nonsmoking area, as described in this chapter.
- (c) No landlord shall knowingly permit smoking in any nonsmoking area of a multi-unit residence, which is under the landlord's control. The landlord shall keep the nonsmoking area of a multi-unit residence free of any tobacco litter or waste.

- (d) No person shall intimidate or harass 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.
- (e) Causing, permitting, aiding, or abetting a violation of any provision of this chapter shall also constitute a violation of this chapter.
- (f) Smoking outside of a multi-unit residence property shall occur at a minimum distance of thirty (30) feet from any operable building entrance or exit, window, opening, or ventilation system of the multi-unit residence property provided that the smoke does not enter the adjacent areas in which smoking is also prohibited by law or by the owner of the adjacent property.

4-15.07. - Signage.

- (a) "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 on the outside of each enclosed building or unenclosed area or any other area where smoking is prohibited by this chapter. If a designated smoking area exists in a multi-unit residence, the sign may indicate that no smoking is allowed except in said designated smoking area.
- (b) Notwithstanding the foregoing, "no smoking" signs shall not be required inside any unit of a multi-unit residence.
- (c) Signs required to be posted in a multi-unit residence shall be posted and maintained by the landlord. The absence of signs shall not be a defense to a violation of any provision of this chapter.

4-15.08. - 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 all of the following:
 - (1) A clause providing in substance 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 multi-unit residence property other than a designated smoking area, if one exists, (ii) smoke in a new unit, (iii) smoke in an existing unit twelve (12) months or more after the effective date of this ordinance, or (iv) violate any law regulating smoking anywhere on the multi-unit residence property;

- (2) A clear description of all areas on the multi-unit residence property where smoking is allowed or prohibited; and
 - (3) A clause expressly conveying third-party beneficiary status to all tenants and lawful occupants of the multi-unit residence as to the smoking provisions of the agreement.
- (b) Whether or not a landlord complies with subsection (a) of section 4-15.08 above, the clauses required by section 4-15.08 shall be implied and incorporated by law into every agreement to which subsection (a) is applicable and section 4-15.08(a)(1)(2) and (3) shall become effective as of the earliest possible date on which the landlord could have made the insertions into the lease or rental agreement.
- (c) This chapter shall not create liability in a landlord of the multi-unit residence 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 subsection (a) of 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.

4.15.09. - Penalties and enforcement.

- (a) Any violation of this chapter, including smoking in any area where smoking is prohibited, constitutes a public nuisance and may be abated as such including the application of any of the enforcement remedies provided in the Pacifica Municipal Code or under any applicable state or federal law or pursuant to any other lawful power the City may possess.
- (b) Infractions. Any person who violates any provision of this chapter shall be guilty of an infraction, punishable in accordance with section 1-2.01 of the Pacifica Municipal Code, unless otherwise stated.
- (c) Misdemeanors. Any person who violates any provision of this chapter in excess of three times within one year, shall be guilty of a misdemeanor.
- (d) Each day that a violation of this chapter continues shall constitute a separate violation of this chapter.
- (e) Enforcement of this chapter shall be the responsibility of the Pacifica Police Department, Pacifica Code Enforcement Officials and the Park Rangers or their designees.

- (f) The remedies provided for by this chapter are not intended to preclude or in otherwise limit any other remedy available by law or equity.

4-15.10. - Interpretation.

- (a) The provisions of this chapter are restrictive only. This chapter establishes no new rights for a person who engages in smoking. 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.
- (b) This chapter is intended and shall be interpreted to be consistent with and at least as stringent as any state statute prohibiting smoking in any unit, common area or other area of a new or existing multi-unit residence, or any other place as identified herein.
- (c) Notwithstanding any provision of this chapter, any landlord may adopt policies relating to smoking which are more restrictive than those provided herein.”

Section 3. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), under Section 15061(b)(3) of the CEQA Guidelines (14 Cal. Code Regs. 15000 et seq.) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

Section 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 5. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published in accordance with State law.

Section 6. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 9th day of September 2019, by the following vote:

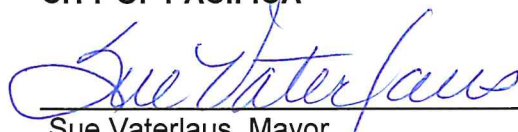
AYES, Councilmembers: Vaterlaus, Martin, O'Neill, Beckmeyer, Bier

NOES, Councilmembers: None.

ABSENT, Councilmembers: None.


ABSTAIN, Councilmembers: None.

CITY OF PACIFICA



Sue Vaterlaus, Mayor

APPROVED AS TO FORM:



For Michelle Marchetta Kenyon, City Attorney

ATTEST:



Sarah Coffey, City Clerk