

ORDINANCE NO. 2021 - _____

**AN ORDINANCE ADDING CHAPTER 6.74 TO TITLE 6 OF THE ALAMEDA COUNTY
ORDINANCE CODE TO PROHIBIT SMOKING IN AND AROUND MULTI-UNIT RESIDENCES
IN THE UNINCORPORATED AREAS OF THE COUNTY OF ALAMEDA**

IT IS HEREBY ORDAINED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA THAT THE ALAMEDA COUNTY ORDINANCE CODE IS AMENDED AS FOLLOWS:

SECTION I

Chapter 6.74 is added to Title 6 of the General Code of the County of Alameda, to read as follows:

Chapter 6.74 – Prohibition on Smoking In and Around Multi-Unit Residences

Section 6.74.005. Findings and Declaration

The Board of Supervisors of the County of Alameda finds and declares that:

- A. Secondhand smoke has repeatedly been identified as a health hazard.
 - 1. The U.S. Surgeon General concluded there is no risk-free level of exposure to secondhand smoke.
 - 2. The California Air Resources Board categorized secondhand smoke as a toxic air contaminant, along with most toxic automotive and industrial air pollutants, for which there is no safe level of exposure.
 - 3. The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm.
 - 4. The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) recommends that multiunit housing be free from secondhand smoke, cannabis smoke, and aerosol from electronic smoking devices.
 - 5. The American Heart Association has recommended all adults and children be protected from smoking in multiunit housing.
- B. Exposure to secondhand smoke causes death and disease.
 - 1. Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke.
 - 2. 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.
 - 3. 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%.
 - 4. Secondhand smoke kills more than 400 infants every year.

C. Electronic smoking device aerosol may be considered a health hazard.

1. Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, and toluene.
2. Electronic smoking device aerosol is not harmless water vapor as it contains varying concentrations of particles and chemicals with some studies finding particle sizes and nicotine concentrations similar to, or even exceeding, conventional cigarette smoke.
3. Evidence continues to build that exposure to electronic smoking device aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and thus likely poses a risk to human health.
4. Given the increasing prevalence of electronic smoking device use, especially among youth and young adults, widespread nicotine exposure resulting in addiction and other harmful consequences is a serious concern.
5. A number of health authorities, including the U.S. surgeon general, ASHRAE, and State of California's Tobacco Education and Research Oversight Committee (TEROC) all support inclusion of electronic smoking devices in regulations of smoking and other tobacco product use.

D. Secondhand cannabis smoke is a health hazard.

1. The California EPA included cannabis smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer;
2. Cannabis smoke contains at least 33 known carcinogens;
3. In one study, exposure to cannabis smoke in an unventilated setting resulted in detectible levels of cannabinoids in nonsmoker participants' blood and urine, and participants experienced minor increases in heart rate and impaired cognitive performance; and
4. A recent systematic review of the literature concluded that secondhand exposure to cannabis smoke leads to cannabinoid metabolites in bodily fluids and individuals experiencing self-reported psychoactive effects.

E. Nonsmokers who live in multiunit dwellings can be exposed to neighbors' secondhand smoke.

1. Several peer-reviewed studies on drifting secondhand smoke in multiunit housing have confirmed that secondhand smoke transfers between units, seeping into smoke-free areas from areas where smoking occurs.
2. Residents of multiunit housing have higher levels of cotinine (a biomarker for nicotine) in their blood and saliva than those living in detached houses.
3. Twelve peer-reviewed journal articles have found that between 26% and 64% of residents of multiunit housing report secondhand smoke drifting into their home.

4. Between 44% and 46.2% of Californians living in multiunit housing with personal smoke-free home policies are exposed to secondhand smoke in their home.
 5. Surveys have found that 65% to 90% of multiunit housing residents who experience secondhand smoke in their home are bothered by it.
- F. 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, making this “thirdhand smoke” a potential health hazard.
1. Thirdhand smoke contains carcinogenic materials that accumulate over time, presenting a health hazard long after the initial smoke is gone.
 2. A study found that thirdhand smoke remains months after nonsmokers have moved into units where smokers previously lived.
 3. Human exposure to these thirdhand smoke carcinogens can occur through inhalation, ingestion, or skin absorption through contact with carpeting, furnishings, or clothing.
 4. Thirdhand smoke potentially poses the greatest danger to infants and toddlers, who crawl on rugs and furnishings and place household items in their mouths.
 5. Nonsmoking people who are exposed to thirdhand smoke have significantly higher nicotine and cotinine levels than those who have not been exposed to thirdhand smoke.
 6. Research has shown that thirdhand smoke damages human cellular DNA.
- G. The Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure, and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure.
- H. Secondhand smoke exposure in multiunit housing contributes to tobacco-related health inequities. For example, in California, when compared with adults who live in single family homes, adults who live in multiunit housing are more likely to be:
1. People of color (63% of residents of multiunit homes versus 49.6% of residents of single family homes);
 2. Lower-income or below the poverty line (46.8% versus 27%);
 3. Lacking a high school diploma (21.4% versus 14.8%);
 4. Current smokers (17.5% versus 13.2%);
 5. Uninsured (23.4% versus 14.2%).
- I. Secondhand smoke in multiunit housing is a significant threat to the health and safety of California children.
1. About a quarter of those who live in multiunit housing (25.2%) are under the age of 18.
 2. The home is the primary source of secondhand smoke for children.

3. Fifty-six percent 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.
 4. Children who live in apartments have mean cotinine levels that are 45% higher than cotinine levels in children who live in detached homes.
- J. In the Eden area of unincorporated Alameda County, forty-seven percent of youth reported having been exposed to secondhand cannabis, tobacco, or vape smoke in their home. The highest numbers of children reside in Districts 3 and 4.
- K. A majority of multiunit housing residents, including a large portion of smokers, support smoke-free policies in multiunit residences.
1. Seventy-four percent of United States adults surveyed favor smoke-free public housing.
 2. Sixty-one percent of Californians surveyed favor limiting smoking inside apartment units and 69% would support limiting smoking in outdoor common areas of apartment buildings.
 3. Almost three out of four (72%) Eden area residents strongly support or support a smoke-free policy for where they live.

Section 6.74.010. Purpose and Intent

It is the purpose and intent of the Board of Supervisors, in enacting this Chapter, to prohibit smoking in and around Multi-Unit Residences to protect the health, safety, and general welfare of residents within the unincorporated areas of the County of Alameda.

Section 6.74.020. Definitions

The following words and phrases, whenever used in this Chapter, shall be construed as hereafter set forth, unless it is apparent from the context that they have a different meaning:

“Adjacent Unenclosed Property” means any Unenclosed Area of property, publicly or privately owned, that abuts a Multi-Unit Residence, but does not include a Lot containing a single family home.

“Cannabis” has the meaning set forth in California Business and Professions Code section 26001, as that section may be amended from time to time.

“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.

“Department” means the Planning Department of the Community Development Agency of the County of Alameda and its authorized representatives, designees, or agents.

“Enclosed Area” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

- A. Any type of overhead cover, whether or not that cover includes vents or other openings, and at least three (3) walls or other vertical constraints to airflow, including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or
- B. Four (4) walls or other vertical constraints to airflow, regardless of composition, including, but not limited to, vegetation, that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.

“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, except this term does not apply to a tenant who sublets their Unit.

“Lot” means a separate parcel of land shown and identified as such on the records of the county recorder or on the final map of an approved and recorded subdivision.

“Multi-Unit Residence” means a Lot with two or more Units, including, but not limited to, apartments, townhomes, condominium complexes, senior and assisted living facilities, and long-term health care facilities; or a Lot with a Unit attached to another Unit on an adjacent Lot, including but not limited to attached townhomes. For the purpose of determining whether a property is a Multi-Unit Residence, the following do not constitute “Units”: secondary (or accessory) dwelling units, as defined by Ordinance Code section 17.04.010 (including junior accessory dwelling units); agricultural employee housing, as defined by Ordinance Code section 17.04.010; agricultural caretaker dwellings, as defined by Ordinance Code section 17.04.010; and mobilehomes in a mobilehome park, as defined by Ordinance Code section 3.32.020.

“Nonsmoking Area” means any Enclosed Area or Unenclosed Area in which Smoking is prohibited by this Chapter or other law.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any other device that delivers to a Person nicotine or other substances, including substances derived from Cannabis. “Smoking” includes using an electronic device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral device for the purpose of circumventing the prohibition of Smoking.

“Unenclosed Area” means any area that is not an Enclosed Area.

“Unit” means a personal dwelling space, even one lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area 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, or hospital; a room in a hotel or motel; a dormitory room; a room in a single-room occupancy (“SRO”) facility; a room in a homeless shelter. This definition does not include a room in an unlicensed group living facility with 6 or fewer residents. This definition does

not include: secondary (or accessory) dwelling units, as defined by Ordinance Code section 17.04.010 (including junior accessory dwelling units); agricultural employee housing, as defined by Ordinance Code section 17.04.010; agricultural caretaker dwellings, as defined by Ordinance Code section 17.04.010; and mobilehomes in a mobilehome park, as defined by Ordinance Code section 3.32.020.

Section 6.74.030. Smoking Prohibition in Multi-Unit Residence Units

On or after July 1, 2022, Smoking is prohibited in all Units of a Multi-Unit Residence, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as a private balcony, porch, deck, or patio.

Section 6.74.040. Smoking Prohibition in Multi-Unit Residence Common Areas Except in Designated Smoking Areas

- A. On or after July 1, 2022, Smoking is prohibited in Common Areas of a Multi-Unit Residence, except within a designated Smoking area that meet the following requirements:
1. The designated Smoking area is established by a Person with legal control over a Common Area, such as a Landlord or homeowners' association.
 2. The designated Smoking area is:
 - a. An Unenclosed Area;
 - b. At least twenty-five (25) feet from Unenclosed Areas primarily used by children, Unenclosed Areas of K-12 school campuses, and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, and swimming pools, including any accessory features (e.g., seating, water fountains) but not including parking facilities;
 - c. At least twenty-five (25) feet from any Nonsmoking Area;
 - d. At least twenty-five (25) feet from any doorway, window, opening, or other vent into an Enclosed Area, including an Enclosed Area not regulated by this Chapter.
 - e. No more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;
 - f. Clearly marked with a perimeter;
 - g. Identified by conspicuous signs; and
 - h. Not within any Enclosed or Unenclosed Area where Smoking is otherwise prohibited by this Chapter or other law.
- B. Notwithstanding A, on Lots one (1) acre or larger, a designated Smoking area need not comply with Section 6.74.040(A)(2)(f) and (g) (need not be clearly marked with a perimeter or identified with conspicuous signs).
- C. No Person with legal control over a Common Area in which Smoking is prohibited by this Chapter or other law shall permit the presence of ashtrays, ashcans, or other receptacles primarily used for disposal of Smoking waste within the area.

Section 6.74.050. Smoking Prohibition Within Buffer Zones

- A. On or after July 1, 2022, Smoking is prohibited in Adjacent Unenclosed Property located within twenty-five (25) feet of any doorway, window, opening, or other vent into an Enclosed Area of a Multi-Unit Residence.
- B. Section 6.74.050(A) above does not apply to a Person who is Smoking in the restricted buffer zone area while actively passing on the way to another destination.

Section 6.74.060. Responsibility of Persons with Legal Control of Nonsmoking Areas

No Person with legal control over any Nonsmoking Area, including Landlords, property managers, tenants, and subtenants, shall permit or suffer Smoking in a Nonsmoking Area in violation of this Chapter.

Section 6.74.070. Notice and Signage Requirements

- A. On or before July 1, 2022, every Landlord or Person responsible for establishing rules in a Multi-Unit Residence shall deliver to each Unit of a Multi-Unit Residence a written notice meeting the requirements of Section 6.74.070(D).
- B. On or after July 1, 2022, every Landlord shall provide prospective tenants written notice meeting the requirements of Section 6.74.070(D).
- C. On or after July 1, 2022, prior to any sale every seller of a Multi-Unit Residence or Unit within shall provide the buyer a written notice meeting the requirements of Section 6.74.070(D).
- D. Written notice must provide the following information:
 - 1. On or after July 1, 2022, Smoking is prohibited in all Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as a private balcony, porch, deck, or patio; and
 - 2. On or after July 1, 2022, Smoking is prohibited in all Common Areas except within specifically designated Smoking areas, if applicable.
- E. Persons with legal control over Common Areas shall post and maintain clear and unambiguous “No Smoking” signs in sufficient numbers and locations in Common Areas where Smoking is prohibited by this Chapter or other law.

Section 6.74.080. Exception for Drug, Device, or Combination Product Authorized by United States Food and Drug Administration

Notwithstanding any provision to the contrary, nothing in this Chapter shall be interpreted to restrict or otherwise regulate the use of a drug, device, or combination product authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act. This exception does not apply to tobacco products regulated by the United States Food and Drug Administration.

Section 6.74.090. Administrative Enforcement

- A. Upon a finding that a Person has violated any provision of this Chapter, the enforcement officer designated by the Department shall attempt to give written notice of the violation first to the Person that has possession of the Unit, and subsequently to the Landlord and property manager for any subsequent violation. Such notice shall be provided in person or by pre-paid certified mail, return receipt requested and shall include a copy of this chapter and a statement describing the section(s) found to be violated. Enforcement may proceed against the tenant, subtenant, property manager, and Landlord as determined necessary by the Enforcement Officer.
- B. The enforcement officer designated by the Department may impose the following administrative penalties, which penalties may be assessed at the time of the notice of violation:
 1. A \$100 (one hundred dollars) fine upon a finding of a first violation of this Chapter within any three-year period.
 2. A \$200 (two hundred dollars) fine upon a finding of a second violation of this Chapter within any three-year period.
 3. A \$500 (five hundred dollars) fine upon a finding of a third or subsequent violation of this Chapter within any three-year period.
- C. Penalties must be paid directly to the County to the address indicated in the notice. Unpaid penalties levied on a tenant, subtenant, or property manager will be collected via the County's central collections agency. Unpaid penalties levied on a Landlord will be added to the lien on the subject property.
- D. Any Person receiving an administrative penalty pursuant to this section may appeal the violation to the Planning Director within 10 (ten) calendar days of the date the notice of penalty is sent to the Person. The appeal must contain:
 1. Specific identification of the address of the Multi-Unit Residence;
 2. The names and addresses of all appellants, including unit number, if any;
 3. A statement of the appellant's relationship to the property at issue (e.g., tenant, landlord);
 4. A statement in ordinary and concise language of the grounds for appeal, stating the facts supporting appellant's contention that they did not violate this Chapter or that the violation has been corrected;
 5. If the appellant is seeking a hearing before the Planning Director, a statement that a hearing is requested;
 6. The date and signatures of all appellants; and
 7. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.
- E. Late appeals and appeals based on financial hardship will not be considered.

- F. The Planning Director will consider the appellant's written appeal and will issue a decision based on the written appeal unless the appellant requests a hearing.
 - 1. If the Planning Director determines, based on the facts in the record, that the appellant violated this Chapter, the Planning Director shall uphold the declaration of violation, unless the appellant presents clear and convincing evidence that the violation has been corrected. If the Planning Director upholds the appeal, the notice of violation and administrative penalty will be rescinded.
 - 2. The Planning Director's decision shall be in writing. The decision will be provided in person or by pre-paid certified mail, return receipt requested. The decision shall be final.
- G. Planning Director appeal hearings shall not be conducted unless timely requested by the appellant and shall follow the following procedures.
 - 1. The Planning Director shall set the matter for hearing at least 10 (ten) and not more than 60 (sixty) days from the date of the appeal. The Planning Director may hear additional evidence and may sustain, modify, or overrule the finding of violation.
 - 2. All hearings shall be electronically tape recorded.
 - 3. Hearings need not be conducted according to the California Code of Evidence.
 - 4. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in the state.
 - 5. Irrelevant and unduly repetitious evidence shall be excluded.
- H. An appellant whose appeal is denied may seek review by filing an appeal to be heard by the superior court pursuant to Government Code section 53069.4. Such appeal must be filed within 20 days after service of the final decision.

Section 6.74.100. Enforcement

- A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Violations of this Chapter are subject to a civil action brought by the District Attorney or the County Counsel, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.
- C. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- D. In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the County, including, for example, civil or criminal Code enforcement proceedings, and suits for injunctive relief.

Section 6.74.110. No Grounds to Terminate Tenancy

Nothing in this Chapter may be used as grounds to terminate a tenancy. Nothing in this Chapter shall render Smoking in a Nonsmoking Area a violation of law pursuant to any rental housing agreement.

Section 6.74.120. Authority to Adopt Regulations to Implement this Chapter

- A. The Department may adopt rules and regulations which are necessary or appropriate to implement, administer, and enforce the provisions of this Chapter.

Section 6.74.130. Severability

- A. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other person or circumstance. The Board of Supervisors hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION II

- A. This ordinance shall take effect thirty (30) days from and after the date of passage.
- B. Before the expiration of fifteen (15) days after its passage, it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on _____
_____, 2021, by the following called vote:

AYES:

NOES:

EXCUSED:

Keith Carson
President of the Board of Supervisors
County of Alameda, State of California

ATTEST:
Clerk of the Board of Supervisors
County of Alameda

By: _____

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL
County of Alameda

By: _____

Raymond Leung, Deputy County Counsel