

ORDINANCE NO. 1710

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN FERNANDO, CALIFORNIA, ADDING CHAPTER 24 TO THE SAN FERNANDO MUNICIPAL CODE TO PROHIBIT SMOKING IN MULTI-UNIT HOUSING

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat. According to the World Health Organization (WHO), tobacco kills up to half of its users, amounting to more than 8 million deaths each year worldwide, including nearly half a million people who die prematurely from smoking in the United States.¹ According to the United State Department of Health and Human Services, tobacco use can cause disease in nearly all organs of the body and is responsible for an estimated 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all chronic obstructive pulmonary disease deaths, in the United States. It is estimated that 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;² and

WHEREAS, tobacco use is the number one cause of preventable death in California and continues to be an urgent public health issue, as evidenced by the fact that an estimated 40,000 California adults die from smoking annually.² Each year, smoking costs California an estimated \$13.3 billion in direct health care expenses, \$3.6 billion in Medicaid costs, and \$10.4 billion in productivity losses.³ Research indicates that more than 25% of all adult cancer deaths in California are attributable to smoking;⁴ and

WHEREAS, secondhand smoke has repeatedly been identified as a health hazard, as evidenced by the following:

- In 2006, the U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;⁵
- In 2006, the California Air Resources Board identified secondhand smoke as a toxic air contaminant, in the same category as the most toxic automotive and industrial air

¹ World Health Organization. *WHO Report on the Global Tobacco Epidemic, 2019: Offer Help to Quit Tobacco Use*. 2019. Available at: <https://apps.who.int/iris/handle/10665/326043>.

² U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.

³ Campaign for Tobacco-Free Kids. *The Toll of Tobacco in California*. Available at: www.tobaccofreekids.org/problem/toll-us/california. Accessed June 2, 2020.

⁴ Lortet-Tieulent J, Sauer AG, Siegel RL, et al. State-level cancer mortality attributable to cigarette smoking in the United States. *JAMA Intern Med*. 2016;176(12):1792–1798. doi:10.1001/jamainternmed.2016.6530.

⁵ U.S. National Cancer Institute. *A Socioecological Approach to Addressing Tobacco-Related Health Disparities*. National Cancer Institute Tobacco Control Monograph 22. NIH Publication No. 17-CA-8035A. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. 2017. Available at: <https://cancercontrol.cancer.gov/brp/tcrb/monographs/22/index.html>.

pollutants, and a serious health threat for which there is no safe level of exposure;⁶

- In 2006, the California Environmental Protection Agency added secondhand smoke to the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;⁷
- The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) finds that acceptable indoor air quality in multi-unit housing requires the absence of secondhand smoke, cannabis smoke, and aerosol from electronic smoking devices;⁸
- The American Heart Association and the American Lung Association recommend all adults and children be protected from secondhand smoke in multi-unit housing;^{9, 10} and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the fact that since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke and secondhand smoke was responsible for an estimated 34,000 heart disease-related and 7,300 lung cancer-related deaths among nonsmoker adults each year during 2005-2009 in the United States.² Research indicates that exposure to secondhand smoke increases the risk of coronary heart disease by 25% to 30% and increases the risk of stroke by 20% to 30%.^{2,11} Centers for Disease Control and Prevention estimated that secondhand smoke kills more than 400 infants every year; and

WHEREAS, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

- Research demonstrates that secondhand smoke in multi-unit housing can and does transfer between units, seeping into smoke-free areas from areas where smoking occurs;¹²

⁶ California Identifies Secondhand Smoke as a "Toxic Air Contaminant" [press release]. January 26, 2006. Available at: www.arb.ca.gov/newsrel/nr012606.htm. Accessed June 2, 2020.

⁷ U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2006. Available at: www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm.⁸ Air Resources Board, California Environmental Protection Agency. *Frequently Asked Questions—Environmental Tobacco Smoke*. Available at: www.arb.ca.gov/toxics/ets/factsheetets.pdf. Accessed June 2, 2020.

⁸ American Society of Heating Refrigerating and Air Conditioning Engineers (ASHRAE). *2015 Addenda Supplement to ANSI/ASHRAE Standard 62.1-2013, Ventilation for Acceptable Indoor Air Quality*. Atlanta, GA: ASHRAE. 2015. Available at: https://www.ashrae.org/file%20library/technical%20resources/standards%20and%20guidelines/standards%20addenda/62_1_2_013_2015supplement_20150203.pdf.

⁹ American Heart Association. *Policy Position on Smoke-Free Policies in Multi-Unit Housing*. Washington, DC: American Heart Association. 2013. Available at: www.heart.org/idc/groups/ahaacc-public/@wcm/@adv/documents/downloadable/ucm_469126.pdf.

¹⁰ American Lung Association. *Public Policy Position – Healthy Air*. Chicago, IL: American Lung Association. 2019. Available at: <https://www.lung.org/policy-advocacy/public-policy-agenda/public-policy-position-healthy-air>.

¹¹ DiGiacomo SI, Jazayeri MA, Barua RS, Ambrose JA. Environmental Tobacco Smoke and Cardiovascular Disease. *Int J Environ Res Public Health*. 2018;16(1):96. doi: 10.3390/ijerph16010096.

¹² King BA, Travers MJ, Cummings KM, Mahoney MC, Hyland AJ. Secondhand smoke transfer in multiunit housing. *Nicotine*

- 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;¹³
- Among children who live in homes in which no one smokes indoors, those who live in multi-unit housing have 45% higher cotinine levels than children who live in detached houses;^{12,13}
- Twelve studies have found between 26% and 64% of residents of multi-unit housing report secondhand smoke drifting into their home;¹³
- Surveys have found that 65% to 90% of multi-unit housing residents who experience secondhand smoke in their home are bothered by it,¹³ and a 2019–2020 survey documented variations in secondhand smoke source among multi-unit housing residents in Los Angeles County, who reported secondhand smoke exposure from tobacco (39%), marijuana (36%), and e-cigarettes (9%);¹⁴
- Between 44.0% and 46.2% of Californians living in multi-unit housing with personal smoke-free home policies are exposed to secondhand smoke in their home;¹⁵ and

WHEREAS, several studies have confirmed that smoke-free multi-unit housing policies are an effective method to reduce secondhand smoke exposure to residents living in multi-unit housing.^{16,17,18}

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN FERNANDO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I. The recitals above are true and correct and incorporated herein by reference.

SECTION II. Chapter 24 in the City of San Fernando Municipal Code (“Code”) is hereby added to read as follows:

Tob Res. 2010;12:1133-1141. doi:10.1093/ntr/ntq162.

¹³ Snyder K, Vick JH, King BA. Smoke-free multiunit housing: a review of the scientific literature. *Tob Control.* 2016;25:9-20. doi:10.1136/tobaccocontrol-2014-051849.

¹⁴ Toy P, Yount C, Meng YY, et al. *Health at Risk: Policies Are Needed to End Cigarette, Marijuana, and E-Cigarette Secondhand Smoke in Multi-Unit Housing in Los Angeles.* Los Angeles, Calif.: UCLA Center for Health Policy Research. 2020. Available at: <http://healthpolicy.ucla.edu/publications/Documents/PDF/2020/Health-at-Risk-policybrief-may2020.pdf>.

¹⁵ King BA, Babb SD, Tynan MA, Gerzoff RB. National and state estimates of secondhand smoke infiltration among U.S. multiunit housing residents. *Nicotine Tob Res.* 2013; 15(7):1316–1321. doi:10.1093/ntr/nts254.

¹⁶ Hollar TL, Cook N, Quinn D, Phillips T, DeLucca M. Smoke-free multiunit housing policies show promise in reducing secondhand smoke exposure among racially and ethnically diverse, low-income seniors. *J Immigr Minor Health.* 2017;19(6):1281–1289. doi.org/10.1007/s10903-016-0430-2.

¹⁷ Gentzke AS, Hyland A, Kiviniemi M, Travers MJ. Attitudes and Experiences with Secondhand Smoke and Smoke-Free Policies Among Subsidised and Market-Rate Multiunit Housing Residents Living in Six Diverse Communities in the USA. *Tob Control.* 2018;27(2):194-202. doi: 10.1136/tobaccocontrol-2016-053374.

¹⁸ Young W, Karp S, Bialick P, et al. Health, Secondhand Smoke Exposure, and Smoking Behavior Impacts of No-Smoking Policies in Public Housing, Colorado, 2014-2015. *Prev Chronic Dis.* 2016;13:E148. doi: 10.5888/pcd13.160008.

Section 1. INTENT AND PURPOSE.

This Chapter protects the public from nonconsensual exposure to secondhand smoke in and around their homes by prohibiting smoking in certain locations of Multi-Unit Housing. Exposure to secondhand smoke has been proven to cause adverse health effects including but not limited to cancer, cardiovascular disease, respiratory infections, asthma, and ear and nasal problems. The intent and purpose of prohibiting smoking at the identified locations is to protect the public health, safety, and welfare by reducing the number of locations in the City of San Fernando where exposure to secondhand smoke can occur.

Section 2. DEFINITIONS.

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

- (a) "Common Area" means every enclosed area and unenclosed area of a Multi-Unit Housing that residents of more than one unit are entitled to access, enter or use, including, but not limited to, lobbies, hallways, pathways, lobbies, courtyards, elevators, stairwells, laundry rooms, community rooms, restrooms or offices, entryways, playgrounds, gym facilities, swimming pool areas, parking garages/structures, parking lots, grassy or landscaped areas, walking paths, cooking areas, sitting areas and eating areas.
- (b) "Common interest development" means:
 - (1) A community apartment project as defined in California Civil Code section 4105, or any successor legislation;
 - (2) A condominium project as defined in California Civil Code section 4125, or any successor legislation;
 - (3) A planned development as defined in California Civil Code section 4175, or any successor legislation; and
 - (4) A stock cooperative as defined in California Civil Code section 4190, or any successor legislation.
- (c) "Designated Smoking Area" shall mean an area where smoking is permitted, as designated by a landlord, HOA or other person with legal control of the premises, and has been established in accordance with the provisions of this Chapter.
- (d) "Detached Unit" means a unit in a Multi-Unit Housing that is completely detached from other structures and contains no shared common wall, floor or ceiling with an adjacent unit.
- (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) “Enclosed area” means all 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. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- (g) “Homeowners’ association” or “HOA” means an 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, or any successor legislation.
- (h) “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.
- (i) “Multi-Unit Housing” means a residential property containing two or more units, including, but not limited to, apartment buildings, common interest developments, senior and assisted living facilities, and long-term health care facilities.

For purposes of this Chapter the definition of Multi-Unit Housing does not include the following:

- (1) A hotel or motel that meets the requirements of California Civil Code Section 1940(b)(2);
 - (2) A mobile home park;
 - (3) A single-family home, except if used as a health care facility subject to licensing requirements; and
 - (4) A single-family home with an attached or detached accessory dwelling unit, junior accessory dwelling unit or second primary dwelling unit (Senate Bill 9 urban dwelling unit) permitted pursuant to California Government Code sections 65852.1, 65852.2, 65852.21 or 65852.22 or an ordinance of the City adopted pursuant to those sections, except where one or more of the units is used as a health care facility subject to licensing requirements.
- (j) “New Lease” means any lease or rental agreement that allows a person to occupy a unit that is entered into on or after July 7, 2022.
 - (k) “Nonsmoking Area” means enclosed or unenclosed area of a Multi-Unit Housing in which smoking is prohibited by:
 - (1) this Chapter or other law;
 - (2) binding agreement relating to the ownership, occupancy, or use of real property; or

(3) a person with legal control 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) “Smoking” means:

(1) inhaling, exhaling, or burning, any tobacco, nicotine, cannabis, or plant product, whether natural or synthetic;

(2) carrying any lighted, heated, or activated tobacco, nicotine, marijuana, or plant product, whether natural or synthetic, intended for inhalation; or

(3) using an “electronic smoking device.”

Smoking does not include the use of traditional, sacred tobacco as part of a lawfully recognized religious, spiritual, or cultural ceremony or practice.

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

(o) “Unit” means a personal dwelling space, even one lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use area, such as a private balcony, porch, deck, or patio. “Unit” includes, without limitation, an apartment; a condominium; 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, junior accessory dwelling unit or second unit. Unit includes a New Unit and an Existing Unit.

(1) “New Unit” means a unit that is issued a certificate of occupancy after July 7, 2022, or any unit that is leased or rented for residential use for the first time after July 7, 2022.

(2) “Existing Unit” means a unit in existence on or before July 7, 2022.

Section 3. SMOKING RESTRICTIONS.

(a) Effective as of July 7, 2022, smoking is prohibited anywhere on the premises of a Multi-Unit Housing as follows:

(1) In all New Units and Existing Units governed by a New Lease, together with any associated outdoor exclusive-use unenclosed areas such as a private balcony, deck, porch or patio.

(b) Two (2) years from July 7, 2022, smoking is prohibited anywhere on the premises of a Multi-Unit Housing as follows:

- (1) In all Units, together with any associated outdoor exclusive-use areas such as balconies, decks, or patios; and
 - (2) In all Common Areas and other outdoor areas except for a Designated Smoking Area established in compliance with subsection (d).
- (c) Notwithstanding subsections (a) and (b), smoking is permitted inside the enclosed area of a Detached Unit, as of July 7, 2022. This exception does not apply to and smoking is not allowed in any outdoor exclusive-use unenclosed areas such as balconies, decks or patios associated with a Detached Unit. This subsection (c) shall remain in effect until July 7, 2027 and as of that date is repealed.
- (d) Notwithstanding subsection (b), as of two (2) years from July 7, 2022, smoking is permitted in a Designated Smoking Area that meets all the following conditions:
- (1) Must not be an enclosed area.
 - (2) Must be at least twenty-five (25) feet from any indoor area, doorway, or window, and outdoor recreation area such as a tennis court, swimming pool, and picnic area, or outdoor area primarily used by children such as a playground.
 - (3) Must be no more than 10 percent of the total unenclosed area of the property.
 - (4) Must have a clearly marked perimeter.
 - (5) Must be identified by conspicuous signs. The signs shall have letters of no less than one (1) inch in height and shall be installed and maintained by the Landlord or Homeowner Association with legal control over the Designated Smoking Area.
 - (6) If the requirements set forth in this subsection (d) cannot be satisfied due to unique circumstances affecting a Multi-Unit Housing, the Director of Community Development or designee may approve a smoking area that meets the requirements of this Chapter to the extent practicable or, if in his or her judgment such an area cannot be designed, the Director of Community Development or designee may exempt the landlord or HOA from the Designated Smoking Area requirement.
- (e) No person with legal control over a Multi-Unit Housing shall permit smoking anywhere on the premises, except as provided in subsections (c) and (d).
- (f) No person with legal control over a Common Area in which smoking is prohibited by this Chapter or other law shall knowingly permit the presence of ashtrays, ashcans, or other receptacles designed for or primarily used for disposal of smoking waste within the area.

Section 4. REQUIRED AND IMPLIED LEASE TERMS FOR ALL NEW AND EXISTING UNITS IN MULTI-UNIT HOUSING.

(a) After July 7, 2022, every lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Housing, entered into, renewed, or continued month-to-month, shall be amended to include the following provisions:

(1) A clause providing that as of July 7, 2022, for new units and existing units governed by a new lease, and as of July 7, 2024, for all units, it is a material breach of the agreement to smoke or allow smoking in designated nonsmoking areas and units, including exclusive-use areas such as balconies, porches, or patios. Such clause shall be substantially consistent with the following:

“Tenant agrees and acknowledges that the premises to be occupied by tenant and members of tenant’s household have been designated as a smoke-free living environment. As of July 7, 2022, for new units and existing units governed by a new lease, or July 7, 2024, for all units, tenant, members of tenant’s household, and any guests under control of the tenant will not smoke anywhere:

- a) In the unit rented by tenant, including any associated balconies, decks, or patios, other than the enclosed areas of a detached unit; or
- b) In the common areas of the property, other than a designated smoking area.

As of July 7, 2027, for all units, tenant, members of tenant’s household, and any guests under control of the tenant will not smoke anywhere on the premises.

Tenant acknowledges that a breach of the smoke-free policy may render tenant liable to landlord for the costs to repair tenant’s unit due to damage from smoke odors or residue. A breach of the smoke-free policy is a breach of the lease and grounds for immediate enforcement action, including potential termination of the lease by the landlord.

Tenant will inform tenant’s guests of the smoke-free policy. Tenant will also promptly give landlord a written statement of any incident where tenant observes smoking not allowed by this policy or believes smoke is migrating into the tenant’s unit from sources outside the tenant’s unit.”

(2) A clause providing that it is a material breach of the agreement for tenant to violate any law regulating smoking while anywhere on the property, or to knowingly and intentionally allow any other person subject to the control of the tenant to engage in such behavior. Such clause shall be substantially consistent with the following:

“It is a material breach of this agreement for tenant to violate any law regulating smoking while anywhere on the property. Moreover, it is a material breach of this agreement for tenant to knowingly or intentionally allow any other person subject to the control of the tenant to violate any law regulating smoking while anywhere on the property.”

- (3) A clause expressly conveying third-party beneficiary status to all occupants of the Multi-Unit Housing as to the smoking provisions of the lease or other rental agreement. Such clause shall be substantially consistent with the following:

“Tenant agrees that other tenants of the rental community are third-party beneficiaries of tenant’s smoke-free policy agreement with landlord. A tenant may sue another tenant for an injunction to prohibit smoking or for damages but does not have the right to evict another tenant. Any lawsuit between tenants does not create a presumption that the landlord breached this lease.”

- (b) Whether or not a landlord complies with subsection (a) above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which subsection (a) applies as of July 7, 2022, for new units and existing units governed by a new lease, or July 7, 2024 for all units.
- (c) A tenant who breaches, or knowingly and intentionally allows any other person subject to the control of the tenant to breach, a smoking provision of a lease or other rental agreement for the occupancy of a unit in a Multi-Unit Housing shall be liable for the breach to (i) the landlord; and (ii) any occupant of the Multi-Unit Housing who is exposed to smoke or who suffers damages as a result of the breach.
- (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.

Section 5. REQUIREMENTS FOR RENTAL PROPERTIES.

The following requirements apply to Multi-Unit Housing other than units in a common interest development that are not being rented:

- (a) On or before July 7, 2022, every landlord shall deliver to a tenant of each New Unit or Existing Unit, as applicable, a copy of this Chapter and a written notice clearly stating:
- (1) All new units and existing units governed by a new lease are designated nonsmoking units and smoking is prohibited in any such unit, including any associated private balcony, porch, deck, or patio, with the exception of enclosed areas of a detached unit, as of July 7, 2022;
 - (2) All units are designated nonsmoking units and smoking is prohibited in any unit, including any associated private balcony, porch, deck, or patio, with the exception of enclosed areas of a detached unit, as of July 7, 2024; and
 - (3) All common areas with the exception of Designated Smoking Areas in compliance with Section 2(d) of this Chapter are designated nonsmoking and smoking is prohibited as of July 7, 2024; and
 - (4) The entire premises, including all units, any associated private balcony, porch, deck, or patio, and all common areas, are designated nonsmoking and smoking is prohibited anywhere on the premises effective as of July 7, 2027.

- (b) As of July 7, 2022, every landlord shall provide prospective tenants with written notice clearly stating that:
- (1) All units are designated nonsmoking and smoking is prohibited in any unit, including any associated private balcony, porch, deck, or patio, with the exception of enclosed areas of a detached unit, as of July 7, 2024; and
 - (2) All common areas, with the exception of Designated Smoking Areas in compliance with Section 2(d) of this Chapter are designated nonsmoking and smoking is prohibited as of July 7, 2024; and
 - (3) The entire premises, including all units, any associated private balcony, porch, deck, or patio, and all common areas, are designated nonsmoking and smoking is prohibited anywhere on the premises effective as of July 7, 2027.
- (c) As of July 7, 2024, 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. In addition, as of July 7, 2024, the person or persons with legal control over the Multi-Unit Housing shall post and maintain signs in sufficient numbers and locations in the Multi-Unit Housing to indicate that smoking is prohibited in all Units. The absence of signs shall not be a defense to a violation of any provision of this Chapter. “No Smoking” signs are not required inside or on doorways of units.
- (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. The landlord shall also provide resources provided by the City and/or County of Los Angeles to assist with nicotine dependence, such as referrals to quitline or online resources.

Section 6. REQUIREMENTS FOR COMMON INTEREST DEVELOPMENTS.

The following requirements apply to common interest developments:

- (a) On or before July 7, 2022, the HOA shall provide to all owners of Units a copy of this Chapter and a written notice clearly stating that:
- (1) All new units are designated nonsmoking and smoking is prohibited in any new unit, including any associated private balcony, porch, deck, or patio, with the exception of enclosed areas of a detached unit, as of July 7, 2022;
 - (2) All units are designated nonsmoking and smoking is prohibited in any unit, including any associated private balcony, porch, deck, or patio, with the exception of enclosed areas of a detached unit, as of July 7, 2024; and
 - (3) All common areas, with the exception of Designated Smoking Areas in compliance with Section 2(d) of this Chapter are designated nonsmoking and smoking is prohibited as of July 7, 2024;

- (4) The entire premises, including all units, any associated private balcony, porch, deck, or patio, and all common areas, are designated nonsmoking and smoking is prohibited anywhere on the premises effective as of July 7, 2027.
- (b) As of July 7, 2022, every seller or lessor of a Unit shall provide prospective buyers or renters, a copy of this Chapter and a written notice clearly stating that:
- (1) All units are designated nonsmoking and smoking is prohibited in any unit, including any associated private balcony, porch, deck, or patio, with the exception of enclosed areas of a detached unit, as of July 7, 2024; and
 - (2) All common areas, with the exception of Designated Smoking Areas in compliance with Section 2(d) of this Chapter are designated nonsmoking and smoking is prohibited as of July 7, 2024; and
 - (3) The entire premises, including all units, any associated private balcony, porch, deck, or patio, and all common areas, are designated nonsmoking and smoking is prohibited anywhere on the premises effective as of July 7, 2027.
- (c) As of July 7, 2024, 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. The HOA shall also distribute resources provided by the City and/or County of Los Angeles to assist with nicotine dependence, such as referrals to a *quitline* or other online resources.

Section 7. NUISANCE; OTHER

- (a) The provisions of this Chapter shall be liberally construed to protect the public health to the maximum effect possible. Notwithstanding (i) any provision of this Chapter or 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 rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.
- (b) Any violation of this Chapter is hereby declared to be a public nuisance.
- (c) Nonconsensual exposure to smoke from smoking occurring on or drifting into residential property is a nuisance.

Section 8. PENALTIES AND ENFORCEMENT.

- (a) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.
- (b) Enforcement of this Chapter shall be the responsibility of city manager or his/her designee. In addition, any peace officer or code enforcement official also may enforce this Chapter.
- (c) Any violation of this Chapter shall be punishable by administrative citation, or infraction, and subject to fines pursuant to Chapter 1, articles II and III of this Code.
- (d) A violation of this Chapter shall not constitute a misdemeanor; and no violation of any provision of this Chapter shall be prosecuted by the city attorney or city prosecutor as a misdemeanor; or remedied by a civil action, including but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.
- (e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- (f) No person shall intimidate, harass, or otherwise retaliate against any person who seeks compliance with this Chapter.
- (g) Any Person acting for the interests of itself, its members, or the general public may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this Chapter. Upon proof of the violations, a court shall grant all appropriate relief including awarding actual or statutory damages including court costs and attorney fees, and issuing an injunction or conditional judgement.
- (h) Enforcement of this Chapter is at the sole discretion of the City. Under no circumstances shall the City have any responsibility or obligation to enforce or seek any legal redress, at law or in equity, for any violation of this Chapter. Nothing in this Chapter shall create a right of action in any Person against the City or its agents to compel public enforcement of this Chapter against private parties.

SECTION III. CEQA Finding.

The City Council hereby finds that the adoption of this Ordinance would be exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3) (the "common sense exemption") and 15378(b)(5) since it can be seen with certainty that there is no possibility that adopting an ordinance will have a significant effect on the environment since the project involves administrative activities that do not significantly impact the environment. The Ordinance is also exempt under CEQA Guidelines Section 15307 and 15308, as a regulatory action that protects natural resources and the environment, since the regulation of existing smoking and the related education and outreach activities in the Ordinance will reduce existing smoking practices, improve air quality, and reduce litter and waste from smoking debris, which includes plastic-based cigarette filters that would otherwise impact the environment.

SECTION IV. Inconsistent Provisions.

Any provision of this Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Ordinance.

SECTION V. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, 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 Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION VI. Construction.

The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent. To the extent the provisions of this Code as amended by this Ordinance are substantially the same as the provisions of this Code as it read prior to the adoption of this Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION VII. Publication and Effective Date.

The City Clerk shall attest to the passage of this Ordinance and cause the same to be published once in a newspaper of general circulation within fifteen (15) days after its adoption. This Ordinance shall become effective thirty (30) days after adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of San Fernando this 6th day of June, 2022.

ATTEST:



Julia Fritz, City Clerk



Mary Mendoza, Mayor of the City of San Fernando, California

APPROVED AS TO FORM:



Richard A. Padilla, Assistant City Attorney

CERTIFICATION

I, City Clerk of the City of San Fernando, California, do hereby certify that the foregoing is a full, true, and correct copy of Ordinance No. 1710 which was introduced on May 16, 2022, and adopted by the City Council of the City of San Fernando, California at a regular meeting thereof held on the 6th day of June, 2022, by the following vote of the City Council:

AYES: Rodriguez, Ballin, Mendoza - 3

NAYS: None

ABSENT: Montañez, Pacheco - 2

ABSTAINED: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Fernando, California, this 13th day of June, 2022.



Julia Fritz, City Clerk