

## CITY OF MOUNTAIN VIEW CITY CODE

### CHAPTER 21 ARTICLE II. - PROHIBITION AND REGULATION OF SMOKING IN CERTAIN PLACES

#### SEC. 21.46. - Legislative findings.

The city council does hereby find that tobacco smoke is detrimental to the health, welfare and comfort of the general public and recognizes the right and need of those who wish to breathe fresh air. Accordingly, it has been determined that the health, safety and general welfare of the residents of, persons employed in and persons who frequent this city would be furthered by the prohibition and regulation of smoking in enclosed places or defined places, including places of employment.

#### SEC. 21.47. - Definitions.

"City vehicle" shall mean any vehicle, including, but not limited to, trucks, vans or automobiles owned by the city.

"Common area" means every enclosed area or unenclosed area of a multi-unit residence accessible and usable by residents of more than one (1) unit of that multi-unit residence, including, but not limited to, halls, paths, walkways, 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.

"Dining area" means any area, including streets and sidewalks, which is available to or customarily used by the general public, and which is designed, established or regularly used for consuming food or drink.

"Electronic smoking device paraphernalia" means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers and any other item specifically designed for the preparation, charging or use of electronic smoking devices.

"Employee" shall mean any person who is employed by, or volunteers services to, any employer in consideration for direct or indirect monetary wages or profit.

"Employer" means any person who employs the services of an individual person.

"Enclosed" means a space or area completely separated by a ceiling, roof(s) and three (3) or more walls that form a continuous perimeter, with appropriate openings for ingress and egress.

"Hotel" means hotel, motel, motor inn, bed and breakfast, boarding house and other similar establishments in which the operator has the status of an innkeeper.

"Multi-unit residence" means property containing three (3) or more attached units, except the following, which are specifically excluded:

- a. A campground;
- b. A hotel or motel satisfying the requirements of state and local law;
- c. A single-family home;
- d. A single-family home with a detached or attached in-law or second unit; and
- e. Duplexes.

"Outdoor amphitheater seating area" means any outdoor seating area available to the public at any amphitheater used for public performances.

"Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, municipal corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

"Picnic area" means any area in a city park where picnic tables are located and designed, established or regularly used for consuming food or drink.

"Place of employment" means any enclosed area under the control of a private employer or public employer within the jurisdiction of the city which employees normally frequent during the course of employment, including, but not limited to, common and private work areas or offices, employee lounges, conference and meeting rooms, auditoriums, classrooms, stairways, elevators, restrooms, hallways, vehicles, medical facilities, employee cafeterias and other enclosed facilities.

"Public places" means enclosed areas within publicly and privately owned buildings, structures, facilities or complexes that are open to, used by or accessible to the general public, regardless of any fee or age requirement. Public places include, but are not limited to, entertainment facilities, personal service establishments (such as tailors, laundromats and beauty salons), stores, malls, banks, dining establishments, hotels, motels, depots and transit terminals, theaters and auditoriums, enclosed sports arenas, convention centers, museums, galleries, polling places, child-care and day-care centers, schools, hospitals and other health-care facilities of any kind (including clinics, dental, chiropractic or physical therapy facilities), pharmacies, automotive service centers, general business offices, nonprofit entity offices and libraries. Public places further include, but are not limited to, hallways, restrooms, stairways, escalators, elevators, lobbies, reception areas, waiting rooms, indoor service lines, check-out stations, counters and other pay stations, classrooms, meeting or conference rooms, lecture rooms, taxicabs, enclosed buses and bus waiting lines, enclosed bus and train shelters or other enclosed places open to the public and/or in which members of the general public congregate for service or otherwise frequent. Public places do not include common areas of apartments and condominiums.

"Reasonable distance" means a distance of twenty-five (25) feet in any direction from an area in which smoking is prohibited.

"Smoke" means the gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the by-products, such as, for example, tobacco smoke, and smoke from other controlled substances, except when the combusting material contains no tobacco and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense, and includes vapor from an electronic cigarette.

"Smoking" means inhaling, exhaling, burning or carrying any lighted, heated or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device or any plant product intended for human inhalation.

"Tobacco product" means any product containing, made from or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to, cigarettes, cigars, cigarillos, chewing tobacco, pipe tobacco and snuff and any electronic smoking device. "Tobacco product" also includes any component, part or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately.

"Tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is incidental.

"Tobacco vending machines" means any electronic or mechanical device or appliance, the operation of which depends upon the insertion of money or other thing representative of value which dispenses or releases a tobacco product and/or tobacco accessories.

"Unenclosed area" means any area that is not enclosed.

"Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes, but is not limited to, an apartment; a condominium; a townhouse; a room in a long-term health-care facility, assisted living facility or hospital; a hotel or motel room; a room in a single-room occupancy ("SRO") facility; or a room in a homeless shelter.

#### SEC. 21.49. - Prohibition of smoking in certain places.

Except as specified in Sec. 21.52, and except in any place or area where smoking is already prohibited by state or federal law, in which case those laws apply, smoking shall be prohibited in the following places within the city:

- a. All enclosed public places available to and customarily used by the general public and in all enclosed businesses patronized by the public.
- b. Places of employment.
- c. Semiprivate rooms of health facilities.
- d. Common areas in retirement facilities and nursing homes.
- e. Outdoor amphitheater seating areas, including both fixed and informal seating areas, with a view of the stage.
- f. Picnic areas.
- g. Dining areas.
- h. Multi-unit residences.

#### SEC. 21.49.5. - Reasonable smoking distance required.

- a. Smoking in all unenclosed areas shall be prohibited within a reasonable distance from any doorway, operable window, opening, crack or vent into an enclosed area in which smoking is prohibited, except while actively passing on the way to another destination and provided smoke does not enter any enclosed area in which smoking is prohibited.
- b. Smoking in all unenclosed areas shall be prohibited within a reasonable distance from any unenclosed areas in which smoking is prohibited under Sec. 21.49 of this article, except while actively passing on the way to another destination and provided smoke does not enter any unenclosed area in which smoking is prohibited.

#### SEC. 21.50. - Reserved.

#### SEC. 21.51. - Regulation of tobacco vending machines.

- a. No person shall locate, install, keep or maintain a tobacco vending machine except in a place which under state law is not lawfully accessible to minors.
- b. This section shall become effective ninety (90) days after its enactment. Any tobacco vending machine not in conformance with this section upon its effective date shall be removed.

#### SEC. 21.52. - Smoking—Optional areas.

Notwithstanding any other provisions of this article to the contrary, and subject to any applicable provisions of state and federal law, in which case those laws apply, the following areas shall not be subject to the smoking restrictions of this article:

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- a. Private residences, except when used as places of business for child or elder care as a home business employing one (1) or more employees other than the residents, during the hours the residence is used for business. If the private residence is within a multi-unit residence, then the residence is subject to the provisions of Sec. 21.56 of this article.
- b. Hotel and motel, inn or other similar establishment guest rooms rented to guests, in conformance with state law.
- c. Retail stores that deal primarily in the sale of tobacco products and smoking paraphernalia, in conformance with state law.
- d. On-stage smoking as part of a stage production, ballet or similar exhibition, in conformance with state law.

#### SEC. 21.53. - Posting requirements.

"Smoking" or "no smoking" signs, whichever are appropriate, with letters of not less than one (1) 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 in every building or other place where smoking is controlled by this article by the owner, operator, manager or other person having control of such building or other place.

#### SEC. 21.54. - Enforcement and interpretations.

- a. Any resident who desires to register a complaint hereunder may initiate enforcement with the city manager or designees.
- b. Enforcement and interpretation shall be implemented by the city manager or designees. The fire department shall have the authority to require from any occupancy, while undergoing the regular yearly inspection, a "self-certification" from the owner, manager, operator or other person having control of such establishment, that all requirements of this article have been complied with.
- c. Any owner, manager, operator or employee of any establishment controlled by this article shall have the right to inform persons violating this article of the appropriate provisions thereof.

#### SEC. 21.55. - Penalties.

- a. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.
- b. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this article to fail to: properly post signs required hereunder; to provide signs for the use of employees in designating their area; to properly set aside required "no smoking" areas; or to comply with any other requirements of this article.  
No person, employer or nonprofit entity shall knowingly permit smoking in an area which is under the legal or de facto control of the person, employer or nonprofit entity and in which smoking is prohibited by law, unless otherwise required by state or federal law.
- c. It shall be unlawful for any person to smoke in any area restricted by the provisions of this article.
- d. It shall be unlawful for any person or entity to retaliate in any manner against any person who asserts that person's rights under article.
- e. Any person who violates subsections b. or c. hereinabove, or any other provisions of this article, shall be guilty of an infraction, punishable by:
  1. A fine not exceeding \$100.00 for a first violation.
  2. A fine not exceeding \$200.00 for a second violation of this article within one (1) year.
  3. A fine not exceeding \$500.00 for each additional violation of this article within one (1) year.
- f. Violations of this article are subject to a civil action brought by the city, punishable by a fine of not less than \$250.00 and not exceeding \$1,000.00 per violation.
- g. Causing, permitting, aiding, abetting or concealing a violation of any provision of this article shall also constitute a violation of this article.
- h. Any violation of this article is hereby declared to be a nuisance.
- i. In addition to other remedies provided by this article or by other law, any violation of this article may be remedied by an enforcement action brought by the city, including, but not limited to, administrative or traditional nuisance abatement proceedings, civil or criminal code enforcement proceedings and suits for injunctive release.

#### SEC. 21.56. - Multi-unit residences.

Beginning January 1, 2022:

- a. Smoking is prohibited, and no person shall smoke inside any new or existing unit of a multi-unit residence, in any enclosed or unenclosed common area of a multi-unit residence or within a reasonable distance of any operable doorway, window, opening or vent of a multi-unit residence.

- b. Smoking is prohibited in multi-unit residences as provided in subsection a. of this section, except that a person with legal control over a common area, or authorized representative, 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 c. of this section.

c. Designated smoking areas in multi-unit residences. A designated smoking area shall:

1. Be located in an unenclosed and clearly delineated area totaling not more than ten (10) percent of the total unenclosed area of the multi-unit residence for which it is designated;
2. Be located at least a reasonable distance away from any operable doorway, window, opening or other vent into an enclosed area. This requirement is not limited to the doors, windows, openings or other vents in the same multi-unit residence. Rather, it is intended to apply to any doors, windows, openings or other vents within the reasonable distance radius, whether on the same property or otherwise;
3. Have receptacles designed for and primarily used for disposal of tobacco waste and that are maintained free of tobacco-related litter, including, but not limited to, cigarette butts;
4. Be identified clearly and conspicuously by "designated smoking area" signs with letters not less than one (1) inch in height.
5. Be at least a reasonable distance from, and shall not include, unenclosed areas primarily used by children or that facilitate physical activity, including, for example, playgrounds, parks, swimming pools and school campuses.

d. Common areas free from smoking waste. Persons with legal control over common areas in multi-unit residences and their authorized representatives shall ensure that all common areas except those meeting the requirements of subsection c. of this section remain free of smoking and tobacco waste, ash trays, ash cans or other receptacles designed for or primarily used for disposal of smoking and tobacco waste. e. Signage. "No smoking" signs shall be posted as required by Sec. 21.53 of this chapter but are not required inside any unit or unit residence. Signs shall be maintained by the person or persons with legal control over the common areas or the authorized representative of such person.

f. Lease terms. Every lease or other rental agreement for the occupancy of a new or existing unit in a multi-unit residence entered into, renewed or continued month-to-month after the effective date of the ordinance codified in this chapter shall include the following:

1. A true and correct copy of the full text of this chapter or an abridged version published by the city manager or designee.
2. A description of and/or image depicting the location(s) of any designated smoking area(s) on the property, if any.
3. A clause expressly conveying third-party beneficiary status to all occupants of residences or residence units within reasonable distance as to the smoking provisions of the lease or other rental agreement such that an aggrieved third-party beneficiary may institute a private civil action as against violator(s) to enforce the provisions of this chapter.

If a tenant with an existing lease or rental agreement as of January 1, 2022 does not agree to add the terms required by this subsection to their existing lease or rental agreement, then the landlord shall be deemed to have complied with the requirements of this subsection upon providing the tenant with written notice of each of the terms required by paragraphs 1. through 3. of this subsection.

g. Whether or not a landlord complies with subsection f. of this section, the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection f. of this section applies and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection f. of this section.

h. A tenant's violation of the provisions of this Sec. 21.56 shall not be considered a violation of a material lease or rental agreement term, nor shall a violation provide a basis for termination of a tenancy under paragraph (2) of subdivision (a) of Section 1705 of the Community Stabilization and Fair Rent Act (Charter Article XVII), unless and until the lease or rental agreement terms required by this chapter have been accepted in writing by the tenant in accordance with the provisions of that paragraph (2).

i. This chapter shall not create additional liability for a landlord 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 the provisions of this chapter, except as otherwise allowed by applicable state law.

#### SEC. 21.56.1. - Other applicable laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.