

ORDINANCE NO. 2017-311

**AN ORDINANCE OF THE TOWN OF WINDSOR
AMENDING TITLE III, CHAPTER 20 OF THE TOWN OF WINDSOR CODE TO
PROHIBIT SMOKING IN MULTI-UNIT BUILDINGS AND COMMON AREAS**

WHEREAS, the California Constitution, Article XI, Section 7, provides cities with the authority to enact ordinances to protect the health, safety, and welfare of their citizens; and

WHEREAS, numerous studies have found that smoking is a major contributor to indoor air pollution; and

WHEREAS, reliable studies, including those by the Surgeon General of the United States, have shown that breathing sidestream or secondhand smoke is a significant health hazard, particularly to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, asthmatics and those with obstructive airway disease; and

WHEREAS, health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction and bronchospasm; and

WHEREAS, nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing sidestream or secondhand smoke may experience loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to the same; and

WHEREAS, persons, including tenants in multi-unit buildings, have a right to a smoke-free environment if they desire; and

WHEREAS, the Town Council of the Town of Windsor finds that prohibiting smoking in multi-unit residential buildings is necessary to protect the public health, safety, and welfare against smoking and secondhand smoke.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES
ORDAIN AS FOLLOWS:**

SECTION 1. Section 3-20-110 of the Town of Windsor Municipal Code entitled "Definitions" is hereby amended as follows:

- a. *Business* means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee, as defined in this section.
- b. *Common area* means every enclosed area or unenclosed area of a multi-unit building that residents of more than one (1) unit of that multi-unit building are entitled to enter or use, including but not limited to halls, paths, walkways, lobbies, courtyards, elevators, stairwells, community rooms, playgrounds, gym facilities, swimming pools, parking

garages, parking lots, shared restrooms, shared laundry rooms, common cooking areas and shared eating areas.

- c. *Electronic smoking device* means an electronic and/or battery-operated device, which can provide an inhalable dose of nicotine, cannabis, whether recreational or medical, or other substances by delivering a vaporized solution. "Electronic smoking device" includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
- d. *Employee* means any person who is employed; retained as an independent contractor by an employer, as defined in this section; or any person who volunteers his or her services for an employer, association, nonprofit or volunteer entity.
- e. *Employer* means any person, partnership, corporation, association, nonprofit or other entity who employs or retains the services of one (1) or more persons or supervises volunteers.
- f. *Enclosed area* means all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An enclosed area may have openings for ingress and egress, such as doorways or passageways.
- g. *Existing unit* means any unit that is not a new unit.
- h. *Landlord* means any person who owns property rented for residential use, any person who lets residential property, and any person who manages such property, except that "Landlord" does not include a master tenant who sublets a unit as long as the master tenant sublets only a single unit of a multi-unit building.
- i. *Multi-unit building* means residential property containing two or more units with one or more shared walls, floors or ceilings, including but not limited to apartments, residential cooperatives, residential condominiums, duplexes, residential care facilities for seniors licensed by the State of California and other attached housing. "Multi-unit building" does not include:
 - 1. A hotel or motel;
 - 2. A mobile home park;
 - 3. A campground;
 - 4. A single-family detached residence;
 - 5. A single-family home with an attached or detached second dwelling unit as defined by Government Code Section 65852.2 when permitted pursuant to local ordinance and/or applicable state law.
- j. *New unit* means a multi-unit building that is issued a certificate of occupancy or final inspection on or after June 16, 2017, and a unit that is leased or rented for the first time on or after June 16, 2017.

- k. *Nonprofit entity* means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a nonprofit within the meaning of this section.
- l. *Outdoor dining area* means any outdoor area available to or customarily used by the general public, which is designed, established, or regularly used for consuming food or drink.
- m. *Playground* means any park designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on Town grounds.
- n. *Reasonable distance* means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. The distance shall be a minimum of twenty-five (25) horizontal feet.
- o. *Recreational area* means any area owned and operated by the Town and open to the general public for recreational purposes, including gardens, the Town Green, playgrounds, and picnic and barbeque areas, sporting facilities, including bleachers, dugouts, balls fields, tennis courts, swimming pools and surrounding areas, walking, running, biking and nature trails.
- p. *Smoking* means inhaling or exhaling from, or possessing, a lighted pipe, lighted cigar, operating electronic smoking device, or lighted cigarette of any kind, or the lighting of a pipe, cigar, electronic smoking device, or cigarette of any kind, including but not limited to, tobacco, cannabis, or any other weed or plant.
- q. *Unenclosed area* means any area that is not an enclosed area.
- r. *Unit* means a residential 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, garage, carport, porch, deck, or patio.

SECTION 2. Section 3-20-115 of the Town of Windsor Municipal Code entitled “Prohibition on Smoking” is hereby amended as follows:

- a. Smoking shall be prohibited in the following places within the Town of Windsor except in such places in which smoking is already prohibited by State or Federal law in which case the State or Federal law applies:
 - 1. Recreational area;

2. Playground;
3. Outdoor dining area;
4. Multi-unit building and common areas.

SECTION 3. Section 3-20-120 of the Town of Windsor Municipal Code entitled “Reasonable Distance Required - 20 Horizontal Feet” is hereby amended as follows:

3-20-120 - Reasonable Distance Required – 25 Horizontal Feet.

- a. Smoking shall be prohibited within a reasonable distance from any entrance, opening, crack, or vent of a business and multi-unit building, except while actively passing on the way to another destination and without entering or crossing any area which smoking is prohibited.

SECTION 4. Section 3-20-125 of the Town of Windsor Municipal Code entitled “Duty of Employer, Business, or Nonprofit Entity” is hereby amended as follows:


3-20-125 – Duty of Employer, Business, Nonprofit Entity, or Landlord.

- a. No employer, business, nonprofit entity, or landlord shall knowingly or intentionally permit smoking in an area which is under the employer's, business', nonprofit entity's, or landlord's control and in which smoking is prohibited.
- b. No employer, business, nonprofit entity, or landlord shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, without limitation, ash trays or ash cans, within an area which is under the employer's, business', nonprofit entity's, or landlord's control and in which smoking is prohibited, including, without limitation, inside the perimeter of any reasonable distance required by this chapter.
- c. Notwithstanding any other provision of this chapter, any employer, business, nonprofit entity, landlord, or other person who controls any area may declare that any part of such area in which smoking would otherwise be permitted is a nonsmoking area.
- d. Every landlord of a multi-unit building, as defined in this chapter, in order to demonstrate compliance with the applicable provisions in this chapter, shall at a minimum include in every lease or rental agreement a provision prohibiting any smoking within any such unit, including any exclusive use areas such as patios, balconies and porches, as well as in common areas and on the property, as a whole. Such provision, which may be incorporated by amendment to house rules applicable to the property, shall (1) state that any violation of the smoking prohibition by, through or under the control of tenant be construed as a material breach of the lease or rental agreement, and (2) be included in any rental or lease agreement at the soonest date possible for those units already in existence and occupied pursuant to a lease other than a month-to-month lease as of the effective date of the ordinance. Units rented or leased on a month-to-month basis, and owner-occupied multi-unit building residences, shall be converted to nonsmoking no later than 60 days from the effective date of this ordinance.

- e. Compliance with the requirement set forth in (d.) above shall not excuse the landlord of a multi-unit building from taking appropriate steps to ensure tenant compliance with this chapter. Landlord shall be prepared to respond to and address complaints from other tenants on the property of violations of the smoking prohibitions.
- f. For purposes of this section, appropriate steps shall include the following:
 - 1. Posting signs in compliance with the requirements of this chapter.
 - 2. Sending every tenant written information on an annual basis for the first three years following the adoption of this ordinance about the requirements of this chapter, to include no smoking requirements and the location, if any, of a designated smoking area on the property.
 - 3. Notifying each tenant who is the subject of a smoking complaint of the requirements of this chapter as well as the fact that a complaint was lodged against the tenant and encouraging compliance.
- g. So long as Landlord can demonstrate that it has implemented all of the appropriate steps towards compliance with this ordinance, Landlord shall not be found in violation of the ordinance.

PASSED, APPROVED, AND ADOPTED this 17th day of May 2017, by the following vote:

AYES:	COUNCILMEMBERS MILLAN, OKREPKIE, SALMON, AND MAYOR FUDGE
NOES:	VICE MAYOR FOPPOLI
ABSTAIN:	NONE
ABSENT:	NONE


DEBORA FUDGE, MAYOR

ATTEST:


MARIA DE LA O, TOWN CLERK