



CITY OF DEL REY OAKS

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DATE: March 26, 2024
TO: Honorable Mayor and City Council
FROM: John Guertin, City Manager
SUBJECT: Second Reading of Ordinance Regulating Smoking in Multi-Unit Residences

CEQA: This activity is covered by the commonsense exemption that the California Environmental Quality Act (CEQA) applies only to projects that have the potential to have a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Recommended Action

It is recommended that the City Council adopt Ordinance 318 Amending Chapter 8.38 of the Municipal Code to Prohibit Smoking in New and Existing Units of Multi-Unit Residences.

Background

On January 23, 2024, the Council adopted Ordinance 317 amending the Municipal Code to regulate smoking in public places. At this meeting, staff were directed to develop additional regulations for the prohibition of smoking in multi-unit residences.

On February 27, 2024, the City Council held the first reading of the proposed ordinance.

Discussion

The County Health Department as well as some residents of The Oaks have requested the City consider adopting updates to the existing ordinance regulating smoking in multi-unit residences. As of January 1, 2024, 82 municipalities have enacted a law at the city or county level that prohibits smoking in 100% of private units of rental multi-unit housing properties. Of these municipalities, 75 have laws that prohibit smoking in 100% of private units of both rental and owner-occupied multi-unit housing properties.

The proposed amendments include additions to the Definitions as well as the addition of Section 8.38.035 Prohibition of Smoking in New and Existing Units of Multi-Unit Residences. The proposed Section 8.38.035 language is as follows:

8.38.035 Prohibition of Smoking in New and Existing Units of Multi-Unit Residences.

A. 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 as provided below:

1. Smoking in any New Unit of a Multi-Unit Residence on or after May 1, 2024, is a violation of this Chapter.

2. Smoking in an existing Unit of a Multi-Unit Residence that is not a New Unit, on or after October 1, 2024, is a violation of this Chapter.

B. An owner or Landlord may designate a Smoking Area in a Multi-Unit Residence if the area is:

1. An Unenclosed Area;

2. Located a reasonable distance from Unenclosed Areas primarily used by children or Unenclosed Areas with improvements that facilitate physical activity including but not limited to playgrounds, tennis courts, swimming pools, and school campuses;

3. Located a reasonable distance from any Nonsmoking Area. The location of Nonsmoking Areas may change due to enactment of law, execution of an agreement, or other event that affects the Area's Smoking designation. If an event occurs that changes a Nonsmoking Area, a person with legal control over a designated Smoking area within less than a reasonable distance of that Nonsmoking Area must modify, relocate, or eliminate that designated Smoking Area so as to maintain compliance with the requirements of this Chapter;

a. In the case of a Nonsmoking Area on an adjacent property established by private agreement or designation and not by this Chapter or other law, it shall not be a violation of this Chapter for a person with legal control to designate a Smoking area within a reasonable distance of the Nonsmoking Area unless that person has actual knowledge of, or a reasonable person would know of, the private agreement or designation. It shall not be a violation of this Chapter for a person to Smoke within a Nonsmoking Area if the area is erroneously designated as a Smoking area unless a reasonable person would know of the error.

4. No more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;

5. Defined by a clearly marked perimeter;

6. Identified by conspicuous signs; and

7. Not overlapping any other Area where Smoking is prohibited by this Chapter or other law.

C. No person with legal control over a Common Area of a Multi-Unit Residence in which Smoking is prohibited by this Chapter or other law shall knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of Smoking waste within the Area.

The proposed ordinance is submitted for City Council consideration.

Fiscal Impacts

There are no fiscal impacts associated with consideration of this item.

Attachments

- Multi-Unit Residence Smoking Regulations Ordinance #318

Respectfully Submitted,

John Guertin
City Manager

ORDINANCE NO. 318

AN ORDINANCE OF THE CITY OF DEL REY OAKS AMENDING CHAPTER 8.38 OF THE DEL REY OAKS MUNICIPAL CODE REGARDING SMOKING REGULATIONS

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:

- The World Health Organization (WHO) estimates that 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 alone;
- 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;
- 5.6 million of today’s Americans who are younger than 18 are projected to die prematurely from a smoking-related illness; and
- The estimated economic damage attributable to smoking and exposure to secondhand smoke in the United States is nearly \$300 billion annually; and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts; and

WHEREAS, smokeless tobacco is not a safe alternative to smoking and causes its own share of death and disease, as smokeless tobacco use can lead to nicotine addiction, and cause oral, esophageal, and pancreatic cancers; 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;
- 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;
- 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;
- Twelve studies have found between 26% and 64% of residents of multi-unit housing report secondhand smoke drifting into their home;
- Surveys have found that 65% to 90% of multi-unit housing residents who experience secondhand smoke in their home are bothered by it, 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%); and

WHEREAS, in December 2023, the City Council directed that staff prepare the proposed amendments to Chapter 8.38 to include smoking regulations for multi-unit residences; and

WHEREAS, enactment of this Ordinance is exempt from CEQA pursuant to section 15061(b)(3) of the Guidelines. The City Council determines it does not have the potential to cause a significant effect on the environment.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF DEL REY OAKS DOES ORDAIN AS FOLLOWS:

Section 1. Findings.

The City Council finds and determines the recitals set forth above to be true and correct and by this reference, incorporates the same herein as findings.

Section 2. Existing Municipal Code Chapter 8.38, titled "Smoke Free Public Places" shall be amended by the deletion of all text shown in strikethrough text (~~strikethrough text~~) and by the addition of all text shown in bold, italic text (***bold italic text***), as follows::

CHAPTER 8.38 ~~SMOKE FREE PUBLIC PLACES~~ SMOKING REGULATIONS

Sections:

8.38.010 Purpose and Intent.

8.38.020 Definitions.

8.38.030 Prohibition of Smoking in Unenclosed Areas.

8.38.035 Prohibition of Smoking in New and Existing Units of Multi-Unit Residences.

8.38.040 Smoke Free Buffer Zones.

8.38.050 Tobacco Waste.

8.38.060 Enforcement.

8.38.070 Violation and Penalties.

8.38.010 Purpose and Intent.

The council of the City of Del Rey Oaks hereby finds:

(a) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and

(b) Reliable studies have shown that breathing secondhand smoke is a significant health hazard for certain population groups, including elderly people, those with cardiovascular disease, and those with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

(c) Health hazards induced by breathing secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm; and

(d) The smoking or vaping of tobacco, or any other plant or substance, is a proven danger to health; and

(e) Section 6404.5 of the California Labor Code prohibits smoking in a “place of employment,” with certain exceptions, and provides that local government may regulate smoking in any areas not included within the definition of place of employment. The provisions of this Chapter are intended to prohibit smoking in areas deemed by the council as worthy of regulation, such areas, in the opinion of the council, not covered by Labor Code Section 6404.5, as may be amended.

(f) The use of electronic smoking devices has increased significantly in recent years, and studies on electronic smoking devices’ vapor emissions and cartridge contents have found a number of dangerous substances.

8.38.020 Definitions.

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

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

B. “Common Area” means an area in a Multi-Unit Residence that residents of more than one Unit are entitled to enter or use, including, without limitation, 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.

C. “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. This shall not include inhalers or medical devices prescribed by a physician for medical purposes.

D. “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.

E. “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 that “Landlord” does not include a tenant who sublets a Unit (e.g., a sub-lessor).

F. “Multi-Unit Residence” means property containing three or more units, including, but not limited to, apartment buildings, common interest developments, senior and assisted living facilities, and long-term health care facilities.

G. “New Unit” means a unit that is issued a certificate of occupancy, or a unit that is let for residential use, for the first time after the effective date of the ordinance codified in this Chapter.

H. “Outdoor Dining Area” means any publicly or privately owned outdoor area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used for consuming food or drink.

I. “Reasonable Distance” shall mean a distance of 25 feet in any direction from an area in which smoking is prohibited.

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

K. “Public event areas” means any publicly or privately owned place used for an event open to the general public, regardless of any fee or age requirement, including a farmers’ market, parade, fair, or festival.

L. “Public place” means any publicly or privately owned place that is open to the general public, regardless of any fee or age requirement, including public parks, streets, parking lots, plazas, shopping areas, stadiums, or sporting facilities.

M. “Recreational area” means any publicly or privately owned area, including streets and sidewalks located within the area, that is open to the general public for recreational purposes, regardless of any fee or age requirement. The term “Recreational Area” includes, but is not limited to, facilities, parks, playgrounds, athletic fields, restrooms, picnic areas, spectator and concession areas, walking paths, gardens, vernal ponds, hiking trails, bike paths, riding trails, roller and ice-skating rinks, and skateboard parks.

N. “Service area” means any publicly or privately owned area, including streets and sidewalks, designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term “service area” includes, but is not limited to, areas including or within 25 feet of information kiosks, automatic teller machines (ATMs), service lines, bus stops or shelters, or cab stands.

O. “Service lines” means an outdoor line, in any publicly or privately owned area, in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, mobile vendor lines, movie ticket lines, and sporting event lines.

P. “Smoke” or “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, cannabis, or plant product, whether natural or synthetic, intended for inhalation; or (3) using an electronic smoking device or hookah.

Q. “Tobacco Product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah, tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco, and any product or formulation of matter containing biologically active amounts of nicotine that is product or matter that will be introduced into the human body.

R. “Tobacco product waste” means any component, part, or remnant of any tobacco product. Tobacco product waste includes any waste that is produced from the use of a tobacco product, including all tobacco product packaging and incidental waste such as lighters or matches, whether or not it contains tobacco or nicotine.

S. "Tobacco use" means the act of smoking or the consumption of any other tobacco product in any form.

T. "Unenclosed Area" means any area that is not an enclosed area.

U. "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, 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, 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. Unit includes, without limitation, a New Unit.

8.38.030 Prohibition of Smoking in Unenclosed Areas.

A. Smoking is prohibited in the Unenclosed Areas of the following places within the city:

1. Recreational areas
2. Service areas
3. Outdoor dining areas
4. Public event areas
5. Sidewalks
6. Public places

B. Nothing in this Chapter prohibits any person or employer with control over any property from prohibiting smoking and tobacco use on any part of such property, even if smoking or tobacco use is not otherwise prohibited in that area.

8.38.035 Prohibition of Smoking in New and Existing Units of Multi-Unit Residences.

A. 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 as provided below:

- 1. Smoking in any New Unit of a Multi-Unit Residence on or after May 1, 2024, is a violation of this Chapter.**
- 2. Smoking in an existing Unit of a Multi-Unit Residence that is not a New Unit, on or after October 1, 2024, is a violation of this Chapter.**

B. An owner or Landlord may designate a Smoking Area in a Multi-Unit Residence if the area is:

- 1. An Unenclosed Area;**
- 2. Located a reasonable distance from Unenclosed Areas primarily used by children or Unenclosed Areas with improvements that facilitate physical activity including but not limited to playgrounds, tennis courts, swimming pools, and school campuses;**
- 3. Located a reasonable distance from any nonsmoking area. The location of nonsmoking areas may change due to enactment of law, execution of an agreement, or other event that**

affects the area's Smoking designation. If an event occurs that changes a nonsmoking area, a person with legal control over a designated Smoking area within less than a reasonable distance of that nonsmoking area must modify, relocate, or eliminate that designated Smoking Area so as to maintain compliance with the requirements of this Chapter;

a. In the case of a nonsmoking area on an adjacent property established by private agreement or designation and not by this Chapter or other law, it shall not be a violation of this Chapter for a person with legal control to designate a Smoking area within a reasonable distance of the nonsmoking area unless that person has actual knowledge of, or a reasonable person would know of, the private agreement or designation. It shall not be a violation of this Chapter for a person to Smoke within a nonsmoking area if the area is erroneously designated as a Smoking area unless a reasonable person would know of the error.

4. No more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;

5. Defined by a clearly marked perimeter;

6. Identified by conspicuous signs; and

7. Not overlapping any other area where Smoking is prohibited by this Chapter or other law.

C. No person with legal control over a Common Area of a Multi-Unit Residence in which Smoking is prohibited by this Chapter or other law shall knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of Smoking waste within the Area.

8.38.040 Smoke Free Buffer Zones

Smoking in all Unenclosed Areas shall be prohibited within 25 feet from any area in which smoking is prohibited under Section 8.38.030 of this Chapter or by any other law. This prohibition shall not apply to Unenclosed Areas of private residential properties that are not Multi-Unit residences.

8.38.050 Tobacco Waste

A. No person or employer shall permit smoking ash receptacles within an area under their control and in which smoking is prohibited by law, including within twenty-five (25) feet from any area in which smoking is prohibited. The presence of smoking ash receptacles in violation of this subsection shall not be a defense to a charge of smoking in violation of any provision of this Chapter.

B. No person shall dispose of tobacco product waste within the boundaries of an area in which smoking is prohibited.

8.38.060 Enforcement

A. No person shall permit smoking or tobacco use in an area that is under the control of that person and in which smoking, or tobacco use is prohibited by this article or any other law.

B. Event organizers shall post no smoking signs at an entrance to the event. Signs shall have letters of no less than one inch in height and shall include the international “No Smoking” symbol and may be printed.

C. A person that has control of an area in which smoking and tobacco use is prohibited by this Chapter shall direct anyone who is smoking or using tobacco in violation of this Chapter to extinguish the product being smoked or stop using the tobacco product.

D. No person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this Chapter.

8.38.070 Violations and Penalties.

Enforcement of these provisions shall be governed by Chapter 1.19 of the Del Rey Oaks Municipal Code. Each instance of smoking or tobacco use in violation of this Chapter shall be an infraction and constitute a separate violation. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

Section 3. California Environmental Quality Act (CEQA).

The adoption of this ordinance is exempt from the California Environmental Quality Act, based on 14 California Code of Regulations Section 15061(b)(3), where, as the case here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment because no change in existing permitted uses of land results from adoption of this ordinance, and to the extent impacts associated with the proposed location of cultivation and manufacturing facilities exist, they have been previously addressed in other environmental documents.

Section 4. Severability.

It is the intent of the City Council of the City of Del Rey Oaks to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. 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 City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase independently, even if any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases were declared invalid or unenforceable.

Section 5. Effective Date.

This ordinance shall be in full force and effect thirty (30) days following its passage and adoption, as certified by the City Clerk.

ADOPTED BY THE COUNCIL OF THE CITY OF DEL REY OAKS THIS ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:
ABSTAIN:

SIGNED:

Scott Donaldson, Mayor

ATTEST:

Karen Minami, City Clerk