



BILL NO. B-43

ORDINANCE NO. 2021-045

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
ADDING ARTICLE 20 TO CHAPTER 10 OF THE FRESNO
MUNICIPAL CODE, PROHIBITING SMOKING IN AND
AROUND MULTIUNIT RENTAL PROPERTIES

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat; and

WHEREAS, the World Health Organization (WHO) estimates tobacco kills up to half of its users, and can cause disease in nearly all organs of the body; and

WHEREAS, the estimated damage attributable to smoking and exposure to secondhand smoke in the United States is nearly \$300 billion annually; and

WHEREAS, tobacco use is the number one cause of preventable death in California, and an estimated 40,000 California adults die from smoking annually; and

WHEREAS, secondhand smoke has repeatedly been identified as a health hazard, and the American Heart Association and American Lung Association recommend all adults and children be protected from secondhand smoke in multiunit housing; and

WHEREAS, exposure to secondhand smoke causes death and disease, and 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; and

WHEREAS, electronic smoking device aerosol may be considered a health hazard, as research has found at least twelve chemicals in electronic smoking device



aerosol known to the State of California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, chromium, arsenic, and toluene; and

WHEREAS, 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 poses a risk to human health.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 20 is added to Chapter 10 of the Fresno Municipal Code to read:

ARTICLE 20

PROHIBITION ON SMOKING IN AND AROUND MULTIUNIT RENTAL PROPERTIES

Section	10-2001	Definitions.
	10-2002.	Smoking Restrictions.
	10-2003.	Required and Implied Lease Terms for all new and Existing Units in Multiunit Rental Properties.
	10-2004.	Requirements for Rental Properties.
	10-2005.	Nuisance.
	10-2006.	Penalties and Enforcement.
	10-2007.	Construction, Severability.

SECTION 10-2001. DEFINITIONS.

(a) "Common Area" means every area of a multiunit rental property 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.



(b) "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, vape pen, or e-hookah.

(c) "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% 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.

(d) "Exclusive Use Outdoor Area" means an area accessible only by the occupant of a unit, such as a private balcony, deck, porch, or patio.

(e) "Landlord" means any person or agent of a person who owns, manages, or is otherwise legally responsible for a unit in a multiunit rental property that is leased to a residential tenant. For purposes of this ordinance, a tenant who sublets their unit is not a landlord.

(f) "Multiunit rental property" means residential property containing two or more rental units where the majority of the units, whether rental or not, share at least one common wall with an adjacent unit.

(g) "Nonsmoking Area" means any area in which smoking is prohibited by:

- (1) This Ordinance or other law; and



(2) binding agreement relating to ownership, occupancy, or use of rental property; or

(3) a person with legal control over the area.

(h) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

(i) "Smoking" means:

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

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

(3) using an "electronic smoking device."

(j) "Unit" means a residential rental unit in a multiunit rental property, excluding any associated exclusive use outdoor area.

SECTION 10-2002. SMOKING RESTRICTIONS.

(a) Effective January 1, 2022, smoking is prohibited anywhere on the premises of a multiunit rental property, including units, common areas, and other outdoor areas.

(b) Notwithstanding subsection (a), smoking is permitted in designated smoking areas if they meet the following conditions:

(1) It is an exclusive use outdoor area; or



(2) It is an unenclosed enclosed area at least 20 feet from any:

(i) Outdoor recreation area such as a tennis court, swimming pool, or picnic area; or

(ii) Outdoor area primarily used by children such as a playground; or

(iii) Doorway, entryway into a unit or common area, ventilation system, window, or air conditioner unit.

(3) Designated smoking areas other than exclusive use outdoor areas must have a clearly marked perimeter, and be identified by conspicuous signs.

(c) No person with legal control over any nonsmoking area of a multiunit rental property shall permit smoking in the nonsmoking area, except as provided in subsection (b).

(d) No person with legal control over a common area in which smoking is prohibited by this Ordinance or other law shall permit the presence of ashtrays, ashcans, or other receptacles designed for or primarily used for disposal of smoking waste within the area.

SECTION 10-2003. REQUIRED AND IMPLIED LEASE TERMS FOR ALL NEW AND EXISTING UNITS IN MULTIUNIT RENTAL PROPERTIES.

(a) After the effective date of this Ordinance, every lease or other rental agreement for the occupancy of a unit in a multiunit rental property entered into, renewed, or continued month to month shall prohibit smoking



as required by this Ordinance. The City shall provide a form to be attached to the lease and incorporated therein containing a copy of this Ordinance and setting forth the following conditions:

(1) A clause providing that as of January 1, 2022, it is a material breach of the agreement to smoke or allow smoking:

(i) In the unit, excluding exclusive use outdoor areas; and

(ii) In any common area of the multiunit rental property other than a designated smoking area.

(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 allow any other person subject to the control of the tenant to engage in such behavior.

(3) A clause expressly conveying third-party beneficiary status to all occupants of the multiunit rental property as to the smoking provisions of the lease or other rental agreement.

(b) Whether or not a landlord complies with subsection (a) above, the clauses require by those subsections shall be implied and incorporated by law into every agreement to which subsection (a) applies, as well as to existing leases in effect, as of January 1, 2022.

(c) A tenant who breaches or allows any other person subject to control of the tenant to breach, a smoking provision of a lease or other rental agreement for the occupancy of a unit in a multiunit rental property shall be



liable for the breach to (1) the landlord; and (2) any occupant of the multiunit rental property who is exposed to smoke or who suffers damage as a result of the breach. This Ordinance does not create a private right of action for a tenant against a landlord for any damages the tenant may suffer due to another tenant's breach of any smoking provision in a lease or other rental agreement, so long as the landlord has fully complied with the terms of this Ordinance.

(d) Failure to enforce any smoking provision required by this Ordinance 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 10-2004. REQUIREMENTS FOR RENTAL PROPERTIES. The following requirements apply to multiunit rental properties other than units in a common interest development that are not being rented:

(a) On or before January 1, 2022, every landlord shall deliver to each unit a copy of this Ordinance and a written notice clearly stating:

(1) All units are designated nonsmoking units and smoking is prohibited in a unit, excluding any exclusive use outdoor areas, as of January 1, 2022; and

(2) Smoking in all common areas or outdoor areas, except for specifically designated smoking areas, is a violation of this Ordinance as of January 1, 2022.



(b) As of the effective date, every landlord shall provide prospective tenants with written notice clearly stating that:

(1) Smoking is prohibited in units, excluding any exclusive use outdoor area, as of January 1, 2022; and

(2) Smoking is prohibited in all common areas and outdoor areas, except for specifically designated smoking areas, as of January 1, 2022.

(c) The city shall prepare a form which landlords may use to comply with sections (a) and (b) above.

(d) As of January 1, 2022, 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 January 1, 2022, the person, or persons with legal control over the multiunit rental property shall post and maintain signs in sufficient numbers and locations in the multiunit rental property 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 Ordinance. "No Smoking" signs are not required inside or on doorways of units. This subsection (c) shall not apply to multiunit rental properties with three or fewer units.

(e) 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.

SECTION 10-2005. NUISANCE.

(a) The provisions of this Ordinance shall be liberally construed to protect the public health to the maximum effect possible. Except as otherwise stated herein, nothing in this Ordinance shall be interpreted to limit any person's legal rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.

(b) Any violation of this Ordinance is hereby declared to be a public nuisance.

(c) Nonconsensual exposure to smoke from smoking occurring or drifting into residential property is a nuisance.

SECTION 10-2007. PENALTIES AND ENFORCEMENT.

(a) The remedies provided by this Ordinance are cumulative and in addition to any other remedies available at law or in equity.

(b) Every responsible party owning, occupying, renting, possessing, or having charge or control over a multifamily unit is required to manage and control that unit in a manner so as not to violate the provisions of this Ordinance, and to supervise anyone using or occupying the property, with or without consent of the owner, consistent with this Ordinance. Every responsible party shall be jointly and severally liable for violations thereof regardless of any contract or agreement among them or with any third party regarding the property.



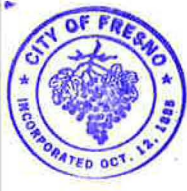
(c) Any person violating the provisions of this Ordinance may be guilty of an infraction. The city may, at its discretion, issue an administrative citation for any violation of this ordinance. In the alternative, the city may, at its discretion, issue community service as an alternative to a fine. The penalty to be assessed for each violation shall be as follows:

- (1) First violation, \$250.
- (2) Second violation within one year of the first violation, \$500
- (3) Third and each subsequent violation within a year of the first violation, \$1,000.

Any person receiving an administrative citation for violation of this article shall have the right to appeal pursuant to Article 4, chapter 1 of this code. In addition, the City Attorney may institute a civil action to ensure compliance with this Ordinance, including an action for injunctive relief and/or to recover damages and attorney fees and costs incurred as a result of any violation.

(d) No person shall intimidate, harass, or otherwise retaliate against any person who seeks compliance with this Ordinance. Residents of the multiunit rental property in violation of this subsection may be subject to community service as an alternative to a civil fine.

(e) Any person may bring a civil action to enforce this Ordinance to prevent future violations and may sue to recover actual or statutory damages, including court costs, and attorney's fees. However, this



Ordinance does not create a private right of action for a tenant against a landlord for any damages the tenant may suffer due to another tenant's breach of any smoking provision in a lease or other rental agreement, so long as the landlord has fully complied with the terms of this Ordinance.

(f) Violations of this ordinance may be reported to the city via the city's internet or app based reporting platform such as FresGo, or via telephone to the city's Code Enforcement Department. The city shall ensure these resources are available for reporting as of January 1, 2022.

SECTION 10-2007. CONSTRUCTION, SEVERABILITY. It is the intent of the city 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 provision of this article is held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect any other provisions of this ordinance.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

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STATE OF CALIFORNIA)
 COUNTY OF FRESNO) ss.
 CITY OF FRESNO)

I, BRIANA PARRA, Interim City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the 14th day of October, 2021.

AYES :Arias, Esparza, Maxwell, Soria, Chavez
 NOES :Bredefeld
 ABSENT :Karbassi
 ABSTAIN :None

Mayor Approval: N/A, 2021
 Mayor Approval/No Return: October 28th, 2021
 Mayor Veto: N/A, 2021
 Council Override Veto: N/A, 2021

BRIANA PARRA, CMC
 Interim City Clerk

BY: Briana Parra 11/1/2021
 Deputy Date

APPROVED AS TO FORM:
 DOUGLAS T. SLOAN
 City Attorney

By: [Signature] 11/1/21
 Katie Doerr Date
 Chief Assistant



October 18, 2021

Council Adoption: 10/14/2021
Mayor Approval:
Mayor Veto:
Override Request:

TO: JERRY DYER
FROM:  BRIANA PARRA, CMC
Interim City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the City Council meeting of October 14, 2021 Council adopted the attached Bill No. B-43, Ordinance No. 2021-045, entitled *****BILL B-43 (Intro. 9/30/2021) (For Adoption) – Adding Article 20 to Chapter 10 of the Fresno Municipal Code, prohibiting smoking in and around multiunit rental properties (Subject to Mayor’s Veto).** Item 1-X, File ID21-23502-01, by the following vote:

Ayes : Arias, Esparza, Maxwell, Soria, Chavez
Noes : Bredefeld
Absent : Karbassi
Abstain : None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk’s office on or before October 28, 2021. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk’s office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor’s signed approval.

APPROVED / NO RETURN: _____

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Jerry Dyer, Mayor
COUNCIL OVERRIDE ACTION:
Ayes :
Noes :
Absent :
Abstain :

Date: _____

Date: _____

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CITY OF FRESNO
CITY CLERK'S OFFICE