ORDINANCE NO. 2440

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDWOOD CITY ADDING ARTICLE V TO CHAPTER 15 (SMOKING REGULATIONS) OF THE CITY CODE OF REDWOOD CITY RELATING TO PROHIBITING SMOKING IN AND AROUND MULTI-UNIT RESIDENCES

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

WHEREAS, secondhand smoke has repeatedly been identified as a health hazard; and

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

WHEREAS, secondhand aerosol emitted from electronic smoking devices has been identified as a health hazard; and

WHEREAS, nonsmokers who live in multi-unit dwellings can be exposed to neighbors’ secondhand smoke; and

WHEREAS, harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this “third hand smoke” a potential health hazard; and

WHEREAS, smoking is a leading cause of fire deaths and fire-related injury, and contributes to fire-related health inequities; and

WHEREAS, the Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure; and

WHEREAS, several studies have confirmed that smoke free multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing; and
WHEREAS, 32 percent of Californians (or 11.8 million people) live in multi-unit housing, which accounts for one-seventh of the total multi-unit housing population in the country; and

WHEREAS, between 44 percent to 46.2 percent of Californians living in multi-unit housing with personal smoke free home policies are exposed to secondhand smoke in their home; and

WHEREAS, surveys have found that between 65 percent and 90 percent of multi-unit housing residents who experience secondhand smoke in their home are bothered by the secondhand smoke incursion; and

WHEREAS, secondhand smoke exposure in multi-unit housing contributes to tobacco-related health inequities; and

WHEREAS, secondhand smoke in multi-unit housing is a significant threat to the health and safety of California children; and

WHEREAS, there are significant savings from adopting a smoke free multi-unit housing policy; and

WHEREAS, a majority of multi-unit housing residents, including a large portion of smokers, support smoke free policies in multi-unit residences; and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking within rental units is not prohibited by California law; and

WHEREAS, there is no Constitutional right to smoke; and

WHEREAS, California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance; and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF REDWOOD CITY DOES ORDAIN AS FOLLOWS:
Section 1. Article V of Chapter 15 of the City Code of Redwood City is hereby added to read as follows:

ARTICLE V. – PROHIBITING SMOKING IN AND AROUND MULTI-UNIT RESIDENCES

Sec. 15.31. – DEFINITIONS.

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

ADJACENT UNENCLOSED PROPERTY: Means any Unenclosed Area of property, publicly or privately owned, that abuts a Multi-Unit Residence but does not include property containing detached single-family homes.

COMMON AREA: Means every Enclosed Area and every Unenclosed 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.

ELECTRONIC SMOKING DEVICE: Means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “Electronic Smoking Device” includes any such 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.

ENCLOSED AREA: Means an area in which outside air cannot circulate freely to all parts of the area, including an area that has:

A. any type of overhead cover and at least three (3) walls or other physical boundaries of any height; or

B. four (4) walls or other vertical boundaries that exceed six (6) feet in height.

EXISTING UNIT: Means a Unit that is not a New Unit.

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 sublessor).

MULTI-UNIT RESIDENCE: Means property containing two (2) or more Units, including, but not limited to, duplexes, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-Unit Residence does not include the following:

A. a hotel or motel that meets the requirements of California Civil Code section 1940, subdivision (b)(2);

B. a mobile home park;

C. a campground;

D. a marina or port;

E. a single-family home, except if used as a child care or health care facility subject to licensing requirements; and

F. a single-family home with a detached or attached in-law or second unit permitted pursuant to California Government Code sections 65852.1, 65852.2 or Article 37 of the City’s zoning ordinance except if the single-family home or in-law/second unit is used as a child care or health care facility subject to licensing requirements.

NEW UNIT: Means a Unit that is issued a certificate of occupancy after January 1, 2018.

NONSMOKING AREA: Means any Enclosed Area or Unenclosed Area in which Smoking is prohibited by

A. this article or other law;

B. binding agreement relating to the ownership, occupancy, or use of real property; or

C. designation of a Person with legal control over the area.

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 byproducts,
except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, Electronic Smoking Device vapors, cannabis smoke, and smoke released into the air by combustion, electrical ignition, or vaporization of any illegal drugs.

SMOKE-FREE RESIDENCE: Means a Multi-Unit Residence that complies with the requirements of this article as of January 1, 2018.

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.

UNENCLOSED AREA: Means any area that is not an Enclosed Area.

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 (“SRO”) facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit. Unit includes, without limitation, a New Unit.

Sec. 15.32. – SMOKING RESTRICTIONS IN NEW AND EXISTING UNITS OF MULTI-UNIT RESIDENCES.

A. Smoking is prohibited in all New Units in a Multi-Unit Residence, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio. Smoking in a New Unit in a Multi-Unit Residence, on or after January 1, 2018 is a violation of this article.

B. Smoking is prohibited in all Existing Units in a Multi-Unit Residence, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio. Smoking in an Existing Unit on or after January 1, 2019, is a violation of this article.
Sec. 15.33. – NO SMOKING PERMITTED IN COMMON AREAS EXCEPT IN DESIGNATED SMOKING AREAS.

A. Smoking in a Common Area on or after January 1, 2018, other than in a designated Smoking area established pursuant to paragraph B below, is a violation of this article.

B. A Person with legal control over a Common Area, such as, for example, a Landlord or homeowners’ association may designate a portion of the Common Area as a designated Smoking area provided the designated Smoking area complies with paragraph C below at all times.

C. A designated Smoking area:

1. Must be an Unenclosed Area;

2. Must be at least twenty-five (25) feet from Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses;

3. Must be located at least twenty-five (25) feet from any Nonsmoking Area. The location of Nonsmoking Areas may change due to the new enactment of a 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 twenty-five (25) feet of that Nonsmoking Area must modify, relocate, or eliminate that designated Smoking area so as to maintain compliance with the requirements of subsection 2 above. In the case of a Nonsmoking Area on a neighboring property established only by private agreement or designation and not by this article or other law, it shall not be a violation of this article for a Person with legal control to designate a Smoking area within twenty-five (25) feet of the Nonsmoking Area unless they have actual knowledge of, or a reasonable person would know of, the private agreement or designation. It shall not be a violation of this article 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. Must be no more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;
5. Must have a clearly marked perimeter;

6. Must be identified by conspicuous signs; and

7. Must not overlap any Enclosed or Unenclosed Area where Smoking is prohibited by this article or other law.

D. No Person with legal control over a Common Area in which Smoking is prohibited by this article 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 a Common Area in which Smoking is prohibited by this article or other law.

Sec. 15.34. – NONSMOKING BUFFER ZONES.

A. Smoking is prohibited in Adjacent Unenclosed Property within twenty-five (25) feet in any direction of any doorway, window, opening, or other vent into an Enclosed Area in a Multi-Unit Residence.

Sec. 15.35. – REQUIRED AND IMPLIED LEASE TERMS FOR ALL NEW AND EXISTING UNITS IN MULTI-UNIT RESIDENCES.

A. Every lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence, entered into, renewed, or continued month-to-month after January 1, 2018 shall include the provisions set forth in paragraph B or C below on the earliest possible date when such an amendment is allowable by law when providing the minimum legal notice.

B. New Units

1. Every lease or other rental agreement for the occupancy of a New Unit in a Multi-Unit Residence entered into after January 1, 2018 shall include the following provisions:

   i. A clause providing that as Smoking is prohibited in the New Unit, including exclusive-use areas such as balconies, porches, or patios, and in any Common Area other than a designated Smoking area; and
ii. A clause expressly conveying third-party beneficiary status to all occupants of the Multi-Unit Residence as to the Smoking provisions of the lease or other rental agreement.

C. Existing Units

1. Every lease or other rental agreement for the occupancy of an Existing Unit in a Multi-Unit Residence entered into, amended, renewed or continued month-to-month after January 1, 2018 shall include the following provisions:

   i. A clause providing that as of January 1, 2019 Smoking is prohibited in the Existing Unit, including exclusive-use areas such as balconies, porches, or patios, and in any Common Area other than a designated Smoking area; and

   ii. A clause expressly conveying third-party beneficiary status to all occupants of the Multi-Unit Residence as to the Smoking provisions of the lease or other rental agreement.

2. Whether or not a Landlord complies with paragraphs A and B above, the clauses required by those paragraphs shall be implied and incorporated by law into every agreement to which paragraphs A and B apply and shall become effective as of the earliest possible date on which the Landlord could have made the insertions pursuant to paragraphs A and B.

3. A tenant who breaches a Smoking provision of a lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence, or who knowingly permits any other Person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to (i) the Landlord; and (ii) any occupant of the Multi-Unit Residence who is exposed to Smoke or who suffers damages as a result of the breach.

4. This article 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 this Section.

5. Failure to enforce any Smoking provision required by this article 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.
Sec. 15.36. – OTHER REQUIREMENTS AND PROHIBITIONS.

A. New Units

1. As of January 1, 2018 every Landlord shall provide prospective tenants in a New Unit in a Multi-Unit Residence with written notice clearly stating that:

   i. Smoking is prohibited in all New Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of January 1, 2018; and

   ii. Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of January 1, 2018.

2. As of January 1, 2018, every seller of a New Unit in a Multi-Unit Residence shall provide prospective buyers with written notice clearly stating that:

   i. Smoking is prohibited in New Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of January 1, 2018; and

   ii. Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of January 1, 2018.

B. Existing Units

1. Every Landlord shall deliver, on or before July 1, 2018, to each Existing Unit in a Multi-Unit Residence a written notice clearly stating:

   i. All Units are designated nonsmoking Units and Smoking will be illegal in all Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of January 1, 2019; and

   ii. Smoking in all Common Areas, except for specifically designated Smoking areas, will be a violation of this article as of January 1, 2019.

2. As of January 1, 2018 every Landlord shall provide prospective tenants in an Existing Unit in a Multi-Unit Residence with written notice clearly stating that:
i. all Units are designated nonsmoking Units and Smoking will be illegal in all Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of January 1, 2019; and

ii. Smoking in all Common Areas, except for specifically designated Smoking areas, will be a violation of this article as of January 1, 2019.

3. As of January 1, 2018 every seller of an Existing Unit in a Multi-Unit Residence shall provide prospective buyers with written notice clearly stating that:

i. all Units are designated nonsmoking Units and Smoking will be illegal in all Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of January 1, 2019; and

ii. Smoking in all Common Areas, except for specifically designated Smoking areas, will be a violation of this article as of January 1, 2019.

4. Smoke-Free Residences are exempt from the noticing requirements of subsections 1, 2, and 3 above.

C. Clear and unambiguous “No Smoking” signs shall be posted in sufficient numbers and locations in Common Areas where Smoking is prohibited by this article or other law. In addition, signs shall be posted in sufficient numbers and locations in the Multi-Unit Residence to indicate that Smoking is prohibited in all Units. Such signs shall be maintained by the Person or Persons with legal control over the Common Areas. The absence of signs shall not be a defense to a violation of any provision of this article. “No Smoking” signs are not required inside or on doorways of Units.

D. No Person with legal control over any Nonsmoking Area shall permit Smoking in the Nonsmoking Area, except as provided in paragraph A of Section 15.33.

Sec. 15.37. – SMOKING AND SMOKE GENERALLY.

A. The provisions of this article are restrictive only and establish no new rights for a Person who engages in Smoking. Notwithstanding (i) any provision of this article or of this Code, (ii) any failure by any Person to restrict Smoking under this article, 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, for example, rights in nuisance,
trespass, property damage, and personal injury or other legal or equitable principles.

B. Nonconsensual exposure to Smoke occurring on or drifting into residential property is a nuisance, and the uninvited presence of Smoke on residential property is a nuisance and a trespass.

**Sec. 15.38. – PROHIBITIONS APPLY TO CANNABIS.**

California Health and Safety Code Sections 11362.3(a) (2) and 11362.79(a), as may be amended or renumbered from time to time, prohibit Smoking cannabis wherever Smoking tobacco is prohibited. The prohibitions on Smoking in Multi-Unit Residences found in this article expressly apply to the Smoking of cannabis.

**Sec. 15.39. – PENALTIES AND ENFORCEMENT.**

A. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.

B. Every instance of Smoking in violation of this article is an infraction punishable as provided in Section 1.7 of this Code. Other violations of this article may be prosecuted as infraction or misdemeanors when the interests of justice so require. Any peace officer or code enforcement official may enforce this chapter.

C. Violations of this article are subject to a civil action brought by the City, punishable by a civil fine not less than two hundred fifty dollars ($250) and not exceeding one thousand dollars ($1,000) per violation.

D. No Person shall intimidate, harass, or otherwise retaliate against any Person who seeks compliance with this article. Moreover, no Person shall intentionally or recklessly expose another Person to Smoke in response to that Person’s effort to achieve compliance with this article. Violation of this paragraph shall constitute a misdemeanor.

E. Causing, permitting, aiding, or abetting a violation of any provision of this article shall also constitute a violation of this article.

F. Any violation of this article is hereby declared to be a public nuisance.

G. In addition to other remedies provided by this article or otherwise available at law or in equity, any violation of this article may be remedied by a civil action brought
by the City Attorney including, without limitation, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

Section 2. If any section, paragraph, sentence or word of this ordinance or of the Code hereby adopted should for any reason, be found invalid, it is intended that all other portions of this ordinance independent of any such portion as may be declared invalid shall be valid.

Section 3. This adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b) (3) because it can be seen with certainty that adoption of this ordinance will not have a significant adverse effect on the environment.

Section 4. The City Clerk shall publish this ordinance in accordance with applicable law.

Section 5. This ordinance shall take effect on January 1, 2018.

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ORDINANCE NO. 2440

At a Joint City Council/Successor Agency Board/Public Financing Authority Meeting thereof held on the 13th day of November, 2017 by the following votes:

AYES, and in favor of the passage and adoption of the foregoing ordinance:

Council Members: Aguirre, Bain, Borgens, Gee, Masur and Mayor Seybert

NOES: None

RECUSED: None

ABSENT: Howard

______________________________
John D. Seybert
Mayor of the City of Redwood City

Attest:

______________________________
Pamela Aguilar
City Clerk of Redwood City

I hereby approve the foregoing Ordinance
This 14th day of November, 2017

______________________________
John D. Seybert
Mayor of the City of Redwood City