New Ordinance
Regarding Smoking and Multi-Unit Residences and Buildings with Landlord/Business Responsibilities

On February 27, 2023, the Gilroy City Council adopted a new ordinance that prohibits smoking in and at residential properties containing two or more units.

This ordinance also places certain responsibilities on landlords and owners of such properties. The requirements of this ordinance went into effect on April 1, 2023.

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
- Within 25 feet of any operable doorway, window, opening, or vent of a multi-unit residence
- Adjacent unenclosed property within 25 feet of any operable doorway, window, opening, or vent of a multi-unit residence
- Exception—persons with legal control over a common area may designate a portion as a designated smoking area (see Designated Smoking Areas)

Other Requirements:

- Common areas must be kept free from smoking waste, ashtrays, ash cans, or other smoking waste receptacles
- No smoking signs must be posted and maintained by persons with legal control over the common areas, though are not required to be posted within each unit
- No person shall dispose of used smoking waste within the boundaries of an area in which smoking is prohibited.
- The presence of smoking waste receptacles or the absence of signs in violation of the ordinance shall not be a defense.
- Lease Terms Required. The below lease terms must be included in every lease or rental agreement entered into, renewed, or continued after April 1, 2023, even if the lease is expired.

- A clause providing that it is a material breach of the agreement to smoke or allow smoking:
  - In the unit, including exclusive-use areas such as balconies, porches, or patios; and
  - In any common area of the multi-unit residence other than a designated smoking area.
- A description of and/or image depicting the location(s) of any designated smoking area(s) on the property, if any.
- 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. Such a clause shall provide that any tenant of the multi-unit residence may sue another tenant/owner to enforce the smoking provisions of the agreement but that no tenant shall have the right to evict another tenant for a breach of the smoking provisions of the agreement.
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Designated Smoking Area Requirements:
A multi-unit residence or housing development may have a designated smoking area, which shall:

- Be an unenclosed area;
- Be a reasonable distance 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;
- Be a reasonable distance in any direction from any operable doorway, window, opening, or other vent into an enclosed area that is located at the multi-unit residence and is a nonsmoking area;
- Be a reasonable distance in any direction from a nonsmoking area and/or any operable doorway, window, opening, or other vent into an enclosed area of adjacent private property;
- Have a clearly marked perimeter;
- Have a receptacle for cigarette butts that is emptied and maintained; and
- Be identified by conspicuous signs.

Violations and Penalties:
Being in violation of these requirements may subject you to the following penalties, in addition to any other remedies available at law or in equity:

- Violating any section is an infraction, which currently carries penalties of $100 for a first violation; $200 for a second; $500 for a third, and $1,000 for each additional violation. Each instance of smoking in violation of the ordinance shall constitute a separate violation. For violations other than smoking, each day of a continuing violation of this chapter shall constitute a separate violation.
- Any violation can be declared a public nuisance, subject to code enforcement actions.
- Civil action may be brought by the city attorney, including, without limitation, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.
- Civil action may be brought by tenants, residents, guests, or invitees of tenants or residents, if the owner fails to comply with the requirements of the new ordinance.

Self-Certification Requirement:
The existing Gilroy City Code requires that those businesses subject to the Ban on Smoking must self-certify their understanding and compliance with the ordinance. With your next business license renewal, owners and operators of multi-family residential dwellings must self-certify that they are in compliance. The form will be released to multi-housing owners and businesses on record and will be available on the City’s website.