

**CITY OF OJAI
ORDINANCE NO. 899**

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF OJAI, CALIFORNIA AMENDING CHAPTER 10
(SMOKING REGULATED OR PROHIBITED) OF TITLE 5
(SANITATION AND HEALTH) OF THE OJAI MUNICIPAL
CODE RELATING TO PROHIBITING SMOKING IN
MULTI-UNIT RESIDENCES.**

**THE CITY COUNCIL OF THE CITY OF OJAI, CALIFORNIA DOES ORDAIN AS
FOLLOWS:**

SECTION 1. Code Amendment. Ojai Municipal Code Section 5-10.02 (Definitions) is hereby amended to read as follows, with additions denoted by underlined text and deletions denoted by ~~struck through text~~:

The Following words, phrases and terms, as used in this chapter, shall be construed as defined in this section:

“Bar” means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term “bar” shall not include the restaurant dining area. A “bar” for the purpose of this definition does not include any bar where smoke can filter into a restaurant through a passageway, ventilation system, or any other means.

“Business” means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

“City” means the City of Ojai, California.

“Common area” means every enclosed area or unenclosed area of a multi-unit residence that residents of more than one unit are entitled to enter or use, including, for example, 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.

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“Designated smoking area” means an outdoor common area of a multi-unit residence designated as such by the owner, manager, or operator of the multi-unit residence, and located at least twenty-five (25) feet from all units and areas primarily used by children.

“Employee” means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

“Employer” means any person, partnership, corporation, including a public entity, or non-profit entity, who employs the services of one or more individual persons.

“Enclosed area” means all space between a floor and ceiling which is enclosed on all sides of solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by portions which do not extend to the ceiling or are not solid, such as “office landscaping” or similar structures.

“Home occupation” means any use within a dwelling which has been issued a home occupation permit by the City.

“Incidental food sales/service” means the sale or service of food products in a bar if such sale/service constitutes twenty-five (25%) percent of the annual gross income of the bar.

“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.

“Multi-unit residence” means property containing two or more units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, group homes, long-term health care facilities, mobile home parks, and campgrounds. Multi-unit residences do not include the following:

- A single-family home, except if used as a child care, group home, or health care facility subject to licensing requirements; and
- A single-family home with a detached or attached accessory dwelling unit, except if used as a child care or health care facility subject to licensing requirements.

“Non-profit entity” means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public entity is not a ‘non-profit entity’ within the meaning of this section.

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“Person” shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Place of employment” means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and rest rooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a child care or health care facility.

“Public entity” means any county, municipality, school or special district or political subdivision of the State, to the extent such public entity is subject to the jurisdiction of the City.

“Public place” means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, shopping malls, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, hotels and motels, theaters and waiting rooms. A private residence is not a “public place.”

“Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeterias, including any associated outdoor eating area, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term “restaurant” shall not include a “bar.”

“Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

“Separate ventilation system” means a system which is approved by the building official, exhausted to the outside, and negatively pressurized.

“Service line” means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

“Smoking” means vaping, inhaling, exhaling, burning or carrying any lighted, activated, or openly burning cigar, cigarette, electronic cigarette, weed, plant, or other combustible substance, or other mechanical or electronic device used for consuming tobacco, tobacco products, or any other weed or plant in any manner or in any form.

“Sports arena” means enclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

“Tobacco product” means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.

“Tobacco vending machine” means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper accuracy, or other things representative of value, which dispenses or releases a tobacco product.

SECTION 2. Code Amendment. Ojai Municipal Code Section 5-10.03 (Prohibition of smoking in public places) is hereby amended to read as follows, with additions denoted by underlined text and deletions denoted by ~~struck-through text~~:

- a) Except as otherwise provided, smoking shall be prohibited in all public places within the City, including, but not limited to, the following areas:
 - (1) All areas available to and customarily used by the general public in all public, business and non-profit entities patronized by the public, including, but not limited to, offices (such as attorneys, doctors, and other professionals), banks, retail stores and shopping malls;
 - (2) Buses, trolleys, taxicabs and other means of public transit provided by or under the authority of the City, and in ticket, boarding and waiting areas of public transit depots;
 - (3) Elevators;
 - (4) Public restrooms;
 - (5) Service lines;
 - (6) Libraries, museums and galleries;
 - (7) All reception and waiting areas;
 - (8) Waiting rooms, dining rooms, recreation rooms, lounges, hallways, wards and semiprivate rooms of private and public health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, senior care facilities, drug and alcohol treatment facilities, and doctors’ and dentists’ offices;
 - (9) Child day care facilities as defined in the California Health and Safety Code and private residences while used as a family day care home or group home;
 - (10) Within any facility which is primarily used for, or designed for the primary purpose of exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance, except to the extent smoking is part of a stage production;

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- (11) Video arcades, bingo parlors, game rooms, pool halls, and other amusement and entertainment centers;
 - (12) Sports arenas, health and fitness clubs, auditoriums, and other facilities used for sports, recreation and fitness purposes;
 - (13) Bowling centers, including, but not limited to, bowling lanes, bowlers' settees, visitors' settees and concourses;
 - (14) Rooms, chambers, halls, or other places used for public meetings or public assembly, during such time as a public meeting is in progress;
 - (15) Restaurants, including outdoor seating areas;
 - (16) Retail food marketing establishments, including, but not limited to, grocery stores and supermarkets;
 - (17) Beauty and personal care salons and barber shops;
 - (18) Laundromats;
 - (19) Common areas in apartment buildings, condominiums, retirement facilities and dormitories;
 - (20) Hotel and motel facilities, except as provided in Section 5-10.067;
 - (21) Educational facilities;
 - (22) Polling places;
- b) Notwithstanding any other provision of this section, any owner, operator, manager, or other person who control any establishment or facility may declare that entire establishment or facility as a non-smoking establishment, whether enclosed or not.

SECTION 3. Code Amendment. Ojai Municipal Code Section 5-10.04 (Regulation of smoking in places of employment) is hereby renumbered to Ojai Municipal Code Section 5-10.05.

SECTION 4. Code Amendment. Ojai Municipal Code Section 5-10.04 (Prohibition of smoking in multi-unit residences) is hereby added to read as follows:

- a) Smoking is prohibited in all of the following, except as permitted under Section 5-10.07:
- (1) Units in a multi-unit residence;
 - (2) Exclusive-use enclosed areas associated with a multi-unit residence, such as a private balcony, porch, deck, or patio;
 - (3) Common areas in a multi-unit residence complex, except in a designated smoking area.

SECTION 5. Code Amendment. Ojai Municipal Code Section 5-10.05 (Restriction of smoking in other areas) is hereby renumbered to Ojai Municipal Code Section 5-10.06.

SECTION 6. Code Amendment. Ojai Municipal Code Section 5-10.06 (Smoking optional areas) is hereby renumbered to Ojai Municipal Code Section 5-10.07 and amended to read as follows, with additions denoted by underlined text and deletions denoted by ~~struck-through text~~:

Notwithstanding any other provisions of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

- a) ~~Private residences~~ Single-family homes, except when used as a child care or health care facility or group home;
- b) Bars;
- c) Retail tobacco stores;
- d) Dwellings used for home occupations;
- e) Hotel and motel rooms with separate ventilation systems rented to guests provided each hotel and motel designates not less than fifty (50%) percent of its guest rooms as non-smoking rooms;
- f) Conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions provided these rooms are equipped with separate ventilation systems, while these places are being used for private functions. However, fifty (50%) percent of these areas will be designated non-smoking;
- g) An enclosed place of employment which employs only the owner and no other employee provided that the place of employment is not a public place and does not share a ventilation system with any other enclosed place of employment or public places;

h) Bar areas within restaurants provided that such areas meet the separation standards enumerated in subdivisions (1) through (3) of this subsection and provided that the restaurant/bar intends to comply with these standards. The intent to comply shall be demonstrated by the restaurant/bar owner in the following manner:

- (1) The bar must have a separate ventilation system from the restaurant;
- (2) There must be a wall or walls with no penetration between the two (2) uses. A doorway may penetrate the wall if the doorway contains a door;
- (3) If a bar and restaurant are both attached through a kitchen or other space, that space must be equipped with a separate ventilation system or vented through the restaurant ventilation system;

i) Designated smoking areas in multi-unit residences;

j) Units within multi-unit residences with separate ventilation systems.

SECTION 7. Code Amendment. Ojai Municipal Code Section 5-10.07 (Prohibition of tobacco vending machines) is hereby renumbered to Ojai Municipal Code Section 5-10.08.

SECTION 8. Code Amendment. Ojai Municipal Code Section 5-10.08 (Regulation of tobacco products) is hereby renumbered to Ojai Municipal Code Section 5-10.09.

SECTION 9. Code Amendment. Ojai Municipal Code Section 5-10.09 (Out of package sales) is hereby renumbered to Ojai Municipal Code Section 5-10.10.

SECTION 10. Code Amendment. Ojai Municipal Code Section 5-10.10 (Education) is hereby renumbered to Ojai Municipal Code Section 5-10.011 and amended to read as follows, with additions denoted by underlined text and deletions denoted by ~~struck-through text~~:

The City Manager or designee, in conjunction with the Ventura County Department of Health, shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide landlords, owners, operators, employers and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter.

SECTION 11. Code Amendment. Ojai Municipal Code Section 5-10.11 (Posting of signs) is hereby renumbered to Ojai Municipal Code Section 5-10.12 and amended to read as follows, with additions denoted by underlined text and deletions denoted by ~~struck-through text~~:

- a) “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this chapter, by the landlord, owner, operator, manager, employer or other person having control of such building or other place.
- b) Every restaurant shall have posted within every entrance a conspicuous sign clearly stating that smoking is prohibited.
- c) Every hotel and motel shall have signs posted conspicuously in the registration and lobby areas which state that non-smoking rooms are maintained and may be available; rooms designated as being non-smoking shall have signs designating such restriction conspicuously placed within the room.
- d) The posting of signs pursuant to this section shall be exempt from the provisions of Chapter 6 of Title 9 of this Code.
- e) The City Manager may adopt such regulations as are reasonably necessary to carry out the purpose and intent of this section.
- f) The absence of signs shall not be a defense to a violation of any provision of this chapter.

SECTION 12. Code Amendment. Ojai Municipal Code Section 5-10.13 (Landlords responsibilities) is hereby added to read as follows:

- a) On the effective date of the ordinance adding this section, the following regulations apply:
 - (1) The landlord will not permit the presence of ash trays, ash cans, or other receptacles designed for, or primarily used for, the disposal of smoking waste within any common area, except in a designated outdoor smoking area;

- (2) The landlord shall provide written notice to all tenants whose units are governed by an existing lease restating Section 5-10.04 and describing their rights to submit written complaints to the landlord under Section 5-10.13(a)(4) or to the City Manager under Section 5-10.14(c). If the landlord has created a designated smoking area, the landlord must include a floor plan of the building in the notice identifying the location of the designated smoking area. The landlord does not need to comply with this provision if smoking is already prohibited in all common areas and units in the multi-unit residence.
 - (3) Every new lease shall include a provision substantially consistent with the following: "Ojai Municipal Code Chapter 5-10 prohibits smoking in all units, exclusive use enclosed areas, and common areas in a multi-unit residence, except as permitted under Section 5-10.07. It is a material breach of this lease for the tenant, or any other person subject to the control of the tenant or resident by invitation or permission of the tenant, to engage in vaping, inhaling, exhaling, or burning any electronic cigarette, lighted cigar, cigarette, weed, plant, combustible substance, or mechanical or electronic device in any manner or in any form on the property, or to violate any law regulating smoking while anywhere on the property. Violations are punishable under Ojai Municipal Code section 5-10.15."
 - (4) Upon receiving a signed written complaint regarding prohibited smoking, the landlord must provide a warning to the offending tenant, stating that the tenant may be evicted if three or more complaints are received. Upon receiving a third signed, written complaint against the offending tenant, the landlord may evict the tenant or pursue other legal remedies available. The landlord must maintain copies of the written complaints and make them available to the City upon request.
- b) If the landlord has fully complied with Chapter 5-10, the landlord shall not be criminally or civilly liable to any person for a person's breach of any smoking provision while in the multi-unit residence.
 - c) A landlord's failure to enforce any smoking regulation of a lease agreement on one or more occasions does not constitute a waiver of the lease or agreement provisions required by this section, and does not prevent future enforcement of the lease or agreement provisions required by this section.

SECTION 13. Code Amendment. Ojai Municipal Code Section 5-10.12 (Enforcement) is hereby renumbered to Ojai Municipal Code Section 5-10.14.

SECTION 14. Code Amendment. Ojai Municipal Code Section 5-10.13 (Violations and penalties) is hereby renumbered to Ojai Municipal Code Section 5-10.15 and amended to read as follows, with additions denoted by underlined text and deletions denoted by ~~struck-through text~~:

- a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.
- b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
- c) Any person, employer, business, tobacco retailer, landlord, or owner, manager or operator of any establishment subject to this chapter who violates any provision of this chapter, shall be deemed guilty of an infraction ~~or a misdemeanor~~ at the discretion of City authorities ~~as provided in Title 1, Chapter 2, Section 1-2.03 of this Code~~ and, upon conviction thereof, shall be subject to the penalties provided therein following schedule of penalties: a maximum of \$100 for the first offense; a maximum of \$200 for the second offense; a maximum of \$500 for every offense thereafter. Such person, employer, business, tobacco retailer, landlord, or owner, manager or operator shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of this chapter is committed, continued or permitted and shall be punishable as provided in this section. The provisions of this section are in addition to and independent of any other sanctions which are or may be imposed under this chapter or any other provision of law.

SECTION 15. Code Amendment. Ojai Municipal Code Section 5-10.14 (Non-retaliation) is hereby renumbered to Ojai Municipal Code Section 5-10.16.

SECTION 16. Code Amendment. Ojai Municipal Code Section 5-10.15 (Other applicable laws) is hereby renumbered to Ojai Municipal Code Section 5-10.17.

SECTION 17. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions might be declared invalid or unconstitutional.

SECTION 18. Environmental Determination. The City Council determines that the following findings reflect the independent judgment of the City Council. The City Council finds that this amendment to the Municipal Code is exempt from California Environmental Quality Act (CEQA). The City Council has considered all of the evidence in the record, including the staff reports, the testimony received on the matter by the City Council, and hereby determines that the proposed text amendments will not have a significant effect on the environment. This Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061 (b)(3) of the California Code of Regulations. The City Council further finds that the proposed text amendments will promote and improve the quality of Ojai's environment and air and water resources, and the adoption of this ordinance is exempt from California Environmental Quality Act review pursuant to Title 14, Sections 15307 and 15308 of the California Code of Regulations.

SECTION 19. Certification. The City Clerk shall cause this Ordinance to be published once, within fifteen (15) calendar days after its passage, in the *Ojai Valley News*, a newspaper of general circulation, printed, published and circulated in the City, and shall cause a copy of this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the City.

SECTION 20. Effective Date. This Ordinance shall take effect 30 days after its passage and adoption pursuant to California Government Code Section 36937.

CITY OF OJAI, CALIFORNIA

By  _____

John F. Johnston, Mayor

 _____

Date signed

ATTEST:

 _____

Gail Davis, Deputy City Clerk

APPROVED AS TO FORM:

 _____


Matthew T. Summers, City Attorney

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CITY OF OJAI)
COUNTY OF VENTURA)
STATE OF CALIFORNIA)

I, Gail Davis, Deputy City Clerk of the City of Ojai do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Ojai held on June 11, 2019 and adopted at a regular meeting held on June 25, 2019 by the following vote:

AYES: Blatz, Francina, Haney, Johnston, Weirick
NOES: None
ABSTAIN: None
ABSENT: None



Gail Davis
Deputy City Clerk for the City of Ojai