

## ORDINANCE NO. 2015-04

### ADDING AND AMENDING PROVISIONS OF CHAPTER 7-2 OF THE DANVILLE MUNICIPAL CODE REGULATING SMOKING

The Danville Town Council does ordain as follows:

**SECTION 1.** Section 7-2.1 of the Danville Municipal Code is hereby amended by adding new subsections h., i. and j., to read as follows:

#### **7-2.1 Purpose and Findings.**

h.. Electronic smoking devices, commonly known as “electronic cigarettes,” “e-cigarettes,” etc., are battery operated devices which deliver nicotine, flavor and/or other substances through a vapor inhaled by the user. The secondhand aerosol emitted from such devices has been found to be a potential health hazard, containing at least ten chemicals known to the State of California to cause cancer, birth defects or other reproductive harm. The State of California’s Tobacco Education and Research Oversight Committee (TEROC) “opposes the use of e-cigarettes in all areas where other tobacco products are banned.”

i. Secondhand marijuana smoke has been identified as a potential health hazard, as evidenced by the California EPA including marijuana smoke on the Proposition 65 list of chemicals known to cause cancer.

j. Numerous studies have found that nonsmokers living in multiple family buildings can be exposed to secondhand smoke from neighbors who smoke. 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. The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) recommends that multi-unit housing be free from environmental tobacco smoke, marijuana smoke, and electronic smoking devices’ aerosol.

**SECTION 2.** Sections 7-2.2 of the Danville Municipal Code is hereby amended by adding the following definitions:

#### **7-2.2 Definitions.**

*Common Area* shall mean every area of a Multiple Family Building that residents of more than one Unit of that Multiple Family Building are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs,

community rooms and playgrounds, gym facilities and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

*Electronic Smoking Device* shall mean 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.

*Multiple family buildings* shall mean a single building or structure containing three or more dwelling units, including townhouses, condominiums and apartments.

*Smoking* shall mean the carrying or holding of a lighted pipe, cigar or cigarette of any kind, including marijuana, a hookah pipe or an operating Electronic Smoking Device or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette or any kind, including marijuana, a hookah pipe or an operating Electronic Smoking Device.

*Unit* shall mean a residential unit in a multiple family building, including all interior and exterior areas under the possession or control of the tenant/owner, including any balconies, patios, porches or fenced outdoor space.

**SECTION 3.** Section 7-2.3 of the Danville Municipal Code is hereby amended to read as follows:

**7-2.3 Regulation of Smoking in Town Facilities.**

Smoking is prohibited in all facilities owned by the Town of Danville.

**SECTION 4.** Section 7-2.4 of the Danville Municipal Code is hereby amended by adding a new subsection l. to read as follows:

**7-2.4 Prohibition of Smoking in Enclosed Places.**

l. *Multiple family buildings.* Beginning on May 1, 2016, smoking is prohibited in the following areas of multiple family buildings:

(i) Within all units in the building; and

(ii) In all common areas of the building or property. Landlords and owners of multiple family buildings shall not allow ashtrays or other receptacles for disposing of smoking materials in common areas.

**SECTION 5.** Section 7-2.7 of the Danville Municipal Code is hereby amended to read as follows:

**7-2.7 Optional Smoking Areas.**

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. A private residence, except multiple family buildings regulated by Section 7-2.4.1, or any private residence used as a health or child care facility;
- b. A bar;
- c. A hotel or motel room rented to guests;
- d. Any designated smoking area in a multiple family building. Any such designated smoking area shall meet the following requirements:
  - 1. It must be unenclosed, and
  - 2. It must be at least 25 feet from any non-smoking area on the property, and
  - 3. It must have a clearly marked perimeter and be identified by conspicuous signs.

**SECTION 6.** A new Section 7-2.13 is hereby added to the Danville Municipal Code to read as follows:

**Section 7-2.13 Required Lease Terms for all Units in Multiple Family Buildings.**

- a. Every lease or other rental agreement for the occupancy of a Unit in a Multiple Family Building, entered into, renewed, or continued month-to-month after May 1, 2016, shall include the provisions set forth in subsection (b) below on the earliest possible date when such an amendment is allowable by law when providing the minimum legal notice.
  - (1) A clause providing that as of May 1, 2016, it is a material breach of the agreement for the tenant or any other person subject to control of the tenant to engage in or allow Smoking in the Unit, including exclusive-use areas such as balconies, porches, or patios or in any Common Area of the property other than a designated Smoking area.
  - (2) A clause expressly conveying third-party beneficiary status to all occupants of the Multiple Family Building as to the Smoking provisions of the lease or other rental agreement, granted those occupants the legal right to enforce the provisions of the lease.

b. Whether or not a Landlord complies with subsection a. above, the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection a. applies and shall become effective as of the earliest possible date on which the Landlord could have made the insertions pursuant to subsection a.

c. A tenant who breaches a Smoking provision of a lease or other rental agreement for the occupancy of a Unit in a Multiple Family Building, 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 Multiple Family Building who is exposed to Smoke or who suffers damages as a result of the breach.

d. This chapter 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 Multiple Family Building if the Landlord has fully complied with this Section.

e. Failure to enforce any Smoking provision required by this chapter 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 7.** A new Section 7-2.14 is hereby added to the Danville Municipal Code to read as follows:

**Section 7-2.14      Other Requirements**

a) Every Landlord shall deliver the following, on or before May 1, 2016, to each Unit of a Multiple family building:

(1) a written notice clearly stating:

(i) all Units are designated nonsmoking Units and Smoking will be illegal in a Unit, including 25 feet from any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of May 1, 2016; and

(ii) Smoking in all Common Areas, except for specifically designated Smoking areas, will be a violation of this chapter as of May 1, 2016.

(2) a copy of this chapter.

(b) As of March 1, 2016, every Landlord shall provide prospective tenants with

written notice clearly stating that:

- (i) Smoking is prohibited in Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of May 1, 2016; and
  - (ii) Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of May 1, 2016.
- (c) Clear and unambiguous "No Smoking" signs shall be posted in sufficient numbers and locations in Common Areas where Smoking is prohibited by this chapter or other law. 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 chapter. "No Smoking" signs are not required inside or on doorways of Units

**SECTION 8. CODIFICATION.**

Sections 1 through 7, inclusive, of this ordinance shall be codified in the Danville Municipal Code.

**SECTION 9. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Danville Town Council hereby declares that they would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases was declared invalid.

**SECTION 10. PUBLICATION AND EFFECTIVE DATE.** The City Clerk shall have a summary of this ordinance published twice in a newspaper of general circulation, once within five (5) days before its adoption and once within 15 (fifteen) days after adoption. This ordinance shall become effective 30 days after adoption.

The foregoing Ordinance was introduced on November 3, 2015 and approved and adopted by the Danville Town Council at a regular meeting held on November 17, 2015, by the following vote:


**AYES:** Doyle, Arnerich, Morgan, Stepper, Storer  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

  
MAYOR

**APPROVED AS TO FORM:**

  
CITY ATTORNEY

**ATTEST:**

  
CITY CLERK

CLERK'S CERTIFICATE

I, Marie Sunseri, City Clerk of the Town of Danville, hereby certify that the foregoing is a true and accurate copy of Ordinance No. 2015-04 of said Town and that said ordinance was published according to law.

Dated: 11/20/15

  
City Clerk of the  
Town of Danville