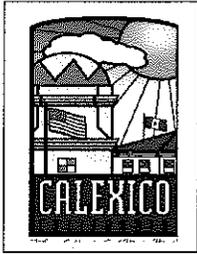


**AGENDA  
ITEM**

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# AGENDA STAFF REPORT

**DATE:** August 18, 2015

**TO:** Mayor and City Council

**APPROVED BY:** Richard Warne, City Manager *RW*  
Nick Servin, Public Works Director/City Engineer

**PREPARED BY:** Mark J. Austin, Interim City Attorney

**SUBJECT:** Introduce and Waive First Reading of Ordinance of the City Council of the City of Calexico Adding Chapter 8.59 to Title 8 ("Health and Safety" of the Calexico Municipal Code), Prohibiting Smoking in and Around Multi-Unit Residences

=====

## Recommendation:

Approve the introduction and first reading of the proposed ordinance, reading the ordinance by title only, waiving the full reading. The proposed ordinance would add Chapter 8.59 to Title 8 – "Health and Safety" – of the Calexico Municipal Code, prohibiting smoking in and around multi-unit residences in the City.

## Background:

At the City Council meeting of July 21, 2015, the American Cancer Society's Cancer Action Network gave a detailed presentation on the adverse health impacts of secondhand cigarette smoke in multi-unit housing, and appealed to the City Council to adopt an ordinance that would completely prohibit smoking in such housing. As part of their presentation, the Cancer Action Network provided handouts that included a draft ordinance, as well as a list of notable communities that have adopted similar bans. A copy of the group's handout materials are included with agenda report. (Attachments 1 and 2.)

Based on the Cancer Action Network's presentation, City staff was directed to return to the Council with an ordinance that was based on the model ordinance provided. To that end, City staff, in conjunction with the City Attorney's office, prepared the attached draft ordinance, adding Chapter 8.59 to the City Municipal Code. (**Attachment 3.**)

An existing chapter of the Calexico Municipal Code, Chapter 8.58, contains limited prohibitions on smoking in and around multi-unit

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housing. Specifically, under Chapter 8.58, smoking is prohibited in the common areas, and only the common areas, of apartment buildings, retirement facilities, and nursing homes.

The new Chapter 8.59 (which would be adopted pursuant to the attached ordinance) would broaden the smoking prohibition to all indoor and outdoor areas in various types of multi-unit residences. This smoking prohibition would also extend into a 25-foot "buffer zone" surrounding all multi-unit residences. Thus, upon adoption of the attached ordinance, all smoking would be prohibited inside, and within 25 feet of, any portion of multi-unit housing. Penalties for violations are also provided.

The health and welfare basis for the adoption of the Ordinance is reflected in the attached materials (Attachments 1 and 2), and can be summarized as follows:

Tobacco use causes death and disease and continues to be an urgent public health threat. Nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke. 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 "thirdhand smoke" a potential health hazard. Smoking is the number one cause of fire deaths, is a leading cause of fire-related injury, and contributes to fire-related health inequities. 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. Smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing. Secondhand smoke in multi-unit housing is a significant threat to the health and safety of Calexico children.

**Environmental Analysis:**

The proposed ordinance is not subject to environmental review because it is not a "project" under Section 15378 of the CEQA Guidelines, and/or because it is exempt from formal environmental review pursuant to Section 15061(b)(3) of the CEQA Guidelines.

**Fiscal Impact:**

None.

**Coordinated With:**

None.

**Attachments:**

1. Cancer Action Network, Presentation Materials
2. ChangeLab Solutions, Smokefree Housing Model Ordinance packet
3. Proposed Ordinance

## ORDINANCE \_\_\_\_

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, ADDING CHAPTER 8.59 TO TITLE 8 OF THE CALEXICO MUNICIPAL CODE TO PROHIBIT SMOKING IN AND AROUND MULTI-UNIT RESIDENCES

**WHEREAS**, tobacco use may cause death and disease and continues to be an urgent public health threat, as evidenced by the following:

- 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the nation's leading cause of preventable death;<sup>1</sup>
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths;<sup>2</sup> and

**WHEREAS**, secondhand smoke has repeatedly been identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;<sup>3</sup>
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;<sup>4,5</sup>
- The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;<sup>6</sup>
- 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;<sup>7</sup> and

**WHEREAS**, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;<sup>8</sup>
- Secondhand smoke is responsible for an estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States;<sup>8</sup>
- Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent<sup>9</sup> and increases the risk of stroke by 20 percent to 30 percent;<sup>10</sup>
- Secondhand smoke kills more than 400 infants every year;<sup>11</sup> and

**WHEREAS**, secondhand aerosol emitted from electronic smoking devices has been identified as a health hazard, as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm,<sup>6, 12, 13, 14</sup> such as formaldehyde, acetaldehyde, lead, nickel, and toluene;<sup>15,16, 17</sup>
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping;<sup>15,17,18</sup>
- 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;"<sup>19</sup> and

**WHEREAS**, secondhand marijuana smoke has been identified as a health hazard, as evidenced by the following:

- The California EPA included marijuana smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer;<sup>6,20</sup>
- Marijuana smoke contains at least 33 known carcinogens;<sup>20</sup>
- Research on the health effects of marijuana smoke has found statistically significant associations with cancers of the lung, head and neck, bladder, brain, and testes;<sup>20</sup> and

**WHEREAS**, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

- Several peer-reviewed studies on drifting secondhand smoke in multi-unit housing have confirmed that secondhand smoke can and does transfer between units,<sup>21,22</sup> creeping under doorways and through wall cracks;<sup>11</sup>
- More than one study has found that residents of multi-unit housing have high levels of cotinine (a biomarker for nicotine) in their blood and saliva;<sup>21,22</sup>
- 13 peer-reviewed journal articles have found that between 26 percent and 64 percent of residents of multi-unit housing report secondhand smoke drifting into their home;<sup>21</sup> 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 "thirdhand smoke" a potential health hazard, as evidenced by the following:

- Thirdhand smoke contains carcinogenic materials that accumulate over time, presenting a health hazard long after the initial smoke is gone;<sup>23</sup>
- A study found that thirdhand smoke remains months after nonsmokers have moved into units where smokers previously lived;<sup>24</sup>
- Human exposure to these thirdhand smoke carcinogens can be through inhalation,

ingestion, or skin absorption through contact with carpeting, furnishings, or clothing;<sup>25</sup>

- Thirdhand smoke potentially poses the greatest danger to infants and toddlers, who crawl on rugs and furnishings and suck on items in the home;<sup>25</sup>
- Nonsmoking people who are exposed to thirdhand smoke have significantly higher nicotine and cotinine levels than those who have not been exposed to thirdhand smoke;<sup>24</sup>
- Research has shown that thirdhand smoke damages human cellular DNA;<sup>26</sup> and

**WHEREAS**, smoking is the number one cause of fire deaths, is a leading cause of fire-related injury,<sup>27</sup> and contributes to fire-related health inequities, as evidenced by the following:

- In 2011, U.S. fire departments responded to an estimated 90,000 smoking-related fires, which resulted in an estimated 1,640 injuries, 540 deaths, and \$621 million in direct property damage;<sup>28</sup>
- One in four fatalities is NOT the smoker whose cigarette started the fire, and 25 percent of those who die are neighbors or friends of the smoker;<sup>28</sup>
- African-American males and American-Indian males have the highest fire death rates;<sup>27</sup>
- The elderly (people 85 and older) have the highest fire death rate (49.2%),<sup>29</sup> and the risk of dying from smoking-related fires increases with age;<sup>28</sup>
- The U.S. Fire Administration recommends that people smoke outdoors;<sup>30</sup> 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;<sup>3</sup> and

**WHEREAS**, several studies have confirmed that smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing;<sup>21</sup> and

**WHEREAS**, 32 percent of Californians (or 11.8 million people) live in multi-unit housing,<sup>31</sup> which accounts for one-seventh of the total multi-unit housing population in the country;<sup>32</sup> and

**WHEREAS**, between 44 percent to 46.2 percent of Californians living in multi-unit housing with personal smokefree home policies are exposed to secondhand smoke in their home,<sup>31</sup> 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;<sup>21</sup> and

**WHEREAS**, secondhand smoke exposure in multi-unit housing contributes to tobacco-related health inequities. For example, when compared with adults who live in single family homes,

adults who live in multi-unit housing are more likely to

- Be from communities of color (62.9% of residents of multi-unit homes versus 49.6% of residents of single family homes);<sup>32</sup>
- Be low-income or below the poverty line (46.8% versus 27%);<sup>32</sup>
- Have less than a high school diploma (21.4% versus 14.8%);<sup>32</sup>
- Be current smokers (17.5% versus 13.2%);<sup>32</sup> as well as
- Be uninsured (23.4% versus 14.2%);<sup>32</sup> and

**WHEREAS**, secondhand smoke in multi-unit housing is a significant threat to the health and safety of California children, as evidenced by the following:

- About a quarter of those who live in multi-unit housing (25.2%) are under the age of 18;<sup>31</sup>
- The home is the primary source of secondhand smoke for children;<sup>11</sup>
- 56.4 percent of youth living in apartment units in which no one smokes have elevated blood cotinine levels above .05 ng/mL, indicating they have been exposed to potentially dangerous levels of secondhand smoke;<sup>21,33</sup>
- Children who live in apartments have mean cotinine levels that are 45 percent higher than cotinine levels in children who live in detached homes;<sup>21,33</sup> and

**WHEREAS**, there are significant savings from adopting a smokefree multi-unit housing policy, as evidenced by the following research:

- Multi-unit housing property owners in California would save \$18.1 million in renovation expenses each year;<sup>21,34</sup>
- If all subsidized housing were to go smokefree in California, there would be approximately \$72.4 million saved per year, including \$61.1 million in secondhand smoke-related healthcare expenditures, \$5.9 million in renovation expenses, and \$5.4 million in smoking-attributable fire losses;<sup>35</sup> and

**WHEREAS**, a majority of multi-unit housing residents, including a large portion of smokers, support smokefree policies in multi-unit residences,<sup>21</sup> as evidenced by the following:

- 74 percent of Californians surveyed approve of apartment complexes requiring that at least half of rental units be nonsmoking;<sup>36</sup>
- 69 percent of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings;<sup>36</sup>
- 78 percent support laws that create nonsmoking units;<sup>36</sup> and

**WHEREAS**, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by California

law;<sup>37</sup> and

**WHEREAS**, there is no Constitutional right to smoke;<sup>38</sup> 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;<sup>39</sup> and

**WHEREAS**, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance;<sup>40-42</sup> and

**WHEREAS**, at least 55 California cities and counties have adopted smokefree multi-unit housing ordinances,<sup>43</sup> and at least 25 of these jurisdictions have restricted smoking in 100 percent of units;<sup>44</sup> and

**WHEREAS**, Chapter 8.58 of Title 8 of the Calexico Municipal Code contains only limited prohibitions on smoking in and around multi-unit housing;

**NOW THEREFORE**, THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

**SECTION I.** The above recitals are true and correct.

**SECTION II.** Title 8 of the City of Calexico Municipal Code is hereby amended by adding Chapter 8.59 to read as follows:

**CHAPTER 8.59 - SMOKING IN AND AROUND MULTI-UNIT RESIDENCES PROHIBITED**

**Sections:**

**8.59.010 – Purpose.**

The purpose of this chapter is to protect the health and welfare by regulating smoking in and around multi-unit residences, and to recognize the need to breathe clean air. Tobacco use causes death and disease and continues to be an urgent public health threat. Nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke. 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 "thirdhand smoke" a potential health hazard. Smoking is the number one cause of fire deaths, is a leading cause of fire-related injury, and contributes to fire-related health inequities. 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. Smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing. Secondhand smoke in multi-unit housing is a significant threat to the health and safety of children.

8.59.020 - Definitions.

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

A. "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.

B. "City" means the City of Calxico.

C. "Common Area" means every Enclosed Area and every Unenclosed Area of 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.

D. "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.

E. "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

(1) any type of overhead cover, whether or not that cover includes vents or other openings and at least three (3) walls or other physical boundaries of any height, whether or not those boundaries include vents or other openings; or

(2) four (4) walls or other vertical boundaries that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.

F. "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).

G. "Multi-Unit Residence" means property containing two (2) or more Units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-Unit Residences do not include the following:

- (1) a single-family home, except if used as a child care or health care facility subject to licensing requirements; and
- (2) a single-family home with a detached or attached in-law or second unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections, 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.

H. "New Unit" means a Unit that is issued a certificate of occupancy after September 17, 2015 and also means a Unit that is let for residential use for the first time after September 17, 2015.

I. "Nonsmoking Area" means any Enclosed Area or Unenclosed Area in which Smoking is prohibited by

- (1) this chapter or other law;
- (2) binding agreement relating to the ownership, occupancy, or use of real property;  
or
- (3) designation of a Person with legal control over the area.

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

K. "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, marijuana smoke, and crack cocaine smoke.

L. "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.

M. "Unenclosed Area" means any area that is not an Enclosed Area.

N. "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.

8.59.030 - Smoking restrictions in new and existing units of multi-unit residences.

A. Smoking is prohibited in all New Units of 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 of a Multi-Unit Residence, on or after September 17, 2015, is a violation of this chapter.

B. Smoking is prohibited in all Units of a Multi-Unit Residence that are not New Units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio. Smoking in a Unit of a Multi-Unit Residence that is not a New Unit, on or after September 17, 2016, is a violation of this chapter.

8.59.040 - No smoking permitted in common areas except in designated smoking areas.

A. Smoking in a Common Area, on or after, September 17, 2015, other than in a designated Smoking area established pursuant to paragraph B, is a violation of this chapter.

B. 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 this paragraph. In the case of a Nonsmoking Area on a neighboring property established only by private agreement or designation and not by this chapter or other law, it shall not be a violation of this chapter for a Person with legal control to designate a Smoking area within twenty-five (25) feet of the Nonsmoking Area unless that Person has actual knowledge of, or a reasonable person would know of, the private agreement or designation. It shall not be a violation of this chapter 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 chapter or other law.

D. No Person with legal control over a Common Area in which Smoking is prohibited by this chapter 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 the area.

#### 8.59.050 - Nonsmoking buffer zones.

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 of a Multi-Unit Residence.

8.59.060 - 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 September 17, 2015, shall include the provisions set forth in paragraph B below on the earliest possible date when such an amendment is allowable by law when providing the minimum legal notice.

B. 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 September 17, 2015, shall be amended to include the following provisions:

(1) A clause providing that as of September 17, 2015, it is a material breach of the agreement to allow or engage in Smoking in the Unit, including exclusive-use areas such as balconies, porches, or patios. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios as of September 17, 2015."

(2) A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant to engage in Smoking in any Common Area of the Multi-Unit Residence other than a designated Smoking area. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property, except in an outdoor designated smoking area, if one exists."

(3) A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant to violate any law regulating Smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."

(4) 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 might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement regarding smoking. As such, other occupants of the property may enforce such provisions by any lawful means, including by bringing a civil action in a court of law."

C. Whether or not a Landlord complies with paragraphs A and B above, the clauses

required by those subsections 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.

D. 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.

E. 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 Multi-Unit Residence if the Landlord has fully complied with this Section.

F. 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.

#### 8.59.070 - Other requirements and prohibitions.

A. Every Landlord shall deliver the following, on or before March 17, 2015, to each Unit of a Multi-Unit Residence:

(1) A written notice clearly stating:

(i) All Units are designated nonsmoking Units, and Smoking will be illegal in a Unit, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of September 17, 2016; and

(ii) Smoking in all Common Areas, except for specifically designated Smoking areas, will be a violation of this chapter as of September 17, 2015.

(2) A copy of this chapter.

B. As of September 17, 2015, every Landlord shall provide prospective tenants with written notice clearly stating that:

(1) 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 September 17, 2015; and

(2) Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of September 17, 2015.

C. As of September 17, 2015, every seller of a Unit in a Multi-Unit Residence shall provide prospective buyers with written notice clearly stating that:

(1) 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 September 17, 2015; and

(2) Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of September 17, 2015.

D. 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. 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 chapter. "No Smoking" signs are not required inside or on doorways of Units, except for hotels or motels as defined in California Civil Code section 1940, subdivision (b)(2).

E. No Person with legal control over any Nonsmoking Area shall permit Smoking in the Nonsmoking Area, except as otherwise provided in Section 8.59.040.

#### 8.59.080 - Smoking and smoke generally.

A. The provisions of this chapter are restrictive only and establish no new rights for a Person who engages in Smoking. Notwithstanding (i) any provision of this chapter or of this Municipal Code, (ii) any failure by any Person to restrict Smoking under this chapter, or (iii) any explicit or implicit provision of this Municipal Code that allows Smoking in any place, nothing in this Municipal 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. For all purposes within the jurisdiction of the City, nonconsensual exposure to Smoke occurring on or drifting into property is a nuisance, and the uninvited presence of Smoke on property is a nuisance and a trespass.

8.59.090 - Penalties and enforcement.

- A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Every instance of Smoking in violation of this chapter is an infraction subject to a one hundred dollar (\$100) fine. Other violations of this chapter may, in the discretion of the City Prosecutor be prosecuted as infractions or misdemeanors when the interests of justice so require. Any peace officer or code enforcement official may enforce this chapter.
- C. Violations of this chapter 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 chapter. Moreover, no Person shall intentionally or recklessly expose another Person to Smoke in response to that Person's effort to achieve compliance with this chapter. Violation of this paragraph shall constitute a misdemeanor.
- E. Causing, permitting, aiding, or abetting a violation of any provision of this chapter shall also constitute a violation of this chapter.
- F. Any violation of this chapter is hereby declared to be a public nuisance.
- G. In addition to other remedies provided by this chapter or otherwise available at law or in equity, any violation of this chapter 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.
- H. Any Person, including a legal entity or organization acting for the interests of itself, its members, or the general public, may bring a civil action to enforce this chapter by way of a conditional judgment or an injunction to prevent future such violations and may sue to recover such actual or statutory damages as he or she may prove.
- I. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City. Nothing in this chapter shall create a right of action in any Person against the City or its agents to compel public enforcement of this chapter against private parties.

8.59.100 – Coordination with Chapter 8.58.

If any sections of this chapter conflict with Chapter 8.58, this chapter shall govern.

**SECTION III.** It is the intent of the City Council of the City of Calexico 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 section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Calexico hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

**SECTION IV.** This ordinance shall take effect thirty (30) days after its adoption. The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance or a summary thereof to be published in the manner required by law.

First introduced and read at a regular meeting of the City Council held on the August 4, 2015, and adopted and at a regular meeting of said Council on the August 18, 2015.

**PASSED, APPROVED, AND ADOPTED** this August 18, 2015.

CITY OF CALEXICO

\_\_\_\_\_  
Joong S. Kim, Mayor

**ATTEST:**

\_\_\_\_\_  
Gabriela T. Garcia, City Clerk

**APPROVED AS TO FORM:**  
RUTAN & TUCKER LLP

\_\_\_\_\_  
Mark J. Austin, City Attorney

STATE OF CALIFORNIA )  
COUNTY OF IMPERIAL ) ss  
CITY OF CALEXICO )

I, Gabriela T. Garcia, City Clerk of the City of Calexico, California, do hereby certify that the foregoing Ordinance No. \_\_\_ had its first reading on \_\_\_\_\_, 2015, and had its second reading on \_\_\_\_\_, 2015, and was passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

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Gabriela T. Garcia, City Clerk

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## Survey of Imperial County Residents in Multi-Unit Housing

For many Californians living in multi-unit housing, breathing secondhand smoke drifting from neighboring apartment units, balconies and outdoor areas has become a real health hazard. The increasing awareness of the dangers of secondhand smoke and the acceptability of smoke-free environments are encouraging tenants to seek out smoke-free units and property owners to declare their buildings smoke-free.

In April 2014, the American Lung Association in California commissioned a survey of Imperial County residents living in multi-unit housing to gauge the level of support for rules around smoke-free multi-unit housing. Complete results for the survey are available at [center4tobaccopolicy.org/smokefree-housing-ca4health-poll/](http://center4tobaccopolicy.org/smokefree-housing-ca4health-poll/).

### Summary of Key Findings

- **Secondhand Smoke Exposure**

Imperial County residents know smoke is harmful and have experienced drifting secondhand smoke.

- 94% know that secondhand smoke is harmful to people who inhale it.
- 68% are concerned about the health effects of secondhand smoke drifting into their rental unit.
- 27% have experienced secondhand smoke drift into their unit in the last year.
- 35% already live in a building with rules limiting smoking in either inside or outside the building.

- **Smoking Rules in Multi-Unit Housing**

Imperial County residents are supportive of rules to protect residents in multi-unit housing from secondhand smoke exposure:



**77%** favor a rule prohibiting smoking in the outdoor common areas of apartments, including swimming pools, play areas, and courtyards



**69%** favor a rule prohibiting smoking inside apartment units.

## Background

CA4Health is the Public Health Institute's Community Transformation Grant, funded by the Centers for Disease Control and Prevention, that is focused on reducing the burden of chronic disease in California counties with populations under 500,000. CA4Health partners with some of the state's leading technical assistance providers and content experts to provide local county partners with tools, training and guidance to make their communities healthier. CA4Health's four strategic directions are reducing consumption of sugary beverages, increasing availability of smoke-free housing, creating safe routes to schools, and providing people with chronic disease with skills and resources to better manage their health.

CA4Health worked with the American Lung Association in California to increase the availability of smoke-free housing options. As part of that effort, the Lung Association conducted polling in the 12 counties that are part of the CA4Health Community Transformation Grant (Calaveras, Humboldt, Imperial, Madera, Mendocino, Merced, Monterey, Shasta, Siskiyou, Solano, Tulare, and Tuolumne).

## Survey Methodology

This survey was conducted by Goodwin Simon Strategic Research. This survey data represents information acquired from Imperial County residents in multi-unit housing by telephone interview, including both land lines and wireless numbers. Interviews were conducted in both English and Spanish, with about 12% of the interviews conducted in Spanish. The margin of error is plus or minus 7.896% at a 95% confidence level. The survey was conducted between April 10 and April 22, 2014.



*CA4Health is a project of the Public Health Institute, with funding from the Centers for Disease Control and Prevention. If you have any questions, please contact the CA4Health program at the Public Health Institute.*



## List of Communities that Restrict Smoking in Outdoor Common Areas of Multi-Unit Housing

December 2013

Many communities in California have begun to address the issue of drifting secondhand smoke in multi-unit housing by restricting smoking in outdoor common areas. Outdoor common areas include swimming pools, outdoor eating areas, play areas, courtyards and other areas outside of multi-unit housing buildings where residents of different units have access. While such a policy does not address the main problem of drifting secondhand smoke from neighboring units, it does provide some benefits for multi-unit housing residents. Prohibiting smoking in outdoor common areas provides protection from secondhand smoke in areas which are used frequently by families with children such as play areas and swimming pools. In addition, these policies protect residents in units from the secondhand smoke that would typically drift inside from common areas.

Below is a comprehensive list of the fifty-four cities and counties in California that have passed an ordinance prohibiting smoking in part of or all of outdoor common areas of multi-unit housing. Not all of these ordinances are the same; some only restrict smoking in specific outdoor common areas and some allow for designated smoking areas to be created. For specific questions about a city or county policy, please contact the Center. Additional smokefree housing materials produced by the Center are available at [www.Center4TobaccoPolicy.org/smokefree-multi-unit-housing/](http://www.Center4TobaccoPolicy.org/smokefree-multi-unit-housing/)

Lafayette (November 2013)	Larkspur (April 2011)	Santa Monica (January 2009)
Walnut Creek (October 2013)	Carpinteria (February 2011)	Dublin (December 2008)
San Ramon (February 2013)	Union City (November 2010)	Glendale (October 2008)
Petaluma (January 2013)	Santa Clara County (November 2010)	Loma Linda (June 2008)
Temple City (December 2012)	Burbank (October 2010)	Albany (May 2008)
Daly City (October 2012)	Menlo Park (September 2010)	Novato (April 2008)
San Rafael (October 2012)	Sebastopol (August 2010)	Oakland (December 2007)
Sausalito (August 2012)	South Pasadena (August 2010)	Belmont (October 2007)
Marin County (May 2012)	Eureka (July 2010)	El Cajon (August 2007)
San Jose (April 2012)	Pleasant Hill (April 2010)	Blue Lake (June 2007)
Huntington Park (April 2012)	Pinole (April 2010)	Temecula (May 2007)
Alameda (November 2011)	San Luis Obispo (April 2010)	Marin County (November 2006)
Baldwin Park (November 2011)	Camarillo (April 2010)	Contra Costa County (October 2006)
Compton (October 2011)	Palm Desert (December 2009)	Emeryville (September 2006)
Sonoma County (September 2011)	Santa Cruz (September 2009)	Mammoth Lakes (June 2006)
Tiburon (July 2011)	Richmond (June 2009)	San Mateo County (May 2006)
Pasadena (July 2011)	Martinez (April 2009)	Calabasas (February 2006)
Fairfax (May 2011)	Rohnert Park (April 2009)	Laguna Woods (August 2004)

## Top of the Class: Cities and Counties with Strong Smokefree Multi-Unit Housing Policies

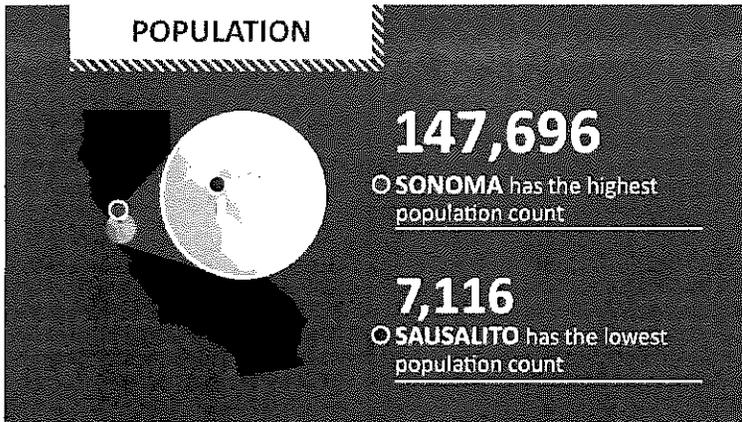
In California, communities have taken action to combat the dangers of secondhand smoke by implementing strong local policies. Secondhand smoke exposure in multi-unit housing is a serious health threat because secondhand smoke drifts into housing units from neighboring units, balconies, patios and common areas. To tackle this issue, 55 cities and counties have passed smokefree multi-unit housing policies.

Of these 55 jurisdictions, 17 have passed policies that protect residents to the fullest extent. These strong smokefree multi-unit housing policies restrict smoking within all new and existing units of both apartments and condominiums, including balconies and patios. These healthy and safe communities are of every size and in all parts of the state. Eleven of the jurisdictions are found in Northern California, while seven are found in Southern California. Not only are these policies located throughout the state, but they are also of varying income levels, racial diversity and population sizes.

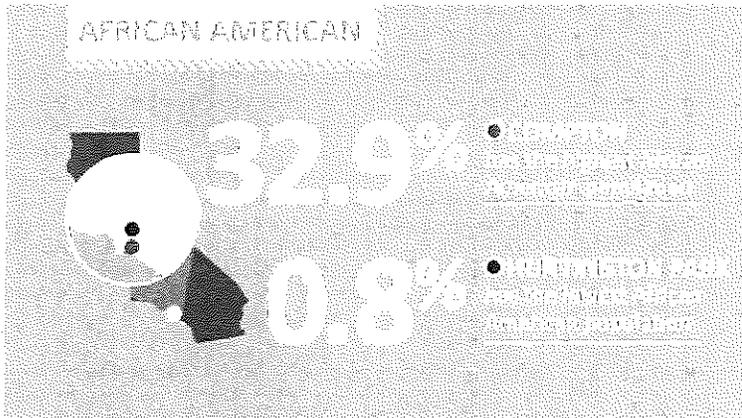
The tables below break down the 17 communities with strong smokefree multi-unit housing policies in the areas of population, race, Latino origin and median income.

More information about all of these policies can be found in the Center's Local California Smokefree Housing Policies: Detailed Analysis, which contains the full details of the policy and enforcement provisions in each smokefree housing ordinance. These documents and other smokefree documents are all available on the Center's website [www.Center4TobaccoPolicy.org/smokefree-multi-unit-housing/](http://www.Center4TobaccoPolicy.org/smokefree-multi-unit-housing/).

*The data is pulled from the U.S. Census Bureau: State and County QuickFacts except for the data in the population table which is pulled from the California Department of Finance Demographic Research Unit: Population Estimates for Cities, Counties, and the State January 1, 2012 and 2013.*



Sonoma County .....	147,696	Huntington Park .....	58,624
Pasadena .....	140,020	San Rafael .....	58,182
Richmond .....	105,562	Petaluma .....	58,804
Compton .....	97,549	Belmont .....	26,315
Santa Monica .....	91,040	South Pasadena .....	25,857
Santa Clara County .....	87,100	Larkspur .....	12,021
Baldwin Park .....	76,315	Sebastopol .....	7,445
Alameda .....	75,126	Sausalito .....	7,116
Walnut Creek .....	65,684		



Compton .....	32.90%	Belmont .....	1.60%
Richmond .....	26.60%	Larkspur .....	1.60%
Pasadena .....	10.70%	Walnut Creek .....	1.60%
Alameda .....	6.40%	Petaluma .....	1.40%
Santa Monica .....	3.90%	Baldwin Park .....	1.20%
South Pasadena .....	3.00%	Sebastopol .....	1.00%
Santa Clara County .....	2.90%	Sausalito .....	0.90%
San Rafael .....	2.00%	Huntington Park .....	0.80%
Sonoma County .....	1.90%		

**ASIAN AMERICAN**



**33.7%**

● **SANTA CLARA COUNTY**  
has the highest Asian American population

**0.3%**

● **COMPTON**  
has the lowest Asian American population

Santa Clara County .....	33.70%	Sausalito .....	4.80%
Alameda .....	31.20%	Larkspur .....	4.70%
South Pasadena .....	31.10%	Petaluma.....	4.50%
Belmont .....	19.90%	Sonoma County.....	4.10%
Pasadena .....	14.30%	Sebastopol .....	1.60%
Richmond.....	13.5%	Baldwin Park .....	0.90%
Walnut Creek .....	12.50%	Huntington Park .....	0.70%
Santa Monica .....	9.00%	Compton .....	0.30%
San Rafael .....	6.10%		

**LATINO ORIGIN**



**97.1%**

● **HUNTINGTON PARK**  
has the highest Latino population

**4.1%**

● **SAUSALITO**  
has the lowest Latino population

Huntington Park .....	97.1%	South Pasadena.....	18.60%
Baldwin Park .....	80.1%	Santa Monica .....	13.10%
Compton .....	65.0%	Sebastopol .....	12.00%
Richmond.....	39.5%	Belmont .....	11.50%
Pasadena.....	33.7%	Alameda.....	11.00%
San Rafael .....	30.0%	Walnut Creek .....	8.60%
Santa Clara County .....	26.9%	Larkspur .....	7.70%
Sonoma County.....	25.5%	Sausalito .....	4.10%
Petaluma .....	21.5%		

**CAUCASIAN**



**90.6%**

● **SAUSALITO**  
has the highest Caucasian population

**25.9%**

● **COMPTON**  
has the lowest Caucasian population

Sausalito .....	90.60%	Santa Clara County .	57.60%
Sebastopol .....	88.20%	Pasadena.....	55.80%
Sonoma County.....	87.70%	South Pasadena.....	54.30%
Larkspur .....	86.50%	Huntington Park .....	51.20%
Petaluma.....	80.40%	Alameda.....	50.80%
Walnut Creek .....	78.70%	Baldwin Park .....	43.90%
Santa Monica .....	77.60%	Richmond .....	31.40%
San Rafael .....	70.60%	Compton .....	25.90%
Belmont .....	67.60%		

**MEDIAN INCOME**



**\$110,040**

● **SAUSALITO**  
has the highest median income

**\$36,788**

● **HUNTINGTON PARK**  
has the lowest median income

Sausalito .....	\$110,040	San Rafael.....	\$71,343
Belmont .....	\$100,417	Pasadena.....	\$67,920
Santa Clara County .....	\$89,064	Sonoma County.....	\$64,343
Larkspur .....	\$86,046	Sebastopol .....	\$60,000
South Pasadena.....	\$84,914	Richmond .....	\$54,554
Walnut Creek.....	\$84,722	Baldwin Park .....	\$52,094
Petaluma.....	\$76,185	Compton .....	\$43,311
Alameda .....	\$75,832	Huntington Park .....	\$36,788
Santa Monica .....	\$71,400		

## Matrix of Strong Local Smokefree Multi-Unit Housing Ordinances

December 2013

Cities and counties in California have led the way on many secondhand smoke issues throughout the years by passing groundbreaking local ordinances to restrict smoking in certain areas. On the issue of smokefree housing, California's communities are once again paving the way. Secondhand smoke exposure in multi-unit housing is a serious health threat because secondhand smoke drifts into housing units from neighboring units, balconies, patios and common areas. The most effective way to address this problem is to pass a policy that restricts smoking within units, which includes balconies and patios, in multi-unit housing.

There are now 33 jurisdictions in California that have adopted an ordinance that prohibits smoking within a certain percentage of units in multi-unit housing. The table on the following pages lists questions about policy and enforcement provisions of smokefree housing ordinances and provides the answers for each of the 33 jurisdictions. This table makes it easier to learn more about and understand in detail these ordinances, as well as providing some guidance on the types of issues that need to be addressed by other communities working on a smokefree housing ordinance. The 33 cities and counties are listed in reverse chronological order on the following three pages.

Page 2 – Lafayette, Walnut Creek, Glendale, Petaluma, Daly City, Santa Monica, San Rafael, Sausalito, Huntington Park, Marin County, Alameda, Baldwin Park, Compton

Page 3 – Sonoma County, Tiburon, Pasadena, Dublin, Fairfax, Larkspur, Union City, Santa Clara County, Contra Costa County, Sebastopol, South Pasadena, Pinole

Page 4 – Pleasant Hill, Richmond, Rohnert Park, Loma Linda, Novato, Calabasas, Belmont, Temecula

More information about all of these policies can be found in the Center's Local California Smokefree Housing Policies: Detailed Analysis, which contains the full details on all of the policy and enforcement provisions in each smokefree housing ordinance. These documents and other smokefree housing documents are all available on the Center's website, [www.Center4TobaccoPolicy.org/smokefree-multi-unit-housing/](http://www.Center4TobaccoPolicy.org/smokefree-multi-unit-housing/).

Breakdown of Smokefree Housing Units Ordinances

	POLICY PROVISIONS					ENFORCEMENT PROVISIONS					
	Date Passed/ Population	Percentage of Units	Implementation	Grandfathering	Includes condominiums	Minimum number of units	Nuisance	Eviction provisions for the landlord	Enforced by tenant	Enforced by public	Violations
LAFAYETTE	October 2013 24,312	New: 100%	New: Immediately	X	X	3 Units				X	Infraction with fines starting at \$100
WALNUT CREEK	October 2013 65,684	100%	4 Months		X	2 Units	X		X	X	Infraction with a \$100 fine/ subject to civil action
GLENDALE	May 2013 199,652	New: 100%	New: 1 month	X	X	2 units	X		X	X	Infraction with fines starting at \$100
PETALUMA	January 2013 58,804	100%	Existing: 1 year New: 7 months		X	2 units	X		X		In accordance with the municipal code
DALY CITY	October 2012 109,347	100%	Existing: 14 months New: Immediately			2 units	X		X		Infraction with fines starting at \$100/subject to civil action/in accordance to municipal code
SANTA MONICA	October 2012 91,040	100%	Existing: 180 days New: Immediately	X	X	2 Units				X	N/A
SAN RAFAEL	October 2012 58,182	100%	Existing: 1 year New: 180 days		X	3 Units			X		In accordance with the municipal code
SAN JUANITO	August 2012 7,116	Existing: 80% New: 100%	Existing: 14 months New: Immediately		X	2 Units	X		X		In accordance with the citation schedule in the municipal code
HUNTINGTON PARK	April 2012 58,624	Existing: 80% New: 100%	Existing: 14 months New: 1 month		X	2 Units	X		X	X	Civil penalties of \$250 - \$1000/ subject to civil action
MARIN COUNTY	May 2012 67,174	Existing: 85% New: 100%	Existing: 12 months New: Immediately		X	2 units	X		X	X	Infraction with fines starting at \$100
ALAMEDA	November 2011 75,126	100%	Existing: 14 months New: Immediately		X	2 units			X	X	Infraction with fines starting at \$100/subject to civil action
BALDWIN PARK	November 2011 76,315	Existing: 80% New: 100%	Existing: 3 years New: 6 months		X	2 units	X		X	X	Infraction with fines starting at \$500
COMPTON	October 2011 97,549	100%	Existing: 14 months New: Immediately		X	3 units			X	X	Infraction with a fine of \$100

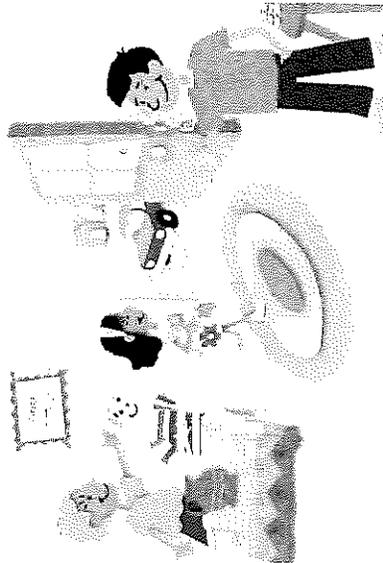
### Breakdown of Smokefree Housing Units Ordinances

	POLICY PROVISIONS						ENFORCEMENT PROVISIONS				
	Date Passed/ Population	Percentage of Units	Implementation	Grandfathering	Includes condominiums	Minimum number of units	Nuisance	Eviction provisions for the landlord	Enforced by tenant	Enforced by public	Violations
<b>SONOMA COUNTY</b>	September 2011 147,696	100%	Existing: 14 months New: 5 months		X	2 units					Infraction with fines starting at \$100/ subject to civil action
<b>TIBURON</b>	July 2011 9,031	100%	Existing: 35 months New: Immediately			4 units			X	X	Infraction with a fine up to \$100
<b>PASADENA</b>	July 2011 140,020	100%	Existing: 18 months New: Immediately		X	2 Units					In accordance with the citation schedule in the municipal code
<b>DUBLIN</b>	July 2011 (original-Dec 2008) 49,850	75%	25 months			16 units	X		X	X	Infraction with fines starting at \$100
<b>FAIRFAX</b>	May 2011 7,499	75%	14 months		X	4 units	X		X	X	In accordance with the town code/ Requires written warning
<b>LARKSPUR</b>	April 2011 12,021	Existing: 80% New: 100%	Existing: 13 months New: Immediately		X	2 units	X		X	X	Infraction with a fine of \$100/subject to civil enforcement
<b>UNION CITY</b>	November 2010 71,329	100%	Existing: 14 months New: Immediately			2 units	X		X	X	Infraction with a fine of \$100/subject to civil action
<b>SANTA GLARA COUNTY</b>	November 2010 87,100	100%	Existing: 14 months New: Immediately		X	2 units			X	X	Infraction with fines starting at \$100/subject to civil action
<b>CONTRA COSTA COUNTY</b>	October 2010 163,762	New: 100%	New: 15 months	N/A	X	4 units		X			In accordance with the municipal code
<b>SEBASTOPOL</b>	August 2010 7,445	100%	14 months		X	2 units	X		X	X	Infraction with fine of \$100
<b>SOUTH PASADENA</b>	August 2010 25,857	Existing: 80% New: 100%	3 Years		X	2 Units	X		X	X	Infraction with fine of \$100
<b>PINOLE</b>	April 2010 18,664	New: 100%	Immediately	N/A	X	2 units					Infraction with fines starting at \$100

**Breakdown of Smokefree Housing Units Ordinances**

	POLICY PROVISIONS					ENFORCEMENT PROVISIONS					
	Date Passed/ Population	Percentage of Units	Implementation	Grandfathering	Includes condominiums	Minimum number of units	Nuisance	Evasion provisions for the landlord	Enforced by tenant	Enforced by public	Violations
<b>PLEASANT HILL</b>	April 2010 33,633	Existing: 50% New: 100%	5 years from January 2011			4 units	X				In accordance with the municipal code
<b>RICHMOND</b>	July 2009 105,562	100%	Existing: 17 months New: Immediately		X	2 units		X	X	X	\$100 fine
<b>ROHNERT PARK</b>	April 2009 41,034	Existing: 50% New: 75%	Existing: 25 months New: Immediately	X	X	2 units				X	Infraction
<b>LOMA LINDA</b>	June 2008 23,476	70%	3 1/2 years	X		2 units	X	X	X		Infraction
<b>NOVATO</b>	April 2008 52,554	Existing: 50% New: 75%	90 days	X	X	10 units	X	X	X	X	Infraction with fines starting at \$100/ a warning letter must be provided
<b>CALABASAS</b>	January 2008 23,802	80%	4 years	X		2 units	X	X	X	X	Misdemeanor or infraction/subject to civil action
<b>BELMONT</b>	October 2007 26,316	100%	14 months		X	2 units	X		X		Infraction subject to a \$100 penalty/civil action
<b>TEMECULA</b>	May 2007 104,879	25%	5 years, up to 8 years with extensions	X		10 units					In accordance with the municipal code/subject to civil action

# Secondhand Tobacco Smoke and the Health of Your Family



## Make Your Home and Car Smoke-Free

Secondhand smoke is the smoke that comes from the burning end of a cigarette, cigar or pipe. Secondhand smoke can make you and your children sick.

## Secondhand Smoke is Dangerous

Everyone knows that smoking is bad for smokers, but did you know:

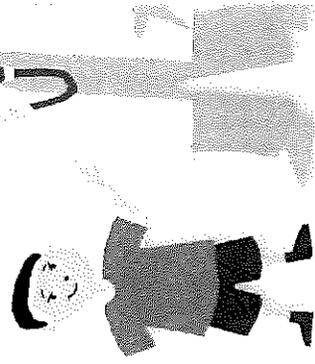
- Breathing in someone else's cigarette, pipe or cigar smoke can make you and your children sick.
- Children who live in homes where people smoke may get sick more often with coughs, wheezing, ear infections, bronchitis or pneumonia.
- Children with asthma may have asthma attacks that are more severe or occur more often.
- Opening windows or using fans or air conditioners will not stop secondhand smoke exposure.
- The U.S. Surgeon General says that secondhand smoke can cause Sudden Infant Death Syndrome, also known as SIDS.
- Secondhand smoke also can cause lung cancer and heart disease.

## Protect Your Family

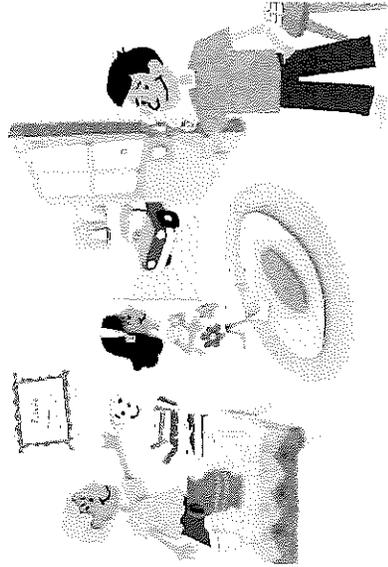
- Make your car and home smoke-free.
- Family, friends or visitors should never smoke inside your home or car.
- Keep yourself and your children away from places where smoking is allowed.
- If you smoke, smoke only outside.
- Ask your doctor for ways to help you stop smoking.

## Remember

Keeping a smoke-free home and car can help improve your health, the health of your children and the health of your community.



## El humo de tabaco en el medio ambiente y la salud de su familia



### Mantenga su hogar y su auto libres del humo de tabaco

El humo de segunda mano es el humo que sale de un cigarrillo, de un puro, o de una pipa. El humo de segunda mano puede enfermarlo a usted y a sus niños.

### El humo de segunda mano es peligroso

Todo el mundo sabe que fumar es malo para los fumadores, pero ¿tenía usted conocimiento?

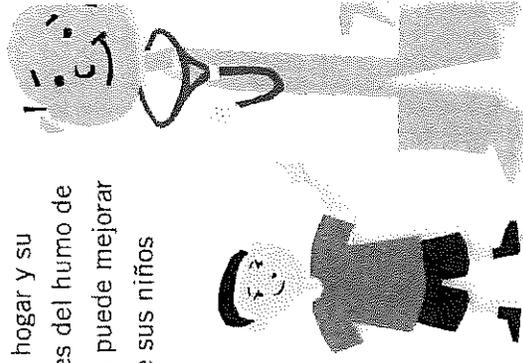
- Respirar el humo que sale del cigarrillo de una pipa o puro puede enfermarlo a usted y a sus niños.
- Los niños que viven en casas donde las personas fuman se pueden enfermar más a menudo con tos, respirar con dificultad, infecciones de oído, bronquitis o pulmonía.
- Los niños con asma pueden sufrir de ataques de asma más severo y con más frecuencia.
- Abrir las ventanas, usar abanicos o aires acondicionados no reducirá por completo el humo de segunda mano.
- El Cirujano General de los E.U. dice que el humo de segunda mano puede causar el síndrome de muerte súbita (SIDS, por sus siglas en inglés).
- El humo de segunda mano puede causar cáncer pulmonar y enfermedades del corazón.

### Proteja a su familia

- Mantenga su hogar y su automóvil libres del humo de segunda mano.
- Su familia, amigos o visitantes no deben nunca fumar en el interior de su hogar ni de su automóvil.
- Manténgase al igual que a sus niños alejados de los lugares donde es permitido fumar.
- Si usted fuma, fume afuera solamente.
- Pídale a su médico que le diga formas de como dejar de fumar.

### Recuerde

Mantener a su hogar y su automóvil libres del humo de segunda mano puede mejorar su salud, la de sus niños y la de su comunidad.





The Center  
for Tobacco Policy  
& Organizing

AMERICAN LUNG ASSOCIATION  
IN CALIFORNIA



# Understanding California's New Smokefree Housing Law

## November 2011

On September 6, 2011 Governor Jerry Brown signed Senate Bill 332 into law making it explicit that landlords have the right to make their rental properties smokefree. SB 332 was authored by Senator Alex Padilla (D-San Fernando Valley) and goes into effect on January 1, 2012. The new law simply places an existing authority into state law. In fact, many landlords throughout California have already prohibited smoking on their properties. More importantly, many cities and counties in California have gone much further than this new state law and prohibit smoking in multi-unit housing through local ordinances and housing authority policies.

This new state law has generated many questions from advocates, tenants, landlords and elected officials. This document serves to answer those questions by providing an overview of California's new smokefree housing law and how it impacts the different types of smokefree housing policies. For more smokefree housing resources, visit [www.center4tobaccopolicy.org/localpolicies-smokefreehousing](http://www.center4tobaccopolicy.org/localpolicies-smokefreehousing).

### Common Questions about the New State Smokefree Housing Law

#### What specifically does this new law do?

While it has always been legal for landlords to prohibit smoking in the apartments they own and manage, this law specifically spells out that authority in state law. Moving forward, landlords who adopt a smoking restriction for anywhere on their property would need to include a provision in all leases and rental agreements specifying where smoking is prohibited and provide adequate notice for these changes in accordance with federal, state and local notice requirements.

#### What does this new law mean for smokefree housing policies for condominiums or housing authorities?

It was legal to prohibit smoking in condominiums and housing authority properties prior to this law and it remains legal to do so. Homeowners' associations and housing authorities can continue to adopt smokefree housing policies. Homeowners' associations and housing authorities were likely already providing adequate notice for changes and including information in leases and rental agreements when implementing nonsmoking policies, which this new law requires landlords to do. For more information about how to implement these types of policies, see the fact sheets from the Technical Assistance Legal Center on creating smokefree policies for affordable housing and condo complexes.

#### What does this new law mean for existing and future local smokefree housing ordinances?

The state law specifically does not preempt any local ordinance in effect on or before January 1, 2012, including ordinances that grandfather tenants who smoke, and it does not preempt any provision of a local ordinance in effect after January 1, 2012 that restricts smoking. This means that cities and counties can continue to adopt ordinances that create nonsmoking units in multi-unit housing. Landlords implementing a local ordinance will need to include a provision in all leases and rental agreements specifying where smoking is prohibited and provide adequate notice for these changes in accordance with federal, state and local notice requirements. These requirements are standard for any sort of changes in terms for tenants and mostly already included in ordinances passed prior to this law.



# ChangeLab Solutions

Law & policy innovation for the common good.

## Smokefree Housing Ordinance

### A Model California Ordinance Regulating Smoking in Multi-Unit Residences

(with Annotations)

Revised June 2015  
(Originally issued April 2005)

Developed by ChangeLab Solutions

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*ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.*



## INTRODUCTION

ChangeLab Solutions developed this Model Ordinance to help California cities and counties limit exposure to secondhand smoke in multi-unit residences such as apartment buildings, condominium complexes, senior housing, and single resident occupancy hotels. By creating nonsmoking living environments in multi-unit residences, communities can provide an opportunity for everyone to live smokefree – even people who can't afford to live in a single-family home.

Smokefree multi-unit housing is an important policy initiative to address health inequities among communities of color and low-income populations. Nearly two-thirds of residents of multi-unit housing are people of color, and close to half are low-income or below the poverty level. By adopting laws eliminating exposure to secondhand smoke in people's homes, communities can ensure that smokefree living is not a luxury but instead made available to all residents, regardless of their economic means, race, or ethnicity.

This Model Ordinance is very broad and can be used to limit smoking in *all* types of multi-unit dwelling places, from hotels to long-term health care facilities to apartments and condominiums. The Model Ordinance's comprehensive design limits exposure to secondhand smoke by

- Restricting smoking in the indoor and outdoor common areas of all types of multi-unit residences, with the option to create designated outdoor smoking areas that meet specific criteria;
- Prohibiting smoking inside all units of multi-unit residences, including apartments and condominiums; and
- Providing robust enforcement mechanisms, including no-smoking lease terms and options for private individuals and organizations to enforce the smokefree housing provisions.

To create this updated version of the Model Ordinance, ChangeLab Solutions conducted key informant interviews with a dozen tobacco control professionals and advocates across California. Based on their detailed feedback and experience with the rapidly evolving policy landscape – in which acceptance and appreciation of smokefree housing is constantly growing – ChangeLab Solutions made the following changes to the Model Ordinance:

- *All* units of multi-unit residences, rather than *most* units, are nonsmoking. This approach is more protective of health; when smoking is permissible in even a few units, smoke can travel between smoking and nonsmoking units, exposing residents to secondhand smoke. Several studies have confirmed that smokefree housing policies are the most effective way to fully reduce secondhand smoke exposure in



multi-unit housing. In addition, public health professionals and advocates agree that a 100 percent smokefree policy makes implementation, education, and enforcement of the law clearer and easier, since there are no exceptions to the policy.

- The prohibition of smoking in multi-unit housing includes not only traditional tobacco products, such as cigarettes and cigars, but also marijuana, used either medicinally or recreationally, and newly popular electronic smoking devices, such as e-cigarettes. Research has found that the secondhand smoke from marijuana and the aerosol emitted from electronic smoking devices contain chemicals known to the State of California to cause cancer. The gases from electronic smoking devices also have chemicals known to cause birth defects or other reproductive harm. Users of tobacco products and marijuana have smokeless options available to ingest the active ingredients. By using these alternatives, users can reduce the health risks associated with secondhand emissions, minimize exposure to those toxins, and protect people who live with and adjacent to them.

For communities that wish to allow smoking in some units or create an exemption for the use of electronic smoking devices or medical marijuana, please contact ChangeLab Solutions for assistance.

Please note: while this Ordinance is not written specifically for communities with rent control laws, there are no legal restrictions that would prevent those cities from adopting a smokefree housing law. However, it is highly recommended that in such jurisdictions the city attorney and rent control board be included in selecting and adopting the specific provisions for a smokefree housing law.

The Model Ordinance offers a variety of options. In some instances, blanks (e.g., [ \_\_\_\_ ] ) prompt you to customize the language to fit your community's needs. In other cases, the ordinance offers you a choice of options (e.g., [ choice one / choice two ] ). Some of the ordinance options are followed by a comment that describes the legal provisions in more detail. Some degree of customization is always necessary in order to make sure the ordinance is consistent with a community's existing laws. Your city attorney or county counsel will likely be the best person to check this for you.

ChangeLab Solutions also has developed a separate ordinance to create smokefree outdoor areas, such as parks, dining patios, and public events. The Comprehensive Smokefree Places Ordinance also would make all indoor workplaces smokefree by eliminating the exceptions contained in California's Labor Code section 6404.5, which prohibits smoking in most – but not all – places of employment. If you would like to adopt a more customized approach, some aspects of that ordinance can be combined with the smokefree housing ordinance.



**ChangeLab Solutions**

If you have questions about how to adapt ChangeLab Solutions' ordinances for your community, please contact ChangeLab Solutions through our website at [www.changelabsolutions.org/tobaccoquestions](http://www.changelabsolutions.org/tobaccoquestions). The model ordinances, plug-ins, and other tobacco control resources can be found on our website at [www.changelabsolutions.org/tobacco-control](http://www.changelabsolutions.org/tobacco-control).



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**AN ORDINANCE OF THE [ CITY / COUNTY OF \_\_\_\_\_ ]  
PROHIBITING SMOKING IN AND AROUND  
MULTI-UNIT RESIDENCES  
AND AMENDING THE [ \_\_\_\_\_ ] MUNICIPAL CODE**

The [ City Council / County Board of Supervisors ] of the [ City / County of \_\_\_\_\_ ] does ordain as follows:

**SECTION I. FINDINGS.**

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:

- 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the nation's leading cause of preventable death;<sup>1</sup>
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths;<sup>2</sup> and

WHEREAS, secondhand smoke has repeatedly been identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;<sup>3</sup>
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;<sup>4,5</sup>
- The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;<sup>6</sup>
- 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;<sup>7</sup> and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;<sup>8</sup>
- Secondhand smoke is responsible for an estimated 41,300 heart disease-related and



- lung cancer-related deaths among adult nonsmokers each year in the United States;<sup>8</sup>
- Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent<sup>9</sup> and increases the risk of stroke by 20 percent to 30 percent;<sup>10</sup>
- Secondhand smoke kills more than 400 infants every year;<sup>11</sup> and

WHEREAS, secondhand aerosol emitted from electronic smoking devices has been identified as a health hazard, as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm,<sup>6, 12, 13, 14</sup> such as formaldehyde, acetaldehyde, lead, nickel, and toluene;<sup>15, 16, 17</sup>
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping;<sup>15, 17, 18</sup>
- 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;"<sup>19</sup> and

WHEREAS, secondhand marijuana smoke has been identified as a health hazard, as evidenced by the following:

- The California EPA included marijuana smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer;<sup>6, 20</sup>
- Marijuana smoke contains at least 33 known carcinogens;<sup>20</sup>
- Research on the health effects of marijuana smoke has found statistically significant associations with cancers of the lung, head and neck, bladder, brain, and testes;<sup>20</sup> and

WHEREAS, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

- Several peer-reviewed studies on drifting secondhand smoke in multi-unit housing have confirmed that secondhand smoke can and does transfer between units,<sup>21, 22</sup> creeping under doorways and through wall cracks;<sup>11</sup>
- More than one study has found that residents of multi-unit housing have high levels of cotinine (a biomarker for nicotine) in their blood and saliva;<sup>21, 22</sup>
- 13 peer-reviewed journal articles have found that between 26 percent and 64 percent of residents of multi-unit housing report secondhand smoke drifting into their home;<sup>21</sup> 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 "thirdhand smoke" a potential health hazard, as evidenced by the following:



- Thirdhand smoke contains carcinogenic materials that accumulate over time, presenting a health hazard long after the initial smoke is gone;<sup>23</sup>
- A study found that thirdhand smoke remains months after nonsmokers have moved into units where smokers previously lived;<sup>24</sup>
- Human exposure to these thirdhand smoke carcinogens can be through inhalation, ingestion, or skin absorption through contact with carpeting, furnishings, or clothing;<sup>25</sup>
- Thirdhand smoke potentially poses the greatest danger to infants and toddlers, who crawl on rugs and furnishings and suck on items in the home;<sup>25</sup>
- Nonsmoking people who are exposed to thirdhand smoke have significantly higher nicotine and cotinine levels than those who have not been exposed to thirdhand smoke;<sup>24</sup>
- Research has shown that thirdhand smoke damages human cellular DNA;<sup>26</sup> and

WHEREAS, smoking is the number one cause of fire deaths, is a leading cause of fire-related injury,<sup>27</sup> and contributes to fire-related health inequities, as evidenced by the following:

- In 2011, U.S. fire departments responded to an estimated 90,000 smoking-related fires, which resulted in an estimated 1,640 injuries, 540 deaths, and \$621 million in direct property damage;<sup>28</sup>
- One in four fatalities is NOT the smoker whose cigarette started the fire, and 25 percent of those who die are neighbors or friends of the smoker;<sup>28</sup>
- African-American males and American-Indian males have the highest fire death rates;<sup>27</sup>
- The elderly (people 85 and older) have the highest fire death rate (49.2%),<sup>29</sup> and the risk of dying from smoking-related fires increases with age;<sup>28</sup>
- The U.S. Fire Administration recommends that people smoke outdoors;<sup>30</sup> 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;<sup>3</sup> and

WHEREAS, several studies have confirmed that smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing;<sup>21</sup> and

WHEREAS, 32 percent of Californians (or 11.8 million people) live in multi-unit housing,<sup>31</sup> which accounts for one-seventh of the total multi-unit housing population in the country,<sup>32</sup> and



WHEREAS, between 44 percent to 46.2 percent of Californians living in multi-unit housing with personal smokefree home policies are exposed to secondhand smoke in their home;<sup>31</sup> 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;<sup>21</sup> and

WHEREAS, secondhand smoke exposure in multi-unit housing contributes to tobacco-related health inequities. For example, when compared with adults who live in single family homes, adults who live in multi-unit housing are more likely to

- Be from communities of color (62.9% of residents of multi-unit homes versus 49.6% of residents of single family homes);<sup>32</sup>
- Be low-income or below the poverty line (46.8% versus 27%);<sup>32</sup>
- Have less than a high school diploma (21.4% versus 14.8%);<sup>32</sup>
- Be current smokers (17.5% versus 13.2%);<sup>32</sup> as well as
- Be uninsured (23.4% versus 14.2%);<sup>32</sup> and

WHEREAS, secondhand smoke in multi-unit housing is a significant threat to the health and safety of California children, as evidenced by the following:

- About a quarter of those who live in multi-unit housing (25.2%) are under the age of 18;<sup>31</sup>
- The home is the primary source of secondhand smoke for children;<sup>11</sup>
- 56.4 percent of youth living in apartment units in which no one smokes have elevated blood cotinine levels above .05 ng/mL, indicating they have been exposed to potentially dangerous levels of secondhand smoke;<sup>21,33</sup>
- Children who live in apartments have mean cotinine levels that are 45 percent higher than cotinine levels in children who live in detached homes;<sup>21,33</sup> and

WHEREAS, there are significant savings from adopting a smokefree multi-unit housing policy, as evidenced by the following research:

- Multi-unit housing property owners in California would save \$18.1 million in renovation expenses each year;<sup>21,34</sup>
- If all subsidized housing were to go smokefree in California, there would be approximately \$72.4 million saved per year, including \$61.1 million in secondhand smoke-related healthcare expenditures, \$5.9 million in renovation expenses, and \$5.4 million in smoking-attributable fire losses;<sup>35</sup> and



WHEREAS, a majority of multi-unit housing residents, including a large portion of smokers, support smokefree policies in multi-unit residences,<sup>21</sup> as evidenced by the following:

- 74 percent of Californians surveyed approve of apartment complexes requiring that at least half of rental units be nonsmoking;<sup>36</sup>
- 69 percent of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings;<sup>36</sup>
- 78 percent support laws that create nonsmoking units,<sup>36</sup> and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by California law;<sup>37</sup> and

WHEREAS, there is no Constitutional right to smoke;<sup>38</sup> 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;<sup>39</sup> and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance;<sup>40-42</sup> and

WHEREAS, at least 55 California cities and counties have adopted smokefree multi-unit housing ordinances,<sup>43</sup> and at least 25 of these jurisdictions have restricted smoking in 100 percent of units;<sup>44</sup> and

NOW THEREFORE, it is the intent of the [ City Council / County Board of Supervisors ] in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around nontobacco users; by protecting children from exposure to smoking where they live and play; and by protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

**SECTION II.** [ Article / Section ] of the [ City / County of \_\_\_\_\_ ] Municipal Code is hereby amended to read as follows:

**Sec. [ \_\_\_\_\_ (\*1) ]. DEFINITIONS.** For the purposes of this [ article / chapter ] the following definitions shall govern unless the context clearly requires otherwise:

- (a) “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 ].



**COMMENT:** This definition is used to describe the reach of nonsmoking "buffer zones" around Multi-Unit Residences. It defines where Smoking is prohibited when buffer zones reach beyond the property lines of the Multi-Unit Residence and extend onto neighboring property (see Section 4 "Nonsmoking Buffer Zones").

To exclude property containing detached single-family homes (so that residents and guests at such homes may smoke notwithstanding their proximity to multi-family housing), add the bracketed language. Without the bracketed language, a smokefree buffer zone might encompass a portion of the backyard of a single-family residence as well as adjacent outdoor areas of businesses and parking lots.

- (b) "Common Area" means every Enclosed Area and every Unenclosed Area of 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.

**COMMENT:** Note that California Labor Code section 6404.5 (the state smokefree workplace law) may already prohibit Smoking in indoor Common Areas if the Multi-Unit Residence has employees, such as maintenance workers, property managers, or others who work on-site.

The definition of Common Areas does not include balconies, patios, or decks associated with individual Units because these are not shared areas. Balconies, patios, and decks are included in the definition of Unit.

- (c) "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.

**COMMENT:** This definition is broad enough to cover all Electronic Smoking Devices that are used to deliver nicotine or other substances. Regulating the use of all varieties of Electronic Smoking Devices, regardless of their nicotine content, protects bystanders from exposure to the hazardous substances found in Electronic Smoking Device vapor, reduces the risk that people may view the use of Electronic Smoking Devices in smokefree areas as acceptable, and facilitates uniform enforcement.



(d) "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has

- (1) any type of overhead cover, whether or not that cover includes vents or other openings and at least three (3) walls or other physical boundaries of any height, whether or not those boundaries include vents or other openings; or
- (2) four (4) walls or other vertical boundaries that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.

**COMMENT:** For the purposes of this ordinance, the distinction between "enclosed" and "unenclosed" is primarily relevant to establishing designated Smoking areas (see Section 3) and nonsmoking buffer zones (see Section 4).

An area that is partially covered by anything would be analyzed under subparagraph (1), whereas only areas that are totally uncovered would be analyzed under subparagraph (2). For the purposes of this ordinance, any physical boundary, regardless of composition, constitutes an "other physical boundary" for application of this definition.

**NOTE:** If the Municipal Code already has Smoking restrictions, it may contain a definition of "enclosed." Review the Code and make any necessary modification to existing definitions and/or operative provisions to ensure consistency with the new definition.

(e) "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).

**COMMENT:** The Municipal Code may already contain a definition of "Landlord." If so, the definition provided here can be omitted, although sublessors should specifically be excluded.

(f) "Multi-Unit Residence" means property containing two (2) or more Units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. [ Multi-Unit Residences do not include the following:

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



- (2) a mobile home park;
- (3) a campground;
- (4) a marina or port;
- (5) a single-family home, except if used as a child care or health care facility subject to licensing requirements; and
- (6) a single-family home with a detached or attached in-law or second unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the [ City / County ] adopted pursuant to those sections, 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. ]

**COMMENT:** This definition is intended to be used in conjunction with the definition of Unit in this Model Ordinance, which makes clear that this term is limited to dwelling spaces.

Because the definition of Unit in this ordinance is very broad and includes all types of dwelling places – from rooms in a hotel to tents at a campground – a community may want to limit the types of dwelling places covered by the smokefree housing ordinance. The optional language provides examples of the types of exceptions communities are likely to consider. Hotels and motels are included in the list of optional exemptions because many communities regulate smoking in these facilities using a smokefree workplace ordinance, but there is no legal reason why hotels and motels could not be made completely smokefree using this Model Ordinance. Single-family residences are suggested as an exemption, because the definition of Unit in this ordinance includes individual bedrooms in a single-family home. Thus, a two-bedroom free-standing house would be a Multi-Unit Residence per the definitions in this ordinance, unless the exemption is included.

Note that the definition of Multi-Unit Residence without any exemptions includes the following types of dwelling places: apartments, condominium projects, townhomes, stock cooperatives, and co-housing; affordable housing (for seniors, disabled tenants, Section 8, etc.); long-term health care facilities, assisted living facilities, hospitals, and family support facilities; hotels, motels, single room occupancy ("SRO") facilities, dormitories, and homeless shelters; mobile home parks, campgrounds, marinas, and ports; as well as single-family homes and single-family homes with an in-law unit.

Should your community wish to allow smoking inside a certain percentage of Units in apartments or condominiums and exclude those Units from the prohibitions in this Model Ordinance, please contact ChangeLab Solutions for assistance.



- (g) “New Unit” means a Unit that is issued a [ certificate of occupancy / final inspection ] after [insert effective date of ordinance] [and also means a Unit that is let for residential use for the first time after [insert effective date of ordinance] ].

**COMMENT:** This definition is used to differentiate between Units that are already built and occupied when the ordinance is adopted and Units constructed afterward. The distinction is important because, under this ordinance, all Units built after the ordinance is adopted are required to be nonsmoking as soon as they are deemed ready for occupancy. However, Smoking may be allowed in existing Units for a period of time after the effective date of the ordinance (the implementation period) to allow landlords and tenants time to become aware of and comply with the new ordinance.

The *certificate of occupancy* or *final inspection* is probably the most administrable way to distinguish between existing and New Units. Alternatively, a community could distinguish between Units for which land use entitlements have or have not been issued or Units that have or have not been occupied by a tenant for the first time.

To include existing housing that may become available to the rental market after the ordinance is adopted, such as an in-law cottage that has not been rented previously, add the optional clause at the end of the definition.

Note that the term “New Unit” is a subset of “Unit,” so whenever the term Unit is used in the ordinance, it includes all New Units.

- (h) “Nonsmoking Area” means any Enclosed Area or Unenclosed Area in which Smoking is prohibited by

(1) this [ chapter / article ] or other law;

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

(3) designation of a Person with legal control over the area.

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

**COMMENT:** The Municipal Code may contain a definition of “person.” Review any existing definition of “person” in the Municipal Code to determine whether to include this definition in your ordinance.



This definition includes most businesses. In addition, it includes governmental entities, such as a city or county.

- (j) "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, marijuana smoke, and crack cocaine smoke.

**COMMENT:** This is a special definition that differs from the common understanding of what 'smoke' is. For example, smoke from a fireplace or a barbecue grill is not "Smoke" for the purposes of this ordinance because the smoke generated by those activities is not produced for the purpose of inhalation. The limitation placed on "Smoke" by this definition is important to prevent unintended consequences, such as inadvertently prohibiting the burning of incense or use of barbecue grills.

At the same time, this definition is designed to be broad enough to cover any emissions released into the air as a result of combustion or heating, so long as the purpose of the combustion or heating is to inhale the byproduct, as discussed above. By clarifying that the term "Smoke" applies not just to solid particles but also to vapor and gas, this definition covers the vapor emitted by Electronic Smoking Devices, such as electronic cigarettes, electronic hookahs, etc. This definition also includes marijuana smoke. Users of tobacco products and marijuana have smokeless options available to ingest the active ingredients. By using these alternatives, users can reduce the health risks associated with secondhand emissions, minimize exposure to those toxins, and protect people who live with and adjacent to them.

Should your community wish to allow the use of marijuana or Electronic Smoking Devices inside of Units and exclude these from the prohibitions in this Model Ordinance, please contact ChangeLab Solutions for assistance.

- (k) "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.

**COMMENT:** This definition includes Smoking marijuana and the use of Electronic Smoking Devices. Should your community wish to allow the use of marijuana or Electronic Smoking Devices inside of Units and exclude these from the prohibitions in this Model Ordinance, please contact ChangeLab Solutions for assistance.



- (l) "Unenclosed Area" means any area that is not an Enclosed Area.
- (m) "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.

**COMMENT:** This definition is intentionally extremely broad. It is designed to capture all conceivable "dwelling spaces," as the examples illustrate. However, due to the design of this Model Ordinance, any limitations on the types of housing covered by the ordinance should be added to the defined term "Multi-Unit Residence," *not* to the definition of "Unit." For example, some "mobile homes" in mobile home parks may be included in this definition and even cited in the examples, but "mobile homes" can be specifically excluded from the ordinance under the definition of "Multi-Unit Residence."

**Sec. [ \_\_\_\_ (\*2) ]. SMOKING RESTRICTIONS IN NEW AND EXISTING UNITS OF MULTI-UNIT RESIDENCES.**

- (a) Smoking is prohibited in all New Units of 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 of a Multi-Unit Residence, on or after [ *insert effective date of ordinance* ], is a violation of this [ article / chapter ].
- (b) Smoking is prohibited in all Units of a Multi-Unit Residence that are not New Units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio. Smoking in a Unit of a Multi-Unit Residence that is not a New Unit, on or after [ *insert effective date of ordinance + 1 year* ], is a violation of this [ article / chapter ].

**COMMENT:** The Smoking restrictions in existing Units become effective a year after the ordinance is adopted to allow time for people to become familiar with the new law and take the necessary steps to comply with it.

Implementing a smokefree housing law by using a reasonable phase-in period, followed by a specific date on which everyone is required to abide by the law, is generally



perceived to be the most fair approach. This strategy balances public health needs against the potential inconvenience the ordinance puts on people who smoke and those who must implement the new policy. A 12-month phase-in period takes into account both the potential legal rights of tenants under existing rental agreements and the legal authority of Landlords to modify those agreements, as this ordinance requires.

**Sec. [ \_\_\_\_ (\*3) ]. NO SMOKING PERMITTED IN COMMON AREAS EXCEPT IN DESIGNATED SMOKING AREAS.**

**COMMENT:** If your Municipal Code already has Smoking restrictions, it may contain a provision for smokefree Common Areas of multi-unit housing. Review the Code and make any necessary modification to existing definitions and/or operative provisions to ensure consistency with new ordinance language.

- (a) Smoking in a Common Area, on or after, [ *insert effective date of ordinance* ], other than in a designated Smoking area established pursuant to subsection (b), is a violation of this [ article / chapter ].
- (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.

**COMMENT:** Establishing a designated Smoking area is *optional*, not mandatory. While a designated Smoking area is convenient for people to use for Smoking, a Landlord or homeowners' association may decide not to create a designated Smoking area. In this case, a person may go off-site to smoke, or remain on the property and use a smokeless tobacco product or an FDA-approved nicotine replacement therapy (e.g., nicotine gum or nicotine patch). More information on these nicotine replacement products can be found through the California Smokers' Helpline ([www.nobutts.org](http://www.nobutts.org) or 1-800-no-butts).

Should a designated Smoking area be created, the following criteria are highly recommended.

- (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 this subsection (b). In the case of a Nonsmoking Area on a neighboring property established only by private agreement or designation and not by this [ chapter / article ] or other law, it shall not be a violation of this [ chapter / article ] for a Person with legal control to designate a Smoking area within twenty-five (25) feet of the Nonsmoking Area unless that Person has actual knowledge of, or a reasonable person would know of, the private agreement or designation. It shall not be a violation of this [ chapter / 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;

**COMMENT:** This clause limits where a designated Smoking area can be located in order to prevent drifting Smoke from entering neighboring property. It includes areas designated as Nonsmoking either by law or by a neighboring business or homeowner by contract or private designation.

In some communities, it may be difficult to designate a Smoking area twenty-five (25) feet away from a Nonsmoking Area (e.g., where neighboring buildings are close together or when there are limited Unenclosed Areas on site). In this case, a community may reduce the distance requirement.

Another option is to remove the specific distance requirement. To do so, replace the first sentence of subsection (b)(2) "*Must be located at least twenty-five (25) feet from any Nonsmoking Area*" with "*Must be located so that Smoke does not drift into an Enclosed Nonsmoking Area. Should complaints be received, the designated Smoking area must be relocated or removed.*" In addition, the reference to twenty-five (25) feet in the second to last sentence of (b)(2) "*...within twenty-five (25) feet of*" should be replaced with "*near.*"

- (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 [ chapter / article ] or other law.

(d) No Person with legal control over a Common Area in which Smoking is prohibited by this [ chapter / 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 the area.

Sec. [ \_\_\_\_ (\*4) ]. 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 of a Multi-Unit Residence.

**COMMENT:** To create the most comprehensive smokefree buffer zone around Multi-Unit Residences, include this Section. Subsection (a) creates a smokefree buffer zone that extends to Unenclosed Areas on *neighboring* property that is within 25 feet of any doorway, window, etc. of the Multi-Unit Residence. This comprehensive provision can be fine-tuned. By using a version of the "Adjacent Unenclosed Property" definition to exempt certain types of neighboring property, such as property containing detached single-family homes, a community can still prohibit Smoking on other private property, such as bar patios or parking lots. If this Section is not included in your community's ordinance, the defined term "Adjacent Unenclosed Property" in Section \*1 should be deleted.

[(b) Subsection (a) above does not apply to a Person who is Smoking in the restricted buffer zone area for less than a minute while actively passing on the way to another destination, and who does not enter the buffer zone area while Smoking more than twice per day. ]

**COMMENT:** This optional exemption for a passerby who is Smoking (e.g., Smoking while walking or driving by) is a common component of entryway Smoking bans. However, such an exemption could prove problematic in the multi-unit housing context because a Person who is Smoking on neighboring property could claim to be just passing through but in fact be intentionally violating the ordinance. The timing restriction is an attempt to limit this problem, but it does not eliminate it completely. Without this exemption, a Person who is Smoking in a buffer zone while passing through it will be in violation of the law.

Sec. [ \_\_\_\_ (\*5) ]. REQUIRED AND IMPLIED LEASE TERMS FOR ALL NEW AND EXISTING UNITS IN MULTI-UNIT RESIDENCES.

**COMMENT:** This section requires that Smoking restrictions be included in a lease for the rental of a Unit in any type of Multi-Unit Residence (e.g., an apartment building, condominium complex, or single room occupancy facility). Note that the term "Unit" includes the defined term "New Unit," so whenever the term Unit is used in the ordinance, it includes *all* Units, both existing and new.

By including these provisions in lease agreements, Smoking becomes a violation of both the lease and the local ordinance. Thus, Landlords may enforce the Smoking lease terms just like any other condition in the rental agreement, such as common provisions regarding noise, use of laundry facilities, and damage to common areas. Further, by including the "third-party beneficiary" provision, other residents of the Multi-Unit Residence can enforce a lease's Smoking restrictions.

In addition to the lease restrictions, Smoking is unlawful under the ordinance (see Section \*2 Smoking Restrictions in New and Existing Units of Multi-Unit Residences) and local government may enforce the Smoking restrictions pursuant to the law (see Section \*8 Enforcement).

- (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 [ *insert effective date of ordinance* ], 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.

**COMMENT:** This provision calls for the Landlord to amend a rental agreement at the first opportunity. It is also designed to provide tenants with adequate legal notice of the pending change in their lease terms. The overall objective is to insert the new terms into every lease as soon as legally allowable, which will generally be within one year after the effective date of the ordinance (because most standard residential leases are for one year). For multi-year leases, these terms will be added as soon as legally possible when the lease renews.

- (b) 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 [ *insert effective date of ordinance* ], shall be amended to include the following provisions:

**COMMENT:** The following subsections contain both an explicit directive regarding the *legal effect* the required clause must achieve and a model clause to implement the directive. Because leases vary in terms, format, and language, it is not possible to provide verbatim wording that can be easily dropped into any lease. These clause requirements provide a Landlord with needed flexibility to conform an existing lease while using terms consistent with the rest of the lease. In many cases, a Landlord can probably just use the example language provided with minimal changes. Members of the



California Apartment Association may be able to use the Association's Rental Lease Addendum for Tobacco and Smoke-Free Areas.

- (1) A clause providing that as of [ *insert effective date of ordinance* ], it is a material breach of the agreement to allow or engage in Smoking in the Unit, including exclusive-use areas such as balconies, porches, or patios. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios as of [ *insert effective date of ordinance* ]."
- (2) A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant to engage in Smoking in any Common Area of the Multi-Unit Residence other than a designated Smoking area. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property, except in an outdoor designated smoking area, if one exists."
- (3) A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant to violate any law regulating Smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."
- (4) 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 might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement regarding smoking. As such, other occupants of the property may enforce such provisions by any lawful means, including by bringing a civil action in a court of law."

**COMMENT:** Declaring other residents third-party beneficiaries grants people living in the Multi-Unit Residence limited rights to enforce the Smoking restrictions in leases. Without the declaration, other residents usually lack the legal right to enforce the lease terms (because they are not a "party" to the agreement), and the power to enforce the terms of the lease rests solely with the Landlord.



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

**COMMENT:** This is a back-up provision to ensure that the Smoking-related terms are included by law, even if the Landlord fails to comply with subsections (a) or (b).

- (d) 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.

**COMMENT:** This provision provides other tenants legal standing to seek damages or possibly an injunction against someone Smoking in violation of a lease term.

There are two additional enforcement mechanisms in this ordinance.

Section \*8 "Enforcement" provides for traditional enforcement by local government officials. It also contains an optional "private enforcement" provision that grants *any* member of the public the right to enforce the ordinance. Thus, a Landlord, a tenant, or a member of the public could bring a lawsuit to enforce the ordinance in either Superior Court or small claims court if the optional language is included.

- (e) This [ article / 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 Multi-Unit Residence if the Landlord has fully complied with this Section.

**COMMENT:** This provision expressly states that the Landlord is not the guarantor of the ordinance's enforcement. That is, the Landlord is not contractually required to enforce the no Smoking lease terms, and other residents cannot force the Landlord to act against a tenant who violates one. Including this provision can be extremely important in efforts to gain Landlord support for the ordinance.

- (f) Failure to enforce any Smoking provision required by this [ article / 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.

**COMMENT:** This is a technical legal provision designed to prevent a court from inferring a permanent waiver of a Smoking-related provision from a pattern of lax enforcement.

Sec. [ \_\_\_\_ (\*6) ]. **OTHER REQUIREMENTS AND PROHIBITIONS.**

(a) Every Landlord shall deliver the following, on or before [ *insert effective date of ordinance + 6 months* ], to each Unit of a Multi-Unit Residence:

(1) a written notice clearly stating:

- (i) all Units are designated nonsmoking Units and Smoking will be illegal in a Unit, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of [ *insert effective date of ordinance + 1 year* ]; and
- (ii) Smoking in all Common Areas, except for specifically designated Smoking areas, will be a violation of this [ chapter / article ] as of [ *insert effective date of ordinance* ].

(2) a copy of this [ article / chapter ].

**COMMENT:** This subsection describes the information Landlords must give to residents of Multi-Unit Residences to notify them of the new Smoking restrictions.

A copy of this ordinance must accompany the notice of the smokefree housing law so that residents may assess for themselves their full rights and obligations. Alternatively, Landlords can provide residents a summary of their rights and obligations under the law instead of (or in addition to) a copy of the ordinance itself. If this approach is adopted, steps should be taken to ensure the accuracy and appropriateness of any summary, as summaries are inherently incomplete. The city/county may also want to send information directly to renters about the new smokefree housing law. Research by the American Lung Association in California finds tenants are more likely to be aware of the new Smoking restrictions when information comes from the local government.

Your community may want to provide additional recommendations or guidelines for implementing the smokefree housing law. These could include holding a tenant or building meeting to discuss the new policy and/or hosting cessation classes for residents of Multi-Unit Residences. If your community has residents who have limited English proficiency, notices regarding the smokefree housing policy could be translated. Because



smaller housing providers/managers may not have the resources to do this, the city/county could develop sample translated notices.

Communities may want additional requirements to involve tenants and landlords with implementation and enforcement of the law. These could include such things as requiring tenants to inform visitors about the no smoking requirements, requiring tenants to tell landlords promptly about drifting smoke, and/or requiring landlords to take reasonable steps to enforce the no smoking provisions. Should your community wish to add these types of provisions, please contact ChangeLab Solutions for assistance.

- (b) As of [ *insert effective date of ordinance* ], 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 [ *insert effective date of ordinance* ]; and
  - (ii) Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of [ *insert effective date of ordinance* ].
- (c) As of [ *insert effective date of ordinance* ], every seller of a Unit in a Multi-Unit Residence shall provide prospective buyers 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 [ *insert effective date of ordinance* ]; and
  - (ii) Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of [ *insert effective date of ordinance* ].
- (d) Clear and unambiguous “No Smoking” signs shall be posted in sufficient numbers and locations in Common Areas where Smoking is prohibited by this [ article / chapter ] 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 / chapter ]. “No Smoking” signs are not required inside or on doorways of Units [ , except for hotels or motels as defined in California Civil Code section 1940, subdivision (b)(2) ] .



**COMMENT:** If your community excludes hotels and motels from the definition of Multi-Unit Residences (Section \*1 Definitions), then do NOT include the optional underlined text in the last sentence.

(e) No Person with legal control over any Nonsmoking Area shall permit Smoking in the Nonsmoking Area, except as provided in Section [ \_\_\_ (\*3)(a) ].

Sec. [ \_\_\_ (\*7) ]. **SMOKING AND SMOKE GENERALLY.**

(a) The provisions of this [ article / chapter ] are restrictive only and establish no new rights for a Person who engages in Smoking. Notwithstanding (i) any provision of this [ article / chapter ] or of this Code, (ii) any failure by any Person to restrict Smoking under this [ article / chapter ], 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.

**COMMENT:** The subsection spells out that the intent of this ordinance is to create new smokefree areas and enhance the right of nonsmokers to smokefree environments. This ordinance does not provide smokers with any “safe harbors” from existing laws that might already impose potential liability for Smoking.

Subsection (a) *does not* expand traditional nuisance law in any way, and should generally be included in all ordinances based on this model. Subsection (b) below does potentially expand traditional nuisance law.

(b) For all purposes within the jurisdiction of the [ City / County of \_\_\_ ], 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.

**COMMENT:** The declaration in subsection (b) that Smoke is a nuisance extends far beyond the residential context, unless limited by including the optional language in brackets. Once Smoke is declared a nuisance, nuisance abatement laws can be used to address Smoke around doorways, at businesses, in public venues, and anywhere else it may occur. However, declaring Smoke a nuisance is particularly helpful in the housing context because it eliminates the need to prove that some particular level of exposure has occurred and that such exposure is an unjustified intrusion or hazard.



California Government Code section 38771 explicitly authorizes cities to declare nuisances by ordinance. Counties may declare a nuisance pursuant to the broad police power set forth in the California Constitution, article XI, section 7.

Sec. [ \_\_\_\_ (\*8) ]. PENALTIES AND ENFORCEMENT.

- (a) The remedies provided by this [ article / chapter ] are cumulative and in addition to any other remedies available at law or in equity.

COMMENT: The following provisions are designed to offer a variety of options to the drafter and the enforcing agency. Drafters may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency will have the discretion to choose which enforcement tools to use in any given case. As a practical matter, all these enforcement options would not be applied in a single case, although multiple remedies might be used against a particularly egregious violator over time.

- (b) Every instance of Smoking in violation of this [ article / chapter ] is an infraction subject to a [ one hundred dollar (\$100) ] fine. Other violations of this [ article / chapter ] may, in the discretion of the [ City Prosecutor / District Attorney ], be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of [ \_\_\_\_ ]. In addition, any peace officer or code enforcement official may enforce this chapter.

COMMENT: The first sentence establishes the penalty for the core type of violation: Smoking where it is prohibited. The fine amount can be modified but cannot exceed \$100 for a first infraction. (See California Government Code section 36900.) It is separated from the main enforcement provision that follows so that law enforcement officers can simply write a ticket for illegal Smoking. The second sentence, sometimes called a "wobbler," affords the prosecuting attorney discretion whether to pursue a violation as an infraction (like a parking ticket) or a misdemeanor (a crime punishable by up to a \$1,000 fine and/or six months in County Jail). Alternatively, violations can be set as either an infraction or a misdemeanor in all circumstances. Misdemeanors are more serious crimes for which a jury trial is available to defendants. Fines and other criminal penalties are established by the Penal Code and are typically reflected in the general punishments provision of a local code.

This provision also designates a primary enforcement agency, which is recommended but remains flexible by permitting any enforcement agency to enforce the law.

- (c) Violations of this [ article / chapter ] are subject to a civil action brought by the [ City / County of \_\_\_\_ ], punishable by a civil fine not less than [ two hundred fifty dollars (\$250) ] and not exceeding [ one thousand dollars (\$1,000) ] per violation.



**COMMENT:** This provision provides civil fines for violating the ordinance. It requires that a traditional civil suit be filed by the city or county (possibly in small claims court). The fine amounts can be adjusted but cannot exceed \$1,000 per violation. (See California Government Code section 36901.)

(d) No Person shall intimidate, harass, or otherwise retaliate against any Person who seeks compliance with this [ article / chapter ]. 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 / chapter ]. Violation of this subsection shall constitute a misdemeanor.

(e) Causing, permitting, aiding, or abetting a violation of any provision of this [ article / chapter ] shall also constitute a violation of this [ article / chapter ].

**COMMENT:** This is standard language that is typically included in a city or county code and may be omitted if duplicative of existing code provisions.

(f) Any violation of this [ article / chapter ] is hereby declared to be a public nuisance.

**COMMENT:** By expressly declaring that a violation of this ordinance is a nuisance, this provision allows enforcement of the ordinance by the city or county via the administrative nuisance abatement procedures commonly found in municipal codes.

Note that this declaration merely says that *violating* the ordinance qualifies as a nuisance (e.g., when Smoking in a nonsmoking area, the *violation* is the nuisance, not the *Smoke*). It is not the same thing as a local ordinance declaring Smoke a nuisance. Please see Section 7(b) for the declaration that nonconsensual exposure to secondhand is a nuisance.

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

**COMMENT:** It is common to provide that the local government's lawyers may go to court to seek injunctions and other penalties in addition to fines. The express provision for injunctive relief lowers the showing required to obtain a preliminary or permanent injunction as described in *IT Corp. v. County of Imperial*, 35 Cal 3d 63 (1983).



A public agency should think carefully about the nuisance abatement procedure it chooses in enforcing this ordinance after it is adopted. A local government may provide for treble damages for the second or subsequent nuisance abatement judgment within a two-year period, as long as the ordinance is enacted pursuant to Government Code section 38773.7. Treble damages are not available, however, under the alternative nuisance abatement procedures in Government Code section 38773.1 and Health & Safety Code section 17980. Government Code section 38773.5 establishes a procedure for nuisance abatement where the cost of the abatement can be collected via the property tax roll as a special assessment against the property on which the violation occurs.

[ (h) Any Person, including a legal entity or organization acting for the interests of itself, its members, or the general public, may bring a civil action to enforce this [ article / chapter ] by way of a conditional judgment or an injunction to prevent future such violations and may sue to recover such actual or statutory damages as he or she may prove. ]

**COMMENT:** In order to get an injunction, a plaintiff would have to sue in superior court generally with the assistance of an attorney. A plaintiff, however, could seek a conditional judgment in small claims court and represent him/herself. Note that the difference between an injunction and a conditional judgment is that an injunction directly orders the defendant to do something (or to refrain from doing something). A conditional judgment, however, gives the defendant a choice between fulfilling certain conditions (e.g., ceasing the illegal conduct) or suffering a different judgment (e.g., paying monetary damages). (See: *Consumer Law Sourcebook: Small Claims Court Laws and Procedures* (California Department of Consumer Affairs 2005.)) A conditional judgment could serve as an alternative to damages, or it could be in addition to damages. For example, a small claims court could order some monetary damages along with a conditional judgment giving the defendant a choice between stopping the violations or paying even more money.

[ (i) Except as otherwise provided, enforcement of this [ article / chapter ] is at the sole discretion of the [ City / County of \_\_\_\_ ]. Nothing in this [ article / chapter ] shall create a right of action in any Person against the [ City / County of \_\_\_\_ ] or its agents to compel public enforcement of this [ article / chapter ] against private parties. ]

**COMMENT:** This is an optional provision, which makes clear that a City or County cannot be liable to any Person for failure to enforce the Smoking restrictions in this ordinance.



### SECTION III. CONSTRUCTION, SEVERABILITY.

It is the intent of the [ City Council / Board of Supervisors ] of the [ City / County ] of [ \_\_\_\_\_ ] 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 section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The [ City Council / Board of Supervisors ] of the [ City / County ] of [ \_\_\_\_\_ ] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**COMMENT:** This is standard language. Often this "boilerplate" is found at the end of an ordinance, but its location is immaterial.



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