

MEETING DATE: **03/24/14**

AGENDA ITEM: **Discussion of Draft Ordinance Regulating Smoking in
Multi-Unit Housing and Direction to Staff.**

ATTACHMENTS

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DISCUSSION DRAFT ORDINANCE

ORDINANCE NO. 2014-_____

AN ORDINANCE OF THE CITY OF CULVER CITY,
CALIFORNIA, AMENDING CHAPTER 9.11 OF THE CULVER
CITY MUNICIPAL CODE RELATING TO SMOKING
REGULATIONS TO ADD A NEW SUBCHAPTER 9.11.200, *et
seq.*, REGULATING SMOKING IN MULTI-UNIT HOUSING.

WHEREAS, the California Air Resources Board has identified environmental tobacco smoke, or secondhand smoke, as a Toxic Air Contaminant, which may cause and contribute to death or serious illness, including increased risks of cancer, and is especially hazardous to children and people with asthma and other respiratory problems; and

WHEREAS, according to the United States Environmental Protection Agency, any level of exposure to secondhand smoke is harmful; and

WHEREAS, according to the National Fire Protection Association, smoking is the primary cause of fire-related injuries and deaths in the home; and

WHEREAS, according to the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke through doorways, cracks in walls, electrical lines, plumbing and ventilations systems; and

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

WHEREAS, it is the intent of the City Council of the City of Culver City to provide for the public's health, safety, and welfare by discouraging the inherently dangerous activity of tobacco use around non-consenting individuals; 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.

1 **NOW THEREFORE**, the City Council of the City of Culver City, California,
2 **DOES HEREBY ORDAIN** as follows:

3 **SECTION 1.** Chapter 9.11 of the Culver City Municipal Code is hereby
4 amended to add a new Subchapter 9.11.200, *et seq.*, Non-Smoking Multi-Unit Housing as
5 follows:

6 ***Regulation of Smoking in Multi-Unit Housing***

7 § 9.11.200 Purpose

8 § 9.11.205 Definitions

9 § 9.11.210 Smoking Prohibited By Law in Certain Areas

10 § 9.11.215 No Smoking Permitted in Common Areas Except in Designated
11 Smoking Areas

12 § 9.11.220 Nonsmoking Buffer Zones

13 § 9.11.225 Smoking Restrictions in New Units of Multi-Unit Residences.

14 § 9.11.230 Nonsmoking Designations for Existing Units of a Rental
15 Complex

16 § 9.11.235 Required and Implied Lease Terms for All New and Existing
17 Units in Rental Complexes

18 § 9.11.240 Additional Duties of a Landlord of a Rental Complex with Less
19 than 100% Nonsmoking Units

20 § 9.11.245 Nonsmoking Designations for Existing Units of a Common
21 Interest Complex

22 § 9.11.245 Smoking Prohibited by Law in Certain Areas

23 § 9.11.250 Procedures and Requirements for Mandated Submissions

24 § 9.11.255 Smoking and Smoke Generally

25 § 9.11.260 Penalties and Enforcement

26 § 9.11.265 Private Enforcement

27 § 9.11.270 Conflict of Provisions

1 **§ 9.11.200 PURPOSE.**

2 It is the intent of the City Council of the City of Culver City, in enacting
3 this Subchapter, to provide for the public's health, safety, and welfare by
4 discouraging the inherently dangerous activity of tobacco use around non-
5 consenting individuals; by protecting children from exposure to smoking where they
6 live and play; and by protecting the public from nonconsensual exposure to
7 secondhand smoke in and around their homes.

8 **§ 9.11.205 DEFINITIONS.**

9 Notwithstanding the definitions set forth in Subchapter 9.11.100, *et*
10 *seq.*, for the purposes of this Subchapter, the following definitions shall apply
11 unless the context clearly indicates or requires a different meaning.

12 ***Adjacent Property*** shall mean any Unenclosed Area of property,
13 publicly or privately owned, that abuts a Multi-Unit Residence. ***[OPTION:***
14 ***This definition is only necessary if the Council intends to include a***
15 ***"buffer zone" regulation (see Section 9.11.220 below).]***

16 ***Common Area*** shall mean every Enclosed Area or Unenclosed Area
17 of a Multi-Unit Residence that residents of more than one Unit of that Multi-
18 Unit Residence are entitled to enter or use, including, for example, halls and
19 paths, lobbies and courtyards, elevators and stairs, community rooms and
20 playgrounds, gym facilities and swimming pools, parking garages and parking
21 lots, shared restrooms, shared laundry rooms, shared cooking areas, and
22 shared eating areas. ***[OPTION: This definition can be limited to Indoor***
23 ***Common Areas only. The determination on how to define common area***
24 ***will also impact the regulations in Section 9.11.215 below.]***

25 ***Common Interest Complex*** shall mean a Multi-Unit Residence that is
26 a condominium project, a community apartment project, a stock cooperative,
27 or a planned development as defined by California Civil Code Section 1351.
28 ***[OPTION: This definition is only necessary if the City Council intends to***
regulate smoking in less than 100% of existing Multi-Unit Residences.
Otherwise, it is necessary to distinguish between owned multi-unit
housing (e.g. condominiums and townhomes) and other types of multi-
unit housing such as apartments that are leased.]

Enclosed Area shall mean an area in which outside air cannot
circulate freely to all parts of that 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 walls or other vertical
boundaries of any height whether or not those boundaries
include vents or other openings; or

- 1 2. Four walls or other vertical boundaries that exceed six feet in
2 height, whether or not those boundaries include vents or other
3 openings. **[OPTION: The number of walls and height**
4 **threshold can be modified. Reducing the number of walls**
5 **would broaden the definition of Enclosed Area and**
6 **narrowing the definition of Unenclosed Area. This is**
7 **primarily relevant to establishing designated Smoking**
8 **areas (see Section 9.11.215) and nonsmoking buffer zones**
9 **(see Section 9.11.220).]**

10 **Existing Unit** shall mean a Unit in existence on or before [effective
11 date of Ordinance].

12 **Landlord** shall mean any Person who owns property let for residential
13 use, any Person who lets residential property, and any Person who manages
14 such property, except that "Landlord" does not include a master tenant who
15 sublets a Unit as long as the master tenant sublets only a single Unit of a
16 Multi-Unit Residence.

17 **Multi-Unit Residence** shall mean property containing two or more
18 Units, except the following specifically excluded types of housing: **[OPTION:**
19 **This definition without the below exclusions would be very broad and**
20 **include any type of property with more than two units. The City Council**
21 **may want to consider excluding certain types of properties from this**
22 **definition, such as the examples listed below. The below list can be**
23 **expanded (for example, by adding condominiums so they are excluded**
24 **from the regulations) or narrowed (for example, by deleting mobile**
25 **home parks so they are subject to the regulations) as the City Council**
26 **deems appropriate.]**

- 27 1. A hotel or motel that meets the requirements set forth in California
28 Civil Code section 1940(b)(2);
2. A mobile home park;
3. A single-family home;
4. A single-family home with a detached or attached accessory
dwelling unit when permitted pursuant to Section 17.400.095 of this
Code.

New Unit shall mean a Unit that is issued a certificate of occupancy on
or after [effective date of Ordinance]. **[OPTION: Additional language may**
be added if the City Council's intent is to grandfather in new units that
are already under construction at the time of adoption of an ordinance.
For example, that definition could read, for example: "...a Unit that is
issued a certificate of occupancy more than 180 days after [effective
date of Ordinance] and also includes a Unit that is let for residential use
for the first time more than 180 days after effective date of Ordinance.

1 **Nonsmoking Area** shall mean any Enclosed Area or Unenclosed
2 Area of a Multi-Unit Residence in which Smoking is prohibited by: (1) this
3 Subchapter or other law; (2) by binding agreement relating to the ownership,
4 occupancy, or use of real property; or (3) by designation of a Person with
5 legal control over the area. In the case of a Smoking prohibition established
6 only by private agreement or designation and not by this Subchapter or other
7 law, it shall not be a violation of this Subchapter for a Person to engage in
8 Smoking or to allow Smoking in that area unless: (1) the Person knows that
9 Smoking is not permitted; or (2) a reasonable Person would know that
10 Smoking is not permitted.

11 **Rental Complex** shall mean a Multi-Unit Residence for which 50% or
12 more of Units are let by or on behalf of the same Landlord. **[OPTION: This**
13 **definition is only necessary if the City Council intends to regulate**
14 **smoking in less than 100% of existing Multi-Unit Residences.**
15 **Otherwise, it is necessary to distinguish between owned multi-unit**
16 **housing (e.g. condominiums and townhomes) and other types of multi-**
17 **unit housing such as apartments that are leased.]**

18 **Smoke** shall mean the gases, particles, or vapors released into the air
19 as a result of combustion, electrical ignition or vaporization, when the
20 apparent or usual purpose of the combustion, electrical ignition or
21 vaporization is human inhalation of the byproducts, except when the
22 combustng or vaporizing material contains no tobacco or nicotine and the
23 purpose of inhalation is solely olfactory, such as, for example, smoke from
24 incense. The term "Smoke" includes, but is not limited to, tobacco smoke,
25 electronic cigarette vapors and marijuana smoke. **[OPTION: This definition**
26 **may be modified to specifically exclude e-cigarettes. In addition, if the**
27 **Council intends to exempt the smoking of medical marijuana from these**
28 **regulations, there is an optional provision provided in Section 9.11.255**
below.]

Smoking shall mean engaging in an act that generates Smoke, such
as, for example: possessing a lighted pipe, a lighted hookah pipe, a lighted
cigar, an operating electronic cigarette or a lighted cigarette of any kind; or
lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.
[OPTION: If the City Council intends to exclude e-cigarettes, this
definition will be modified.]

Unenclosed Area shall mean any area that is not an Enclosed Area.

Unit shall mean 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. **[OPTION: The Council has the**
option of deleting the foregoing language regarding exclusive-use areas
if the intent is to allow a resident to smoke on their individual balconies,

1 **patios, etc. This issue of exclusive-use areas is also relevant to**
2 **Sections 9.11.220, 9.11.225, 9.11.230, 9.11.245 below.] "Unit" includes,**
3 **without limitation, an apartment; a condominium; a townhouse; a room in a**
4 **long-term health care facility, assisted living facility, or hospital; a hotel or**
5 **motel room; a room in a single room occupancy ("SRO") facility; a room in a**
6 **homeless shelter; a mobile home; a camper vehicle or tent; a single family**
7 **home; and an accessory dwelling unit when permitted pursuant to Section**
8 **17.400.095 of this Code. Unit includes an Existing Unit and a New Unit.**
9 **[NOTE: This definition is intentionally broad. Any exclusion for a type**
10 **of unit should be made in the definition of Multi-Unit Residence.]**

11
12 **§ 9.11.210 SMOKING PROHIBITED BY LAW IN CERTAIN AREAS.**

- 13 A. Smoking in a Common Area, other than in a designated Smoking area
14 established pursuant to Section 9.11.215, is prohibited and a violation
15 of this Subchapter. **[OPTION: The exception language contained in**
16 **this provision, as well as the entirety of Section 9.11.215 below, are**
17 **only necessary if the City Council intends to allow for the creation of**
18 **designated Smoking areas.]**
- 19 B. Smoking in a New Unit as set forth in Section 9.11.230 is prohibited
20 and a violation of this Subchapter.
- 21 C. Smoking in a designated nonsmoking Unit, is prohibited and a violation
22 of this Subchapter.
- 23 D. Smoking in any Nonsmoking Area is prohibited and a violation of this
24 Subchapter.
- 25 E. No Person with legal control over any Nonsmoking Area shall permit
26 Smoking in the Nonsmoking Area, except as provided in Section
27 9.11.235.E.

28 **§ 9.11.215 NO SMOKING PERMITTED IN COMMON AREAS EXCEPT IN**
DESIGNATED SMOKING AREAS.

A. Smoking is prohibited in all Common Areas pursuant to Section
9.11.210.A, except that 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 that
at all times the designated Smoking area complies with Section 9.11.215.B
below. **[OPTION: Section 9.11.215 is only necessary if the City Council**
intends to allow smoking in certain designated smoking areas.
Otherwise, it should be deleted in its entirety.]

B. A designated Smoking area:

1. Must be an Unenclosed Area.

1 2. Must be located at least twenty-five (25) feet from any
2 Enclosed Area that is a Nonsmoking Area. A Person with legal control
3 over a Common Area in which a designated Smoking area has been
4 designated shall modify, relocate or eliminate that designated Smoking
5 area so as to maintain compliance with the requirements of this
6 Section 9.11.215.B as laws change, as binding agreements are
7 created, and as Nonsmoking Areas on neighboring property are
8 established.

9 3. Must be at least 25 feet from Unenclosed Areas primarily
10 used by children and Unenclosed Areas with improvements that
11 facilitate physical activity including, for example, playgrounds, tennis
12 courts, swimming pools, and school campuses.

13 4. Must be no more than [10%] of the total Unenclosed
14 Area of the Multi-Unit Residence for which it is designated. ***[OPTION:
15 The City Council can choose to require a smaller or larger
16 maximum area for a designated smoking area. In smaller
17 developments, there may be physical constraints to providing a
18 designated smoking area.]***

19 5. Must have a clearly marked perimeter.

20 6. Must be identified by conspicuous signs.

21 C. No Person with legal control over a Common Area in which
22 Smoking is prohibited by this Subchapter or other law shall knowingly permit
23 the presence of ash trays, ash cans, or other receptacles designed for or
24 primarily used for disposal of Smoking waste within the area.

25 D. Clear and unambiguous "No Smoking" signs shall be posted in
26 sufficient numbers and locations to make Common Areas where Smoking is
27 prohibited by this Subchapter or other law obvious to a reasonable person.
28 The signs shall have letters of no less than one inch in height or contain the
international "No Smoking" symbol (consisting of a pictorial representation of
a burning cigarette enclosed in a red circle crossed by a red bar). 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 Subchapter.

§ 9.11.220 NONSMOKING BUFFER ZONES.

A. Smoking is prohibited in Unenclosed Areas of a Multi-Unit
Residence, including balconies, porches, decks, and patios, within 25 feet in
any direction of any doorway, window, opening, or other vent into an
Enclosed Area that is a Nonsmoking Area.

1 B. Smoking is prohibited in Unenclosed Areas of Adjacent
2 Property within 25 feet in any direction of any doorway, window, opening, or
3 other vent into an Enclosed Area that is a Nonsmoking Area.

4 C. Subsections 9.11.220.A and 9.11.220.B above do not apply to a
5 Person who is Smoking in the restricted buffer zone while actively passing on
6 the way to another destination.

7 D. Notwithstanding any other provision of this Subchapter,
8 Smoking is prohibited in all exclusive-use Unenclosed Areas associated with
9 a Unit, such as, for example, a private balcony, porch, deck, or patio.

10 ***[OPTION: The above provisions regarding smoke-free buffer zones may
11 be included if the City Council intends to address the issue of smoke
12 drifting from a smoking area to a nonsmoking area.]***

13 **§ 9.11.225 SMOKING RESTRICTIONS IN NEW UNITS OF MULTI-UNIT
14 RESIDENCES.**

15 A. All New Units of a Multi-Unit Residence are hereby designated
16 nonsmoking Units, including any associated exclusive-use Enclosed Areas or
17 Unenclosed Areas, such as, for example, a private balcony, porch, deck, or
18 patio; and including without limitation New Units in a Rental Complex and
19 New Units in a Common Interest Complex. ***[OPTION: This section as
20 written applies to 100% of New Units, however, the City Council may
21 designate a lesser minimum number (for example, "Up to 100%, but no
22 less than 80%..."). If a lesser percentage is designated, other
23 provisions will need to be included in this Section regarding location,
24 no sharing of ventilation systems, permanent designation, specific unit
25 description.]***

26 B. Smoking in a designated nonsmoking Unit is a violation of this
27 Subchapter, as provided in Section 9.11.210.C.

28 **§ 9.11.230 NONSMOKING DESIGNATIONS FOR EXISTING UNITS OF A
RENTAL COMPLEX.**

A. All Existing Units of a Rental Complex, including any associated
exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a
private balcony, porch, deck, or patio, are hereby designated nonsmoking
Units as of [effective date of Ordinance + 120 days] ***[OPTION: This
effective date provides for a phase-in plan on the ordinance. The 120
days may be modified if the City Council wants to provide a shorter or
longer period.];*** provided, however, that a lesser percentage of Existing
Units may be designated nonsmoking Units if a Landlord fully complies with
Section 9.11.230.B below. ***[OPTION: This section applies to 100% of
existing Units and provides the Landlord an opportunity to allow
smoking in some of the existing Units. If a Landlord chooses to***

1 **exercise this option, they would be required to comply with certain**
2 **additional procedures, as set forth in Section 9.11.230.B below. If the**
3 **Council does not wish to provide this option, subsection C will be**
4 **deleted in its entirety.]**

5 B. Except as provided in Subsection 9.11.230.C below, at least 60
6 days before [effective date of Ordinance + 120 days], a Landlord shall
7 provide each tenant with:

8 1. A written notice clearly stating that all Units, including the
9 tenant's Unit, are designated nonsmoking Units and that Smoking in a
10 Unit shall be prohibited as of [effective date of Ordinance + 365 days];
11 and **[OPTION: The 365 days provides for a full year to implement**
12 **the ordinance as discussed in the recommended phase-in plan in**
13 **the staff report.]**

14 2. A copy of this Subchapter.

15 C. A Landlord may choose to designate fewer than 100% of
16 Existing Units of a Rental Complex as nonsmoking Units by fully complying
17 with the requirements stated in Sections 9.11.230.C.1 through 9.11.230.C.7
18 below. If a Landlord takes no action or does not fully comply with all of the
19 requirements set forth in 9.11.230.C.1 through 9.11.230.C.7 below, then
20 100% of all Existing Units shall be nonsmoking Units, as set forth in Section
21 9.11.230.A above.

22 1. The Landlord shall permanently designate up to 100% of
23 Existing Units, but no less than 80% **[OPTION: City Council may allow**
24 **the designation of the minimum number of nonsmoking units to be a**
25 **lesser or greater number than 80%]** of Existing Units, including, for
26 example, any associated exclusive-use Enclosed Areas or Unenclosed
27 Areas, such as, for example, a private balcony, porch, deck, or patio,
28 as nonsmoking Units.

2. To the maximum extent possible, nonsmoking Units must
be grouped together both horizontally and vertically and physically
separated from Units where Smoking may be allowed. Where
possible all Units where Smoking may be allowed shall be in a single
building of a multi-building Rental Complex.

3. No later than [effective date of Ordinance + 120 days], a
Landlord who chooses to designate fewer than 100% of the Units of a
Rental Complex as nonsmoking Units shall submit the following in
accordance with Section 9.11.250:

a. A description of each designated nonsmoking Unit
sufficient to identify the Unit; and

1 b. A diagram depicting the location of the designated
2 nonsmoking Units in relation to all other Units.

3 4. At least 60 days before submitting the nonsmoking Unit
4 designations required by Section 9.11.230.C.3 above, the Landlord
5 shall provide each tenant with:

6 a. A written notice of the proposed designations,
7 clearly stating that Smoking in a Unit which is designated as a
8 nonsmoking Unit shall be prohibited as of [effective date of
9 Ordinance + 365 days], and inviting comments on the proposed
10 designations of nonsmoking Units within the timeline for
11 submission of the designations as required by Section 9.11.250;

12 b. A diagram depicting the location of the designated
13 nonsmoking Units in relation to all other Units; and

14 c. A copy of this Subchapter.

15 5. A Landlord may modify the proposed designations based
16 upon comments received from tenants.

17 6. At least 30 days before submitting the final designations
18 of nonsmoking Units required by Section 9.11.230.C.3 above, the
19 Landlord shall provide all tenants:

20 a. Written notice of the final designations clearly
21 stating that Smoking in a designated nonsmoking Unit shall be
22 prohibited as of [effective date of Ordinance + 365 days].
23 These final designations may differ from the proposed
24 designations on which tenants were invited to comment; and

25 b. A copy of the final documents that will be
26 submitted pursuant to Section 9.11.250 of this Subchapter.

27 7. No later than [effective date of Ordinance + 120 days]
28 the final designations of nonsmoking Units must be made and the
following must be submitted in accordance with Section 9.11.250:

 a. A description of each designated nonsmoking Unit
sufficient to readily identify the Unit; and

 b. A diagram depicting the location of the designated
nonsmoking Units in relation to all other Units.

 D. Smoking in a designated nonsmoking Unit is a violation of this
Subchapter, as provided in Section 9.11.2XX.C.

1 **§ 9.11.235 REQUIRED AND IMPLIED LEASE TERMS FOR ALL NEW**
2 **AND EXISTING UNITS IN RENTAL COMPLEXES.**

3 A. Every lease or other rental agreement for the occupancy of a
4 Unit in a Rental Complex, including New Units and Existing Units, entered
5 into, renewed, or continued month-to-month after [effective date of
6 Ordinance], shall include the provisions set forth in Section 9.11.285.B below
7 on the earliest possible date such lease or other rental agreement may be
8 amended in accordance with applicable law, including providing the minimum
9 legal notice.

10 B. Every lease or other rental agreement for the occupancy of a
11 Unit in a Rental Complex, including New Units and Existing Units, entered
12 into, renewed, or continued month-to-month after [effective date of
13 Ordinance], shall be amended to include the following provisions:

14 1. A clause providing that as of [effective date of Ordinance
15 + 365 days], it is a material breach of the lease or other rental
16 agreement to allow or engage in Smoking in the Unit unless the
17 Landlord has supplied written notice that the Unit has not been
18 designated a nonsmoking Unit and no other prohibition against
19 Smoking applies. Such clause shall be substantially consistent with the
20 following: "It is a material breach of this agreement for tenant or any
21 other person subject to the control of the tenant or present by invitation
22 or permission of the tenant to engage in smoking in the unit as of
23 [effective date of Ordinance + 365 days] unless landlord has provided
24 written notice that the unit has not been designated a nonsmoking unit
25 and smoking in the unit is not otherwise prohibited by this agreement,
26 other agreements, or by law."

27 2. A clause providing that it is a material breach of the lease
28 or other rental 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 other than
a designated Smoking area. Such clause shall be substantially
consistent with the following: "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 lease
or other rental 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.
Such clause shall be substantially consistent with the following: "It is a

1 material breach of this agreement for tenant or any other person
2 subject to the control of the tenant or present by invitation or
3 permission of the tenant to violate any law regulating smoking while
4 anywhere on the property."

4 4. A clause expressly conveying third-party beneficiary
5 status to all occupants of the Rental Complex as to the Smoking
6 provisions of the agreement. Such clause shall be substantially
7 consistent with the following: "Other occupants of the property are
8 express third-party beneficiaries of those provisions in this agreement
9 that concern smoking. As such, other occupants of the property may
10 seek to enforce such provisions by any lawful means, including by
11 bringing a civil action in a court of law."

9 C. Whether or not a Landlord complies with Sections 9.11.235.A
10 and 9.11.235.B above, the clauses required by those subsections shall be
11 implied and incorporated by law into every agreement to which Sections
12 9.11.235.A and 9.11.235.B apply and shall become effective as of the earliest
13 possible date on which the Landlord could have made the insertions pursuant
14 to Sections 9.11.235.A and 9.11.235.B.

13 D. A tenant who breaches a Smoking provision of a lease or other
14 rental agreement for the occupancy of a Unit in a Rental Complex, or who
15 knowingly permits any other Person subject to the control of the tenant or
16 present by invitation or permission of the tenant, shall be liable for the breach
17 to:

16 1. The Landlord; and

17 2. Any occupant of the Rental Complex who is exposed to
18 Smoke or who suffers damages as a result of the breach.

19 E. This Subchapter shall not create additional liability in a Landlord
20 to any Person for a tenant's breach of any Smoking provision in a lease or
21 other rental agreement for the occupancy of a Unit in a Rental Complex if the
22 Landlord has fully complied with this Section and Section 9.11.230.

22 F. Failure to enforce any Smoking provision required by this
23 Subchapter shall not affect the right to enforce such provision in the future,
24 nor shall a waiver of any breach constitute a waiver of any subsequent
25 breach or a waiver of the provision itself.

24 **§ 9.11.240 ADDITIONAL DUTIES OF A LANDLORD OF A RENTAL**
25 **COMPLEX WITH LESS THAN 100% NONSMOKING UNITS.**

26 A Landlord of a Rental Complex with less than 100% nonsmoking
27 Units shall provide to every prospective tenant, prior to entering into a new
28 lease or other rental agreement for the occupancy of a Unit in a Rental

Complex, a copy of the designation documents submitted pursuant to Section 9.11.230 describing each designated nonsmoking Unit with an accompanying diagram depicting the location of nonsmoking Units in relation to all other Units and any designated Smoking areas. ***[OPTION: This Section is only necessary if the City Council intends to allow a Landlord to designate less than 100% of existing units as nonsmoking units.]***

§ 9.11.245 NONSMOKING DESIGNATIONS FOR EXISTING UNITS OF A COMMON INTEREST COMPLEX.

A. All Units of a Common Interest Complex 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, are hereby designated nonsmoking Units as of [effective date of Ordinance + 365 days]; provided, however, that a lesser percentage of Units may be designated nonsmoking Units if a Common Interest Complex fully complies with Section 9.11.245.B below. ***[OPTION: This Section is only necessary if the City Council intends to regulate Common Interest Complexes, i.e. condominiums, etc. If so, as provided in this Section, the City Council also has the option of providing the homeowners' associations of such Complexes to elect to allow smoking in some of the existing Units, which would require that certain additional procedures be followed by the HOA, as set forth in Section 9.11.245.B below. If this City Council intends that 100% of the units in Common Interest Complexes be designated nonsmoking, then Section 9.11.245.B may be deleted in its entirety.]***

B. By a vote of the membership as provided in Section 9.11.245.B.1 below, a Common Interest Complex may choose to designate less than 100% of existing Units as nonsmoking Units by fully complying with the requirements stated in Sections 9.11.245.B.1 through 9.11.245.B.4 below. If a Common Interest Complex does not elect to follow this Section 9.11.245.B, then 100% of all Units shall be nonsmoking Units, as set forth in Section 9.11.245.A above.

1. A vote by the membership on the threshold question of allowing less than 100% of Units to be designated nonsmoking Units must take place on or before [effective date of Ordinance + 270].

2. Up to 100%, but no less than 80% ***[OPTION: City Council may allow the designation of the minimum number of nonsmoking units to be a lesser or greater number than 80%]***, of Units that are not New Units, including, for example, any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio, shall be permanently designated as nonsmoking Units.

1 3. Where possible, best efforts shall be made to group
2 nonsmoking Units together, both horizontally and vertically, and
physically separate them from Units where Smoking may be allowed.

3 4. No later than [effective date of this Ordinance + 365
4 days] the final designations of nonsmoking Units must be made and
the following must be submitted in accordance with Section 9.11.250:

5 a. A description of each designated nonsmoking Unit
6 sufficient to readily identify the Unit; and

7 b. A diagram depicting the location of the designated
8 nonsmoking Units in relation to all other Units.

9 C. Smoking in a designated nonsmoking Unit is a violation of this
10 Subchapter, as provided in Section 9.11.210.C.

11 **§ 9.11.250 PROCEDURES AND REQUIREMENTS FOR MANDATED**
12 **SUBMISSIONS.**

13 A. Submissions required by this Subchapter must be received by
14 the Community Development Department on or before any applicable due
15 date. The submissions shall include all material and information required by
16 this Subchapter and such other materials and information as the Community
Development Department deems necessary for the administration and
enforcement of this Subchapter.

17 B. All material and information submitted pursuant to this
18 Subchapter constitute discloseable public records and are not private or
confidential.

19 **§ 9.11.255 SMOKING AND SMOKE GENERALLY.**

20 A. The provisions of this Subchapter are restrictive only and
21 establish no new rights for a Person who engages in Smoking.
22 Notwithstanding (1) any provision of this Subchapter or other provisions of
23 this Code, (2) any failure by any Person to restrict Smoking under this
24 Subchapter, or (3) any explicit or implicit provision of this Code that allows
25 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.

26 B. Notwithstanding any other provision of this Code, Smoking
27 marijuana for medical purposes as permitted by California Health and Safety
28 Code Sections 11362.7 *et seq.* is not prohibited by this Subchapter.
[OPTION: This Section is only necessary if the City Council intends to

1 allow the smoking of medical marijuana in nonsmoking Units. As
2 discussed in the staff report, State law (Health and Safety Code Section
3 11362.79(a)) states that nothing in the Compassionate Care Act of 1996
4 (which allows the use of medical marijuana) authorizes such use in any
5 place where smoking is prohibited by law. Therefore, without this
6 specific Section in the Ordinance, the smoking of medical marijuana
7 would be prohibited in nonsmoking Units.]

8
9 **§ 9.11.260 PENALTIES AND ENFORCEMENT.**

10 **[OPTION: If the City Council intends to provide for private enforcement
11 only or a hybrid of City and private enforcement, this Section will be
12 modified accordingly.]**

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

15 B. A violation of this Chapter is subject to a civil action brought by
16 the City Attorney, punishable by a civil fine not less than \$100 and not
17 exceeding \$1,000 per violation.

18 C. A violation of any provision of this Chapter may, in the discretion
19 of the City Attorney, be prosecuted as an infraction or misdemeanor. The
20 penalties for a violation of this Chapter shall be consistent with the penalties
21 set forth in Sections 1.01.040 and 1.01.045 of this Code, but in no event shall
22 such penalties exceed the maximum penalties permitted under State law.

23 D. Causing, permitting, aiding, abetting, or concealing a violation of
24 any provision of this Chapter shall also constitute a violation of this Chapter.

25 E. Any violation of this Chapter is hereby declared to be a public
26 nuisance.

27 F. No Person shall intimidate, harass, or otherwise retaliate
28 against any Person who seeks compliance with this Subchapter. Moreover,
no Person shall intentionally or recklessly expose another Person to Smoke
in response to that Person's effort to achieve compliance with this
Subchapter. Violation of this Section 9.11.260.F shall constitute a
misdemeanor.

G. Any person acting for the interests of itself, its members, or the
general public may bring a civil action to enforce this Subchapter in
accordance with the provisions in Section 9.11.265 below. **[OPTION: This
Section is necessary if the City Council intends to provide a
comprehensive method of private enforcement. If private enforcement
is not intended, Section 9.11.265 may be deleted in its entirety. Another**

1 *option is retain this Section, but delete the reference to Section 9.11.265*
2 *herein, and delete Section 9.11.265 in its entirety. This approach will*
3 *provide a much more limited type of private enforcement.]*

4 H. Except as otherwise provided, enforcement of this Subchapter
5 is at the sole discretion of the City of Culver City. Nothing in this Subchapter
6 shall create a right of action in any Person against the City of Culver City or
7 its agents to compel public enforcement of this Subchapter against private
8 parties.

9 **§ 9.11.265 PRIVATE ENFORCEMENT.**

10 A. Any Person, including a legal entity or organization or a
11 government agency, acting for the interests of itself, its members, or the
12 general public may bring a civil action to enforce this Subchapter. Upon proof
13 of a violation, a court shall award the following:

14 1. Damages in the amount of either:

15 a. Upon proof, actual damages; or

16 b. With insufficient or no proof of damages, \$500
17 for each violation of this Subchapter (hereinafter "Statutory
18 Damages"). Each day of a continuing violation shall constitute a
19 separate violation. Notwithstanding any other provision of this
20 Subchapter, no Person suing on behalf of the general public
21 shall recover Statutory Damages based upon a violation of this
22 Subchapter if a previous claim brought on behalf of the general
23 public by another Person for Statutory Damages and based
24 upon the same violation has been adjudicated, whether or not
25 the Person bringing the subsequent claim was a party to the
26 prior adjudication.

27 2. Exemplary damages, where it is proven by clear and
28 convincing evidence that the defendant is guilty of oppression, fraud,
malice, retaliation, or a conscious disregard for the public health.

B. The Person may also bring a civil action to enforce this
Subchapter by way of a conditional judgment or an injunction. Upon proof of
a violation, a court shall issue a conditional judgment or an injunction.

C. Notwithstanding any legal or equitable bar against a Person
seeking relief on its own behalf, a Person may bring an action to enforce this
Subchapter solely on behalf of the general public. When a Person brings an
action solely on behalf of the general public, nothing about such an action
shall act to preclude or bar the Person from bringing a subsequent action
based upon the same facts but seeking relief on his, her or its own behalf.

1 D. Nothing in this Subchapter prohibits a Person from bringing a
2 civil action in small claims court to enforce this Subchapter, so long as the
3 amount in demand and the type of relief sought are within the jurisdictional
4 requirements of that court.

5 **§ 9.11.270 CONFLICT OF PROVISIONS.**

6 In the event of any conflict between this Subchapter and any other provision
7 of this Code, including Subchapter 9.11.100, et seq., this Subchapter shall control.

8 **SECTION 2.** Pursuant to Section 619 of the City Charter, this Ordinance
9 shall take effect thirty (30) days after the date of its adoption. Pursuant to Sections 616
10 and 621 of the City Charter, prior to the expiration of fifteen (15) days after the adoption,
11 the City Clerk shall cause this Ordinance, or a summary thereof, to be published in the
12 Culver City News and shall post this Ordinance or a summary thereof in at least three
13 places within the City.

14 **SECTION 3.** The City Council hereby declares that, if any provision, section,
15 subsection, paragraph, sentence, phrase or word of this ordinance is rendered or declared
16 invalid or unconstitutional by any final action in a court of competent jurisdiction or by
17 reason of any preemptive legislation, then the City Council would have independently
18 adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases
19 or words of this ordinance and as such they shall remain in full force and effect.

20 **APPROVED AND ADOPTED** this _____ day of _____, 2014.

21
22 _____
23 JEFFREY COOPER, Mayor
24 City of Culver City, California

25 **ATTEST:**

APPROVED AS TO FORM:

26
27 _____
28 MARTIN R. COLE, City Clerk

CAROL A. SCHWAB, City Attorney

A14-00233



NON-SMOKING MULTI-UNIT HOUSING ORDINANCES **LOS ANGELES COUNTY**

	Calabasas	Glendale	Santa Monica	South Pasadena	Burbank*	Pasadena
Year Passed:	2008	2008	2009	2010	2010	2011

POLICY PROVISIONS						
Create separate smoking and non-smoking sections	X			X		
Prohibit smoking in at least 75% of the individual units	X (80%)			X (80%)		X (100%)
Prohibit smoking in indoor common areas	X	X	X	X	X	X
Prohibit smoking in outdoor common areas	X	X	X	X		X
Designate smoking area away from doors and windows	X	X (2010)	X (2012)	X		
Prohibit smoking on balconies and patios		X (2010)	X (2010)		X	X
Disclosure of the location of smoking units to prospective tenants	X	X	X (2012)	X		X**
Prohibit smoking in buffer zones (balconies and patios of smoking-permitted units directly adjacent to non-smoking units)	X			X		
Declare second-hand smoke a nuisance in housing	X	X		X		
Include a phase-in plan	X		X (2012)			X
Apply to condominiums		X	X	X	X	X
Apply to existing housing	X	X	X	X	X	X
Apply to new housing	X	X	X	X	X	X
Enforcement plan						
• public education	X		X	X		X
• smoke-free lease terms	X			X		X
• private citizen enforcement	X		X	X		
• local government enforcement	X	X		X		X

*Smoking is prohibited in units that share a common ducting system and in children's play areas and the swimming pool area when children are present.

** Landlords are required to disclose to prospective tenants about the no-smoking policy.

Last updated 12/27/2012

This material was made possible by funds through the Proposition 99 Tobacco Tax Initiative from the Los Angeles County Department of Public Health.

For more information please contact the Tobacco Control and Prevention Program at 213-351-7340.

NON-SMOKING MULTI-UNIT HOUSING ORDINANCES LOS ANGELES COUNTY

Year Passed:					Compton	Baldwin Park	Carson	Huntington Park	Temple City
	2011	2011	2011	2012					

POLICY PROVISIONS	2011	2011	2011	2012					
Create separate smoking and non-smoking sections			X					X	
Prohibit smoking in at least 75% of the individual units	X (100%)	X (80%)							
Prohibit smoking in indoor common areas	X	X	X					X	X
Prohibit smoking in outdoor common areas	X	X						X	
Designate smoking area away from doors and windows		X						X	X
Prohibit smoking on balconies and patios	X	X						X	
Disclosure of the location of smoking units to prospective tenants		X***							
Prohibit smoking in buffer zones (balconies and patios of smoking-permitted units directly adjacent to non-smoking units)		X						X	
Declare second-hand smoke a nuisance in housing	X	X						X	X
Include a phase-in plan	X	X						X	X
Apply to condominiums	X	X							X (rental units only)
Apply to existing housing	X	X						X	X
Apply to new housing	X	X						X	X
Enforcement plan									
• public education									
• smoke-free lease terms	X	X						X	X
• private citizen enforcement		X						X	X
• local government enforcement	X	X							X

*** Landlords are required to disclose to prospective tenants about the no-smoking policy and location of smoking and non-smoking units. In single-family dwellings licensed as Family Day Care Home, persons with legal control must disclose to parents/guardians if smoking is permitted and does occur at facility.

Last updated 12/27/2012
This material was made possible by funds through the Proposition 99 Tobacco Tax Initiative from the Los Angeles County Department of Public Health.
For more information please contact the Tobacco Control and Prevention Program at 213-351-7340.

ATTACHMENT 3

CITY COUNCIL
26 AUG 2013
A-2

Cole, Martin

From: PMSHA@aol.com
Sent: Sunday, August 25, 2013 10:28 PM
To: Cole, Martin
Cc: PMSHA@aol.com
Subject: Email from City Website: Item Not On the Agenda

Email message from the City's Website from:

Paul Ehrlich
11472 Diller Ave
Culver City, 90230
(310)398-4103

Email:

Mayor + City Council, My comments here are only indirectly related to Item A-2 "Discussion of Regulating Smoking IN Multi-unit Housing..." In the attached public information PDF discussing of possible regulation or prohibition of smoking perhaps 25 ft from any window doorway, deck, balcony, etc. outside a multifamily unit. I just wanted to point out that under current CC law, you allow smoking in front of City Hall. For example, a person can smoke at the doorway to the City Council Chambers allowing second hand smoke to enter City Hall. I would recommend that the Council review and revise current law to prohibit smoking on all City owned property, internally and externally.

Cole, Martin

From: PMSHA@aol.com
Sent: Sunday, August 25, 2013 11:39 PM
To: Cole, Martin
Cc: PMSHA@aol.com
Subject: Email from City Website: City Council Agenda Items A2

Email message from the City's Website from:

Paul Ehrlich
11472 Diller Ave
Culver City, 90230
(310)398-4103

Email:

Mayor + City Council, My comments here are related to Item A-2 "Discussion of Regulating Smoking IN Multi-unit Housing..." Hopefully the City Council will discuss: 1. If a commercial landlord rents out part of the property to housekeeper or guard, for example, would this be considered "Multi-Unit" Housing for the purpose of this proposed law? 2. If a landlord owns a single family home in an R1 zoned area, with a separate "in-law" area and rents it out to two unrelated people, would this be considered "Multi-Unit" Housing for the purpose of this proposed law? 3. Is the use of an electronic cigarette be defined as smoking under this discussion item? 4. Should tobacco-vending machines be prohibited in multi-unit housing? 5. The proposed ban on smoking should clearly allow or not allow medically prescribed marijuana smoking. 6. Can a tobacco vendor be prohibited from distributing tobacco products on the property of multi-family units? 7. If a landlord rents out a residential unit above a detached residential garage, is that structure and multi-family unit? 8. In any 12-month period, a \$100 first offence, \$300 second offence and \$500 third offence is recommended. 9. For existing multi-family buildings, the law should take effect Jan 1, 2015, because it is easy to remember. For a new structure, it should take effect when the law is passed. 10. All landlords should be required to inform tenants IN WRITING about the law and when it is in effect. This should be in the lease or a separated paper, if leased month to month. 11. Smoking in detached multi-family garages should be prohibited. 12. Smoking regulations 25 ft from all doorways, vents, windows, decks, balconies, can be complicated, if these areas go beyond property lines. If there is a single family building near an apartment, would smoking in the home be illegal? If the no smoking zone extends to public property, would smoking on public property be illegal? 13. "No Smoking" signage should be mandatory at all multi-family building entries, interior common areas, and exterior prohibited areas. 14. "Unenclosed Designated Smoking Areas" should be 30 ft from multi-family buildings, children's play area and swimming pool area, with proper signage, ash trays, and clearly demarcated.

Green, Jeremy

From: Dana Chotiner <dchotiner1@hotmail.com>
Sent: Monday, August 26, 2013 9:18 AM
To: Clerk, City
Subject: Resident comments for tonight's City Council Meeting
Attachments: SMOKE FREE Living.docx

Dear City Council Members,

I appreciate the "SMOKE-FREE LIVING" item you have on the agenda today. Unfortunately I cannot attend the meeting, but feel very strongly about this issue. I was told I may submit my comments to be entered into the record for tonight. Please find them attached.

If for any reason you need my comments in another format or in the body of this email, please let me know and I will resend.

Thank you for your attention on this matter.

best,

Dana Chotiner
Culver City Resident

Dear Culver City Council,

I am a Culver City resident and have owned and lived in my condo for the past twelve years.

Over the years, I have been increasingly proud to be a Culver City resident. I have experienced both the growth and beautification of downtown and the concerted efforts given by the council to always keep the residents' best interests at heart. It is a quality way to bring vibrancy to a city, while keeping an eye on improving and upholding the integrity of the community at large.

It is on that note of "quality of life" that I would like to ask that the City Council to please put "Smoke-Free Living" on the agenda.

This issue has become a concern over the past year, as my downstairs neighbors have been changing and now there is a chain smoker that lives below me. I have always said "Live and let live". In public places, although it is inconvenient, I can always move away from the smoking. But this is my HOME. I OWN it and I don't want to be driven out just because someone smokes below me.

I am lucky enough to live in a beautiful complex that has a lake, trees and lots of nature. It is really a bit of paradise to live here and yet be in the heart of a booming city. It has given me peace of mind too often to count, knowing that I am always returning home after a long day to this beautiful place.

Now that there is a smoker living below me, I have had to close my windows and balcony door. If I leave them open the entire house smells like someone is sitting inside my place and smoking!

I have left my window open at night, especially in hot weather and been awakened out of a sound sleep at 1am, 2am, 4am, etc., because I am COUGHING and the scent of cigarette smoke is in my bedroom!

My parents like to come over and visit. They are 75yrs old. We always sit on the balcony and they just can't believe how wonderful it is. My dad has severe asthma. Since the smoker has moved in below us, we can no longer be outside talking and again have to shut the windows and doors, just so my dad can breathe while he is here!

I recently had a friend with a 10 month old baby come over for a visit. We had the doors and windows open because it was a hot day. The baby was on a blanket on the floor playing. All of a sudden the baby started sneezing and coughing all at once. The smoker had just lit up downstairs!

Please know I would be there myself tonight to express these things, but I had a work event. I appreciate my comments being read into the record and I **IMPLORE** you to please follow the example of **MANY** other Cities and **institute a "Smoke – Free Living" regulation** in Culver City for multi-unit housing.

The quality of living in Culver City is wonderful and always improving. Right now, that is being seriously threatened. I urge you to institute a "Smoke-Free Living" regulation.

Thank you,

Dana Chotiner
Culver City resident

Green, Jeremy

From: Patrick Rowe <patrickrowe@sbcglobal.net>
Sent: Sunday, August 25, 2013 9:20 PM
To: Clerk, City
Subject: Smoking in Multi-unit Housing - meeting of 08-26-13

Dear Culver City Council Members,

We applaud you for taking on the thorny issue of possibly banning smoking in multi-unit housing, which we support wholeheartedly.

My wife and I have lived at the Camelot Condominium Complex for more than 23 years. We spent the first 15 years of that time having to constantly close our windows on beautiful, breezy days because our neighbors smoke always found its way into our unit. And though we would make them aware that their smoke was entering our unit, it was always US who had to try and find a remedy: close our windows; buy an air purifier; burn incense. You name it, we tried it. They did nothing but continue to smoke.

In the last few years we have seen more families move into our complex. After numerous complaints regarding smoke entering their kids' bedrooms, our Board got some guts and passed a smoking ordinance that prohibits smoking in all common areas. Where they fell short, however, is that they still allow smoking in individual units (which, in a condo, includes the "air space" of the open exclusive use patio areas. As everyone knows, smoke will travel through vents to other units from inside and to other areas from outside on their patios. We have signs posted throughout our complex that brags to everyone entering: "This is a smoke free property." Perhaps someone should tell the smoke.

If we had children, which we do not, we would never move to a multi-family dwelling that allowed cigarette smoking in any form anywhere on the property. Especially now that there are safer alternatives to smoking, such as vapor cigarettes. Anyone who is not a smoker and is not in some kind of denial, knows that second-hand smoke can and does cause asthma, cancer and related heart disease (as well as other assorted respiratory diseases and illnesses). Why do we continue to subject our children and ourselves to the threat of these health issues when so much information makes it clear that this is something that should be prohibited completely? How much health care costs could be saved down the road, by closing the road to smoking in multi-unit housing? How many other costs, including lives, could be saved from the fires caused by smokers? By not acting on the information available regarding the hazards of second hand smoke, those who are in a position to make laws to protect the public remain as culpable as the individuals who release their poison into the air we breathe.

We hope that the Culver City Council will spearhead this effort to prohibit smoking in multi-unit housing. If we can assist in this effort, consider this an invitation to volunteer our services.

Sincerely,
Patrick W. Rowe
Nancy A. Wilmouth

Green, Jeremy

From: Jen Kersey <jactressk@hotmail.com>
Sent: Sunday, August 25, 2013 7:04 PM
To: Clerk, City
Subject: On Smoking in multi-unit dwellings

Hello!

My name is Jen and I live in Lakeside Village, a community with 15 buildings and each building with 35 units. My husband and I live in a corner unit on the 3rd floor.

AND we absolutely wished to address the concern of smoking in multi-unit buildings.

As of now, my husband and I live here alone. My husband, while quite athletic, is an asthma sufferer, with inhalers all over our unit. Myself, I have severe allergies to dust, mold, and yes, smoke. There is nothing worse than waking up in the middle of the night because your neighbor in the unit beneath you is having a late night party, which while quiet, consists of multiple smokers, filling up your bedroom with smoke, choking you while you sleep. Sometimes, it's just one person enjoying a smoke of marijuana from their porch. But sometimes, the sinus and chest congestion that comes with breathing in this smoke lasts for weeks, because the smoke coming in doesn't stop, so there is no time to breathe fresh air and heal. Smoke rises... right into my apartment.

As I sit and write this from my living room, my unit is full of cigar smoke. Now granted, I would rather take the chest-crushing stench of a cigar over the putrid skunky stink of marijuana that often wafts into our unit. But what is truly disrespectful are the smoking tenants who leave their cars smoking, filling the garage, then the elevator, and then the hallways with their still lit cigarette as they enter their apartment.

We can't seem to run enough fans to keep the smoke moving.

There is no way to get the smoke out.

We have a cold air humidifier that uses costly filters to keep the air wet instead of dry so that we can breathe.

We plan to get pregnant soon. It is factually proven that cigarette smoke causes severe health issues and birth defects both stemming from within the womb and to growing lungs outside of the womb, with instances of SIDS caused by second hand smoke. We may have to move before we take this next step. And we've been here over 5 years. Where to? I don't know. We likely can't move to another apartment, so we may have to go broke trying to buy or rent a single dwelling house.

SO many studies have been conducted on the effects that smoking has on the smoker, but more importantly, what it has on the second hand breathers.

From No-Smoke.org, we learn:

- The 2006 Surgeon General's Report on *The Health Consequences of Involuntary Exposure to Tobacco Smoke* confirmed the known health effects of secondhand smoke exposure, including immediate

adverse effects on the cardiovascular system, and coronary heart disease and lung cancer. The report concluded that there is no safe level of exposure to secondhand smoke and that establishing smokefree environments is the only proven way to prevent exposure.

- The 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, confirms that even occasional exposure to secondhand smoke is harmful, and that low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke

From the Surgeon General, we learn how second hand smoke effects children, namely my future children in my home:

- <http://www.surgeongeneral.gov/library/reports/smokeexposure/index.html>
- Secondhand smoke is a known preventable cause of low birth weight, which contributes to infant mortality and health complications into adulthood. Secondhand smoke exposure reduces the birth weight of infants of nonsmoking mothers and contributes to additional reductions in birth weight among babies of smoking mothers.
- Nonsmoking pregnant women who are exposed to secondhand smoke tend to give birth to infants who have a reduced mean birth weight of 33g or more. Secondhand smoke exposure also increases the risk of a birth weight below 2,500g by 22 percent.
- Secondhand smoke exposure impairs a child's ability to learn. It is neurotoxic even at extremely low levels. More than 21.9 million children are estimated to be at risk of reading deficits because of secondhand smoke. Higher levels of exposure to secondhand smoke are also associated with greater deficits in math and visuospatial reasoning.
- Children born to women nonsmokers who are exposed to secondhand smoke during pregnancy and to women who smoked during pregnancy are more likely to suffer from Attention Deficit Hyperactivity Disorder (ADHD) and conduct disorder.
- The U.S. Environmental Protection Agency (EPA) has reported that secondhand smoke exposure increases the risk of lower respiratory tract infections such as bronchitis and pneumonia. The EPA estimates that between 150,000 and 300,000 annual cases of lower respiratory tract infections in infants and young children up to 18 months of age are attributable to secondhand smoke exposure. Of these cases, between 7,500 and 15,000 result in hospitalization.

Cancer.org also mentions this information:

- Secondhand smoke is classified as a "known human carcinogen" (cancer-causing agent) by the US Environmental Protection Agency (EPA), the US National Toxicology Program, and the International Agency for Research on Cancer (IARC), a branch of the World Health Organization.
- Tobacco smoke contains more than 7,000 chemical compounds. More than 250 of these chemicals are known to be harmful, and at least 69 are known to cause cancer.
- SHS has been linked to lung cancer. There is also some evidence suggesting it may be linked with childhood leukemia and cancers of the larynx (voice box), pharynx (throat), brain, bladder, rectum, stomach, and breast.

- SHS kills children and adults who don't smoke.
- SHS causes disease in children and in adults who don't smoke.
- Exposure to SHS while pregnant increases the chance that a woman will have a spontaneous abortion, stillborn birth, low birth-weight baby, and other pregnancy and delivery problems.
- Babies and children exposed to SHS are at an increased risk of sudden infant death syndrome (SIDS), acute respiratory infections, ear infections, and more severe and frequent asthma attacks.

I understand that people have a right to smoke in their own homes. They can decide to kill themselves, and to murder their spouses and children and other loved ones. I get that smoking in public is being severely limited as well, since the rest of the world understands that smoke kills, so it's being limited everywhere. I do understand their plight and their wish to enjoy their cigarette/cigar/marijuana/etc.

But when you live in a multi-dwelling unit, you are still in a very public place. You share your walls, ceilings, and floors with other people. You share your hallways, parking lot, mailroom and public areas with other people. You share the same water supply and air vents with everyone else. When you sit on your porch, you are in close proximity, sometimes only inches away, from other people and their homes.

Here are multiple links with information, including an article on Culver City. One of the articles mentions that people are getting limited and are angry at government control over private lives. I say: I don't really care. You don't want the government to get involved? Pick up a nasty habit that doesn't directly effect others, like drinking. Get drunk and pass out on your couch, vomit on your carpet, I don't really care. But as soon as you do something that effects others, step in, government, step in.

<http://www.nmsapartments.com/nonsmoking-apartments-still-expose-kids-to-smoke-research-shows/>

http://culvercityobserver.com/News/newsmain_view.php?editid1=989

<http://usnews.nbcnews.com/news/2012/10/16/14480203-california-city-bans-smoking-in-duplexes-and-other-multi-family-homes?lite>

We have chosen to live smoke-free lifestyles. You do not have the right to force your cancerous habit onto me and my family.

Any idiot who suggests that we simply "close our windows" will be met with the suggestion to go back to elementary school science to learn what air is and how it moves.

Listen, I've always said, you have the right to commit suicide. We know that smoking kills. But you do not have the right to murder.

Our vote is to have smoking of ALL things smoke related (tobacco, cigars, marijuana, etc) banned from multi-unit dwellings.

Now, if you will excuse me, I need to leave my apartment for a bit of fresh air.

Thank you for your time and consideration of my input.

Jennifer and Terry

Green, Jeremy

From: Carol Prince <home603@sbcglobal.net>
Sent: Saturday, August 24, 2013 3:19 PM
To: Clerk, City
Subject: Regulating Smoking in Multi-Unit Housing

I am unable to attend the meeting Monday evening, but I am very much in favor of regulating smoking in multi-unit housing. I live on the second floor of a 3-story condo complex. The neighbor below me smokes inside her unit and the neighbor above me smokes on her balcony. My unit constantly smells of smoke. I have even had visitors ask me how can I stand the smoke, so I know I am not the only one who smells smoke in my unit.

Please take some action to regulate smoking so that those of us who don't smoke do not have to constantly breathe second hand smoke. Thank you for your consideration of this matter.

Carol Prince
8209 Summertime Lane
Culver City, CA 90230

Green, Jeremy

From: PPapet <ppapet@ca.m.com>
Sent: Saturday, August 24, 2013 8:59 AM
To: Clerk, City
Subject: Multi Unit Smoking ban

Hello,

I would like to register my support for a ban on smoking in multi-unit buildings. This ban should also include pot smoking as well. I am a citizen of Culver City and live in a multi-unit building.

Thank You

Patricia Papet

Green, Jeremy

From: irippy@gmail.com on behalf of Isabel Rippy <irippy@ucla.edu>
Sent: Friday, August 23, 2013 10:04 AM
To: Clerk, City
Subject: Regulating Smoking in Multi-Unit Housing

Dear City Council,

As an active member of this city I wanted to share my family's experience with second hand smoke at my condominium. I live on the top floor of a three story building and from September 2011 to August 2012 an individual (smoker) rented the unit on the first floor, directly below my unit. During the course of that entire year, myself and my then 11 year old child had to live with second hand smoke coming in our windows. The renter would smoke on their balcony every 10-15 minutes and the smoke would rise directly up to our unit. My child would smell it and run to our patio door saying "smoke" and close the door. This went on for a year where we could not have our patio door or windows open because of the smoke. The smoke also came through the vents and into my child's bathroom.

I can honestly say that it was the worst year of home ownership I have ever had, not being able to open my home's windows and stressing about the effects the smoke would have on my child were unbearable. After researching online, consulting with lawyer friends and seeing that there was not much I could do, I began the process to sell my home to move. Luckily soon after that, the unit was put on the market and a wonderful family with children moved in.

I don't have a problem with smokers, some of my best friends smoke, it's their choice and when they smoke it does not affect my family or myself. But I do have a problem when the health of my family and my lifestyle are affected by a neighbor smoking specially when we live so close to each other.

Please consider my family's experience as you decide on this very important issue affecting children and adults alike in our community.

Respectfully,

Isabel Rippy

—

Green, Jeremy

From: SUSAN NEUBERG <susanneuberg@yahoo.com>
Sent: Monday, August 26, 2013 3:16 PM
To: Clerk, City
Subject: Regulation Smoking in Multi-Unit Housing

I am an owner of a condo in Lakeside Village at 8304 Summertime Lane. I just moved back here after being gone for 8 years and I am miserable due to the fact the occupant underneath me smokes and is on his balcony all times of the day and night smoking. My family and myself can almost never open our sliding glass door to let air in, enjoy the breeze or sit on the balcony and if our door is open we are overpowered by the smoke which travels directly into our home, which makes it impossible to enjoy our home to the fullest. Our electric bill is sky high, as we have to use our air conditioner constantly, as I am allergic to smoke and have asthma and we are scared of second hand smoke. We are also opposed to anyone smoking in their unit, as some neighbors do and the smoke travels out to the hallway. My family and myself are against smoking in units, balconies, patios and common areas.

Susan Neuberg

Green, Jeremy

From: Mark C. Minichiello <markm@quincycass.com>
Sent: Sunday, August 25, 2013 8:08 PM
To: Clerk, City
Cc: Mark C. Minichiello
Subject: Regulating smoking in Multi-unit dwellings
Attachments: Culver City Council Letter - Regulated Smoking.pdf

Importance: High

City Council
Culver City City Hall
9770 Culver Boulevard
Culver City, CA 90232

August 25, 2013

RE: Regulating Smoking in Multi-Unit Housing

Dear City Council,

First, let me state for the record that I do NOT smoke cigarettes! However, I am **STRONGLY OPPOSED** to any law that would ban or regulate smoking in Multi-unit Complexes!

I live in Playa Pacific Homeowners Association, a 173 multi-unit dwelling complex located at 7001 Hannum Avenue, Culver City. We are governed by a Board of Directors and our CCR's which have been voted on by our membership. I strongly state that the membership and the Board is in a better position to determine what rules should be in place within our own property boundaries. Specifically, our membership has voted and the majority have approved our CCR's which state: **Section 6.17 Smoking**. "Smoking is prohibited in all enclosed Common Areas."

Our Culver City Police force has far more important issues to focus their time, energy and limited resources on specifically, crime and criminals. Recently, a biker was brutally beaten and robbed on the Bologna Bike Path. This is a prime example of where our Police should be focusing their energy as opposed to enforcing who is lighting up a legal cigarette on their property. What about the law of unintended consequences? By banning smoking in multi-unit residences you will force residents outside onto public streets creating litter and loitering. Then there is medical marijuana. Where does one go to smoke their "legal" joint?

Furthermore, regulating smoking only in multi-unit residences and excluding single family homes is discriminatory! Culver City may legally be challenged in court, because you are singling out a specific group of citizen's/homeowners. Why would Culver City spend legal resources and finances defending a discriminatory law affecting a certain class of Culver City homeowners?

Homeowner's attempting to sell property may lose potential buyers because of smoking restrictions. This will affect property value by reducing the pool of potential buyers. During these uncertain economic times, why would our city Council even consider devaluing our property values?

Do we ban grills because of their second hand smoke? Do we ban perfume, because it has been linked to asthma? Do we ban automobiles, because their exhaust is just as harmful as second hand smoke? What's next giant sodas? Are we really becoming a police state?

An argument for smoking in public was outlined by a former Governor of California, who said that disallowing people to smoke in public is "an improper intrusion of government into people's lives". It is argued that individuals should have the freedom to choose to smoke and not be marginalized by a ban.

I state, that I **STRONGLY OPPOSE** regulating smoking in multi-unit housing complexes.

Respectfully,

Mark C. Minichiello

Mark C. Minichiello

Culver City Reside

City Council
Culver City City Hall
9770 Culver Boulevard
Culver City, CA 90232

August 25, 2013

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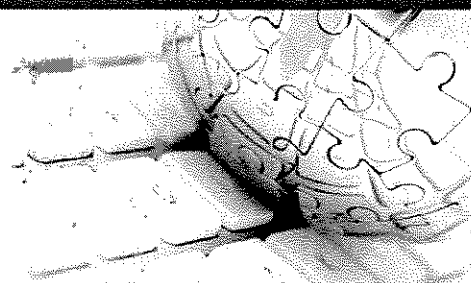
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Respectfully,
Mark C. Minichiello
Mark C. Minichiello
Culver City Resident



WHITE PAPER



BROUGHT TO YOU BY THE CALIFORNIA APARTMENT ASSOCIATION

Tobacco Smoking at Residential Rental Properties

I INTRODUCTION

The anti-smoking movement has been gathering steam in California and throughout the country ever since secondhand smoke was declared a human carcinogen a decade ago. Heartened by their success in gaining passage of state laws and local ordinances that restrict smoking in the workplace and many other indoor and outdoor public areas, anti-smoking advocacy groups have turned their attention to smoking in multi-unit housing. Many communities have passed ordinances restricting smoking in multi-unit common areas and requiring set asides of certain numbers of units as smoke free. California state law makes clear that rental property owners may prohibit the smoking of cigarettes or other tobacco products by anyone on the property or in any building or portion of the property. Recent surveys indicate that over 80 percent of renters in California prefer housing with smoke-free areas.

As the new local ordinances have received nationwide media coverage, property owners are receiving complaints from non-smokers about smoking in common areas and about secondhand smoke seeping into their units from the units of their smoking neighbors. In addition, lawsuits have been filed against property management companies, alleging failure to warn about environmental tobacco smoke and alleging that secondhand smoke is a nuisance.

II RISING DEMAND FOR SMOKE-FREE UNITS

Eighty-four percent of Californians do not smoke. A recent statewide telephone survey of 602 California apartment residents, commissioned by the American Lung Association of California's Center for Tobacco Policy and Organizing, found:

- 69 percent favored regulations requiring all apartment buildings to offer non-smoking sections, where all the apartments, patios, and balconies in that section were non-smoking.
- 39 percent would prefer to live in a building where smoking is not allowed anywhere.
- 46 percent experience secondhand smoke drifting into their own apartment.
- 61 percent favor a law requiring landlords to inform new tenants if there is a smoker in the apartment next door to the unit they are about to rent.
- 70 percent of survey respondents believed a tenant should be evicted for repeated violations of smoking prohibitions in a lease (43 percent definitely should / 27 percent probably should).



Interestingly, this also means 30 percent of respondents did *not* think a tenant should be evicted for repeated violations of the lease.

III CALIFORNIA STATE LAW RESTRICTIONS ON SMOKING IN THE WORKPLACE

Although tenants view the apartment building and their individual units as their home, larger complexes are also the workplace of the building manager and maintenance personnel. California's Labor Code Section 6404.5 bars smoking in any enclosed work area. Although "private residences" are exempt from this law, according to California's Legislative Counsel, common areas of apartment or condominium buildings or complexes such as lobbies, hallways, laundry rooms, stairways, elevators, and recreation rooms remain subject to the Labor Code's smoking prohibition if the areas are enclosed and are places of employment. The smoking prohibition also applies to residences licensed as family daycare homes during the hours of operation as a family daycare home and in those areas where children are present. The Labor Code requires the posting of 'no smoking' signs and requires employers to ask smokers to stop smoking in any enclosed work area. The Labor Code is enforced by local health departments and other local law enforcement agencies. Penalties start at \$100 for a first violation and increase thereafter. Workplace exposure to tobacco smoke is also addressed by Proposition 65 (discussed below).

IV LEASE PROVISIONS TO BAN SMOKING AT RENTAL PROPERTY

California state law allows a residential landlord to prohibit the smoking of a cigarette or other tobacco product by anyone on the property or in any building or portion of the building, including any dwelling unit, other interior or exterior area, or the premises on which it is located.

Every lease or rental agreement entered into on or after January 1, 2012, for a residential dwelling unit on property in any portion of which the landlord has prohibited the smoking of cigarettes or other tobacco products must include a provision that specifies the areas on the property where smoking is prohibited, if the lessee has not previously occupied the dwelling unit.

For a lease or rental agreement entered into before January 1, 2012, a prohibition against the smoking of cigarettes or other tobacco products in any portion of the property in which smoking was previously permitted constitutes a change of the terms of tenancy, and the landlord must provide written notice to the affected tenants.

There are many local laws that prohibit individuals from smoking tobacco at public and private property. This state law does not preempt those local laws.

V ENVIRONMENTAL TOBACCO SMOKE AS A TOXIC AIR CONTAMINANT

On January 26, 2006, the California Air Resources Board (ARB) identified environmental tobacco smoke (ETS) as a "Toxic Air Contaminant," meaning that it is now formally identified as an airborne toxic substance that may cause and/or contribute to death or serious illness. The listing is based on studies of exposure levels and health effects. In May 2007, the ARB indicated that it is now beginning to evaluate the need for action to reduce exposure by conducting an analysis of measures already in place, available options, and costs for reducing the health risk from exposure. CAA will monitor this process as it takes place and participate when appropriate.

For additional information see: <http://www.arb.ca.gov/toxics/ets/factsheetets.pdf>.



On June 27, 2006, the Office of the Surgeon General of the United States issued a report that concludes there is no risk-free level of exposure to secondhand smoke, and that nonsmokers exposed to secondhand smoke at home or work increase their risk of developing heart disease by 25 to 30 percent and lung cancer by 20 to 30 percent.

For a copy of the report see: <http://www.surgeongeneral.gov/library/secondhandsmoke/report/>.

VI HOUSING DISCRIMINATION

Under the California Fair Employment and Housing Act (Government Code Section 12960 ("FEHA")), individuals with disabilities are entitled to reasonable accommodations to ensure equal access to, and enjoyment of, their housing. FEHA prohibits discrimination based on physical disability, mental disability, and medical condition. "Physical disabilities" include physiological and anatomical conditions that limit a person's ability to participate in major life activities. Courts have found that individuals such as asthmatics, who are hypersensitive to tobacco smoke, are disabled because the tobacco exposure interferes with the major life activity of breathing. Under the FEHA, reasonable accommodations must be provided to the qualified disabled person unless that accommodation causes an undue hardship. Depending on the circumstances, such accommodations could range from (1) designating common areas or certain other portions of a building as smoke-free, (2) allowing the tenant to relocate to a different unit, or (3) allowing the tenant to terminate the lease without a penalty so that the tenant can move to other housing in order to obtain a smoke-free environment.

VII LIABILITY FOR FAILURE TO WARN REGARDING EXPOSURE TO ENVIRONMENTAL TOBACCO SMOKE: PROPOSITION 65

Proposition 65, the "Safe Drinking Water and Toxic Enforcement Act of 1986," (Health & Safety Code Sections 25249.5, *et seq.*) requires businesses with ten or more employees to provide notification to individuals about exposures to carcinogens and reproductive toxins. Tobacco smoke is listed as both a carcinogen and a reproductive toxin under Proposition 65. In addition, it contains over forty other listed chemicals, including arsenic, carbon monoxide, nicotine, lead, benzene and formaldehyde. Proposition 65 requires warnings for consumer products, environmental, and workplace exposures. Unlike the Labor Code's prohibition against smoking in the workplace, Proposition 65's "environmental" warning requirement is not limited to enclosed areas and applies to any area where smoking occurs. CAA and its special counsel, Jeffer, Mangels, Butler & Marmaro have developed Proposition 65 compliance guidelines, warning signs and warning brochures for use by members of the rental housing industry. CAA's recommended compliance methodology consists of two parts: warning signs to be posted on the property and a brochure to be provided to new and existing tenants. The brochure contains information regarding specific exposure sources that may be present on the property. Specific warning requirements vary depending on the size and layout of the property. The compliance guidelines and additional information about Proposition 65 is available on CAA's website at: http://www.caanet.org/Proposition_65.aspx.



VIII LOCAL REGULATION OF SMOKING IN PUBLIC PLACES

Local ordinances that restrict smoking in public places have been passed in many California communities. Some of these ordinances can be interpreted to prohibit smoking in certain interior common areas, entryways, or playgrounds of apartment complexes. The cities of Arcata, Oakland, Davis, Sacramento, Palo Alto, and Monterey, as well as San Mateo and Marin Counties have, to varying degrees, restricted indoor and outdoor smoking in public areas. Certain local ordinances apply to the interiors of buildings that are open to the public, including areas that may not be workplaces, as covered by the Labor Code. Other ordinances extend to outdoor public areas such as sidewalks, plazas, doorways, and entryways. The Cities of Davis and Arcata have the most restrictive ordinances. Arcata bans smoking in its entire downtown “plaza” area. Davis bans smoking in most outdoor locations where people are likely to congregate, including ATM lines, bus stops, and outdoor bar and restaurant seating areas, and it also forbids smoking within 20 feet of any building in which smoking is prohibited, except when passing through to another destination. Calabasas prohibits smoking outdoors within 20 feet of any person who is not smoking.

Modesto, San Ramon, Berkeley, and San Diego have ordinances that make outdoor children's recreational facilities, such as parks, playgrounds, zoos, wading pools, and skate parks, smoke-free. These ordinances could cover playgrounds that are part of an apartment complex if the playgrounds are accessible to the public.

IX LOCAL REGULATION OF SMOKING IN MULTI-UNIT HOUSING

The Technical Assistance Legal Center (TALC), funded by the California Department of Health Services, provides California communities with free technical assistance on tobacco control policy issues. TALC's website¹ contains a host of information about local laws that address smoking, the legality of smoking prohibitions, and background regarding litigation over drifting secondhand smoke. In addition to serving as an information resource, TALC has developed a sample local ordinance that addresses smoking in multifamily housing. The sample ordinance contains a wide variety of provisions – allowing localities to pick and choose among various approaches - ranging from provisions for clear authority for owners to limit or prohibit smoking and notification requirements about non-smoking areas, to mandates that prohibit smoking in certain areas, in a certain percent of units, etc. Other provisions include a “grandfather” clause for existing smokers when owners convert a complex over time, a declaration that secondhand smoke is a nuisance, and options for private enforcement both by tenants and the public.

Many localities have passed ordinances specifically addressing smoking in multi-unit rental housing. The most stringent ordinances - those in Belmont and Calabasas - have received nationwide news coverage.

Belmont, Calabasas, El Cajon, and Temecula all prohibit smoking in individual units and outdoor common areas. Belmont, Calabasas, and El Cajon additionally require a 20 foot non-smoking buffer around any smoke-free area. Belmont prohibits smoking in any residential rental unit that shares a floor or ceiling with another unit. By 2012, 80 percent of units in every apartment building in Calabasas must be smoke-free. Similarly, in Temecula 25 percent of units in new buildings with 10 or more units must be designated as non-smoking units.

The City and County of Sacramento have taken a different voluntary approach to the issue. Each has passed resolutions encouraging owners of multi-unit rental properties to designate a certain percentage of units as non-smoking (city 25 percent, county 50 percent). Owners in the City who comply are eligible for “public recognition.”



X SMOKING IN INDIVIDUAL UNITS

According to the American Lung Association, secondhand smoke that seeps in from neighboring units can pose both a health threat to sensitive individuals and a significant nuisance. Non-smokers have filed lawsuits against property owners and against their fellow tenants for causing or failing to stop exposures to environmental tobacco smoke. They use legal theories such as nuisance, battery, breach of the covenant of quiet enjoyment, and the warranty of habitability, negligence, harassment, and intentional infliction of emotional distress.

A tenant could argue that the owner has violated the implied covenant of quiet enjoyment by failing to stop other tenants from smoking and thereby substantially affecting the tenant's enjoyment of a material part of the premises. Although no California court has ruled on this issue, courts in several other states have allowed lawsuits to continue where a neighbor's smoking is extreme enough, and the courts have required owners to give the tenant a reduction in rent or other relief.

In the absence of a specific law or ordinance, it may be difficult for a tenant to establish that a neighbor's smoking is a nuisance, because the behavior must be both substantial and unreasonable. However, in San Diego, a condominium owner was successful in obtaining a restraining order to prevent his neighbor from smoking in his garage, which was located underneath the plaintiff's home.

In 2006, a lawsuit was filed in Van Nuys, California that sought to require an apartment building owner to protect a tenant from secondhand smoke. The father, on behalf of his five year old daughter who suffers from asthma, asked the court to stop the property owner from permitting smoking in the common areas of the apartment complex. The plaintiff argued that the tobacco smoke had caused special injury to his daughter and to other residents and guests of the property. In 2007, the court granted the landlord's motion to dismiss. The case has been appealed.

XII BENEFITS OF PROVIDING SMOKE-FREE HOUSING

In addition to the obvious health and safety benefits of reducing exposure to secondhand smoke and decreasing fire danger, smoke-free housing can be a good business decision. The statistics quoted above indicate that smoke-free units are a desired amenity that can make it easier to market a unit. In addition, maintenance and turnover costs are significantly lower for non-smoking units. Refurbishing the apartment of a heavy smoker for the next resident requires more time and effort in repainting (particularly surface preparation). In many instances, carpeting, draperies, and upholstered furniture must be replaced rather than cleaned. Many owners have also found fire insurance to be less expensive due to the lower risk present on non-smoking properties. According to the State Fire Marshall, in one year, cigarettes were found to have caused over 1400 fires in California homes, apartment, and mobile homes, with an estimated \$18 million loss in property and contents. According to the National Fire Protection Association, smoking materials (*i.e.*, cigarettes and cigars, etc.) are twice as likely to be the cause of fires in apartment buildings compared with one and two family homes and mobile homes. Lastly, voluntarily providing an amenity desired by many residents may diminish the perceived need for government regulation in this area.



XIII

HOW TO IMPLEMENT A SMOKE-FREE OR PARTIALLY SMOKE-FREE APARTMENT COMMUNITY

Before implementing a smoke-free environment, many owners survey residents to determine whether they are interested in living in a smoke-free apartment building or smoke-free section of the building. This also provides owners an opportunity to communicate to residents about the health and safety and business reasons for a non-smoking policy – secondhand smoke, fire dangers, maintenance, cleaning and redecorating costs, insurance costs, and consumer demand for smoke-free units. The easiest time to set a new policy is when a unit or building is vacant.

For most owners, the next step for occupied units is to set a time frame for making changes; some owners “grandfather” in existing tenants – making their units non-smoking after residents move out, rather than changing the terms of tenancy. As with any other change in terms of tenancy, residents must be provided proper notice – thirty days if the tenancy is month to month or at the time of renewal if the tenant is on a lease. An owner who prohibits smoking in common areas, where it was previously permitted – for example at poolside – also requires proper notice. In addition to adding the smoking prohibition to rental agreements, non-smoking signs should be posted on the property, and the no-smoking policy advertised as part of the owner’s marketing strategy.

In response to member inquiries and to enable the industry to address this resident demand voluntarily, the California Apartment Association has made available an Addendum for Non-Smoking Areas.

XIV

SMOKE-FREE APARTMENT REGISTRY

The Smoke-free Apartment Registry – <http://smokefreeapartments.org> and other similar registries like Smoke Free Rentals.com – www.smokefreerentals.com are ways to market your property to residents who are looking for smoke-free housing. These registries provide free listings of apartment buildings that are completely or partially smoke-free. Funded by the Tobacco Tax Health Protection Act of 1988 (Proposition 99), the Registries are in response to tenant complaints about drifting smoke. The goal with the registries is to accommodate both smokers and non-smokers in multi-family housing so that all residents are able to use and enjoy their homes. Most owners listed in the Registries have adopted smoke-free policies for their buildings; some owners include outdoor common areas. The Registries also accept listings of single family homes. According to the Smoke-Free Apartment Registry, more than 200 building owners in Los Angeles have successfully adopted smoke-free policies.

OTHER REFERENCE MATERIALS FROM THE CALIFORNIA APARTMENT ASSOCIATION

CAA’s Policy Statement #12 – Smoke-Free Housing Choice
www.caanet.org/Policy_Statements.aspx

CAA’s Lease Addendum (Form 34.0) – Smoking Policy Addendum
<http://www.caanet.org/Smoking.aspx>

ⁱ <http://www.phi.org/talc/>



Heather S. Baker
Office of the City Attorney
9770 Culver Boulevard
P.O. Box 507
Culver City, CA 90232

RECEIVED
14 MAR -3 AM 10:44
CITY OF CULVER CITY

February 27, 2014

RE: Regulating Smoking in Multi-Unit Housing

Dear Heather,

As you consider a no smoking ordinance in Multi-unit Housing, I urge you to consider two specific exemptions from the proposed ordinance: 1) Townhomes or units in which they have separate ventilation systems that do not comingle air from neighboring units 2) Communities that have a Governing Board in which may set rules and policy within their community boundaries.

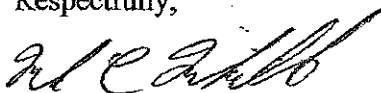
As an example:

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- 1) We are governed by a Board of Directors and our CCR's which have been voted on by our membership. I strongly state that the membership and the Board is in a better position to determine what rules should be in place within our own property boundaries. Specifically, our membership has voted and the majority have approved our CCR's which state: **Section 6.17 Smoking.** "Smoking is prohibited in all enclosed Common Areas."
- 2) Each unit within our community has a separate ventilation system not shared by any other units. Therefore, no air is comingled between units.

Thank you for your consideration when drafting the proposed ordinance. I may be reached at 630-319-9831 should you have any questions that need clarifying.

Respectfully,



Mark C. Minichiello
7511 Hannum Avenue
Culver City, CA 90230