

# SMOKE-FREE MULTIUNIT HOUSING MODEL ORDINANCE

## Introduction

This Smoke-free Multiunit Housing Model Ordinance was prepared for California cities and counties interested in creating smoke-free multiunit residences by prohibiting smoking on the premises. This 2020 model ordinance builds on the ordinance developed by ChangeLab Solutions and released in 2018. The Public Health Law Center acknowledges the excellent work done by ChangeLab Solutions in creating the original ordinance.

This model ordinance is based on an independent and objective analysis of the relevant law, evidence, and available data, as well as work done for the California Tobacco Control Program. The model offers cities and counties a variety of options to tailor the ordinance to meet local needs. Readers should consider all the evidence and decide for themselves which approach is appropriate for their multiunit housing needs.



## Customizing the Ordinance

Context boxes are included throughout the ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A city or county wishing to adopt all or part of this ordinance should keep this in mind and remove the context boxes.

In some instances, blanks (such as [ \_\_\_\_\_ ]) prompt you to customize the language to fit your community's needs. In other instances, the ordinance offers you a choice of options (such as [ choice one / choice two ]). Some options are followed by a comment that describes the legal provisions in more detail. A degree of customization is always necessary to make sure the ordinance is consistent with a community's existing laws. Such customization also ensures that communities are using this model ordinance to address local needs and engender health equity.

## Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use. Communities differ on their readiness and willingness to adopt certain commercial tobacco control policies that are intended to help make that world a reality. Accordingly, this model ordinance represents a balance between state and federal minimum standards, best public health policy practices, and practicality for city governments in California. This model ordinance contains several policy components that communities may or may not choose to adopt at this time that may go beyond minimum state and federal requirements.

While the Public Health Law Center does not lobby, advocate, or directly represent communities, we can provide assistance through our publications and referrals to experts in the field. Education, stakeholder and community engagement, and a strong advocacy plan are key steps in the adoption of effective commercial tobacco control policies. If a community is unaware of the resources available to it for engaging the community and developing an advocacy plan, or if a city is considering adopting an ordinance and is interested in learning about the range of resources available, please contact the Public Health Law Center. If you have any questions about this ordinance, you can reach us at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).

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## AN ORDINANCE OF THE [ CITY/COUNTY OF \_\_\_\_\_ ] PROHIBITING SMOKING IN AND AROUND MULTIUNIT RESIDENCES AND AMENDING THE [ \_\_\_\_\_ ] MUNICIPAL CODE

The [ city council/county board of supervisors ] of the [ city/county of \_\_\_\_\_ ] does ordain as follows:

### SECTION I. [ See Appendix A: Findings ]

#### Note

A findings section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies and demonstrates the jurisdiction's reasoning for adopting specific provisions. This findings section reflects language appropriate for all of the provisions suggested. The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal code. An ordinance based on this model ordinance should include findings of fact — data, statistics, relevant epidemiological information, for instance — that support the purposes of this ordinance, as well as any legal precedent that directly supports the ordinance. In addition to serving an educational purpose and building support for the ordinance, the findings can also serve a legal purpose. If the ordinance is challenged in court, the findings are an admissible record of the factual determinations made by the legislative body when considering the ordinance. Courts will generally defer to legislative determinations of factual issues, which often influence legal conclusions. A list of findings supporting this model ordinance appears in "Appendix A: Findings." Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law.

### SECTION II. [ Article/Chapter ] of the [ City/County of \_\_\_\_\_ ] Municipal/ County 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) "Common Area" means every area of a multiunit residence that residents of more than one unit are entitled to enter or use, including, but not limited to, 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.

- (B) “Common interest development” means:
- (1) A community apartment project as defined in California Civil Code section 4105, or any successor legislation;
  - (2) A condominium project as defined in California Civil Code section 4125, or any successor legislation;
  - (3) A planned development as defined in California Civil Code section 4175, or any successor legislation; and
  - (4) A stock cooperative as defined in California Civil Code section 4190, or any successor legislation.
- (C) “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
- (D) “Home owners’ association” or “HOA” means an organization or entity established for the purpose of managing or maintaining a common interest development. A homeowners’ association shall also mean “association” as defined in California Civil Code section 4080, or any successor legislation.
- (E) “Landlord” means any person or agent of a person who owns, manages, or is otherwise legally responsible for a unit in a multiunit residence that is leased to a residential tenant. For purposes of this ordinance, a tenant who sublets their unit (e.g., a sublessor) is not a landlord.
- (F) “Multiunit Residence” means property containing two or more units, including, but not limited to, apartment buildings, common interest developments, senior and assisted living facilities, and long-term health care facilities. [ Multiunit Residences do not include the following:
- (1) a hotel or motel that meets the requirements of California Civil Code section 1940(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 health care facility subject to licensing requirements; and

- (6) a single-family home with an accessory dwelling unit or second unit permitted pursuant to California Government Code sections 65852.1, 65852.2, or 65852.22 or an ordinance of the [ city/county ] adopted pursuant to those sections, except where the accessory dwelling unit or second unit is rented or is used as a health care facility subject to licensing requirements. ]

#### Note

This definition is 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, a community may want to limit the types of dwelling places covered by the smoke-free housing ordinance. Hotels and motels are included in the list of optional exemptions because many communities regulate smoking in these facilities using a smoke-free workplace ordinance, but there is no legal reason hotels and motels could not be made completely smoke-free 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 multiunit residence per the definitions in this ordinance, unless the exemption is included. With the new accessory dwelling unit (ADU) law taking effect Jan. 1, 2020, the optional language would make clear that the ordinance only applies to ADUs where they are rented or used as a licensed health care facility.

Note that the definition of multiunit 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 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.

The U.S. Department of Housing and Urban Development requires public housing agencies to adopt a policy prohibiting smoking in all indoor areas, including residential units, and outside spaces within 25 feet of indoor areas.

- (G) “Nonsmoking Area” means any area in which smoking is prohibited by
- (1) this [ article/chapter ] or other law;
  - (2) binding agreement relating to the ownership, occupancy, or use of real property; or
  - (3) a person with legal control over the area.
- (H) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.
- (I) “Smoking” means:
- (1) inhaling, exhaling, or burning, any tobacco, nicotine, cannabis, or plant product, whether natural or synthetic;
  - (2) carrying any lighted, heated, or activated tobacco, nicotine, marijuana, or plant product, whether natural or synthetic, intended for inhalation; or
  - (3) using an “electronic smoking device.”

[Smoking does not include the use of traditional, sacred tobacco as part of an Indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.]

**Note**

Some smoke-free policies provide exceptions for traditional, ceremonial, and sacred uses of tobacco practiced by some tribal communities, while prohibiting the use of commercial tobacco. If you would like more information about this topic, please visit [keepitsacred.org](http://keepitsacred.org).

- (J) “Unit” means a personal dwelling space, even one lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use area, such as 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, community care facility, or hospital; a room in a hotel or motel; a dormitory room; a room in a single-room occupancy facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an accessory dwelling unit or second unit.

## Sec. 2. SMOKING RESTRICTIONS

- (A) Effective 90 days from [ effective date ], smoking is prohibited anywhere on the premises of a multiunit residence, including units, common areas, and other outdoor areas.
- (B) No person with legal control over any multiunit residence shall permit smoking anywhere on the premises of the multiunit residence.

### Note

The strongest approach from a public health standpoint is to prohibit smoking anywhere on the premises. However, if a jurisdiction wants to allow some outdoor smoking, the narrowest way to do so would be to include a designated smoking area (DSA). Again, from a public health standpoint, the preferable approach would be to allow on the premises only one DSA that is required to be at least 25 feet from interior areas and from areas frequented by children. Here is sample language that would allow this:

Replace the current subsection Sec. 2(B) with the following new subsections:

(b) Notwithstanding subsection (a), smoking is permitted in designated smoking areas if they meet the following conditions:

- (1) Must not be an enclosed area;
- (2) Must be at least twenty-five (25) feet from any:
  - (a) outdoor recreation area such as a tennis court, swimming pool, and picnic area;  
or
  - (b) outdoor area primarily used by children such as a playground;
- (3) Must have a clearly marked perimeter; and
- (4) Must be identified by conspicuous signs.

(C) No person with legal control over any nonsmoking area of a multiunit residence shall permit smoking in the nonsmoking area, except as provided in subsection (b).

*(continued)*

**Note** *(continued)*

Insert as new subsection (d) in Sec. 1 (Definitions):

(D) “Enclosed area” means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

If limiting outdoor smoking to one DSA is not feasible, the next most protective approach would be to follow the Department of Housing & Urban Development’s approach and include a 25-foot “buffer zone.” Please contact the Public Health Law Center for more information on this approach.

**Note**

This model ordinance includes a 90-day phase-in of the smoke-free requirement to allow time for public officials to educate tenants and management about the requirements of the ordinance. Some smoke-free multiunit housing ordinances allow current leases to expire before the smoke-free requirements take effect in those units. We believe this approach is not necessary since lease provisions cannot conflict with local laws.

**Note**

The CA Labor Code Sec. 6404.5, which prohibits smoking in places of employment, exempts private residences in Sec. 6404.5(e)(6). Local jurisdictions are able to impose more restrictions on smoking than state law, but if a jurisdiction has incorporated Sec. 6404.5 and the decision is made to have this ordinance apply to residential private property rentals, then consider adding the following sentence to the above subsection (a):

“This section applies notwithstanding [ citation to local incorporation of Sec. 6404.5(e)(6) ].”



- (C) No person with legal control over a common area in which smoking is prohibited by this [ article/chapter ] or other law shall permit the presence of ashtrays, ashcans, or other receptacles designed for or primarily used for disposal of smoking waste within the area.

### Sec. 3. REQUIRED AND IMPLIED LEASE TERMS FOR ALL NEW AND EXISTING UNITS IN MULTIUNIT RESIDENCES.

#### Note

This section requires that smoking restrictions be included in a lease for the rental of a unit in any type of multiunit residence (e.g., an apartment building, common interest development, or single-room occupancy facility).

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. Further, by including the “third-party beneficiary” provision, other residents of the multiunit residence can enforce a lease’s smoking restrictions.

- (A) After [ effective date ], every lease or other rental agreement for the occupancy of a unit in a multiunit residence entered into, renewed, or continued month to month shall be amended to include the following provisions:
- (1) A clause providing that as of [ effective date + 90 days ], it is a material breach of the agreement to smoke or allow smoking:
    - (a) in the unit, including exclusive-use areas such as balconies, porches, or patios; and
    - (b) in any common area of the multiunit residence [ other than a designated smoking area ].

#### Sample Language

The bracketed language above and in the sample language below regarding DSAs is to be included if a building has a DSA.

“Tenant agrees and acknowledges that the premises to be occupied by tenant and members of tenant’s household have been designated as a smoke-free living

*(continued)*

**Sample Language** *(continued)*

environment. As of [ effective date + 90 days ], tenant, members of tenant's household, and any guests under control of the tenant will not smoke anywhere:

- (A) In the unit rented by tenant, including any associated balconies, decks, or patios;
- (B) In the common areas of the property, including, but not limited to, lobbies, hallways, stairwells, elevators, laundry rooms, community rooms, community bathrooms, or offices; or
- (C) On the outdoor grounds of the property, [ other than a designated smoking area, ] including, but not limited to, entryways, playgrounds, pool areas, walking paths, or sitting areas.

"Tenant acknowledges that a breach of the smoke-free policy may render tenant liable to landlord for the costs to repair tenant's unit due to damage from smoke odors or residue. A breach of the smoke-free policy is a breach of the lease and grounds for immediate enforcement action, including potential termination of the lease by the landlord.

"Tenant will inform tenant's guests of the smoke-free policy. Tenant will also promptly give landlord a written statement of any incident where tenant observes smoking not allowed by this policy or believes smoke is migrating into the tenant's unit from sources outside the tenant's unit."

- (2) A clause providing that it is a material breach of the agreement for tenant to violate any law regulating smoking while anywhere on the property, or to allow any other person subject to the control of the tenant to engage in such behavior.

**Sample Language**

"It is a material breach of this agreement for tenant to violate any law regulating smoking while anywhere on the property. Moreover, it is a material breach of this agreement for tenant to allow any other person subject to the control of the tenant to violate any law regulating smoking while anywhere on the property."

- (3) A clause expressly conveying third-party beneficiary status to all occupants of the multiunit residence as to the smoking provisions of the lease or other rental agreement.

**Sample Language**

“Tenant agrees that other tenants of the rental community are third-party beneficiaries of tenant’s smoke-free policy agreement with landlord. A tenant may sue another tenant for an injunction to prohibit smoking or for damages but does not have the right to evict another tenant. Any lawsuit between tenants does not create a presumption that the landlord breached this lease.”

- (B) Whether or not a landlord complies with subsection (A) above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which subsection (A) applies as of [ effective date + 90 days ].
- (C) A tenant who breaches, or allows any other person subject to the control of the tenant to breach, a smoking provision of a lease or other rental agreement for the occupancy of a unit in a multiunit residence shall be liable for the breach to (1) the landlord; and (2) any occupant of the multiunit residence who is exposed to smoke or who suffers damages as a result of the breach.
- (D) 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.

**Note**

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. [ \_\_\_\_ (\*4)]. REQUIREMENTS FOR RENTAL PROPERTIES.**

The following requirements apply to multiunit residences other than units in a common interest development that are not being rented:

- (A) On or before [ effective date + 90 days ], every landlord shall deliver to each unit a copy of this [ article/chapter ] and a written notice clearly stating:

- (1) All units are designated nonsmoking units and smoking is prohibited in a unit, including any associated private balcony, porch, deck, or patio, as of [ effective date + 90 days ]; and
  - (2) Smoking in all common areas or outdoor areas [ , except for specifically designated smoking areas, ] is a violation of [ this article/chapter ] as of [ effective date + 90 days ].
- (B) As of [ effective date ], every landlord shall provide prospective tenants with written notice clearly stating that:
- (1) Smoking is prohibited in units, including any associated private balcony, porch, deck, or patio, as of [ effective date + 90 days ]; and
  - (2) Smoking is prohibited in all common areas and outdoor areas [ , except for specifically designated smoking areas, ] as of [ effective date + 90 days ].
- (C) As of [ effective date + 90 days ], the person or persons with legal control over common areas shall post and maintain clear and unambiguous “No Smoking” signs at entrances and exits, in common areas, and in conspicuous places adjoining the property grounds. In addition, as of [ effective date + 90 days ], the person or persons with legal control over the multiunit residence shall post and maintain signs in sufficient numbers and locations in the multiunit residence to indicate that smoking is prohibited in all units. 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 that meet the criteria listed in California Civil Code section 1940, subdivision (b)(2) ].

**Note**

If your community excludes hotels and motels from the definition of multiunit residences (Section \*1 Definitions), then do not include the optional language in grayscale in the last sentence.

- (D) Landlords with knowledge of violations shall take reasonable steps to investigate and enforce the regulations, including a written notice to the resident of the landlord’s knowledge of the violation, a request to cease the violation, and the course of action to be taken if the violation is not corrected. [ The landlord shall also provide resources provided for free by the [ city/county ] to assist with nicotine dependence, such as referrals to quitline or online resources. ]

**Sec. [ \_\_\_\_ (\*5)]. REQUIREMENTS FOR COMMON INTEREST DEVELOPMENTS.**

The following requirements apply to common interest developments:

- (A) On or before [ effective date + 90 days ], the HOA shall provide to all owners of units a copy of this [ article/chapter ] and written notice clearly stating that:
- (1) Smoking is prohibited in units, including any associated private balcony, porch, deck, or patio, as of [ effective date + 90 days ]; and
  - (2) Smoking is prohibited in all common areas and outdoor areas [ , except for specifically designated smoking areas, ] as of [ effective date + 90 days ].
- (B) As of [ effective date ] every seller of a unit shall provide prospective buyers or renters, a copy of this [ article/chapter ] and written notice clearly stating that:
- (1) Smoking is prohibited in units, including any associated private balcony, porch, deck, or patio, as of [ effective date + 90 days ]; and
  - (2) Smoking is prohibited in all common areas and outdoor areas [ , except for specifically designated smoking areas, ] as of [ effective date + 90 days ].
- (C) As of [ effective date + 90 days ], the HOA, or any person having legal ownership or control over common areas, shall post and maintain clear and unambiguous “No Smoking” signs in sufficient numbers and locations in the common interest development to make it obvious to a reasonable person that smoking is prohibited throughout the common interest development. The absence of signs shall not be a defense to a violation of any provision of this chapter.
- (D) HOAs with knowledge of violations shall take reasonable steps to investigate and enforce the regulations, including a written notice to the resident of the HOA’s knowledge of the violation, a request to cease the violation, and the course of action to be taken if the violation is not corrected. [ The HOA shall also distribute resources provided for free by the [ city/county ] to assist with nicotine dependence, such as referrals to quitline or online resources. ]

Sec. [ \_\_\_\_ (\*5)]. NUISANCE; OTHER

- (A) The provisions of this [ article/chapter ] shall be liberally construed to protect the public health to the maximum effect possible. Notwithstanding (1) any provision of this [ article/chapter ] or of this code, (2) any failure by any person to restrict smoking under this [ article/chapter ], or (3) 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 rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.

**Note**

The subsection spells out that the intent of this ordinance is to create new smoke-free areas and enhance the right to smoke-free environments. This ordinance does not provide smokers with any "safe harbors" from existing laws that might already impose potential liability for smoking.

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

**Note**

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 and penalties commonly found in municipal codes. The jurisdiction may want to cross-reference its nuisance code with this section to ensure consistency.

- (C) Nonconsensual exposure to smoke from smoking occurring on or drifting into [ residential ] property is a nuisance.

### Note

The declaration in subsection (B) that smoking is a nuisance extends far beyond the residential context. Once smoking 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 smoking 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.

### Note

Enforcement of smoke-free multiunit housing policies should balance the goal of protecting residents from secondhand smoke exposure with the goal of ensuring housing stability for all residents. Several factors should be considered in this balance, such as the likely effectiveness of enforcement; equity (balancing the public health benefits of smoke-free housing policies with the risks of housing instability and associated health harms or negative social outcomes posed by different enforcement mechanisms); and the process of enforcement. Criminal and monetary administrative penalties can carry significant risks of discriminatory enforcement, financial hardship, and housing instability for residents. In the context of housing, another concern is the prospect of unintended criminal, immigration, and Due Process consequences as a result of potential increased interactions with law enforcement.

Another consideration for such criminal charges and penalties is how the criminal process may trigger a probation or parole violation or similar significant ripple effect in the residents' interaction with the justice system. Increased involvement with the criminal justice system could lead to more severe criminal sanctions, and possible incarceration. In turn, these criminal sanctions could jeopardize the individual's housing, benefits, education, and employment. These

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**Note** *(continued)*

risks should be carefully weighed by the municipality as policymakers consider whether to include criminal and monetary penalties and how to structure those penalties.

For these reasons, the enforcement provisions in this model policy do not include criminal sanctions, and focus primary responsibility for enforcement on landlords and HOAs as the managers of such properties by holding them accountable with appropriate civil penalties for any failure to enforce the rules required under this law. Penalties for individual residents are limited to violations that include harassment or retaliation for seeking enforcement of the law.

The following provisions are designed to offer several enforcement options to the jurisdiction and residents. While not all enforcement mechanisms may be pursued, allowing multiple enforcement mechanisms in the ordinance may increase the likelihood of compliance, enforcement, and, in turn, protections from second and third-hand smoke.

- (A) The remedies provided by this [ article/chapter ] are cumulative and in addition to any other remedies available at law or in equity.
- (B) Any person exposed to secondhand smoke as a result of a violation of this [ article/chapter ] may initiate enforcement of this [ article/chapter ] by registering a complaint with the [ city/county manager ], or his or her designee.
- (C) Enforcement of this chapter shall be the responsibility of [ department of housing inspections/public health/other ]. In addition, any code enforcement official may enforce this chapter.
- (D) Landlords or HOAs found to have violated this [ article/chapter ] are subject to a civil fine not less than [ two hundred fifty dollars (\$250) ] and not exceeding [ one thousand dollars (\$1,000) ] per violation.

**Note**

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.)



- (E) No person shall intimidate, harass, or otherwise retaliate against any person who seeks compliance with this [ article/chapter ]. Any person in violation of this subsection is subject to a civil fine not less than [ two hundred fifty dollars (\$250) ] and not exceeding [ one thousand dollars (\$1,000) ] per violation.

**Note**

This subsection allows penalties for any person who intimidates, harasses, or otherwise retaliates for persons seeking compliance with this ordinance. These fines may be too steep for some residents, which could put their housing stability in jeopardy. Community service may be provided as an alternative option. The following language could be added to this paragraph: "Residents of the multiunit residence in violation of this subsection may be subject to community service as an alternative to a civil fine."

- (F) 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 code enforcement proceedings, and suits for injunctive relief.

**Note**

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.

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.

(G) Any person may bring a civil action to enforce this [ article/chapter ] to prevent future violations and may sue to recover actual or statutory damages, including court costs, and attorney fees.

### 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.

### APPENDIX A: FINDINGS

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

- The World Health Organization (WHO) estimates that tobacco kills up to half of its users, amounting to more than 8 million deaths each year worldwide,<sup>1</sup> including nearly half a million people who die prematurely from smoking in the United States alone;<sup>2</sup>
- Tobacco use can cause disease in nearly all organs of the body and is responsible for an estimated 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all chronic obstructive pulmonary disease deaths, in the United States;<sup>2</sup>
- 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;<sup>2</sup> and
- The estimated economic damage attributable to smoking and exposure to secondhand smoke in the United States is nearly \$300 billion annually; and<sup>2</sup>

**WHEREAS**, tobacco use is the number one cause of preventable death in California<sup>2</sup> and continues to be an urgent public health issue, as evidenced by the following:

- An estimated 40,000 California adults die from smoking annually;<sup>2</sup>
- Each year, smoking costs California an estimated \$13.3 billion in direct health care expenses, \$3.6 billion in Medicaid costs, and \$10.4 billion in productivity losses;<sup>3</sup>
- Research indicates that more than 25% of all adult cancer deaths in California are attributable to smoking;<sup>4</sup> and

[ insert local data if available ]

**WHEREAS**, significant disparities in tobacco use exist in California which create barriers to health equity,<sup>5</sup> as evidenced by the following:

- African American (17%) and American Indian (19.1%) Californians report a higher smoking prevalence than white Californians (11.8%);<sup>6</sup>
- The American Indian population in California reports the highest cigarette smoking rate among adults; and American Indian youth report the highest rate of smoking among high school students;<sup>6</sup>
- Californians with the highest levels of educational attainment and annual household income report the lowest smoking rates;<sup>6</sup>
- Those who identify as lesbian, gay, bisexual, or transgender in California report smoking at higher rates than those who do not;<sup>6</sup>
- Californians who live in multiunit housing report smoking cigarettes at a higher rate (13.1%) than those who live in a house;<sup>6</sup>
- Californians who reported experiencing psychological distress in the preceding month smoked at a rate far higher (26.7%) than the average statewide smoking rate (11.0%);<sup>6</sup> and

[ insert local data if available ]

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

- In 2006, the U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;<sup>7</sup>
- In 2006, the California Air Resources Board identified secondhand smoke as a toxic air contaminant, in the same category as the most toxic automotive and industrial air pollutants, and a serious health threat for which there is no safe level of exposure;<sup>8,9</sup>

- In 2006, the California Environmental Protection Agency added secondhand smoke to the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;<sup>10</sup>
- The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) finds that acceptable indoor air quality in multiunit housing requires the absence of secondhand smoke, cannabis smoke, and aerosol from electronic smoking devices;<sup>11</sup>
- The American Heart Association and the American Lung Association recommend all adults and children be protected from secondhand smoke in multiunit housing;<sup>12,13</sup>

**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>2</sup>
- Secondhand smoke was responsible for an estimated 34,000 heart disease-related and 7,300 lung cancer-related deaths among adult nonsmokers each year during 2005–2009 in the United States;<sup>2</sup>
- Research indicates that exposure to secondhand smoke increases the risk of coronary heart disease by 25% to 30% and increases the risk of stroke by 20% to 30%;<sup>2,14</sup>
- Secondhand smoke kills more than 400 infants every year;<sup>15</sup>

**WHEREAS**, electronic smoking device aerosol may be considered a health hazard, as evidenced by the following:

- Research has found at least twelve chemicals in electronic smoking device aerosol known to the State of California to cause cancer, birth defects, or other reproductive harm,<sup>10,16,17</sup> such as formaldehyde, acetaldehyde, lead, nickel, chromium, arsenic, and toluene;<sup>17,18</sup>
- Electronic smoking device aerosol is not harmless water vapor as it contains varying concentrations of particles and chemicals with some studies finding particle sizes and nicotine concentrations similar to, or even exceeding, conventional cigarette smoke;<sup>17,19–21</sup>
- Evidence continues to build that exposure to electronic smoking device aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and poses a risk to human health;<sup>17,19,21–27</sup>

- Given the increasing prevalence of electronic smoking device use, especially among youth and young adults, widespread nicotine exposure resulting in addiction and other harmful consequences is a serious concern;<sup>17,19,28,29</sup>
- Indoor air experts and health authorities, including the U.S. Surgeon General, American Society of Heating Refrigerating and Air Conditioning Engineers, and the State of California Tobacco Education and Research Oversight Committee (TEROC), all support inclusion of electronic smoking devices in regulations of smoking and other tobacco product use;<sup>11,19,30,31</sup>

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

- The California Environmental Protection Agency includes cannabis smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer;<sup>10,32</sup>
- Cannabis smoke contains at least 33 known carcinogens;<sup>32</sup>
- In one study, exposure to cannabis smoke in an unventilated setting resulted in detectable levels of cannabinoids in non-smoker participants' blood and urine, and participants experienced minor increases in heart rate and impaired cognitive performance;<sup>33</sup> and
- A recent systematic review of the literature concluded that secondhand exposure to cannabis smoke leads to cannabinoid metabolites in bodily fluids and individuals experiencing self-reported psychoactive effects;<sup>34</sup>

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

- Research demonstrates that secondhand smoke in multiunit housing can and does transfer between units, seeping into smoke-free areas from areas where smoking occurs;<sup>35</sup>
- Residents of multiunit housing have higher levels of cotinine (a biomarker for nicotine) in their blood and saliva than those living in detached houses;<sup>36</sup>
- Among children who live in homes in which no one smokes indoors, those who live in multiunit housing have 45% higher cotinine levels than children who live in detached houses;<sup>36,37</sup>
- Twelve studies have found between 26% and 64% of residents of multiunit housing report secondhand smoke drifting into their home;<sup>36</sup>

- Surveys have found that 65% to 90% of multiunit housing residents who experience secondhand smoke in their home are bothered by it,<sup>36</sup> and a 2019–2020 survey documented variations in secondhand smoke source among multiunit housing residents in Los Angeles County, who reported secondhand smoke exposure from tobacco (39%), marijuana (36%), and e-cigarettes (9%);<sup>38</sup>
- Between 44.0% and 46.2% of Californians living in multiunit housing with personal smoke-free home policies are exposed to secondhand smoke in their home;<sup>39</sup>

**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>40,41</sup>
- Studies consistently find that thirdhand smoke remains months after nonsmokers have moved into units where smokers previously lived,<sup>42</sup> and a recent study documents that it can remain in units for years;<sup>43</sup>
- Human exposure to these thirdhand smoke carcinogens can occur through inhalation, ingestion, or skin absorption through contact with carpeting, furnishings, or clothing;<sup>44</sup>
- Thirdhand smoke potentially poses the greatest danger to infants and toddlers, who crawl on rugs and furnishings and place household items in their mouths;<sup>44</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>42</sup>
- Research has shown that thirdhand smoke damages human cellular DNA<sup>45,46</sup> and is carcinogenic at exposure levels relevant to residents of multiunit housing;<sup>46</sup>

**WHEREAS**, smoking is a leading cause of fire-related injury and death,<sup>47</sup> and contributes to health inequities, as evidenced by the following:

- During 2012–2016, U.S. fire departments responded to an estimated 18,100 smoking-related structure fires, which resulted in an estimated 1,130 injuries, 590 deaths, and \$476 million in direct property damage;<sup>48</sup>
- During 2012–2016, smoking materials caused 5% of reported home fires, 23% of home fire deaths, 10% of home fire injuries, and 7% of the direct property damage from home fires;<sup>48</sup>

- African American males and American Indian males have the highest mortality rates for fire-related deaths; altogether, African Americans accounted for 19% of all fire-related deaths in 2017, but made up only 13% of the U.S. population;<sup>47</sup>
- Elderly people 85 or older have the highest fire death rate, and the risk of dying from smoking-related fires increases with age;<sup>47</sup>

[ insert local data if available ]

**WHEREAS**, an estimated 28% of Californians (or 7.3 million people) live in multiunit housing;<sup>49</sup>

**WHEREAS**, the U.S. 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>7</sup>

**WHEREAS**, smoke-free housing policies resulted in a 24% reduction in self-reported exposure to secondhand smoke exposure among racially and ethnically diverse seniors living in low-income multiunit housing properties;<sup>50</sup>

**WHEREAS**, several studies have confirmed that smoke-free multiunit housing policies are an effective method to reduce secondhand smoke exposure in multiunit housing;<sup>50-52</sup>

**WHEREAS**, secondhand smoke exposure occurs more often in multiunit housing compared to separate, single-unit housing;<sup>49,53,54</sup> and therefore contributes to tobacco-related health inequities. For example, in California, when compared with adults who live in single-family houses, adults who live in multiunit housing are more likely to be:

- People of color (62.9% of residents of multiunit homes versus 49.6% of residents of single-family houses);<sup>49</sup>
- Lower-income or below the poverty line (46.8% versus 27.0%);<sup>49</sup>
- Lacking a high school diploma (21.4% versus 14.8%);<sup>49</sup>
- Current smokers (17.5% versus 13.2%);<sup>49</sup> as well as
- Uninsured (23.4% versus 14.2%);<sup>49</sup>

**WHEREAS**, secondhand smoke in multiunit 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 multiunit housing (25.2%) are under the age of 18;<sup>39</sup>

- The home is the primary source of secondhand smoke exposure for children;<sup>15</sup>
- A national survey found that 56.4% of U.S. youth living in apartment units in which no one smokes have elevated blood cotinine levels above 0.05 ng/mL, indicating they have been exposed to potentially dangerous levels of secondhand smoke;<sup>37</sup>
- The same survey also found that children who live in homes in which no one smokes indoors have 45% higher cotinine levels if they live in apartments compared with detached homes;<sup>37</sup>

**WHEREAS**, research consistently demonstrates that a majority of multiunit housing residents, including a large portion of smokers, supports smoke-free policies in multiunit residences,<sup>36,55,56</sup> and that support is even greater among residents with children;<sup>56</sup>

**WHEREAS**, research demonstrates that a majority of adults supports smoke-free policies in multiunit residences, as evidenced by the following:

- 73.7% of U.S. adults surveyed favor smoke-free public housing;<sup>57</sup>
- 65% of Californians surveyed favor restricting smoking inside apartment units;<sup>58</sup>

[ insert local data if available ]

**WHEREAS**, there are significant savings from adopting a smoke-free multiunit housing policy, as evidenced by the following:

- Prior to implementation, the U.S. Department of Housing and Urban Development's smoke-free public housing policy was conservatively estimated to produce an annual savings of 4 to 8 million dollars a year for U.S. public housing authorities in renovation-related costs,<sup>59</sup> and 30 to 109 million dollars per year in health care costs in California alone;<sup>60</sup>
- Implementing statewide smoke-free policies in multiunit housing property would save property owners in California an estimated \$18.1 million in renovation expenses each year;<sup>61</sup>

**WHEREAS**, in 2016 the United States Department of Housing and Urban Development issued a final rule requiring all public housing agencies to adopt smoke-free policies to protect residents from secondhand smoke exposure effective February 2017;<sup>62</sup>

**WHEREAS**, children, low-income tenants of public housing, and members of racial and ethnic minority groups are disproportionately exposed to secondhand smoke; and smoke-free housing policies have shown potential to reduce exposure in these populations;<sup>63,64</sup>



**WHEREAS**, California state law allows local governments to adopt ordinances that permit residential rental agreements to prohibit smoking tobacco products within rental units;<sup>65</sup>

**WHEREAS**, more than 140 California cities and counties have adopted smoke-free multiunit housing ordinances;<sup>6</sup>

**WHEREAS**, there is no Constitutional right to smoke;<sup>66</sup>

**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>67</sup>

**WHEREAS**, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance;<sup>67,68</sup>

**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.

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