

San Diego Smoke-Free Housing Task Force

September 19, 2016

Public Safety and Livable Neighborhoods Committee
202 C. Street
San Diego, CA 92101

Dear Public Safety and Livable Neighborhoods Committee Members,

We have had the privilege of serving on the City of San Diego's Smoke-Free Housing Task Force for over 7 years. The Task Force was initiated by Council Member Emerald on May 13, 2009 following a presentation to the Public Safety and Neighborhood Services Committee by the San Diego Live and Play Smoke-Free Project. The Task Force is comprised of members of the community representing a wide range of views and backgrounds. Our group includes the San Diego County Apartment Association, California Apartment Association, San Diego Housing Federation, American Lung Association, Tenants Legal Center, SAY San Diego's San Diego Smoke-Free Project, two renters, the Environmental Health Coalition and the Associate Professor of Epidemiology and Chief of the Division of Global Health at the Department of Family and Preventive Medicine. We have reviewed dozens of ordinances from other California cities and counties over the past 7 years and have developed the proposed ordinance - *Multi-Unit Housing Smoking Policy Disclosure Ordinance* - which will address secondhand smoke in multi-unit housing through disclosure.

On Thursday, March 24, 2016, the Task Force unanimously voted to approve the draft ordinance which will address secondhand smoke in multi-unit housing through disclosure with minor changes made via email and approved by the Task Force on April 28, 2016 for consideration by the Public Safety and Livable Neighborhoods Committee. We request that an action be taken to direct a city attorney to review the proposed draft and work with the Task Force in finalizing the Multi-Unit Housing Smoking Policy Disclosure Ordinance that will address secondhand smoke in multi-unit housing.

We greatly appreciate the opportunity to have advised the Committee on this issue and all of your diligent efforts to bring a draft ordinance before you that would support both multi-housing community tenants and landlords/managers.

Respectfully submitted,

San Diego Smoke-Free Housing Task Force

**ORDINANCE OF THE CITY OF SAN DIEGO AMENDING THE
MUNICIPAL CODE TO ADDRESS SECONDHAND SMOKE IN MULTI-UNIT HOUSING
THROUGH DISCLOSURE**

WHEREAS, scientific studies have concluded that cigarette smoking causes chronic lung disease, coronary heart disease, stroke, cancer of the lungs, larynx, esophagus, mouth, and bladder, and contributes to cancer of the cervix, pancreas, and kidneys;¹ and

WHEREAS, more than 480,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death;² and

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide;³ and

WHEREAS, the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and neither separating smokers from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke;⁴ and

WHEREAS, the United States Environmental Protection Agency (EPA) has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;⁵ and

WHEREAS, the California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant;⁶ and

WHEREAS, the California Office of Environmental Health Hazard Assessment has included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm;⁷ and

WHEREAS, exposure to secondhand smoke is the sixth leading cause of preventable death in this country, killing over 53,000 non-smokers each year,⁸ and smoking is the number one cause of lung cancer and deaths;⁹ and

WHEREAS, secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight, and increased risk of Sudden Infant Death Syndrome (SIDS) in infants of mothers who smoke;¹⁰ and

¹ U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*.

² U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *Highlights Annual Smoking Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999 (2002)* MORBIDITY AND MORTALITY WEEKLY REPORT.

³ U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *Reducing Tobacco Use: A Report of the Surgeon General*, 437 (2001).

⁴ U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006).

⁵ U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *Clean Indoor Air Regulations Fact Sheet* (2001).

⁶ Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006).

⁷ Cal. Evtl. Prot. Agency, Office of Evtl. Health Hazard Assessment, *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity* 17, (Aug. 11, 2006).

⁸ S.A. Glantz & W. Parmley, *Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry*, 83(1) *Circulation* 1 (1991) and California Environmental Protection Agency, Office of Evtl. Health Hazard Management, *Health Effects of Exposure to Environmental Tobacco Smoke: Final Report* (1997).

⁹ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, 2 (2002).

¹⁰ Cal. Evtl. Prot. Agency, Office of Evtl. Health Hazard Assessment, *Health Effects of Exposure to Environmental Tobacco Smoke, Final Report* ES-5 (1997).

WHEREAS, secondhand smoke exposure causes as many as 300,000 children in the United States to suffer from lower respiratory tract infections, such as pneumonia and bronchitis,¹¹ exacerbates childhood asthma, and increases the risk of acute chronic middle ear infection in children;¹² and

WHEREAS, the total cost of smoking in California was estimated to be \$487 per resident or \$4,603 per smoker per year, for a total of nearly \$18.1 billion in smoking-related costs in 2009 alone;¹³ and

WHEREAS, the medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke are nearly \$6 billion per year in the United States;¹⁴

WHEREAS, almost 90% of adult smokers started smoking at or before age 18;¹⁵ and

WHEREAS, with certain exceptions, state law prohibits smoking inside an enclosed place of employment;¹⁶ and

WHEREAS, state law prohibits smoking in playgrounds and tot lots and also prohibits smoking within twenty feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions.¹⁷

WHEREAS, there is no constitutional right to smoke.

WHEREAS, state law expands the availability of smoke-free housing in California by allowing landlords to prohibit smoking in rental units.

Purpose: This article is adopted to (1) protect the public health, safety and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco 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 and (2) to strike a reasonable balance between the need of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air has priority.

According to the American Lung Association, “Approximately 40 million Americans live in multi-unit housing properties, which account for 31.5 percent of all housing units in the United States (2014).” The home is a major source of secondhand smoke exposure for both adults and children. People spend a considerable amount of time at home therefore a SHS disclosure policy in a multi-unit housing setting can significantly reduce exposure to SHS. By adopting smoke-free policies in addition to a SHS disclosure clause, multi-housing owners can protect their tenants from First/Second-hand smoke, encourage healthy behaviors, reduce turnover cost, and meet the growing demand for smoke-free multi-unit housing. Smoking disclosure laws will not mandate smoke-free units or buildings, but they should require owners to inform prospective residents of smoking policies and the location of smoking, nonsmoking, and SHS units.

¹¹ U.S. Dep’t of Health and Human Services., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation’s Leading Cause of Death 2002*, 2 (2002).

¹² U.S. Dep’t of Health and Human Services. Centers for Disease Control and Prevention, *Clean Indoor Air Regulations Fact Sheet* (2001).

¹³ Tobacco-Related Disease Research Program, University of California, Office of the President, Phillip Gardiner, Program Officer (2009).

¹⁴ American Academy of Actuaries, *Costs Associated with Secondhand Smoke*, October, 2006.

¹⁵ National Household Surveys on Drug Abuse, unpublished data, 1998. *See also*, U.S. Dep’t of Health & Human Services. et al., *Preventing Tobacco Use Among Young People: A Report of the Surgeon General*, 101 (1994).

¹⁶ Cal. Lab. Code § 6404.5

¹⁷ Cal. Health & Safety Code § 104495 and Cal. Gov’t Code § 7597

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN DIEGO, CALIFORNIA,
does hereby ordain as follows:

Definitions:

The following words and phrases, whenever used in this article, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning.

"Common Area" means every Enclosed Area or Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including but not limited to halls, paths, lobbies, courtyards, elevators, stairwells, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, shared restrooms, shared laundry rooms, common cooking areas and shared eating areas.

"Electronic Cigarette or Electronic Smoking Device" means an electronic device that delivers vapor for inhalation including hookah pens, vape pipes, and electronic hookahs; which can be used to deliver an inhaled dose of nicotine or other substances, including any refill, cartridge, component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. This does not include any product approved by the United States Food and Drug Administration for sale as a drug or medical device.

"Enclosed Area" means all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An Enclosed Area may have openings for ingress and egress, such as doorways or passageways. An Enclosed Area includes all areas within that space, such as hallways and areas screened by partitions that do not extend to the ceiling or are not solid.

"Existing Unit" means any unit that is not a New Unit.

"Landlord" means any Person who owns property rented for residential use, any Person who rents residential property, and any Person who manages such property, except that "Landlord" does not include a master tenant who sublets a Unit as long as the master tenant sublets only a single Unit of a Multi-Unit Residence.

"Multi-Unit Residence" means a building that contains two or more attached dwelling Units, including but not limited to apartments, condominiums, senior citizen housing, except the following specifically excluded types of housing:

- (a) a mobile home park;
- (b) a marina or port;
- (c) a single-family home;
- (d) a single-family home with a detached or attached in-law or second unit when permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections.

"New Unit" means a Unit that is issued an occupancy clearance more than 180 days after the effective date of this ordinance and also means a Unit that is rented for residential use for the first time more than 180 days after the effective date of this ordinance.

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

"Smoke or Smoking" means inhaling, exhaling, burning or carrying of any lighted, heated or activated pipe, cigar, cigarette, hookah, electronic smoking device of any kind, or the lighting of a pipe, cigar, cigarette, hookah, electronic smoking device or any other lighted, heated, or activated tobacco product, marijuana product or plant product intended for inhalation.

"Vape or Vaping" means the use of an electronic cigarette or electronic smoking device in any of the following ways: (1) through inhalation or exhalation of vapor from an electronic cigarette or electronic smoking device or (2) by holding or otherwise activating an electronic cigarette or electronic smoking device such that any vapor is being emitted from it.

"Unenclosed Area" means any area that is not an Enclosed Area. Unenclosed Areas include balconies, porches, decks and patios.

"Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck or patio. "Unit" includes the following: an apartment, a condominium, a townhouse and a room in a homeless shelter.

Second-hand Smoke Disclosure of Designated Non-smoking Units and Designated Smoking Areas (including vaping as defined above)

All Landlords of Multi-Unit Residences are required to disclose to prospective tenants whether smoking is permitted in the unit to be rented, which units are designated non-smoking units, which units are designated smoking units, if any, including a description of the precise location of designated smoking areas, if any, and the smoking policy for the multi-unit resident complex, if any.

Sample Language:

Resident and Owner/Agent agree to incorporate this Non-Smoking Addendum (“Addendum”) into the rental agreement (“Rental Agreement”) currently in existence or renewed on this day between Resident and Owner/Agent.

Smoking Policy Addendum

Disclosure on smoking: *(Check the one that applies):*

Smoking is allowed everywhere in the complex, including, but not limited to, all common areas, elevators, offices, stairwells, all residential units, patios, porches, entryways, and adjoining grounds of the complex.

Smoking is prohibited everywhere in the complex in which the Premises is located, including, but not limited to, all common areas, all residential units, elevators, offices, lobby, stairwells, hallways, laundry rooms, patios, porches, balconies, playgrounds, tot lots, pools, clubhouse, entryways, walking paths, parking lots, alleyways and adjoining grounds of the complex.

Smoking is prohibited in all areas of the complex in which the Premises is located, including all rental units, **except** the following designated areas of the complex where smoking is allowed: (Circle all that apply):

all common areas	all residential units	laundry rooms	offices
lobby	conference rooms	party rooms	clubhouse
hallways	stairwells	entryways	elevators
patios	porches	balconies	backyard
tot lots	playground	BBQ area	pools
dog parks	courtyard	gym	tennis courts
walking path	parking lots	alleyways	adjoining grounds

OR

Smoking is prohibited in the following areas of the complex in which the Premises is located: (Circle all that apply):

all common areas	all residential units	laundry rooms	offices
lobby	conference rooms	party rooms	clubhouse
hallways	stairwells	entryways	elevators
patios	porches	balconies	backyard
tot lots	playground	BBQ area	pools
dog parks	courtyard	gym	tennis courts
walking paths	parking lots	alleyways	adjoining grounds

Property Owners SHS Disclosure:

The violation of the terms of a Smoking Policy Addendum made part of a lease under this Ordinance, by a tenant, resident, his/her guests and/or invitees may be grounds for a civil claim for damages by an affected tenant or lawful resident at the same and subject property owned, operated or managed by a common Lessor. A Lessor who has complied with this Ordinance by providing the appropriate Smoking Policy Addendum shall not be liable for a claim based on a breach of the Smoking Policy Addendum by a current or former tenant or resident and their guests or invitees unless the Lessor's actions in failing to enforcing the terms of the Smoking Policy Addendum were willful and in bad faith.

Owners Signature: _____

Date: _____

Managers Signature: _____

Date: _____

Tenants Signature: _____

Date: _____