Council Agenda #6-A
Meeting of March 13, 2007

Staff Report

DISCUSSION AND DIRECTION REGARDING ORDINANCE REGULATING SECONDHAND SMOKE

Honorable Mayor and Council Members:

Summary

This report attaches a draft model ordinance regulating secondhand smoke (Attachment A). It was prepared by the staff and counsel at the Public Health Institute's Technical Assistance Legal Center (TALC). Attachment B is a list of California Cities and Counties with smoke-free laws. Attachment C is a list of other private and public entities which have adopted smoke-free policies.

Background

On October 24, 2006, the City Council considered possible further regulation of secondhand smoke. The City's current ordinance bans smoking in indoor places of employment and most public places, including service lines, waiting areas, lobbies, hallways, stairwells and other common areas in apartment buildings, condominiums, senior citizen retirement or residential care houses, nursing homes and other multi-residential facilities and buildings. Smoking is allowed in certain designated places in bars, hotels, and in private residences, though the ordinance allows owners to voluntarily ban smoking in these places. Violation is declared to be a public nuisance, and enforcement mechanisms include a formal complaint to the City Manager, criminal enforcement, or a private lawsuit. The initial impetus for amending the ordinance had come from a resident of a senior housing facility, who requested that Belmont follow the city of Dublin in declaring secondhand smoke a public nuisance.

On November 14, 2006, the Council considered the matter again, and heard testimony from apartment and condominium residents about the effects of secondhand smoke. The Council directed staff to prepare an ordinance similar to that adopted by Calabasas regulating secondhand smoke. There was discussion at the meeting about amending or replacing Belmont's existing smoking ordinance with an ordinance that banned smoking throughout the City, except in single family residences and their yards. There was also discussion about updating the ordinance to conform to current public health standards.

Discussion

The draft model ordinance prepared by TALC, reprinted in Attachment A, contains several important features which are discussed in turn below.

I. Eliminating the Exemptions in Labor Code section 6404.5

The state smokefree workplace law (Labor Code section 6404.5) prohibits smoking in most indoor workplaces. There are a few exceptions such as retail and wholesale tobacco shops, warehouses, and hotel lobbies where smoking is allowed under the state law. Belmont currently allows smoking in bars and bar areas of restaurants. The definition of "Places of Employment" in this draft ordinance eliminates most of these exceptions.

In addition, this ordinance addresses the situation of owner-operated facilities which do not have employees (usually bars under sole proprietorship), and some organizations that rely solely on volunteers (such as VFW clubs or AA meeting halls). State law does not apply to these facilities. The definitions of "Business" and "Employee" and "Public Place" in this draft ordinance address these issues.

Finally, both the current Belmont ordinance and state law only regulate *indoor* workplaces, but allow smoking in *outdoor* workplaces such as construction sites. This ordinance prohibits smoking in outdoor workplaces.

Versions of all of the above-described provisions have been widely adopted by cities and counties throughout the state—most recently in the cities of Emeryville and Calabasas, and Marin and Contra Costa counties.

(For more information on secondhand smoke ordinances, please go to California Clean Air Project's website www.ccap.etr.org and search its California Secondhand Smoke Policy database. It can be searched by jurisdiction and by topic.)

II. Declaring Secondhand Smoke a Nuisance

This ordinance includes a provision that declares secondhand smoke a nuisance. The Cities of Dublin and Calabasas have both declared secondhand smoke a nuisance. The prior staff reports attached copies of both ordinances.

III. Restricting Smoking Outdoors

A. Outdoor Workplaces
As described above, this ordinance restricts smoking in outdoor workplaces, such as construction sites and outdoor dining.

B. Outdoor Public Places
The draft ordinance also prohibits smoking in outdoor public places, such as parks, stadiums, sports fields, recreation trails, and shopping malls. Such smoking restrictions are widespread in California, including the cities of Emeryville, Santa Rosa, Santa Monica, Fresno, and

Healdsburg, and Contra Costa and Marin counties, to list only a few.

C. Sidewalks and Streets

One area in which the Belmont ordinance goes further than almost any city is the proposed ban of smoking on city streets and sidewalks. The only other community to do this so far is the City of Calabasas.

The draft model ordinance includes a range of options to choose from, including:

- an all-out ban of smoking on streets and sidewalks;
- a smoking ban only when these areas are used for special events such as parades or fairs;
- a smoking ban on streets and sidewalks with designated smoking areas; and
- no smoking restriction for streets and sidewalks.

All these options are contained within the definition of "Public Places" and the associated comments to that definition.

D. "Reasonable Distance" Requirement

If the City decides to allow smoking on streets and sidewalks, then the "Reasonable Distance" provisions of the draft model ordinance would apply. This type of provision is sometimes also called an "entryway ban." The most common problem this type of provision attempts to solve is the situation where people smoke right next to entryways and windows of buildings, and the smoke drifts back inside the building. Such "reasonable distance" laws prohibit smoking within a specified distance away from or sometimes just a "reasonable" distance away from entrances, exits, windows, and intake vents.

State law already prohibits smoking within 20 feet of the main entrance, exit, and windows of government buildings (Government Code sections 7596-7598), and Health & Safety Code section 104495 bans smoking within 25 feet of tot lots and playgrounds. Several communities have already adopted such "reasonable distance" provisions including the cities of Berkeley, Oakland, Santa Monica, Stockton, and Santa Barbara, to list only a few.

The draft model ordinance prohibits smoking within 20 feet of all places where smoking is prohibited, whether that place is indoors or outdoors. Thus, smoking would not be allowed 20 feet from a doorway to an office building or an outdoor construction site.

E. Service Areas

The draft model ordinance continues the current Belmont ban on smoking while waiting in lines for services, such as movies, buses, ATM machines, etc. Such restrictions against smoking in "service lines" or "service areas" are relatively commonplace in California. For example, the cities of Fremont, Pleasanton, Union City, Arcata, Laguna Woods, Palo Alto, and Scotts Valley are just a few of the communities that have such laws.

IV. Restricting Smoking in Multi-Unit Housing

The draft model ordinance provides language which continues to restrict smoking in the indoor common areas of multi-unit housing, but extends the ban to outdoor common areas and individual units of multi-unit housing, such as apartments, condominiums, senior housing complexes, and single-room occupancy facilities.

Several communities already restrict smoking in multi-family housing common areas—both indoors and outdoors. (In fact, many indoor common areas may already be covered under the state smokefree workplace law if there are employees on site, such as a property manager, cleaning staff, maintenance workers, and/or security guard. These inside areas would then be worksites and covered by the smoking restrictions in Labor Code section 6404.5.) The cities of Arcata, Calabasas, Davis, Healdsburg, Laguna Woods, and San Mateo and Contra Costa counties have ordinances that restrict smoking in both indoor and outdoor common areas.

The City of Belmont would be the first to restrict smoking in individual units. According to TALC, hundreds of landlords and property management firms throughout the state have already adopted smoking policies for their complexes that restrict smoking in individual units, reportedly because they recognize insurance cost savings while protecting` the health of their tenants and reducing the risk of fire.

The draft ordinance provides two alternative approaches to restricting smoking in units. The first approach is to ban smoking in all units in multi-family housing. The smoking ban can become effective immediately, or the city may choose to phase-in the smoking restrictions. One phase-in option is to create a "grace period" where the smoking prohibition does not go into effect immediately but is instead delayed for a period of time. This means that people who smoke may continue to smoke inside their units during the grace period. Once the grace period has passed, then they may no longer smoke inside the unit. Another phase-in option is to "grandfather" current occupants who smoke and allow them to smoke in their units until they move. This means that people who live in their apartment or condominium before the effective date of the ordinance may continue to smoke inside their unit until they move out. This creates a much longer transition period.

The alternative approach is to restrict smoking in multi-unit housing by creating smoking and non-smoking units (like the old smoking and non-smoking sections in restaurants). The same grace period and grandfather options are provided for this alternative approach.

V. Smoking in Cars

This draft ordinance does not include language to restrict smoking in cars. Additional research would be required if the Council wants to consider banning smoking in cars. Two states (Louisiana and Arkansas), one territory (Puerto Rico), and one city (Bangor, Maine) have adopted smokefree car legislation. There is a bill pending before the California Legislature that, if passed, would prohibit smoking in a car with a minor present.

VI. Enforcement

The draft model ordinance includes a full range of enforcement alternatives, including civil enforcement, administrative code enforcement, and criminal penalties. However, the main purpose of enforcement is compliance. Compliance is more likely if the public is educated and informed about the important provisions of the ordinance. The current Belmont ordinance specifically requires educational and outreach efforts. Staff recommends additional ongoing public contact and outreach efforts after adoption of any ordinance. The Council may also consider requesting that staff engage primarily in educational efforts instead of enforcement for a period of time after any new ordinance is adopted.

VII. Ordinance Drafting Conventions

The draft ordinance contains annotations ("comments") by TALC to the legal provisions to explain the provision in more detail. In some instances alternate language is offered (e.g., [black / white]) or blanks have been left (e.g., [____]) for the language to be customized to fit the needs of the city. In some instances, entire provisions are offered as options. These are underlined and bracketed.

General Plan/Vision Statement

Regulating the effects of secondhand smoke is consistent with General Plan provisions to protect the public health, safety, and welfare of Belmont citizens.

Fiscal Impact

The fiscal impact of adopting the draft model ordinance would depend primarily on the level of staff involvement in outreach and educational efforts, as well as enforcement alternatives.

Public Contact

Staff and Councilmembers have received many pieces of correspondence from residents of Belmont, other states, and foreign countries. Belmont's consideration of this issue has received widespread media coverage on a local, national and international level. Prior to bringing a draft ordinance back to Council, staff recommends meeting with local groups which may have an interest in the matter, such as the Chamber of Commerce, Apartment Association, condominium and townhouse associations, schools and colleges, and Neighborhood Associations, among others. Input received at these meetings will be reported at the next available Council meeting when the matter is scheduled.

Since this effort started, staff has also received numerous inquiries from other California cities regarding the status of the Council's deliberations on this ordinance. Staff anticipates that the public interest in the matter will continue as the City decides on the main provisions of its ordinance.

Recommendation

Staff recommends that the Council provide direction on the primary operative provisions of the

TALC draft model ordinance so staff may return with a draft ordinance.

Alternatives

1. Direct staff to conduct further research and return with a different ordinance.
2. Direct staff to amend the current Belmont ordinance.
3. Direct staff to take no additional action at this time.

Attachments

A. Draft Model Ordinance prepared by TALC
B. California Cities And Counties With Smoke-Free Laws
C. Public and Private Entities Which Have Voluntarily Adopted Smoke-Free Policies

Respectfully submitted,

Marc L. Zafferano
City Attorney

Attachment A

DRAFT MODEL ORDINANCE

AN ORDINANCE OF THE CITY OF BELMONT REGULATING SECONDHAND SMOKE AND AMENDING THE BELMONT MUNICIPAL CODE

The City Council of the City Belmont does hereby ordain as follows:

SECTION I. FINDINGS. The City Council of the City of Belmont hereby finds and declares as follows:[1]

WHEREAS, tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs, as evidenced by the following:

- more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death;[2] and

- secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease;[3] and

- 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;[4] and

- secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis;[5] exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children;[6] and

- 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

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[1] Each of the authorities identified in this draft ordinance is available on-line or may be obtained from the Technical Assistance Legal Center.

[2] U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Annual Smoking – Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999* MORBIDITY AND MORTALITY WEEKLY REPORT, 51(14), at 300-303 (2002), *available at* http://www.cdc.gov/mmwr/PDF/wk/mm5114.pdf (last accessed March 23, 2005).

[3] Nat'l Cancer Inst., *NCI Health Information Tip Sheet for Writers: Secondhand smoke, available at* http://www.cancer.gov/newscenter/tip-sheet-secondhand-smoke (last accessed February 28, 2005).

[4] Cal. Envtl. Prot. Agency, Office of Envtl Health Hazard Assessment, *Health Effects of Exposure to Environmental Tobacco Smoke, Final Report* ES-5 (1997), available at http://www.oehha.org/pdf/chapter4.pdf (last accessed December 21, 2006).

[5] 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*, at 2 (2004), *available at* http://www.cdc.gov/nccdphp/aag/aag_osh.htm (last accessed October 18, 2006).

[6] U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), *available at* http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed October 18, 2006).

States;[7] and

- the total annual cost of smoking in California was estimated at $475 per resident or $3,331 per smoker per year, for a total of nearly $15.8 billion in smoking-related costs in 1999 alone;[8] and

WHEREAS, secondhand smoke is consistently identified as an extremely dangerous substance, as evidenced by the following:

- the United States Environmental Protection Agency has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;[9] and

- the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke;[10] and

- 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 for which there is no safe level of exposure;[11] and

- the California Environmental Protection Agency 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;[12] and

WHEREAS, state law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke;[13] and

WHEREAS, state law prohibits smoking in playgrounds and tot lots and within 20 feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions;[14] and

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[7] American Academy of Actuaries, *Costs Associated with Secondhand Smoke*, October, 2006, *available at* http://www.actuary.org/pdf/health/smoking_oct06.pdf (last accessed October 11, 2006).

[8] Wendy Max, Dorothy P. Rice, Xiulan Zhang, Hai-Yen Sung, Leonard Miller, Cal. Dept. of Health Servs., *The Cost of Smoking in California, 1999*, at 76 (2002), *available at* http://www.dhs.ca.gov/tobacco/documents/pubs/CostOfSmoking1999.pdf (last accessed October 18, 2006).

[9] U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), *available at* http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed October 18, 2006).

[10] U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006), *available at* http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter1.pdf (last accessed Sept. 19, 2006).

[11] Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006), *available at* http://www.arb.ca.gov/regact/ets2006/res0601.pdf (last accessed Oct. 6, 2006).

[12] Cal. Envtl. Prot. Agency, Office of Envtl. Health Hazard Assessment, *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity,* at 8 and 17 (Aug. 11, 2006), *available at* http://www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf (last accessed Oct. 6, 2006).

[13] Cal. Lab. Code § 6404.5 (West 2003).

[14] Cal. Health & Safety Code § 104495 (West 2003) and Cal. Gov't Code § 7596 (West 2004).

WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

- in 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarette butts;[15] and

- children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;[16] and

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- it is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year;[17] and

- cigarette butts are often cast onto sidewalk and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean;[18] and

- cigarette butts, made of plastic cellulose acetate, take approximately 15 years to decompose;[19] and

WHEREAS, creating smokefree areas helps protect the 86% of Californians who are non-smokers;[20] and

WHEREAS, a majority of Californians favor limitations on smoking in multi-unit residences, as evidenced by the following:

- 67% of apartment renters, apartment owners, and managers favor limiting smoking in outdoor common areas of apartment buildings;[21] and

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[15] Am. Ass'n of Poison Control Ctr. *Annual Report of the Toxic Exposure Surveillance System* at 645 (2004), *available at* http://www.aapcc.org/Annual%20Reports/04report/AJEM%20-%20AAPCC%20Annual%20Report%202004.pdf (last accessed October 23, 2006).

[16] U.S. Dep't of Health and Human Servs., Center for Disease Control and Prevention, *Ingestion of Cigarettes and Cigarette Butts by Children – Rhode Island, January 1994-July 1996*, MORBIDITY AND MORTALITY WEEKLY REPORT at 125-128 (1997), *available at* http://www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm (last accessed October 18, 2006).

[17] Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, *at* http://www.surfridersd.org/hotyb.php (last accessed October 18, 2006).

[18] Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, *at* http://www.surfridersd.org/hotyb.php (last accessed October 18, 2006).

[19] Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, *at* http://www.surfridersd.org/hotyb.php (last accessed October 18, 2006).

[20] Tobacco Control Section, Cal. Dep't of Health Servs., *Adult Smoking Prevalence*, at 1, *available at* http://www.dhs.ca.gov/tobacco/documents/pubs/AdultSmoking06.pdf (last accessed October 18, 2006).

[21] Ctr. For Tobacco Policy and Org., Am. Lung Ass'n of Cal., *Statewide Tobacco Renter Study* (2004), *available at* http://www.californialung.org/thecenter/community/documents/SFH-Survey-Data_001.doc (last

- 69% of apartment renters approve of apartment complexes offering non-smoking sections;[22] and

- 57% of apartment owners and managers favor a law mandating non-smoking units in every building;[23] and

- 46% of apartment renters have experienced secondhand smoke drifting into their units;[24] and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by state law;[25] and

WHEREAS, lighted tobacco products caused an estimated 14,450 residential fires in the United States in 2002 resulting in 520 deaths, 1,330 injuries, and $371 million in residential property damage;[26] and

WHEREAS, California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance;[27] and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance;[28] and

WHEREAS, there is no Constitutional right to smoke;[29] and

NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance, to

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accessed March 4, 2005).

[22] Tobacco Control Section, Cal. Dep't of Health Servs., *2004 Field Research Poll Results* at 16 (2004), *available at* http://www.dhs.ca.gov/tobacco/documents/2004TCSupdate.pdf (last accessed March 4, 2005).

[23] Ctr. For Tobacco Policy and Org., Am. Lung Ass'n of Cal., *Statewide Survey of California Apartment Owners and Managers* (2005), *available at* http://www.californialung.org/thecenter/documents/CenterSmokefreeApartmentsOwnersSurveyJune2005.doc (last accessed December 21, 2006).

[24] Ctr. For Tobacco Policy and Org., Am. Lung Ass'n of Cal., *Statewide Tobacco Renter Study* (2004), *available at* http://www.californialung.org/thecenter/community/documents/SFH-Survey-Data_001.doc (last accessed March 4, 2005).

[25] Cal. Legislative Counsel Op., 21547, *Secondhand Smoke in Multi-Unit Housing (Apartments & Condos) Smoking Bans: Residential Rental Property*, (September 23, 1999).

[26] U.S. FIRE ADMINISTRATION/NATIONAL FIRE DATA CENTER, U.S. DEPT. OF HOMELAND SECURITY, RESIDENTIAL SMOKING FIRES AND CASUALTIES, TOPICAL FIRE RESEARCH SERIES, VOLUME 5 – ISSUE 5, at 1 (June 2005), *available at http://www.usfa.dhs.gov/downloads/pdf/tfrs/v5i5.pdf* (last accessed Jan. 30, 2007).

[27] Cal. Civil Code § 3479 (Deerings 2005).

[28] *In Re Jones*, 56 Cal.App.2d 658, 663 (1943). *See also*, Cal. Const., art. XI, § 7 and Cal. Gov. Code § 38771 (Deerings 2005).

[29] Technical Assistance Legal Ctr., Pub. Health Inst., *There Is No Constitutional Right to Smoke* (2004), *available at* http://talc.phlaw.org/pdf_files/0051.pdf (last accessed April 8, 2005).

provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-smoking individuals, especially children; by protecting the public from nonconsensual exposure to secondhand smoke where they live, work, and play; by lessening tobacco-related litter; by reducing the potential for children to wrongly associate smoking and tobacco with a healthy lifestyle; and by affirming and promoting the family atmosphere of the City's public places.

SECTION II. [Article / Section] of the City of Belmont's Municipal Code is hereby amended to read as follows:

Sec. 1. DEFINITIONS. The following words and phrases, whenever used in this [article / chapter], shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an Employee, as defined in this section.

> **COMMENT:** The state smokefree workplace law (Labor Code section 6404.5) only applies to enclosed places of employment. If there are no employees, such as in a sole proprietorship, then the state law does not apply. This definition of "Business" includes sole proprietorships in order to address this loophole of the state law.

[(*) "Condominium Association" means …]

> **COMMENT:** If the city chooses to regulate smoking in owner-occupied multi-family housing, then a definition of "condominium association" or "homeowners' association" will need to be included to accurately assign duties and obligations under this ordinance for such things as posting signs, etc. TALC does not have model language for "Condominium Association". I have used the phrase "Condominium Association" in this draft ordinance to point out where this type of organization should be included.

(b) "Employee" means any person who is employed; retained as an independent contractor by any Employer, as defined in this section; or any person who volunteers his or her services for an Employer, association, nonprofit, or volunteer entity.

> **COMMENT:** The state smokefree workplace law (Labor Code section 6404.5) only applies to enclosed places of employment. If an organization only uses volunteers, then the state law might not apply. This definition of "Employee" includes volunteers in order to address this loophole of the state law.

(c) "Employer" means any person, partnership, corporation, association, nonprofit or other entity who employs or retains the service of one or more persons, or supervises volunteers.

(d) "Landlord" means any Person who owns real property leased as residential property, any Person who lets residential property, or any Person who manages such property, except that "Landlord" does not include sublessors.

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

(e) "Multi-Unit Residence" means a building or portion thereof that contains more than one dwelling Unit including but not limited to apartments, condominiums, senior citizen housing, nursing homes, and single room occupancy hotels.

COMMENT: This definition does include condominiums, however, no specific definition of condominium is provided. The City may want to include a definition for "condominium" to clarify what type of owner-occupied multi-unit housing it includes. For example, do condominiums also include townhouses—those types of developments that are not multi-story but do share a common wall, have a joint ownership structure of common areas, governing documents, and a board/association? Does the city council want to ban smoking everywhere except free-standing single-family homes or are townhouses exempt as well? Does the city only want to regulate smoking in residential buildings where there is more than one-unit per building? This is a policy decision that will need to be made before crafting a definition.

(f) "Multi-Unit Residence Common Area" means any indoor or outdoor area of a Multi-Unit Residence accessible to and usable by residents of different Units, including but not limited to halls and stairwells, paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, swimming pools, and parking areas.

(g) "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

(h) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity except the City of Belmont.

COMMENT: The Municipal Code likely contains a definition of "Person." If so, the definition provided here can be omitted. The city is excluded from the definition so that it does not make itself potentially liable for not fully enforcing the ordinance due to practical limitations.

(i) "Place of Employment" means any area under the legal or de facto control of an Employer, Business or Nonprofit Entity that an Employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, but not limited to: construction sites, vehicles used in employment or for business purposes, taxis, employee lounges and breakrooms, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, retail and wholesale tobacco shops, and private residences that are used as child care or health care facilities subject to licensing requirements.

COMMENT: Most of the enumerated exceptions in Labor Code section 6404.5(d) are listed here as examples of places that would be designated as nonsmoking in this draft ordinance. Theatrical production sites (LC 6404.5 (d)(9)), medical research or treatment sites (LC 6404.5(d)(10)), and most private residences (LC 6404.5(d)(11)) are exceptions under state law and remain exceptions in this model. Note that while state law prohibits smoking in private residences *when* used as day care facilities, this language prohibits smoking in private residences *if* used as day care facilities. In other words, smoking would be prohibited at all times in private residences used as daycare facilities, no matter whether children are present.

(j) "Public Place" means any place, public or private, open to members of the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, plazas, parking lots, malls, stadiums, parks, playgrounds, farmers markets, fairs, and taxis.

COMMENT: One alternative for this definition is to exempt streets and sidewalks from the smoking banning. If this alternative is selected then the words "streets" and "sidewalks" should be removed from the above definition and an explicit exemption for these areas should be added.

Another option is to exempt streets and sidewalks unless they are being used for a parade, craft fair, farmers market, etc. Language should be added to exempt streets and sidewalks except when these are closed for special public events. TALC does not have model language for this exemption, but I would be happy to work with you to craft such a provision.

Another alternative is the Calabasas approach where smoking is prohibited on streets and sidewalks except when "no non-smoker is present and, due to the time of day or other factors, it is not reasonable to expect

another person to arrive." See Calabasas Ordinance Section 8.12.040(b)(4).

Another option, should the city decide to prohibit smoking on city streets and sidewalks, is to create designated smoking areas in public places. This is a variation on the Calabasas ordinance which created "smokers' outposts" at the outdoor shopping malls. See Calabasas Ordinance Section 8.12.040(b)(3). Designated smoking areas are also presented as an option for Multi-Unit Residences. See Section 3(a)(3) of this ordinance. This language could be modified to create public designated smoking areas.

(k) "Reasonable Distance" means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty (20) feet in any direction from an area in which smoking is prohibited.

COMMENT: This definition is necessary even if the City decides to prohibit smoking on streets and sidewalks. This definition is used to create buffer zones around multi-family housing units that are declared non-smoking (see Sections 3 and 5).
If the City decides to allow smoking on streets and sidewalks, then the Reasonable Distance requirement will create a buffer zone around entryways and windows of all buildings and outdoor areas where smoking is prohibited (see alternative Section ** "REASONABLE SMOKING DISTANCE REQUIRED—20 FEET").

[(*) "Service Area" means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction whether or not such service includes the exchange of money, including but not limited to ATMs, bank teller windows, telephones, ticket lines, bus stops, and cab stands.]

COMMENT: This definition for "Service Area" should be included if the City decides to allow smoking on sidewalks and streets.

(l) "Smoking" or to "Smoke" means possessing a lighted tobacco product, lighted tobacco paraphernalia, or any other lighted weed or plant (including but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, or lighted cigarette of any kind), or the lighting of a tobacco product, tobacco paraphernalia, or any other weed or plant (including but not limited to, a pipe, a hookah pipe, cigar, or cigarette of any kind).

COMMENT: This definition includes marijuana, but smoking marijuana for medical purposes is excluded from the prohibitions of this ordinance in some circumstances under Section 9 "Medical Marijuana."

(m) "Tobacco Product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

> **COMMENT:** This definition is written broadly to include nontraditional tobacco and nicotine products such as nicotine water and nicotine lollipops, but without interfering with the FDA's mission of approving products intended to benefit public health, such as nicotine patches and other nicotine cessation products.

(n) "Unit" means: (1) a dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping, and any private outdoor spaces like balconies and patios; and (2) senior citizen housing and single room occupancy hotels, as defined in California Health and Safety Code section 50519(b)(1), even where lacking private cooking facilities or private plumbing facilities. "Unit" does not include lodging in a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2).

> **COMMENT:** The Municipal Code may already contain a definition of "unit," "dwelling unit," "residential unit," or some similar term. If so, the definition provided here may be omitted and replaced by the following:
>
> *"Unit" means a [unit, dwelling unit, residential unit, etc.] as defined in Section ___ of this Code as well as private rooms in senior citizen housing and single-room-occupancy hotels. "Unit" does not include a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2).*

Sec. 2. SECONDHAND SMOKE GENERALLY

For all purposes within the City of Belmont, nonconsensual exposure to secondhand smoke is a nuisance, and the uninvited presence of secondhand smoke on property is a nuisance and a trespass.

Sec. 3. SMOKING PROHIBITIONS

(a) Smoking shall be prohibited in the following indoor and outdoor places within the City of Belmont [<u>except in places listed in subsection (b) below</u>]:

(1) Public Places;

(2) Places of Employment; and

(3) Multi-Unit Residence Common Areas [except that a Landlord or Condominium Association may designate a portion of the outdoor area a Smoking area. A designated Smoking area:

(i) must be located a Reasonable Distance from any indoor area of a Multi-Unit Residence where Smoking is prohibited;

(ii) must not include, and must be a Reasonable Distance from, outdoor areas primarily used by children including, but not limited to, areas improved or designated for play or swimming;

(iii) must be no more than [25%] of the total outdoor area of the premises for which it is designated;

(iv) must have a clearly marked perimeter;

(v) must be identified by conspicuous signs; and

(vi) must not overlap with any area in which Smoking is otherwise prohibited by this [article / chapter] or other provisions of this Code, state law, or federal law.]

[(4) Service Areas;

COMMENT: Include "Service Areas" if the City decides to allow smoking on streets and sidewalks.

[(b) Unless otherwise prohibited by law, smoking is not restricted by this [article / chapter] in the following places:

(1) By performers during theatrical productions, if smoking is an integral part of the story in the theatrical production;

(2) Single-family homes and the lots they are sited on, except those used as a child care or health care facility subject to licensing requirements; and

COMMENT: TALC does not have a model definition for "single-family home", and it does not appear that the City of Belmont's municipal code contains a definition of single family home. The City may want to include a definition of "single family home" to add clarity to the ordinance and distinguish this type of housing from other types of residential buildings that are owner-occupied, such as condominiums and townhouses.

(3) Up to [twenty percent (20%)] of hotel and motel guest rooms, if the hotel or

motel permanently designates particular guest rooms as nonsmoking rooms such that [eighty (80%)] or more of its guest rooms are nonsmoking and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent "no smoking" signage shall be posted in nonsmoking rooms.]

COMMENT: These exceptions are designed to be very limited. Note that unless exception (3) is included in the ordinance, all hotel and motel guest rooms must be smoke-free. Under the state smokefree workplace law (Labor Code section 6404.5) up to 65% of hotel/motel guest rooms can be smoking.)

(c) Nothing in this [article / chapter] shall be construed to prohibit Smoking in any area in which such Smoking is already prohibited by state or federal law unless the applicable state or federal law does not preempt additional local regulation.

COMMENT: This provision keeps the ordinance from regulating areas where smoking is already prohibited by another law that forbids additional local regulation. However, the language is designed to allow the local ordinance to regulate smoking in areas that are allowed by state or federal law but without leaving any gaps between the local and state or federal law.

Sec. 4. NON-SMOKING UNITS REQUIRED IN MULTI-UNIT RESIDENCES

COMMENT: There are several options to restrict smoking in multi-unit residences. The following subsections prohibit smoking in all units of multi-family housing. The prohibition can go into effect immediately.

Two alternatives to this language are provided. The first option provides a "grace period" where the smoking prohibition does not go into effect immediately but is instead delayed for a period of time. This means that people who smoke may continue to smoke inside units during the grace period. Once the grace period has passed, then they may no longer smoke inside the unit.

The second option is to "grandfather" current occupants who smoke and allow them to smoke in their units until they move. This means that people who live in their apartment or condominium before the effective date of the ordinance may continue to smoke inside their unit until they move out. This creates a much longer turn-over period.

There is also an alternative approach provided. This option creates smoking and non-smoking units (like the old smoking and non-smoking sections in restaurants). You will remember how ineffective such a division was; however, such an approach may be more politically acceptable. The same grace period and grandfather

options are provided for this alternative approach.

(a) Smoking is prohibited in all Units of Multi-Unit Residences, including private outdoor spaces associated with such Units, such as balconies, patios, and decks.

[(*) A Unit shall not be subject to the Smoking restrictions in subsection (a) of this [section / subsection] until [six (6) months] after the effective date of this [article / chapter] or until the legal occupants on the effective date of this [article / chapter] vacate the Unit, whichever occurs first.]

COMMENT: This provision provides a grace period for current smoking occupants and allows them to continue to smoke in their units for a designated period of time after the ordinance passes. The amount of time is a policy choice and can be altered.

The purpose of this section is to allow for a delayed phase-in of the smoking restriction so that smoking occupants have the opportunity to seek out cessation services, other housing options, or adjust to smoking in the designated outdoor smoking areas (if such smoking areas are provided for by the ordinance and established by the landlord or condominium association.)

Note the City may wish to include a provision in the ordinance to help citizens gain access to cessation services and products. TALC does not have model language for this, but I can work with you to draft such a provision.

[(*) A Unit shall not be subject to the Smoking restrictions in subsection (a) of this [section / subsection] while the legal occupant(s) in occupancy on the effective date of this [article / chapter] continuously live in the Unit.]

COMMENT: The City may choose to "grandfather" current smoking occupants until they vacate their unit. Such a grandfather clause would allow for the gradual transition of units to non-smoking when smoking occupants move out of these units. If the City chooses this option, then this alternate language would be used instead of the suggested grace period language.

[Sec. **. DESIGNATED NON-SMOKING UNITS REQUIRED IN MULTI-UNIT RESIDENCES *(Alternative approach to Section 4)*

(a) In every Multi-Unit Residence at least [seventy-five (75)] percent of the Units (including private outdoor spaces associated with such Units, such as balconies, patios, and decks), must be designated as non-smoking Units. All Units may be designated non-smoking Units. Non-smoking Units must be grouped together (e.g., horizontally and/or vertically) and physically separated from Smoking Units to the maximum extent practicable.

COMMENT: The percentage of non-smoking Units required is a policy choice and may be modified.

(b) A Unit designated non-smoking by the force of this [article / chapter] shall not be subject to the Smoking restrictions in subsection (c) of this [section / subsection] until [six (6) months] after the effective date of this [article / chapter] or until the legal tenants on the effective date of this [article / chapter] vacate the Unit, whichever occurs first.

COMMENT: This provision provides a grace period for current smoking tenants and allows them to continue to smoke in their units even if the unit is declared a non-smoking unit. The tenant is allowed to smoke in the non-smoking unit for a designated period of time after the ordinance is passed. The amount of time is a policy choice and can be altered.

The purpose of this section is to allow for a delayed phase-in of the smoking restriction so that smoking tenants have the opportunity to seek out cessation services, other housing options, or adjust to smoking in the designated outdoor smoking areas (if such smoking areas are provided for by the ordinance and established by the landlord or condominium association.)

Note the City may wish to include a provision in the ordinance to help citizens gain access to cessation services and products. TALC does not have model language for this, but I can work with you to draft such a provision.

The City may choose to "grandfather" current smoking tenants who live in non-smoking units until they vacate the unit. Such a grandfather clause would allow for the gradual transition of units to non-smoking when smoking tenants move out of these units. If the City chooses this option, then this alternate language can be substituted for the above:

A Unit designated non-smoking by the force of this [article / chapter] shall not be subject to the Smoking restrictions in subsection (c) of this [section / subsection] while the legal tenant(s) in occupancy on the effective date of this [article / chapter] continuously live in the Unit.

(c) Smoking is prohibited in non-smoking Units in Multi-Unit Residences.]

Sec. 5. SMOKEFREE BUFFER ZONES FOR MULTI-UNIT RESIDENCES

Smoking is prohibited on the premises of a Multi-Unit Residence within a Reasonable Distance of any entrance, opening, or other vent into an enclosed area of a Multi-Unit Residence in which Smoking is prohibited by this [article / chapter], other provisions of this

Code, state law, or federal law. For example, and without limitation, Smoking on balconies, porches, or patios within a Reasonable Distance of a window or door of a non-smoking Unit is prohibited. This provision does not apply inside a designated Smoking Unit pursuant to Section 4.

COMMENT: This provision prohibits smoking near enclosed non-smoking areas. This section addresses smoking on a balcony or other area that is so close to a non-smoking Unit that the smoke drifts in to the non-smoking Unit, a common complaint of non-smoking tenants. Note that "Reasonable Distance" is defined as at least 20 feet, although this distance may be modified.

Sec. 6. REQUIRED LEASE TERMS

COMMENT: This section only applies to units that are rented. This section provides an alternative enforcement mechanism to traditional local government enforcement.

TALC has not conducted the necessary legal research to determine whether an ordinance may insert similar language into condominium CC&Rs. However, most CC&RS have provisions that enable owners to file complaints against neighbors if they create a nuisance. With the declaration of secondhand smoke a nuisance in this ordinance, a condominium owner being bothered by drifting smoke will have an easier time proving his or her nuisance claim.

(a) Every lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence entered into or renewed after the effective date of this [article / chapter] shall include:

COMMENT: This section requires that smoking restrictions be included as part of the lease.

If the alternative "grandfather" language provided in Section 4 is used, then delete the words "*or renewed*" from the above provision.

By including these restrictions in the lease agreement, Landlords may enforce the smoking restrictions just like any other condition in the lease. In addition, by making other tenants of the Multi-Unit Residence third-party beneficiaries to the required lease terms (see below), this becomes an alternate enforcement mechanism for the smoking restrictions, in addition to local government enforcement of the law and private citizen enforcement (see Section 10 "Penalties and Enforcement").

(1) a clause stating that Smoking is prohibited in the Unit if the Unit has been designated as a non-smoking Unit [and that such term takes effect [six (6) months]

after the effective date of this [article / chapter]];

(2) a clause stating that it is a material breach of the lease or agreement to (i) violate any law regulating Smoking while on the premises; (ii) Smoke in violation of a non-smoking lease term, such as smoking in a non-smoking Unit; or (iii) Smoke in any Multi-Unit Residence Common Area in which Smoking is prohibited by the Landlord; and

(3) a clause stating that all lawful occupants of the Multi-Unit Residence are express third-party beneficiaries of the above required clauses.

COMMENT: Declaring other residents third-party beneficiaries grants people living in the Multi-Unit Residence limited rights to enforce the no smoking lease terms. Without the declaration, other residents have no legal right to enforce the lease terms and the burden of enforcing the terms rests solely with the Landlord and the public agency.

(b) The lease or agreement terms required by subsection (a) are hereby incorporated by force of law into any lease or other agreement for the occupancy of a Unit in a Multi-Unit Residence made on or after the effective date of the ordinance which adopted this section and which does not fully comply with subsection (a).

COMMENT: This is a back-up provision to ensure that the no smoking term is included by law, even if the Landlord fails to comply with subsection (a).

(c) A tenant who breaches the Smoking regulations of a lease or knowingly allows another person to do so shall be liable to: (i) the Landlord; and (ii) to any lawful occupant of the Multi-Unit Residence who is exposed to secondhand smoke as a result of that breach. A Landlord shall not be liable to any person for a tenant's breach of Smoking regulations if the Landlord has fully complied with subsection (a).

COMMENT: This provision allows other tenants to enforce the no smoking term in the lease agreement. In addition, this provision expressly states that the Landlord is not contractually required to enforce the no smoking term and that other residents cannot force the Landlord to act against a tenant who violates the term. Thus, the Landlord need not be a guarantor of the ordinance's enforcement.

There are two additional enforcement mechanisms in this ordinance:

Section 10 "Penalties and Enforcement" provides for traditional enforcement by local government officials.

Section 10 also grants *any* member of the public the right to enforce the ordinance. Thus, a Landlord, a

tenant, or a member of the public could bring a lawsuit to enforce the ordinance in either Superior Court or small claims court.

(d) Failure to enforce any Smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this ordinance and shall not prevent future enforcement of any such Smoking regulation on another occasion.

Sec. 7. DISCLOSURE OF NON-SMOKING UNITS

COMMENT: The language in this section was originally drafted to accompany the alternative approach presented above in Section 4 where units are designated smoking on non-smoking.

Depending on which option the city chooses, I can re-write the disclosure provision. I am providing you with this language as an example to illustrate the basic premise of disclosure. The idea is that a potential owner or renter should be informed where smoking is allowed. That way, they can make an informed choice on whether or not to purchase or rent the available unit. This provision does not require disclosure of any person's smoking habits. Instead, it merely identifies where smoking is allowed and where it is not.

Every Landlord or Condominium Association shall maintain a list of designated non-smoking Units and a floor plan identifying the relative position of Smoking and non-smoking Units. [The floor plan also shall identify the location of any designated Smoking Areas and any Units that are covered by the [grace period / grandfather clause] allowed by Section 4 of this [article / chapter].] A copy of this list and floor plan shall accompany every new lease, or other agreement for the occupancy of a Unit in a Multi-Unit Residence. If a copy of the list and floor plan is not so supplied, the Unit shall be a non-smoking Unit.

COMMENT: This section requires that potential residents of multi-unit housing be informed of the relative location of Smoking and non-smoking Units. It also requires a potential resident be informed of any designated smoking areas and units that are covered by the grace period or the grandfather clause, if those options are selected.

[Sec. **. REASONABLE SMOKING DISTANCE REQUIRED—20 FEET

COMMENT: This section is only required if the City chooses not to restrict smoking on sidewalks and streets.

(a) Smoking in outdoor areas shall be prohibited within a Reasonable Distance from any entrance, opening, crack, or vent into an indoor area in which smoking is prohibited, except

while actively passing on the way to another destination and so long as smoke does not enter any indoor area in which smoking is prohibited.

> **COMMENT:** This creates a buffer zone around indoor smokefree areas, allowing smoking only if passing through the zone. Note that "Reasonable Distance" is defined in this ordinance as a minimum of twenty feet.

(b) Smoking in outdoor areas shall be prohibited within a Reasonable Distance from any outdoor area in which smoking is prohibited by this [article / chapter] except while actively passing on the way to another destination.]

> **COMMENT:** As written, this would prohibit smoking on private property and in private residences within twenty feet of an outdoor area in which smoking is already prohibited under the preceding section. If necessary to compromise on this point, private property can be exempted by inserting: "(c) The prohibitions in subdivisions (a) and (b) shall only apply to areas of private property that are part of a Multi-Unit Residence, Place of Employment, Public Place, or Service Area."

Sec. 8. PROHIBITIONS AND DUTIES GENERALLY

(a) No Person, Employer, Business, Nonprofit Entity, Landlord, or Condominium Association shall knowingly permit the Smoking of Tobacco Products in an area which is under the legal or de facto control of the Person, Employer, Business, Nonprofit Entity, Landlord, or Condominium Association and in which Smoking is prohibited by law and the Person, Employer, Business, Nonprofit Entity, Landlord, or Condominium Association is not otherwise compelled to act under state or federal law.

> **COMMENT:** This provision makes anyone who is in control of an area responsible for any violation of existing laws prohibiting smoking. The phrase "and the Person . . . is not otherwise compelled to act under state or federal law" is included to avoid preemption by not duplicating state or federal law.

(b) No Person, Employer, Business, Nonprofit Entity, Landlord, or Condominium Association shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area which is under the legal or de facto control of the Person, Employer, Business, Nonprofit Entity, Landlord, or Condominium Association and in which Smoking is prohibited, including, without limitation, inside the perimeter of any Reasonable Distance required by this [article / chapter].

(c) Notwithstanding any other provision of this [article / chapter], any owner, Employer, Business, Nonprofit Entity, Landlord, Condominium Association or other Person who controls any property, establishment, Place of Employment, Public Place, or Multi-Unit Residence regulated by this [article / chapter] may declare any part of such area in which

Smoking would otherwise be permitted to be a nonsmoking area.

> **COMMENT:** This would permit, for example, landlords to prohibit smoking in all parts of multi-unit residential buildings.

(d) "No Smoking"signs, with letters of no less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar) shall be clearly, sufficiently, and conspicuously posted in every indoor and outdoor place in which Smoking is prohibited by this chapter, by the Person, Employer, Business, Nonprofit Entity, Landlord, or Condominium Association that has legal or de facto control of such place. [At least one sign with the City of Belmont phone number where complaints can be directed must be conspicuously posted in every place in which Smoking is prohibited.] For purposes of this chapter, the City Manager or designee shall be responsible for the posting of signs in regulated facilities owned or leased in part by the City of Belmont. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this [article / chapter].

> **COMMENT:** The City may choose what it wants the required signs to say and modify the above language.

Sec. 9. MEDICAL MARIJUANA

Notwithstanding any other provision of this [article / chapter], Smoking marijuana for medical purposes as permitted by California Health and Safety Code sections 11362.7 *et seq.* in any Unit of a Multi-Unit Residence is not prohibited by this [article / chapter]. Notwithstanding the forgoing, such use of marijuana may be prohibited by other provisions of this Code, state law, or federal law.

Sec. 10. PENALTIES AND ENFORCEMENT

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

(b) Each violation of this [article / chapter] by a Person because of the Person's Smoking is an infraction subject to a [one hundred dollar ($100)] fine. Other violations of this [article / chapter] constitute misdemeanors punishable as provided in section [____] of this Code or may, in the discretion of the City Prosecutor, be prosecuted as infractions if the interests of justice so require. Enforcement of this chapter shall be the responsibility of [____]. In addition, any peace officer or code enforcement official also may enforce this chapter.

> **COMMENT:** Permitting any peace officer or code enforcement official to enforce the law provides the maximum flexibility that is a key component to meaningful enforcement. Identifying a specific enforcement agency, such as law enforcement or the Health Department, should improve the likelihood of

enforcement.

If circumstances require that the duty of designating the enforcement agency be assigned to the City Manager, the following may be substituted:

Enforcement of the penal provisions of this [article / chapter] shall be implemented by the [City Manager / County Administrative Officer] or his or her designee.

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

COMMENT: The fine amounts can be adjusted but cannot exceed $1,000 per violation. See California Government Code section 36901.

(d) No Person shall intimidate, harass, or otherwise retaliate against any Person who seeks to attain compliance with this [article / chapter]. Moreover, no Person shall intentionally or recklessly expose another Person to secondhand smoke in response to that Person's effort to achieve compliance with this [article / chapter]. Violation of this subsection shall constitute a misdemeanor.

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

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

(g) In addition to other remedies provided by this [article / chapter] or by other law, any violation of this [article / chapter] may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

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

The City 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 38773.5. 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 38773.7 (authorizing treble damages) establishes a procedure for nuisance abatement where the cost of the abatement can be collected via the property tax roll as a special assessment against the property on which the violation occurs.

(h) Any Person acting for the interests of itself, its members, or the general public may bring a civil action to enjoin a violation of this [article / chapter] by a business or to enjoin repeat violations of this [article / chapter] by an individual.

COMMENT: This provision enables private citizens to go to court to seek *compliance* with the ordinance through an injunction. Money damages are not an available remedy. Because an injunction is the only remedy available, small claims court is not an appropriate venue for filing a lawsuit under this provision.

Note that while a business may be sued for one violation of this ordinance, an individual can be sued only for repeat violations. This limitation is intended to address concerns about the potential for abusive lawsuits.

SECTION III. STATUTORY CONSTRUCTION & SEVERABILITY. It is the intent of the City Council of the City of Belmont to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Belmont 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.

Attachment B

California Cities And Counties With Smoke-Free Laws

California Cities And Counties With Smoke-Free Laws

Amusement Parks/Golf Courses/Zoos

Fresno
Oakland
Pasadena
San Francisco (City and County)

Athletic Fields/Sporting Venues

Albany
Anaheim
Arcata
Berkeley
Buellton
Burbank
Calabasas
Calexico
Carpinteria
Clayton
Concord
Davis
El Centro
Fremont
Glendale
Goleta
Lafayette
Laguna Hills
Laguna Woods
Lemon Grove
Livermore
Los Angeles
Marin (County)
Milpitas
Monterey (County)
Mountain View
Newark
Oakland
Ojai
Palm Desert
Pittsburg
Pleasant Hill
Pleasanton
Redding
Reedley
Richmond
Sacramento (specifically Raley Field)
Salinas
San Bernardino (City and County)
San Diego
San Fernando

Athletic Fields/Sporting Venues (Cont.)

San Francisco (City and County)
San Jose
San Rafael
Santa Barbara (County)
Santa Rosa
Sonoma
Stockton
Sunnyvale
Tuolumne (County)
Union City
Visalia
Woodland

Beaches and Piers

Capitola
Carmel-by-the-Sea
Carpinteria
Coronado
Del Mar
El Segundo
Hermosa Beach
Huntington Beach
Huntington Park
Imperial Beach
Laguna Beach
Long Beach
Los Angeles (City and County)
Malibu
Manhattan Beach
Marina Del Rey
Morro Bay
Newport Beach
Pacific Grove
Pacifica
San Clemente
San Diego
San Francisco (City and County)
Santa Barbara
Santa Cruz
Santa Monica
Seal Beach
Solana Beach
Torrance

Entryways: Non-Governmental (Privately Owned) Facilities

Alameda (County)
Arcata
Berkeley
Buellton
Calabasas
Calexico
Capitola
Carpinteria
Colusa (County Private Medical Offices)
Contra Costa (County)
Crescent
Davis
Dublin
El Cajon
Fremont
Goleta
Healdsburg
Imperial Beach
Laguna Hills
Laguna Woods
Livermore
Marin (County)
Mono (County)
Newark
Novato
Oakland
Palm Desert
Palo Alto
Pleasanton
Rancho Cucamonga
Sacramento (City and County)
San Anselmo
San Mateo (County)
San Rafael
San Ramon
Santa Barbara (City and County)
Santa Cruz (County)
Santa Monica
Sausalito
Scotts Valley
Stockton
Sutter (County)
Thousand Oaks
Tracy
Union City
Watsonville

Entryways: Non-Governmental (Privately Owned) Facilities (Cont.)

Woodland
Yolo (County)

Hotels and Motels

Alameda (County)
Berkeley
Livermore
Marin (County)
Ojai
Pleasanton
San Jose

Misc Local Ordinances/Regulations

Anderson
Arcata
Chico
Davis
El Centro
Kings (County)
Los Gatos
Mendota
Oceanside
Palos Verdes Estates
Redlands
Santa Rosa
Sutter (County)
Thousand Oaks
Trinity (County)
Vista
Woodland

Common Areas of Multi Family Housing

Buellton
Calabasas
Contra Costa (County)
San Jose
San Mateo (County)

Nuisance

Calabasas
Dublin

California Cities And Counties With Smoke-Free Laws

Outdoor Dining

Alameda (County)
Albany
Arcata
Berkeley
Buellton
Calabasas
Carpinteria
Chula Vista
Contra Costa (County)
Davis
Del Mar
Dublin
Fremont
Gilroy
Goleta
Hayward
Healdsburg
Laguna Hills
Laguna Woods
Los Gatos
Marin (County)
Menlo Park
Newark
Ojai
Palo Alto
Pleasanton
Reedley
San Carlos
San Mateo
San Ramon
Santa Barbara (City and County)
Santa Monica
South San Francisco
Sunnyvale
Tuolumne (County)
Union City

Outdoor Workplaces

Berkeley
Santa Monica
Marin (County)

Parks and Gardens

Arcata
Baldwin Park
Beverly Hills
Calabasas

Parks and Gardens (Cont.)

Calexico
Capitola
Carpinteria
Carson
Ceres
Cerritos
Compton
Contra Costa (County)
Coronado
Covina
Culver City
Davis
Del Mar
El Cajon
El Monte
Firebaugh
Fowler
Fresno
Gardena
Glendale
Grand Terrace
Hawthorne
Healdsburg
Huntington Park
Imperial (County)
Imperial Beach
Irvine
La Mesa
La Puente
Laguna Hills
Laguna Niguel
Lake Forest
Lathrop
Los Alamitos
Los Angeles
Mammoth Lakes
Manhattan Beach
Mendota
Modesto
Monterey (County)
Monterey Park
Newport Beach
Oakland
Oceanside
Orange Cove
Orinda
Palm Desert

Parks and Gardens (Cont.)
Pasadena
Pine Grove
Rancho Cucamonga
Redlands
Redondo Beach
Reedley
Riverbank
Rohnert Park
Rosemead
Salinas
San Diego (City and County)
San Fernando
San Francisco (City and County)
San Marino
San Rafael
San Ramon
Santa Clarita
Santa Cruz (City and County)
Santa Monica
Scotts Valley
Seal Beach
Solana Beach
Tulare (County)
Vacaville
Ventura (County)
Vista
Walnut
Watsonville
Windsor
Winters
Woodland
Yolo (County)
Yucaipa

Public Places: Comprehensive (Indoor/Outdoor)
Albany
Berkeley
Calabasas
Ceres
Clayton
Contra Costa (County)
Coronado
Dublin
Healdsburg
Laguna Hills
Laguna Woods

Public Places: Comprehensive (Indoor/Outdoor) (Cont.)
Lemon Grove
Marin (County)
Riverbank
San Carlos
San Mateo (City and County)
Santa Monica
Santa Rosa
Windsor

Retail Tobacco Shops
Dublin
Galt
Pleasant Hill

Service Lines/Ticket Lines/Waiting Lines/ Bus Stops/Taxi Shelters/ Terminals/ Waiting Rooms
Albany
Arcata
Berkeley
Buellton
Carpinteria
Corte Madera
Davis
Dublin
Fremont
Glendale
Goleta
Hayward
Laguna Woods
Los Angeles
Marin (County)
Newark
Ojai
Palo Alto
Pleasanton
San Bernardino
San Francisco (City and County)
San Mateo
Santa Barbara (City and County)
Scotts Valley
Sunnyvale
Tuolumne (County)
Union City
Visalia

Statewide Laws

Day Care Facilities
Entryways to Government Buildings
Fair Employment and Housing Act
Food Handling and Tobacco Use
Playgrounds and Tot Lots
Prisons
Prop 65
Public Schools
Public Transportation
Workplaces

Attachment C

Public and Private Entities Which Have Voluntarily Adopted Smoke-Free Policies

California Private and Public Entitites Which Have Voluntarily Adopted Smoke-Free Policies

Hospitals/Health Care Campuses
Kaiser Permanente (Statewide)
Mercy General Hospital (Sacramento)
Sutter Medical Center (Sacramento)
Watts Healthcare Corporation (Los Angeles)

Hotels and Motels
Marriott International Inc (Statewide)
Westin Hotel (Statewide)

Housboats
Shasta

Multi-Family Housing (Indoor/Outdoor)
Pleasanton Gardens (Alameda)
Plumas (County)

Outdoor Community Events (Monterey)
Girl Scouts of Monterey Bay
Kidfest Tobacco Policy
Monterey Peninsula College Farmers Market
Pacific Grove Feast of Lanterns
American Cancer Society Relay for Life (Salinas)
Artistas Unidos First Friday Art Walk

State and County Fairs
Amador County Fair (Amador)
Antelope Valley Fair and Alfalfa Festival (Los Angeles)
Big Fresno Fair (Fresno)
Calaveras County Fair and Jumping Frog Jubilee (Calaveras)
California Mid-State Fair (San Luis Obispo)
California State Fair (Sacramento)
Colorado River Country Fair (Riverside)
Del Norte County Fair (Del Norte)
Desert Empire Fair and High Desert Spring Festival (Kern)
Dixon May Fair (Solano)
Eastern Sierra Tri-County Fair (Alpine, Inyo and Mono)
El Dorado County Fair (El Dorado)
Glenn County Fair (Glenn)
Humboldt County Fair (Humboldt)
Kern County Fair (Kern)
Lake County Fair (Lake)

State and County Fairs (Cont.)
Mariposa County Fair and Homecoming (Mariposa)
Plumas-Sierra County Fair (Plumas)
San Benito County Fair (San Benito)
San Joaquin Fair (San Joaquin)
Santa Barbara Fair and Expo (Santa Barbara)
Shasta District Fair (Shasta)
Siskiyou Golden Fair (Siskiyou)
Sonoma-Marin Fair (Marin and Sonoma)
Stanislaus County Fair (Stanislaus)
Trinity County Fair (Trinity)
Yolo County Fair (Yolo)
Yuba-Sutter Fair (Sutter and Yuba)

Theme Parks
Disneyland Resort (Orange)
Universal City Walk (Los Angeles)

Tribal Casinos
Lucky Bear Casino (Humboldt)

University Campuses
Santa Monica College (Los Angeles)
San Diego Mesa Community College (San Diego)
Santa Rosa Junior College (Sonoma)
Woodland Community College (Yolo)