



Staff Report

INTRODUCTION OF ORDINANCE REGULATING SECONDHAND SMOKE

Honorable Mayor and Council Members:

Summary

At the City Council meeting of August 14, 2007, staff received direction regarding several outstanding issues in the draft model ordinance regulating secondhand smoke. This staff report presents an ordinance for introduction which incorporates the direction received from the Council.

Background

On June 12, 2007 and August 14, 2007, the Council gave staff direction regarding the choices presented in the draft model ordinance prepared by the Public Health Institute's Technical Assistance Legal Center (TALC). At the June 12, 2007 meeting, there was at least majority support for the following provisions of the draft model ordinance:

1. Prohibiting smoking in all indoor workplaces regardless of whether the workplace was a sole proprietorship or staffed by volunteers, but an exception would be made for smoke shops which are sole proprietorships;
2. Prohibiting smoking in all outdoor workplaces, such as construction sites;
3. Declaring exposure to secondhand smoke a public nuisance;
4. Prohibiting smoking in outdoor public places, such as parks, stadiums, sports fields, recreation trails and shopping malls;
5. Prohibiting smoking in service lines;
6. Prohibiting smoking on City streets and sidewalks, but only when used for certain special events, such as parades and fairs;
7. Imposing a reasonable distance requirement from any place in which smoking is prohibited;
8. Regarding multi-unit housing,

- a. Continuing the ban on smoking in indoor and outdoor common areas of all multi-unit residences;
 - b. Prohibiting smoking in individual apartment units, regardless of the number of units in the complex;
 - c. Phasing-in adoption of this portion of the ordinance for some period of time to be determined;
 - d. Allowing smoking in designated outdoor areas of multi-unit housing buildings, within a reasonable distance of entryways.
9. Regarding enforcement and education,
- a. Providing direction that enforcement of the ordinance should be complaint-driven;
 - b. Emphasizing obtaining voluntary compliance with the ordinance;
 - c. Initiating enforcement of the ordinance for a first offense with a letter or personal contact, advising the offender of the ordinance, and referring the person to smoking cessation services if desired;
 - d. Referring the violator to mediation if violations persist;
 - e. Educating citizens regarding private legal remedies available to them under the ordinance;
 - f. Retaining the power to issue administrative citations, infraction citations, or other civil or criminal remedies.
 - g. Omitting provisions in the ordinance which would allow residents to sue on behalf of the public and collect attorney's fees against the City.

At the August 14 meeting, the Council provided additional direction in the following areas:

1. Defining more specifically the smoking ban on City streets and sidewalks when used for special events, such as parades and fairs;
2. Determining the extent of the "reasonable distance" requirement;
3. Regarding multi-unit housing,
 - a. Prohibiting smoking in individual condominiums and/or townhomes;
 - b. Determining the length of the phase-in period;
 - c. Determining whether landlords should be required to insert No Smoking provisions in their leases, and the related issue of limiting the liability of the landlord to other tenants.

Staff has now drafted an ordinance which incorporates these provisions. However, as discussed below, additional clarification may be required in several areas.

Discussion

For clarity, the original draft model ordinance is included as Attachment A. Staff's draft ordinance, which includes the Council's direction, is Attachment B. The remainder of this discussion explains the basis for staff's draft; references to section numbers relate to Exhibit B, staff's draft ordinance.

In Section I of the ordinance entitled "Findings", staff added recent references to sources which confirm the dangers of even brief exposure to secondhand smoke. In addition, there are findings relating to outdoor exposure to secondhand smoke, as well as the ineffectiveness of air cleaning systems to eliminate secondhand smoke exposure.

In Section II of the ordinance, which contains the operative provisions, the following changes have been made.

In Section 1, "Definitions", a "Common Interest Development" was defined to address the applicability of the ordinance to condominiums and townhomes. The definition of a "Multi-Unit Residence" and "Multi-Unit Residence Common Area" was then tied to that definition. Distinctions between the two types of multi-unit residences were then dealt with in the body of the ordinance.

In the definition of "Place of Employment", the reference to vehicles was removed. In the definition of "Public Place", the reference to streets and sidewalks was removed, and dealt with in the other substantive provisions of the ordinance.

The definition of "Reasonable Distance" was modified to include the alternative discussed at the August 14, 2007 meeting. At that time, the Council gave direction to allow the twenty (20) foot reasonable distance to be measured alternatively from any entrance or exit used by the public. This would allow business owners and landlords additional latitude in designating smoking areas which might be difficult to locate because of the physical constraints of the site. However, based on the provision of Section 6, discussed below, this section may need additional clarification.

Staff also added a definition of "Significant Tobacco Retailer", which was supplied by TALC, so that such retailers could be exempted from the smoking ban, as directed by the Council.

Section 3 of the ordinance, entitled "Smoking Prohibitions", contains several changes. This section provides that smoking is prohibited in individual units of multi-unit residences, if such units share at least one common floor or ceiling with another such unit. The parallel provision, which allows smoking in individual units of multi-unit residences which do not share any common floors or ceilings with other such unit, is contained in subsection (b)(5). Staff notes that one consequence of this distinction is to allow smoking in duplexes or other side-by-side living units.

The other change in Section 3 is to indicate that up to ten percent (10%) of hotel and motel guest rooms may be designated as smoking rooms. Currently, the percentage in Belmont of smoking rooms is seven percent (7%).

Section 4 clarifies that there is a fourteen (14) month phase-in period for nonsmoking units in multi-unit residences.

Section 5 retains the provisions regarding required lease terms, which make tenants third party beneficiaries of the nonsmoking clause in rental agreements. While no specific form of rental agreement is required, staff notes that the California Association of Realtors does have an approved form on their website.

Section 6, entitled "Reasonable Smoking Distance Required – 20 feet", may need some additional clarification. At the August 14 meeting, there was discussion regarding the applicability of the twenty (20) foot buffer zone to the outdoor eating spaces of restaurants and cafes. Some of the Councilmembers felt that the 20 foot reasonable distance requirement should not apply to restaurants and cafes, because it would have the practical effect of prohibiting smoking anywhere on some downtown streets and sidewalks. The Council discussed whether to simply treat outdoor eating areas as outdoor workplaces. However, if there is no reasonable distance requirement applicable to outdoor eating areas, whether deemed to be outdoor workplaces or not, then presumably a smoker could stand right next to an outdoor table and expose the patrons to unwanted secondhand smoke, without being in violation of the ordinance. On the other hand, the Council may have felt that a 20 foot radius around the outdoor seating area might be too large. As a compromise, the Council could consider imposing the 20 foot reasonable distance requirement from the entry way to the building. This would make the radius somewhat smaller than 20 feet from the borders of the outdoor seating area. If the Council is interested in this alternative, section 6(b) would be eliminated and section 6(a) would be retained. However, staff notes that section 6 explicitly allows smoking within the Reasonable Distance radius if the person is actively passing to another destination. In other words, someone simply walking past the outdoor seating area for a café, on his way to another store, would not be violation. The Council may wish to consider whether these provisions address the Council's earlier concerns about allowing smoking near outdoor eating areas.

In Section 9, "Penalties and Enforcement", the Council may modify the various fine amounts.

Staff has removed other sections of the draft model ordinance which were not applicable based on the Council direction given at the last two meetings.

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 an ordinance regulating the effects of secondhand smoke would depend primarily on the level of staff involvement in outreach and educational efforts, as well as enforcement alternatives. Based on direction at the last meeting, staff understands that enforcement will be complaint-driven, and staff will make initial efforts to facilitate private resolution of those complaints. This should reduce any fiscal impact from the ordinance.

Public Contact

As noted in earlier staff reports, this issue has been covered by news outlets on a local, state, national, and international level. In addition, staff placed a public notice hearing ad and a separate display ad in local newspapers regarding this meeting. The display ad summarized the main provisions of the proposed ordinance.

Recommendation

Staff recommends that the Council discuss the draft ordinance prepared by staff, provide additional direction if necessary, and introduce the ordinance.

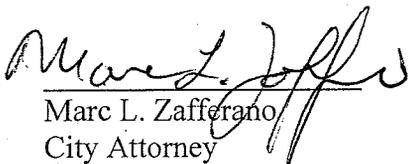
Alternatives

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. Belmont Draft Ordinance

Respectfully submitted,


Marc L. Zafferano
City Attorney

Attachment A

Draft Model Ordinance
Prepared by TALC

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

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. Env'tl. Prot. Agency, Office of Env'tl 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

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

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

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 [except in places listed in subsection (b) below]:

- (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

Belmont Draft 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

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. Env'tl. Prot. Agency, Office of Env'tl 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
- only 5 minutes of exposure to secondhand smoke causes the main artery carrying blood from the heart to the body, the aorta, to stiffen as much as if the person had actually smoked a cigarette, thereby causing the heart to work harder to pump blood;¹³ and

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 C. Stefanadis et al., *Unfavorable Effects of Passive Smoking on Aortic Function in Men*, ANNALS OF INTERNAL MEDICINE 128(6), 426-34 (Mar. 15, 1998).

- 30 minutes of exposure to secondhand smoke reduces the arterial function of a nonsmoker's circulatory system to that of an active smoker's, increasing the nonsmoker's risk of heart disease;¹⁴ and
- Exposure to outdoor secondhand smoke may present a hazard under certain conditions of wind and smoker proximity.¹⁵

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;¹⁶ and

WHEREAS, conventional air cleaning systems can remove large particles, but not the smaller particles or the gases found in secondhand smoke; and¹⁷

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;¹⁸ and

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;¹⁹ and
- children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;²⁰ and

¹⁴ Terry F. Pechacek & Stephen Babb, *How Acute and Reversible are the Cardiovascular Risks of Secondhand Smoke?*, BRITISH MEDICAL JOURNAL (April 24, 2004), available at <http://www.bmj.com/cgi/content/full/328/7446/980#REF21>. Ryo Otsuka, MD et al., *Acute Effects of Passive Smoking on the Coronary Circulation in Healthy Young Adults*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 284 (4), 436-441 (July 25, 2001), available at http://jama.ama-assn.org/cgi/content/abstract/286/4/436?ijkey=bb98316b9d977d6204b0330f4ecc2f8cae6ac6e&keytype2=tf_ipsecsha

¹⁵ Neil E. Klepeis, Wayne R. Ott, and Paul Switzer, *Real-Time Measurement of Outdoor Tobacco Smoke Particles*, AIR & WASTE MANAGEMENT ASSOCIATION, VOLUME 57 (May 1, 2007)

¹⁶ Cal. Lab. Code § 6404.5 (West 2003).

¹⁷ U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006. Available at http://www.cdc.gov/tobacco/sgr/sgr_2006/index.htm

¹⁸ Cal. Health & Safety Code § 104495 (West 2003) and Cal. Gov't Code § 7596 (West 2004).

¹⁹ 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).

²⁰ 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).

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;²¹ 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;²² and
- cigarette butts, made of plastic cellulose acetate, take approximately 15 years to decompose;²³ and

WHEREAS, creating smokefree areas helps protect the 86% of Californians who are non-smokers;²⁴ 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;²⁵ and
- 69% of apartment renters approve of apartment complexes offering non-smoking sections;²⁶ and
- 57% of apartment owners and managers favor a law mandating non-smoking units in every building;²⁷ and
- 46% of apartment renters have experienced secondhand smoke drifting into their

²¹ 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).

²² 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).

²³ 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).

²⁴ 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).

²⁵ 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).

²⁶ 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).

²⁷ 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).

units;²⁸ 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;²⁹ and

WHEREAS, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the preeminent U.S. standard-setting body on ventilations issues, has concluded that ventilation systems cannot remove secondhand smoke from indoor environments;³⁰

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;³¹ 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;³² and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance;³³ and

WHEREAS, there is no Constitutional right to smoke;³⁴ and

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

²⁸ 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).

²⁹ Cal. Legislative Counsel Op., 21547, *Secondhand Smoke in Multi-Unit Housing (Apartments & Condos) Smoking Bans: Residential Rental Property*, (September 23, 1999).

³⁰ American Society of Heating, Refrigerating and Air-Conditioning Engineers. *Environmental Tobacco Smoke: Position Document*. Atlanta, Georgia: American Society of Heating, Refrigerating and Air-Conditioning Engineers, 2005.

³¹ 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).

³² Cal. Civil Code § 3479 (Deerings 2005).

³³ *In Re Jones*, 56 Cal.App.2d 658, 663 (1943). See also, Cal. Const., art. XI, § 7 and Cal. Gov. Code § 38771 (Deerings 2005).

³⁴ 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).

SECTION II. Chapter 20.5 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 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.

(b) A "Common Interest Development" means a development as defined in California Civil Code Section 1351(c), which includes condominium projects (including projects commonly known as townhomes or townhouses), community apartment projects, a planned development, or a stock cooperative.

(c) "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.

(d) "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.

(e) "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.

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

(g) "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.

(h) "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.

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

(j) "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, 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.

(k) "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, plazas, parking lots, malls, stadiums, parks, playgrounds, farmers markets, fairs, and taxis.

(l) "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, or alternatively from any entrance or exit used by the public.

(m) "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.

(n) "Significant Tobacco Retailer" means any tobacco retailer that derives seventy-five percent (75%) or more of gross sales receipts from the sale or exchange of Tobacco Products and Tobacco paraphernalia.

(o) "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).

(p) "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.

(q) "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 such as balconies, decks, 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).

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, except in places listed in subsection (b) below:

(1) Public Places;

(2) Places of Employment; and

(3) Multi-Unit Residence Common Areas; except that a Landlord or Common Interest Development 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 twenty-five percent (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 chapter or other provisions of this Code, state law, or federal law.

(4) Individual Units of Multi-Unit Residences, if such Units share at least one common floor or ceiling with another such Unit.

(5) Service Areas;

(b) Unless otherwise prohibited by law, Smoking is not restricted by this 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) Detached 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;

(3) Up to ten percent (10%) of hotel and motel guest rooms, if the hotel or motel permanently designates particular guest rooms as nonsmoking rooms such that ninety percent (90%) 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;

(4) Significant tobacco retailers, if at all times minors are prohibited from entering the store;

(5) Individual Units of Multi-Unit Residences which do not share any common floors or ceilings with any other such Unit;

(6) Any City-designated outdoor Smoking areas;

(7) Automobiles;

(8) On streets and sidewalks, unless being used as outdoor workplaces or at City-sponsored events such as parades and fairs.

(c) Nothing in this 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.

Sec. 4. PHASE-IN PERIOD FOR NON-SMOKING UNITS IN MULTI-UNIT RESIDENCES

A Unit shall not be subject to the Smoking restrictions in Section 3(a)(4) until fourteen (14) months after the effective date of this chapter, or until the legal occupants on the effective date of this chapter vacate the Unit, whichever occurs first.

Sec. 5. REQUIRED LEASE TERMS

(a) Every lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence in which smoking is prohibited, entered into or renewed after the effective date of this chapter, shall include:

(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 fourteen (14) months after the effective date of this 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.

(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).

(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).

(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. 6. REASONABLE SMOKING DISTANCE REQUIRED—20 FEET

(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.

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

Sec. 7. PROHIBITIONS AND DUTIES GENERALLY

(a) No Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development 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 Common Interest Development and in which Smoking is prohibited by law and

the Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development is not otherwise compelled to act under state or federal law.

(b) No Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development 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 Common Interest Development and in which Smoking is prohibited, including, without limitation, inside the perimeter of any Reasonable Distance required by this chapter.

(c) Notwithstanding any other provision of this chapter, any owner, Employer, Business, Nonprofit Entity, Landlord, Common Interest Development or other Person who controls any property, establishment, Place of Employment, Public Place, or Multi-Unit Residence regulated by this chapter may declare any part of such area in which Smoking would otherwise be permitted to be a nonsmoking area.

(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 Common Interest Development 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 chapter.

Sec. 8. MEDICAL MARIJUANA

Notwithstanding any other provision of this 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 chapter. Notwithstanding the forgoing, such use of marijuana may be prohibited by other provisions of this Code, state law, or federal law.

Sec. 9. PENALTIES AND ENFORCEMENT

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

(b) Each violation of this 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 chapter constitute misdemeanors punishable as provided in Section 1-8 of the Belmont Municipal Code or may, in the discretion of the City Attorney, be prosecuted as infractions if the

interests of justice so require. Any peace officer or code enforcement official may enforce this chapter.

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

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

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

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

(g) In addition to other remedies provided by this chapter or by other law, any violation of this 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.

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.