Council Agenda #5-A
Meeting of September 25, 2007

Staff Report

REINTRODUCTION OF ORDINANCE REGULATING SECONDHAND SMOKE

Honorable Mayor and Council Members:

Summary

At the City Council meeting of September 11, 2007, the Council introduced an ordinance regulating secondhand smoke. After the meeting, and upon further review, several wording changes are necessary to ensure internal consistency. Staff recommends that the Council review the modifications and reintroduce the ordinance as now presented.

Background

At the City Council meetings of 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). That direction was integrated into TALC's draft model ordinance to produce the new Belmont ordinance, which was presented for introduction at the meeting of September 11, 2007. At that meeting, the Council introduced the ordinance.

After the meeting, and upon further review, staff believes that several modifications to the wording would ensure internal consistency and additional clarity, as discussed below.

Discussion

The ordinance introduced by the City Council on September 11, 2007, is included as Attachment A. Staff's recommended changes are shown in redline version in Attachment B, the ordinance which is now proposed for reintroduction. The changes relate to defining a reasonable distance from areas in which smoking is prohibited, and implementation of the fourteen month phase in period for covered multi-unit buildings. Staff believes that the changes are consistent with the Council's intent from prior meetings.

The "reasonable distance" language had been defined in section 1(l) of the ordinance, and was used in sections 3(a)(3)(i) and (ii), as well as section 6(a) and (b). As revised, the "reasonable distance" definition was deleted, and instead replaced in the body of the ordinance with the actual distances and alternatives as directed by Council.

The other area with wording changes relates to the implementation of the fourteen month phase-in period. This is addressed in section 4 and in section 5(a)(1). As modified, the language

clarifies that if occupants (owners or tenants) of covered units vacate the unit during the phase-in period, the unit becomes nonsmoking upon reoccupancy, even if that date is prior to the expiration of the fourteen month phase-in period. Current owner-occupants, or current tenants who renew their leases, may continue to smoke in those units until the fourteen month period expires. As before, landlords are required to inform current tenants whose leases are renewed during the phase-in period that they may not smoke after that period expires.

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

There is no new fiscal impact to the changes proposed.

Public Contact

As noted in earlier staff reports, this issue has been covered by news outlets on a local, state, national, and international level. Prior to the September 11, 2007 meeting, staff placed a public notice hearing ad and a separate display ad in local newspapers.

Recommendation

Staff recommends that the Council reintroduce the ordinance as modified.

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. Belmont ordinance introduced on September 11, 2007
B. Belmont ordinance for reintroduction with suggested staff modifications.

Respectfully submitted,

Marc L. Zafferano
City Attorney

Attachment A

Belmont Ordinance Introduced
On September 11, 2007

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

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

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

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

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

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

- secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome (SIDS) in infants of mothers who smoke;[4] and

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

- the medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke are nearly $6 billion per year in the United

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

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

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

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

[5] U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, at 2 (2004), *available at* http://www.cdc.gov/nccdphp/aag/aag_osh.htm (last accessed October 18, 2006).

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

States;[7] and

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

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

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

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

- the California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;[11] and

- the California Environmental Protection Agency has included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;[12] and

- 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

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

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

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

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

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

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

[13] 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; and[17]

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

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[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=bb98316bf9d977d6204b0330f4ecc2f8cae6ac6e&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

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[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.

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[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.

Attachment B

Belmont Ordinance For Reintroduction With Suggested Staff Modifications

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

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

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

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

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

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

- secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome (SIDS) in infants of mothers who smoke;[4] and

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

- the medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke are nearly $6 billion per year in the United

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

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

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

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

[5] U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002*, at 2 (2004), *available at* http://www.cdc.gov/nccdphp/aag/aag_osh.htm (last accessed October 18, 2006).

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

States;[7] and

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

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

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

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

- the California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;[11] and

- the California Environmental Protection Agency has included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;[12] and

- 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

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

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

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

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

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

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

[13] 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; and[17]

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

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[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=bb98316bf9d977d6204b0330f4ecc2f8cae6ac6e&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

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[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.

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[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) "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.

(m) "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.

(n) "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).

(o) "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.

(p) "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).

Deleted: (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.

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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 at least 20 feet from any window or door of an indoor area of a Multi-Unit Residence where Smoking is prohibited;

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(ii) must not include, and must be at least 20 feet from, outdoor areas primarily used by children including, but not limited to, areas improved or designated for play or swimming;

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(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) For legal occupants on the effective date of this chapter, lease or rental agreement renewals for the occupancy of a Unit in a Multi-Unit Residence in which smoking is prohibited shall include:

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(1) a clause stating that Smoking is prohibited in the Unit if the Unit has been designated as a non-smoking Unit;

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(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.

(4) a clause stating that terms 1 – 3 become effective fourteen (14) months after the effective date of this chapter, unless the Landlord specifies an earlier effective date;

(b) For new tenants not in occupancy on the effective date of this chapter, every lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence in which smoking is prohibited shall include:

(1) a clause stating that Smoking is prohibited in the Unit if the Unit has been designated as a non-smoking Unit;

(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.

(c) The lease or agreement terms required by subsection (a) or (b) 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) or (b).

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(d) 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).

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(e) 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.

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Sec. 6. REASONABLE SMOKING DISTANCE REQUIRED—20 FEET

(a) Smoking in outdoor areas shall be prohibited within 20 feet of an entrance or exit

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used by the public, or operable window of 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.

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(b)Smoking in outdoor areas shall be prohibited within 20 feet from any outdoor area in which smoking is prohibited by this chapter except while actively passing on the way to another destination.

Deleted: a Reasonable Distance

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.