



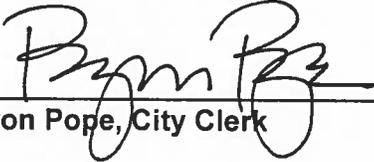
**Beverly Hills City Council / Health and Safety Commission Liaison  
Committee will conduct a Special Meeting, at the following time and place,  
and will address the agenda listed below:**

**CITY HALL  
455 North Rexford Drive  
4<sup>th</sup> Floor Conference Room A  
Beverly Hills, CA 90210**

**Monday July 17, 2017  
3:00 PM**

**AGENDA**

- 1) Public Comment  
Members of the public will be given the opportunity to directly address the Committee on any item listed on the agenda.
  
- 2) Proposed Smoke-Free Multi-Unit Housing Ordinance
  
- 3) Adjournment

  
\_\_\_\_\_  
Byron Pope, City Clerk

**Posted: July 14, 2017**

***A DETAILED LIAISON AGENDA PACKET IS AVAILABLE FOR REVIEW IN THE  
LIBRARY AND CITY CLERK'S OFFICE.***



In accordance with the Americans with Disabilities Act, Conference Room A is wheelchair accessible. If you need special assistance to attend this meeting, please call the City Manager's Office at (310) 285-1014 or TTY (310) 285-6881. Please notify the City Manager's Office at least twenty-four (24) hours prior to the meeting if you require captioning service so that reasonable arrangements can be made.



**CITY OF BEVERLY HILLS**  
**POLICY AND MANAGEMENT**

**MEMORANDUM**

**TO:** City Council Health and Safety Commission Liaisons  
**FROM:** Logan Phillippo, Senior Management Analyst *LP*  
**DATE:** July 17, 2017  
**SUBJECT:** Proposed Smoke-Free Multi-Unit Housing Ordinance  
**ATTACHMENTS:** 1. Proposed Ordinance  
2. Proposed Smoking Enforcement Process Workflow

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**INTRODUCTION**

In August 2016, City Council directed staff to pursue a policy that would expand smoking regulations in multi-unit housing and tasked the Health and Safety Commission to further review the issue and to report back to Council with findings or recommendations. Since then, the Commission has deliberated on the policy at eight public Commission meetings and has solicited public input on the policy at two special community outreach meetings that were advertised in local newspapers and in postcard mailers. Additionally, staff conducted a survey, which consisted of Beverly Hills multi-unit housing renters and landlords that demonstrated community support for increased smoking regulations in multi-unit housing.

At the June 26, 2017, Health and Safety Commission Regular Meeting, the Commission voted (3-1) to recommend several provisions of a proposed ordinance that would amend Chapter 4 of Title 5 of the Beverly Hills Municipal Code and regulate smoking in multi-unit residences ("Smoke-Free Multi-Unit Housing Ordinance" or "Proposed Ordinance"). The Proposed Ordinance is included in this report as Attachment 1.

Staff is providing the City Council Health and Safety Commission Liaisons with an update of the Proposed Ordinance.

**DISCUSSION**

At the Monday, June 26, 2017, Health and Safety Commission Regular Meeting, the Commission voted (3-1) to recommend City Council adoption of the Proposed Ordinance that would prohibit smoking at apartments and condominiums in all indoor and outdoor common areas (laundry rooms, hallways, courtyards, etc.) as well as private enclosed spaces (personal dwellings) and private outdoor spaces (balconies, patios, decks, etc.). The recommendation includes a one-year phase-in period for units with existing leases and a two-year phase-in period for condominium units. The Chair was absent (as-scheduled) from the meeting. One commissioner did not vote in favor of the Proposed Ordinance, expressing concerns over an addition to the Municipal Code 5-4-19 Section A Subsection 3. This section of the Municipal Code addition would allow a leased condominium, that was designated as "non-smoking" after January 1, 2018 under other proposed regulations, to then be again designated as "smoking" if

the owner of the condominium were to occupy the unit before a January 1, 2020 effective date for condominium units\*. The same commissioner noted support for all other key provisions.

The Commission also voted to include one modification to the Proposed Ordinance, which would add clarification to the implementation timeframe, unrelated to the particular section discussed above.

\*Implementation dates are discussed in Item (3) on the next page.

Key provisions include those discussed in items (1) through (5) below.

### (1) Prohibited Areas

Under proposed regulations, smoking would be prohibited in the following areas.

- Residences containing two or more units on the same lot
  - This includes condominium and apartment complexes.
  - This includes hotel/condominium projects, but only areas designated exclusively for condominium users. Regulations would exclude areas designated for hotel uses.
  - Single-family homes with accessory dwelling units and hotels are excluded from this definition.
- All common indoor and outdoor areas, which includes, but is not limited to, hallways, pathways, lobbies, courtyards, elevators, stairs, community rooms, laundry facilities, etc.
- All private enclosed spaces such as personal dwelling spaces
- All private outdoor spaces such as balconies, porches, decks, or patios
- Both renter-occupied units and owner-occupied units

### (2) Landlord and Home Owners Association Responsibilities

The following proposed requirements would also apply to landlords and home owners associations.

- Removal of the presence of ash trays, ash cans or similar receptacles used primarily for smoking waste
- Posting of "no smoking" signage
- Distribution of written notice to tenants regarding smoking restrictions
- Inclusion of language prohibiting smoking in all new leases after January 1, 2018.
  - Effective one year after, all leases, regardless of the start date, would fall under these regulations.

### (3) Proposed Implementation Timeframe

Three dates would guide the implementation of the smoking restrictions.

January 1, 2018: Smoking would be prohibited in all common areas of multi-family residences and condominium complexes. All new leases or leases that were extended/renewed for units in multi-family residences and condominiums would be designated as non-smoking.

January 1, 2019: All multi-family residential units would additionally be designated as non-smoking regardless of the start date of a lease.

January 1, 2020: All condominium units would additionally be designated as non-smoking.

(4) Hotel/Condominium Projects

Certain developments in the City contain a mixture of both condominium units and hotels. Representatives of local hotels have expressed concerns regarding expanded regulations in hotels, noting that the inability to smoke at a hotel may influence international visitors to stay elsewhere. The Proposed Ordinance would not modify the municipal code as it relates to hotel areas. While smoking would be prohibited in condominium units and in common areas reserved for the exclusive use of condominium owners, the regulations would not apply to the buildings, portions of the buildings, or any other areas that are designated as part of the hotel including, but not limited to, hotel rooms and common areas that are used by hotel patrons and guests.

(5) Proposed Enforcement Method

Community Development Department, Code Enforcement Program ("Code Enforcement") currently responds to the majority of smoking complaints or code violations. Smoking-related complaints are typically received by a telephone call, written correspondence, or through the City's Ask Bev customer relationship management system. Most complaints are received after an alleged code violation has already taken place, limiting the ability for Code Enforcement staff to witness the violation and subsequently issue any citations.

Existing code enforcement protocols can address violations that occur "after the fact." An educational and voluntary compliance system can be used to educate alleged code violators regarding smoking restrictions. When a complaint is received, Code Enforcement staff collects relevant information from the complaining party. If the alleged code violating party is identified, the City will send a notice with information regarding the municipal code. In many cases, the notice may make the alleged violating party aware of the violation and remedy the situation.

If a complaint continues, Code Enforcement staff would follow up with a phone call or request a meeting to continue education of the City's smoking restrictions. If the situation continues to persist, staff will continue to collect information and identify in patterns in the alleged violations. The City may request that the alleged violating party voluntarily meet with the City Prosecutor for further education regarding the municipal code restrictions. In cases where the alleged smoking violation continues on a routine and regular basis by a same alleged violating party, the City could attempt to schedule site inspections to verify the violation. Only if the violation is observed, and after multiple attempts to achieve voluntary compliance through education of the municipal code and City restrictions, the City may attempt to remedy the situation through the issuance of a misdemeanor citation. According to Code Enforcement and Police Department staff, it would be difficult to make an observation of a violation, as a cigarette could be extinguished before a door is answered and there would also be no assurance that a person would open a door when the City responded to a complaint, thus limiting the ability for the City to issue a citation.

A proposed smoking enforcement process workflow is provided in Attachment 2. Code Enforcement, the Police Department and the City Prosecutor have coordinated on the enforcement issues. The burden of enforcement, including payment for related investigation costs and, if sufficiently escalated, any prosecution costs, would be left primarily on the City.

Proposed Outreach Timeline

If the Proposed Ordinance were to be adopted in August or September, an approximate four-month period would allow time for outreach to inform residents about the upcoming regulations as well as to allow landlords and homeowners associations time to notify tenants/residents of upcoming regulations on January 1, 2018 and incorporate no-smoking language into new leases. During this time, staff would develop and distribute information and notices through the City's website, email, social media, and local newspapers, host community outreach meetings with homeowners associations, landlords, and tenants, and speak at various engagements as identified/requested.

**RECOMMENDATION**

Staff is providing an informational update to the City Council Health and Safety Commission Liaisons and will be available to answer any questions.

Unless otherwise directed by the Liaisons, staff intends to present the Proposed Ordinance to City Council at an August Study Session.

# **Attachment 1**

ORDINANCE NO. 17-O-\_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING CHAPTER 4 OF TITLE 5 OF THE BEVERLY  
HILLS MUNICIPAL CODE TO REGULATE SMOKING IN  
MULTI-UNIT RESIDENCES AND COMMON INTEREST  
DEVELOPMENTS**

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the fact that 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the leading cause of preventable death.<sup>1</sup> Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths.<sup>2</sup> The World Health Organization estimates that tobacco accounts for the greatest cause of death worldwide accounting for nearly 6 million deaths per year.<sup>3</sup>

WHEREAS, secondhand smoke has repeatedly been identified as a health hazard as evidenced by the U.S. Surgeon General concluding that there is no risk-free level of exposure to secondhand smoke;<sup>4</sup> the California Air Resources Board placing 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;<sup>5</sup> <sup>6</sup> and the California Environmental Protection Agency including secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm.<sup>7</sup>

WHEREAS, since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke. Secondhand smoke is responsible for an

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<sup>1</sup> U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary*. 2014. Available at: [www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf](http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf).

<sup>2</sup> U.S. Surgeon General. Factsheet: *The Health Consequences of Smoking — 50 Years of Progress: A Report of the Surgeon General*. 2014. Available at: [www.surgeongeneral.gov/library/reports/50-years-of-progress/factsheet.html](http://www.surgeongeneral.gov/library/reports/50-years-of-progress/factsheet.html).

<sup>3</sup> World Health Organization. *Tobacco Fact Sheet No. 339*. June 2016. Available at: <http://www.who.int/mediacentre/factsheets/fs339/en/>

<sup>4</sup> U.S. Department of Health and Human Services, 2006 Surgeon General's Report - The Health Consequences of Involuntary Exposure to Tobacco Smoke. 2006. Available at: [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm).

<sup>5</sup> California Environmental Protection Agency Air Resources Board. Environmental Tobacco Smoke: A Toxic Air Contaminant. California Environmental Protection Agency Air Resources Fact Sheet. 2006. Available at: [www.arb.ca.gov/toxics/ets/factsheetets.pdf](http://www.arb.ca.gov/toxics/ets/factsheetets.pdf).

<sup>6</sup> California Environmental Protection Agency Air Resources Board. California Identifies Secondhand Smoke as a "Toxic Air Contaminant." News Release. 2006. Available at: [www.arb.ca.gov/newsrel/nr012606.htm](http://www.arb.ca.gov/newsrel/nr012606.htm).

<sup>7</sup> State of California Office of Environmental Health Hazard Assessment. The Proposition 65 List. January 2017. Available at: <https://oehha.ca.gov/proposition-65/proposition-65-list>.

estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States.<sup>8</sup> Secondhand smoke kills more than 400 infants every year.<sup>9</sup> Secondhand smoke exposure adversely affects fetal growth with an increased risk of low birth weight and of Sudden Infant Death Syndrome in infants of mothers who smoke.<sup>10</sup> Just 30 minutes of exposure to secondhand smoke is sufficient to damage blood vessels in a healthy nonsmoker.<sup>11</sup>

WHEREAS, secondhand aerosol emitted from electronic smoking devices has been identified as a health hazard<sup>12 13 14 15</sup> as evidence by research finding at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, and toluene to be present in electronic smoking devices.<sup>16 17 18</sup>

WHEREAS, it is the intent of the City Council of the City of Beverly Hills to provide for the public's health, safety, and welfare by discouraging the inherently dangerous activity of smoking around non-consenting individuals, protecting children from exposure to smoking where they live and play, and protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

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<sup>8</sup> Centers for Disease Control and Prevention. Secondhand Smoke (SHS) Facts. Available at: [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/)

<sup>9</sup> Centers for Disease Control and Prevention (CDC). Secondhand Smoke: An Unequal Danger. CDC Vital Signs. 2015. Available at: [www.cdc.gov/vitalsigns/pdf/2015-02-vitalsigns.pdf](http://www.cdc.gov/vitalsigns/pdf/2015-02-vitalsigns.pdf).

<sup>10</sup> J. Wagner et al., *Environmental Tobacco Smoke Leakage from Smoking Rooms*, Journal of Occupational and Environmental Hygiene, 1:110-118 (2004).

<sup>11</sup> Christian Heiss, MD, Nicolas Amabile, MD., Andrew C. Lee, MD, et al. *Brief Secondhand Smoke Exposure Depresses Endothelial Progenitor Cells Activity and Endothelial Function: Sustained Vascular Injury and Blunted Nitric Acid Production*, J Am Coll Cardiol (2008).

<sup>12</sup> State of California Office of Environmental Health Hazard Assessment. The Proposition 65 List. January 2017. Available at: <https://oehha.ca.gov/proposition-65/proposition-65-list>.

<sup>13</sup> California Department of Public Health California Tobacco Control Program. *State Health Officer's Report on E-Cigarettes: A Community Health Threat*. Sacramento, CA. Available at: <http://www.cdph.ca.gov/programs/tobacco/Pages/ElectronicSmokingDevices.aspx>

<sup>14</sup> Grana R, Benowitz N, Glantz S. *Background Paper on E-cigarettes (Electronic Nicotine Delivery Systems)*. Center for Tobacco Control Research and Education. 2013. Available at: <http://escholarship.org/uc/item/13p2b72n>.

<sup>16</sup> German Cancer Research Center. "Electronic Cigarettes – An Overview". Red Series Tobacco Prevention and Tobacco Control. Heidelberg. 2013. Available at: <https://www.dkfz.de/en/presse/download/RS-Vol19-E-Cigarettes-EN.pdf>

<sup>17</sup> Goniewicz ML, Knysak J, Gawron M, et al. *Levels of selected carcinogens and toxicants in vapour from electronic cigarettes*. Tob Control. 2013;1:1 8. doi:10.1136/tobaccocontrol-2012-050859.

<sup>18</sup> Schripp T, Markewitz D, Uhde E, Salthammer T. *Does e-cigarette consumption cause passive vaping?* Indoor Air. 2013; 23(1):25-31. doi:10.1111/j.1600-0668.2012.00792.x.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Section 5-4-1 (DEFINITIONS) of Chapter 4 (SMOKING REGULATIONS) of Title 5 (PUBLIC HEALTH, WELFARE, AND SANITATION) of the Beverly Hills Municipal Code is hereby amended to add the following definitions, in alphabetical order, with all other provisions of Section 5-4-1 remaining in effect without amendment:

“COMMON AREA: Every interior or exterior area of a multi-unit residence or common interest development that residents of the multi-unit residence or owners of the common interest development are entitled to enter or use, including, for example, halls, paths, lobbies, courtyards, elevators, stairs, community rooms, recreation areas or rooms, playgrounds, gym facilities, swimming pools, jacuzzis, parking garages, parking lots, restrooms, laundry rooms, cooking areas, and eating areas. Common area shall also mean “common area” as defined in California Civil Code section 4095, or any successor legislation.”

“COMMON INTEREST DEVELOPMENT: Shall mean (1) a community apartment project as defined in California Civil Code section 4105, or any successor legislation, (2) a condominium project as defined in California Civil Code section 4125, or any successor legislation, (3) a planned development as defined in California Civil Code section 4175, or any successor legislation, and (4) a stock cooperative as defined in California Civil Code section 4080, or any successor legislation.

“EXISTING LEASE: Any lease or rental agreement that allows a person to occupy a unit that was entered into before January 1, 2018.”

“HOME OWNERS ASSOCIATION or HOA: An organization or entity established for the purpose of managing and/or maintaining a common interest development. A homeowners association shall also mean “association” as defined in California Civil Code section 4095, or any successor legislation.”

“LANDLORD: Any person who owns property let for residential use.”

“MIXED HOTEL/COMMON INTEREST DEVELOPMENT PROJECT: A project that is comprised of both a hotel and a common interest development. The project can be in any configuration such as, but not limited to, the hotel and common interest development being located in separate buildings, or the hotel and common interest development being located on separate floors of the same building.”

“MULTI-UNIT RESIDENCE: A residential property containing two or more units on the same lot, where one or more of the units is offered for rent. The following types of housing are specifically excluded from this definition:

1. A single-family home;
2. A detached or attached accessory dwelling unit on a single-family zoned property;
3. A hotel;

4. A common interest development; and
5. A mixed hotel/common interest development project.

“NEW LEASE: Any lease or rental agreement that allows a person to occupy a unit that was entered into, amended, or renewed on or after January 1, 2018. This includes any month-to-month lease that is renewed after January 1, 2018.”

“OWNER: The owner of a “separate interest” as that term is defined in California Civil Code section 4185, or any successor legislation.”

“UNIT: Any personal dwelling space in a multi-unit residence or common interest development. A unit shall include any associated exclusive-use area, such as, for example, a private balcony, porch, deck, or patio. A unit shall also have the same meaning as “separate interest” as that term is defined in California Civil Code section 4185, or any successor legislation.”

Section 2. Code Amendment. Section 5-4-18 (PENALTIES AND ENFORCEMENT) is hereby renumbered as Section 5-4-20 (PENALTIES AND ENFORCEMENT) and a new Section 5-4-18 (SMOKING REGULATIONS FOR MULTI-UNIT RESIDENCES) is added to Chapter 4 (SMOKING REGULATIONS) of Title 5 (PUBLIC HEALTH, WELFARE, AND SANITATION) of the Beverly Hills Municipal Code to read as follows:

“5-14-18: SMOKING REGULATIONS FOR MULTI-UNIT RESIDENCES:

Smoking in multi-unit residences shall be governed by the following rules:

- A. Beginning January 1, 2018, the following regulations apply:
  1. Smoking is prohibited in all common areas.
  2. Smoking is prohibited in all units governed by a new lease.
  3. A landlord shall not permit the presence of ash trays, ash cans, or other receptacles designed for, or primarily used for, the disposal of smoking waste within any common area.
  4. Every new lease shall include a provision substantially consistent with the following: “Beverly Hills Municipal Code section 5-4-18 prohibits smoking in all common areas in a multi-unit residence, and in all units governed by a lease that was entered into, renewed, or amended after January 1, 2018. It is a material breach of this lease for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to engage in smoking on the property, including in the unit and common areas (as those terms are defined in Beverly Hills Municipal Code section 5-4-1), or to violate any law regulating smoking while anywhere on the property.”

- B. On or before January 1, 2018, the following regulations apply:

1. The landlord shall post, or shall cause to be posted, clear and unambiguous “No Smoking” signs in sufficient numbers and locations in the multi-unit residence to make it obvious to a reasonable person that smoking is prohibited in all common areas. The signs shall have letters of no less than one inch in height or contain the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar). Such signs shall be maintained by the landlord. The absence of signs shall not be a defense to a violation of any provision of this chapter.

2. The landlord shall provide written notice to all tenants whose units are governed by existing leases stating that (1) smoking is prohibited in all common areas of the multi-unit residence beginning January 1, 2018, (2) any unit that is governed by a lease that was entered into on or after January 1, 2018 is designated as a non-smoking unit, and (3) any unit that is governed by a lease that was entered into before January 1, 2018 will be designated as a non-smoking unit when the lease is renewed or extended, or January 1, 2019, whichever is earlier, unless an earlier date is chosen by the landlord. The landlord does not need to comply with this provision if smoking is already prohibited in all common areas and units in the multi-unit residence.

C. Beginning January 1, 2019, smoking is prohibited in all units governed by an existing lease.

D. If the landlord has fully complied with Sections 5-4-18(A)(4) and B(1) and (2), the landlord shall not be criminally or civilly liable to any person for a person’s breach of any smoking provision while on the multi-unit residence.”

Section 3. Code Amendment. Section 5-4-19 (SMOKING REGULATIONS FOR COMMON INTEREST DEVELOPMENTS) is hereby added to Chapter 4 (SMOKING REGULATIONS) of Title 5 (PUBLIC HEALTH, WELFARE, AND SANITATION) of the Beverly Hills Municipal Code to read as follows:

“5-4-19: SMOKING REGULATIONS FOR COMMON INTEREST DEVELOPMENTS:

Smoking in common interest developments shall be governed by the following rules:

A. Beginning January 1, 2018, the following regulations apply:

1. Smoking is prohibited in all common areas.

2. The HOA, or any person having legal ownership over the common areas of a common interest development, shall not permit the presence of ash trays, ash cans, or other receptacles designed for, or primarily used for, the disposal of smoking waste within any common area.

3. If an owner enters into a new lease to lease a unit to a tenant, that unit shall be designated as a non-smoking unit until such time as the owner resumes the occupancy of the unit. Any new lease for the occupancy of a unit in a common interest development entered into, renewed, or amended on or after January 1, 2018, shall include a provision notifying the tenant that it is a material breach of the lease or other rental agreement to allow or engage in smoking in the common interest development. Such clause shall be

substantially consistent with the following: "It is a material breach of this agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to engage in smoking on the property, including in the unit and common areas (as those terms are defined in Beverly Hills Municipal Code section 5-4-1), or to violate any law regulating smoking while anywhere on the property."

B. On or before January 1, 2018, the following regulations apply:

1. The HOA, or any person having legal ownership over the common areas of the common interest, shall post clear and unambiguous "No Smoking" signs in sufficient numbers and locations in the common interest development to make it obvious to a reasonable person that smoking is prohibited throughout the common interest development. The signs shall have letters of no less than one inch in height or contain the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar). Such signs shall be maintained by the HOA or any person with legal control over the common areas of the common interest development. The absence of signs shall not be a defense to a violation of any provision of this chapter.

2. The HOA shall provide written notice to all owners of units clearly stating that (1) smoking will be prohibited in all common areas of the common interest development beginning January 1, 2018, and (2) that all units will become non-smoking beginning January 1, 2020. The HOA does not need to comply with this provision if smoking is already prohibited in all common areas and units in the common interest development.

C. Beginning January 1, 2020, smoking is prohibited in all units.

D. If the HOA Board has fully complied with Sections 5-4-19 (A)(2), and (B)(1) and (2), the HOA shall not be criminally or civilly liable to any person as a result of a owner or any other person violating the smoking regulations while on the common interest development's property. If an owner has fully complied with Section 5-4-19(A)(3), then the owner shall not be criminally or civilly liable to any person for a tenant or a tenant's guest violating the smoking regulations while on the common interest development's property.

E. The above-referenced regulations will apply to a mixed hotel/common interest development project except as follows:

1. The regulations will not apply to the buildings, portions of the buildings, or any other areas that are designated as part of the hotel including, but not limited to, hotel rooms, and common areas that are used by hotel patrons and guests.

2. The regulations will not prohibit the designation of a smoking area in the hotel portion of the project regardless of whether the designated smoking area can be used by both hotel patrons and owners.

3. The regulations will not prohibit smoking at hotel swimming pools consistent with Section 5-4-2."

Section 4. Code Amendment. Section 5-4-20 (PENALTIES AND ENFORCEMENT) of Chapter 4 (SMOKING REGULATIONS) of Title 5 (PUBLIC HEALTH,

WELFARE, AND SANITATION) of the Beverly Hills Municipal Code is hereby amended to add a new subsection E to read as follows:

“E. No provision of this Chapter shall authorize a criminal prosecution prohibited by Health and Safety Code sections 11362.71, *et seq.* or 11362.1, *et seq.* In the event of any conflict between the penalties enumerated under Title 1 of the Beverly Hills Municipal Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.”

Section 5. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant adverse effect on the environment because the Ordinance only expands upon existing smoking use restrictions. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

Section 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 7. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation, published and circulated in the city within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk’s certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this city.

Section 8. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:  
Effective:

\_\_\_\_\_  
Lili Bosse  
Mayor of the City of Beverly Hills

ATTEST:

\_\_\_\_\_  
BYRON POPE (SEAL)  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

\_\_\_\_\_  
MAHDI ALUZRI  
City Manager

# **Attachment 2**

# Smoking Enforcement Process Model

