

## ATTACHMENT 1

**SECTION 1. FINDINGS.** The Board of Supervisors of the County of San Mateo hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States,<sup>i</sup> accounting for about 443,000 deaths each year;<sup>ii</sup> and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;<sup>iii</sup> and
- Some of the most common types of cancers, including stomach, liver, uterine cervix, and kidney cancers, are related to tobacco use;<sup>iv</sup> and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;<sup>v</sup> and
- The California Air Resources Board placed 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>vi</sup> and
- The California Environmental Protection Agency 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;<sup>vii</sup> and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 73,000 deaths among nonsmokers each year in the United States;<sup>viii</sup> and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent;<sup>ix</sup> and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year;<sup>x</sup> and exacerbates childhood asthma;<sup>xi</sup> and

WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed;<sup>xii</sup> and

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

- The total annual economic burden of smoking in the United States is \$193 billion;<sup>xiii</sup> and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately \$96 billion;<sup>xiv</sup> and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10 billion per year in the United States in 2005;<sup>xv</sup> 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;<sup>xvi</sup> and
- California's Tobacco Control Program saved the state and its residents \$86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly;<sup>xvii</sup> and

WHEREAS, smoking is the primary cause of fire-related injuries and deaths in the home, as evidenced by the following:

- Cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States,<sup>xviii</sup> causing an estimated 142,900 smoking-related fires, 780 deaths, 1,600 injuries, and \$606 million in direct property damage in 2006;<sup>xix</sup> and
- One in four fatalities from home fires caused by smoking is NOT the smoker whose cigarette started the fire, and 25% of those deaths were of neighbors or friends of the smoker;<sup>xx</sup> and
- Smoking in a residence where long-term oxygen therapy takes place is very dangerous as oxygen is a fire accelerant, and 27% of fatalities due to smoking during long-term oxygen therapy occurred in multifamily dwellings;<sup>xxi</sup> and
- The United States Fire Administration recommends that people smoke outdoors;<sup>xxii</sup> and

WHEREAS, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

- Secondhand smoke can seep under doorways and through wall cracks;<sup>xxiii</sup> and
- Persons living in apartments near smokers can be exposed to elevated pollution levels for 24 hours a day, and at times, the particulate matter exposure can

exceed the U.S. Environmental Protection Agency's 24-Hour Health Based Standard;<sup>xxiv</sup> and

- The Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure;<sup>xxv</sup> and

WHEREAS, most Californians do not smoke and a majority favor limitations on smoking in multi-unit residences, as evidenced by the following:

- Nearly 87% of Californians and 91% of California women are nonsmokers;<sup>xxvi</sup> and
- 74% of Californians surveyed approve of apartment complexes requiring at least half of rental units be nonsmoking;<sup>xxvii</sup> and
- 69% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings and 78% support laws that create nonsmoking units;<sup>xxviii</sup> and
- 62% of California renters feel that there is a need for laws to limit smoking in apartments;<sup>xxix</sup> and
- In 2013, Breathe California, Youth Leadership Institute and the Sunset Tobacco Education Project conducted a survey with over 400 people in San Mateo County that showed that 100% of tenants believe secondhand smoke is harmful and 95% would be bothered by the smell of tobacco in their apartments. Residents throughout San Mateo County were overwhelmingly (75-79%) in support of smokefree multi-unit housing policies.

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 California law;<sup>xxx</sup> and

WHEREAS, there is no Constitutional right to smoke;<sup>xxxi</sup> and

WHEREAS, California law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke;<sup>xxxii</sup> 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;<sup>xxxiii</sup> and

WHEREAS, local governments have broad latitude to declare nuisances and are not

constrained by prior definitions of nuisance.<sup>xxxiv</sup>

This Chapter is adopted (1) to protect the public health, safety, and welfare of lawful occupants of multi-unit residences by discouraging the inherently dangerous behavior of smoking around non-tobacco users; (2) to decrease the exposure of the public to secondhand smoke in and around their homes; (3) to protect children from inhaling secondhand smoke and from choking or ingesting butts or other toxic tobacco litter where children live and play; and (4) to strike a reasonable balance between the need of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air has priority.

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- <sup>i</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: [www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf](http://www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf).
- <sup>ii</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. "Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses – United States, 2000-2004." *Morbidity and Mortality Weekly Report*, 57(45): 1226-1228, 2008. Available at: [www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm).
- <sup>iii</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: [www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf](http://www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf).
- <sup>iv</sup> Leistikow B, Zubair K, et al. "Male Tobacco Smoke Load and Non-Lung Cancer Mortality Associations in Massachusetts." *BMC Cancer*, 8:341, 2008. Available at: [www.biomedcentral.com/1471-2407/8/341](http://www.biomedcentral.com/1471-2407/8/341).
- <sup>v</sup> US Department of Health and Human Services, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. 2007. Report highlights available at: [www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet7.html](http://www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet7.html).
- <sup>vi</sup> Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: [www.arb.ca.gov/regact/ets2006/res0601.pdf](http://www.arb.ca.gov/regact/ets2006/res0601.pdf); See California Environmental Protection Agency, Air Resources Board. *News Release, California Identifies Secondhand Smoke as a "Toxic Air Contaminant."* Jan. 26, 2006. Available at: [www.arb.ca.gov/newsrel/nr012606.htm](http://www.arb.ca.gov/newsrel/nr012606.htm).
- <sup>vii</sup> California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*. 2006, p. 8 & 17. Available at: [www.oehha.ca.gov/prop65/prop65\\_list/files/P65single081106.pdf](http://www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf).
- <sup>viii</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm).
- <sup>ix</sup> Barnoya, J and Glantz, S. "Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking." *Circulation*, 111: 2684-2698, 2005. Available at: [www.circ.ahajournals.org/cgi/content/full/111/20/2684](http://www.circ.ahajournals.org/cgi/content/full/111/20/2684).
- <sup>x</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: [www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf](http://www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf).
- <sup>xi</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm).

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- <sup>xii</sup> US Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. 2009. Available at: [www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm).
- <sup>xiii</sup> Centers for Disease Control and Prevention. *News Release, Slightly Lower Adult Smoking Rates*. 2008. Available at: [www.cdc.gov/media/pressrel/2008/r081113.htm](http://www.cdc.gov/media/pressrel/2008/r081113.htm).
- <sup>xiv</sup> Centers for Disease Control and Prevention. *News Release, Slightly Lower Adult Smoking Rates*. 2008. Available at: [www.cdc.gov/media/pressrel/2008/r081113.htm](http://www.cdc.gov/media/pressrel/2008/r081113.htm).
- <sup>xv</sup> Behan DF, Eriksen MP and Lin, Y. *Economic Effects of Environmental Tobacco Smoke*. Schaumburg, IL: Society of Actuaries, 2005, p. 2. Available at: [www.soa.org/files/pdf/ETSReportFinalDraft\(Final%203\).pdf](http://www.soa.org/files/pdf/ETSReportFinalDraft(Final%203).pdf).
- <sup>xvi</sup> Max W, Rice DP, Zhang X, et al. *The Cost of Smoking in California, 1999*. Sacramento, CA: Tobacco Control Section, California Department of Health Services, 2002, p. 74. Available at: <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1026&context=ctcre>.
- <sup>xvii</sup> Lightwood JM, Dinno A and Glantz SA. "Effect of the California Tobacco Control Program on Personal Health Care Expenditures." *PLoS Med*, 5(8): e178, 2008. Available at: [www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178](http://www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178).
- <sup>xviii</sup> Leistikow B, Martin DC and Milano CE. "Fire Injuries, Disasters, and Costs from Cigarettes and Cigarette Lights: A Global Overview." *Preventive Medicine*, 31: 91-99, 2000. Available at: <http://leistikow.ucdavis.edu/SmokingFires.pdf>.
- <sup>xix</sup> Hall JR. *U.S. Smoking-Material Fire Problem*. Quincy, MA: National Fire Protection Association, 2008, p. vii. Available at: [www.nfpa.org/assets/files//PDF/OS.Smoking.pdf](http://www.nfpa.org/assets/files//PDF/OS.Smoking.pdf). (Factsheet available at: [www.nfpa.org/assets/files//PDF/smokingfactsheet.pdf](http://www.nfpa.org/assets/files//PDF/smokingfactsheet.pdf).)
- <sup>xx</sup> Hall JR, Ahrens M, Rohr K, et al. *Behavioral Mitigation of Smoking Fires Through Strategies Based on Statistical Analysis*. US Department of Homeland Security, 2006, p. 17. Available at: [www.usfa.dhs.gov/downloads/pdf/publications/fa-302-508.pdf](http://www.usfa.dhs.gov/downloads/pdf/publications/fa-302-508.pdf).
- <sup>xxi</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. "Fatal Fires Associated with Smoking During Long-Term Oxygen Therapy – Maine, Massachusetts, New Hampshire, and Oklahoma, 2000 – 2007." *Morbidity and Mortality Weekly Report*, 57(31): 852-854, 2008. Available at: [www.cdc.gov/mmwr/preview/mmwrhtml/mm5731a3.htm?s\\_cid=mm5731a3\\_e](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5731a3.htm?s_cid=mm5731a3_e).
- <sup>xxii</sup> Hall JR, Ahrens M, Rohr K, et al. *Behavioral Mitigation of Smoking Fires Through Strategies Based on Statistical Analysis*. US Department of Homeland Security, 2006, p. 19. Available at: [www.usfa.dhs.gov/downloads/pdf/publications/fa-302-508.pdf](http://www.usfa.dhs.gov/downloads/pdf/publications/fa-302-508.pdf).
- <sup>xxiii</sup> Wagner J, Sullivan DP, Faulkner D, et al. "Environmental Tobacco Smoke Leakage from Smoking Rooms." *Journal of Occupational and Environmental Hygiene*, 1: 110-118, 2004. Available at: <http://eetd.lbl.gov/IEP/pdf/LBNL-51010.pdf>.
- <sup>xxiv</sup> Klepeis N. *Measuring the Seepage of Tobacco Smoke Particles Between Apartment Units*. California's Clean Air Project, 2008. Available at: [www.changelabsolutions.org/sites/default/files/CCAP\\_Measuring\\_the\\_Seepage.pdf](http://www.changelabsolutions.org/sites/default/files/CCAP_Measuring_the_Seepage.pdf).
- <sup>xxv</sup> US Department of Health and Human Services, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. 2006, p. 11. Available at: [www.cdc.gov/tobacco/data\\_statistics/sgr/sgr\\_2006/index.htm#full](http://www.cdc.gov/tobacco/data_statistics/sgr/sgr_2006/index.htm#full).
- <sup>xxvi</sup> California Department of Health Services. *News Release, New Data Show 91 Percent of California Women Don't Smoke*. 2007. Available at: [www.applications.dhs.ca.gov/pressreleases/store/PressReleases/07-37%20dhs%20smoking%20rates-with%20charts.html](http://www.applications.dhs.ca.gov/pressreleases/store/PressReleases/07-37%20dhs%20smoking%20rates-with%20charts.html).

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- <sup>xxvii</sup> Goodwin Simon Victoria Research. *Study of California Voters' Attitudes About Secondhand Smoke Exposure*. 2008. Available at: [www.center4tobaccopolicy.org/files/files/Results%20of%20SHS%20Poll%20November%202008.pdf](http://www.center4tobaccopolicy.org/files/files/Results%20of%20SHS%20Poll%20November%202008.pdf) (Statewide poll of 600 California voters, conducted November 2008).
- <sup>xxviii</sup> Goodwin Simon Victoria Research. *Study of California Voters' Attitudes About Secondhand Smoke Exposure*. 2008. Available at: [www.center4tobaccopolicy.org/files/files/Results%20of%20SHS%20Poll%20November%202008.pdf](http://www.center4tobaccopolicy.org/files/files/Results%20of%20SHS%20Poll%20November%202008.pdf) (Statewide poll of 600 California voters, conducted November 2008).
- <sup>xxix</sup> American Lung Association of California, Center for Tobacco Policy and Organizing. *Statewide Apartment Renter Study*. 2004. Available at: [www.center4tobaccopolicy.org/files/files/5242\\_Center%20Renter%20Survey%20Results%20May%202004.pdf](http://www.center4tobaccopolicy.org/files/files/5242_Center%20Renter%20Survey%20Results%20May%202004.pdf) (A survey of apartment residents throughout California).
- <sup>xxx</sup> Cal. Legislative Counsel Op., 21547, *Secondhand Smoke in Multi-Unit Housing (Apartments & Condos) Smoking Bans: Residential Rental Property*, (September 23, 1999). Highlights available at: [www.respect-ala.org/drift\\_samsmokingbans.htm](http://www.respect-ala.org/drift_samsmokingbans.htm).
- <sup>xxxi</sup> ChangeLab Solutions. *There Is No Constitutional Right to Smoke*. 2005. Available at: [www.changelabsolutions.org/publications/no-right-to-smoke-CA](http://www.changelabsolutions.org/publications/no-right-to-smoke-CA).
- <sup>xxxii</sup> Cal. Lab. Code § 6404.5 (West 2009).
- <sup>xxxiii</sup> Cal. Civil Code § 3479 (West 2009).
- <sup>xxxiv</sup> *In Re Jones*, 56 Cal.App.2d 658, 663 (1943); *See also* Cal. Const., art. XI, § 7 and Cal. Gov. Code § 38771 (West 2009).