

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.¹ 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.² The World Health Organization estimates that tobacco accounts for the greatest cause of death worldwide accounting for nearly 6 million deaths per year.³

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;⁴ 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;^{5 6} 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.⁷

¹ 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.

² 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.

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

⁴ 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.

⁵ 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.

⁶ 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.

⁷ 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>.

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 estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States.⁸ Secondhand smoke kills more than 400 infants every year.⁹ 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.¹⁰ Just 30 minutes of exposure to secondhand smoke is sufficient to damage blood vessels in a healthy nonsmoker.¹¹

WHEREAS, secondhand aerosol emitted from electronic smoking devices has been identified as a health hazard^{12 13 14 15} as evidenced 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.^{16 17 18}

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

⁸ 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/

⁹ 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.

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

¹¹ 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).

¹² 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>.

¹³ 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>

¹⁴ 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>.

¹⁶ 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>

¹⁷ 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.

¹⁸ 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.

where they live and play, and protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

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 more than one unit of the multi-unit residence or owners of more than one unit 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 4190, 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 4080, 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;

- zoned property;
2. A detached or attached accessory dwelling unit on a single-family
 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:

“5-4-18: 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. In addition to the above, beginning January 1, 2019, smoking is prohibited in all units.

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, 2019. 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. In addition to the above, beginning January 1, 2019, 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:

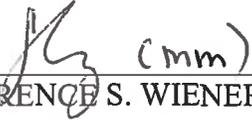
LILI BOSSE
Mayor of the City of Beverly Hills

ATTEST:

BYRON POPE
City Clerk

(SEAL)

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager