

ORDINANCE NO. 2205**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF SOUTH PASADENA, CALIFORNIA,
AMENDING CHAPTER 17 (HEALTH AND SANITATION)
OF THE SOUTH PASADENA MUNICIPAL CODE WITH
ADDITION OF ARTICLE VIII (SMOKE-FREE HOUSING)
RELATING TO THE REGULATION OF SMOKING
IN AND AROUND MULTI-UNIT RESIDENCES**

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, accounting for about 443,000 deaths each year;
- 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;
- Some of the most common types of cancers, including stomach, liver, uterine cervix, and kidney cancers, are related to tobacco use; 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;
- 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;
- 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; 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;
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty (30) percent;

- 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; and exacerbates childhood asthma; 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; 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;
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately \$96 billion;
- 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;
- 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;
- 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; 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, causing an estimated 142,900 smoking-related fires, 780 deaths, 1,600 injuries, and \$606 million in direct property damage in 2006;
- 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;
- 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 multi-family dwellings;
- The United States Fire Administration recommends that people smoke outdoors; 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;
- 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;
- 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; 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;
- 74% of Californians surveyed approve of apartment complexes requiring at least half of rental units be nonsmoking;
- 69% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings and 78% support laws that create nonsmoking units;
- 62% of California renters feel that there is a need for laws to limit smoking in apartments; and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within multi-unit residences is not prohibited by California law; and

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

WHEREAS, California law declares that anything that 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; and

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

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 17 (Health and Sanitation) of the South Pasadena Municipal Code is hereby amended with the following Article VIII (Smoke Free Housing):

**ARTICLE VIII
SMOKE-FREE HOUSING**

17.80 Purpose.

It is the intent of the City Council of South Pasadena in enacting this article to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users; by protecting children from exposure to smoking where they live and play; and by protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

17.81 Definitions.

For the purposes of this article, the following definitions shall govern unless the context clearly requires otherwise:

(a) "Adjacent Property" means any Unenclosed Area of property, publicly or privately owned, that abuts a Multi-Unit Residence but does not include property containing detached single-family homes.

(b) "Common Area" means every Enclosed Area or Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

(c) "Common Interest Complex/Mix-Use" means a Multi-Unit Residence that is a condominium project, a community apartment project, a stock cooperative, or a planned development as defined by California Civil Code section 1351.

(d) "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

(1) any type of overhead cover whether or not that cover includes vents or

other openings and at least three (3) walls or other vertical boundaries of any height whether or not those boundaries include vents or other openings; or

(2) four (4) walls or other vertical boundaries that exceed six (6) feet in height whether or not those boundaries include vents or other openings.

(e) "Landlord" means any Person who owns property let for residential use, any Person who lets residential property, and any Person who manages such property, except that "Landlord" does not include a master tenant who sublets a Unit as long as the master tenant sublets only a single Unit of a Multi-Unit Residence.

(f) "Multi-Unit Residence" means property containing two (2) or more Units, except the following specifically excluded types of housing:

(1) a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2);

(2) a mobile home park;

(3) a campground;

(4) a marina or port;

(5) a single-family home; or

(6) a single-family home with a detached or attached in-law or second unit when permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections.

(g) "New Unit" means a Unit that is issued a Certificate of Occupancy or passes final inspection more than 180 days after September 4, 2010 and also means a Unit that is let for residential use for the first time more than 180 days after September 4, 2010.

(h) "Nonsmoking Area" means any Enclosed Area or Unenclosed Area of a Multi-Unit Residence in which Smoking is prohibited by:

(1) this article or other law;

(2) by binding agreement relating to the ownership, occupancy, or use of real property; or

(3) by designation of a Person with legal control over the area.

In the case of a Smoking prohibition established only by private agreement or designation and not by this article or other law, it shall not be a violation of this article for a Person to engage in Smoking or to allow Smoking in that area unless:

(1) the Person knows that Smoking is not permitted; or

(2) a reasonable Person would know that Smoking is not permitted.

(i) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity including government agencies.

(j) "Rental Complex" means a Multi-Unit Residence for which fifty percent (50%) or more of Units are let by or on behalf of the same Landlord.

(k) "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, electronic cigarette vapors, marijuana smoke, and crack cocaine smoke.

(l) "Smoking" means engaging in an act that generates smoke, such as, for example: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, an operating electronic cigarette or a lighted cigarette of any kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

(m) "Unenclosed Area" means any area that is not an Enclosed Area.

(n) "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes without limitation: an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit. Unit includes a New Unit.

17.82 Smoking prohibited in common areas.

(a) Smoking is prohibited in all Common Areas pursuant to Section 17.90 except that a Person with legal control over a Common Area, such as, for example, a Landlord or homeowners' association, may designate a portion of the Common Area

as a designated Smoking Area provided that at all times the designated Smoking area complies with paragraph (b) below.

(b) A designated Smoking Area:

(1) Must be an Unenclosed Area.

(2) Must be located at least twenty-five (25) feet from any Enclosed Area that is a Nonsmoking Area. A Person with legal control over a Common Area in which a designated Smoking Area has been designated shall modify, relocate or eliminate that designated Smoking Area so as to maintain compliance with the requirements of this subsection (b) as laws change, as binding agreements are created, and as Nonsmoking Areas on neighboring property are established.

(3) Must be at least twenty-five (25) feet from Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses.

(4) Must be no more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated.

(5) Must have a clearly marked perimeter.

(6) Must be identified by conspicuous signs.

(c) No Person with legal control over a Common Area in which Smoking is prohibited by this article or other law shall knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of smoking waste within the area.

(d) Clear and unambiguous "No Smoking" signs shall be posted in sufficient numbers and locations to make Common Areas where smoking is prohibited by this article or other law obvious to a reasonable person. The "No Smoking" sign template shall have letters of no less than one inch in height and contain the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) on a contrasting background. Such signs shall be maintained by the Person or Persons with legal control over the Common Areas. The absence of signs shall not be a defense to a violation of any provision of this article.

17.83 Nonsmoking buffer zones.

(a) Smoking is prohibited in Unenclosed Areas of Multi-Unit Residence, including balconies, porches, decks, and patios, within twenty-five (25) feet in any

direction of any doorway, window, opening, or other vent into an Enclosed Area that is a Nonsmoking Area.

(b) Smoking is prohibited in Unenclosed Areas of Adjacent Property within twenty-five (25) feet in any direction of any doorway, window, opening, or other vent into an Enclosed Area that is a Nonsmoking Area.

(c) Subsections (a) and (b) above do not apply to a Person who is Smoking in the restricted buffer zone area for less than a minute while actively passing on the way to another destination, and who does not enter the buffer zone area while Smoking more than twice per day.

(d) Notwithstanding any other provision of this article Smoking is prohibited in all exclusive-use Unenclosed Areas associated with a Unit, such as, for example, a private balcony, porch, deck, or patio.

17.84 Smoking restrictions in new units of multi-unit residences.

(a) All New Units of a Multi-Unit Residence are hereby designated nonsmoking Units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio; and including without limitation New Units in a Rental Complex and New Units in a Common Interest Complex/Mix-Use.

(b) Smoking in a designated nonsmoking Unit is a violation of this article as provided in Section 17.90.

17.85 Nonsmoking designations for existing units of a common interest complex/mix-use.

(a) All Units of a Common Interest Complex/Mix-Use that are not New Units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio, are hereby designated nonsmoking Units as of September 4, 2013; provided, however, that a lesser percentage of Units may be designated nonsmoking Units if a Common Interest Complex/Mix-Use fully complies with subsection (c) below.

(b) Smoking in a designated nonsmoking Unit is a violation of this article as provided in Section 17.90.

(c) By a vote of the membership as provided in subsection (1) below, a Common Interest Complex/Mix-Use may choose to designate fewer than one-hundred percent (100%) of existing Units as nonsmoking Units by fully complying with the requirements stated in subsections (1) - (4) below. Otherwise subsection (a) above shall apply.

(1) A vote by the membership on the threshold question of allowing less than one hundred percent (100%) of Units to be designated nonsmoking Units must take place before June 1, 2013.

(2) Up to one hundred percent (100%), but no less than eighty percent (80%) , of Units that are not New Units, including, for example, any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio, shall be permanently designated as nonsmoking Units.

(3) Where possible, best efforts shall be made to group nonsmoking Units together, both horizontally and vertically, and physically separate them from Units where Smoking may be allowed.

(4) In the event of a change of owner or lease/rental tenant in a designated smoking Unit in the Common Interest Complex/Mix-Use, the Unit and any associated exclusive-use Enclosed Areas or Unenclosed Areas shall then be designated as a nonsmoking Unit in order to meet the percentage designation or for grouping of Units.

(5) No later than September 4, 2013 the final designations must be made and the following must be made available for City Inspection in accordance with Section 17.91:

(i) a description of each designated nonsmoking Unit sufficient to readily identify the Unit; and

(ii) a diagram depicting the location of the designated nonsmoking Units in relation to all other Units.

17.86 Nonsmoking designations for existing units of a rental complex.

(a) All Units of a Rental Complex that are not New Units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio, are hereby designated nonsmoking Units as of January 4, 2013; provided, however, that a lesser percentage of Units may be designated nonsmoking Units if a Landlord fully complies with subsection (d) below.

(b) Smoking in a designated nonsmoking Unit is a violation of this article as provided in Section 17.90.

(c) Except if a Landlord fully complies with subsection (d) below, at least sixty (60) days before January 4, 2013, the Landlord shall provide each tenant with:

(1) a written notice clearly stating that all Units, including the tenant's Unit,

are designated nonsmoking Units and that Smoking in a Unit will be illegal as of 17.90 (c), and

(2) a copy of this article.

(d) A Landlord may choose to designate fewer than one-hundred percent (100%) of existing Units that are not New Units of a Rental Complex as nonsmoking Units by fully complying with the requirements stated in subsections (1) - (7) below. However, subsection (a) above shall apply whenever a Landlord takes no action or only partially complies with the requirements of this subsection.

17.87 Designation of nonsmoking units.

The following timeline will be observed in designating nonsmoking units:

- (a) On or before November 4, 2012 the Landlord must notify tenants of proposed designation of nonsmoking units.
- (b) On or before December 4, 2012, the Landlord must notify tenants of final designation of nonsmoking units.
- (c) On or before January 4, 2013, the Landlord must have on file and make available for inspection by City Staff designation documents.
- (d) On Sept. 4, 2013, it shall be unlawful to smoke in a nonsmoking unit.

(1) The Landlord shall permanently designate up to one hundred percent (100%) of Units, but no less than eighty percent (80%) of Units, including, for example, any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio, as nonsmoking Units by the Landlord.

(2) To the maximum extent practicable, nonsmoking Units must be grouped together both horizontally and vertically and physically separated from Units where Smoking may be allowed. Where possible all Units where Smoking may be allowed shall be in a single building of a multi-building Multi-Unit Residence.

(3) No later than January 4, 2013 a Landlord who chooses to designate fewer than 100% of the Units of a Multi-Unit Residences as nonsmoking shall have available for City Inspection the following in accordance with Section 17.91:

- (i) a description of each designated nonsmoking Unit sufficient to identify the Unit; and

(ii) a diagram depicting the location of the designated nonsmoking Units in relation to all other Units.

(4) At least sixty (60) days before preparing the nonsmoking Unit designations required by subsection (3) above, the Landlord shall provide each tenant with:

(i) a written notice of the proposed designations, clearly stating that Smoking in a Unit which is designated as a nonsmoking Unit will be illegal as of 17.90 (c), and inviting comments on the proposed designations of nonsmoking Units within the requisite timeline;

(ii) a diagram depicting the location of the designated nonsmoking Units in relation to all other Units; and

(iii) a copy of this article.

(5) A Landlord may modify the proposed designations based upon comments received from tenants.

(6) At least thirty (30) days prior to final designation of the nonsmoking Units required by subsection (3) above, the Landlord shall provide all tenants written notice of the final designations clearly stating that Smoking in a designated nonsmoking Unit will be illegal as of 17.90 (c), and a copy of the final documents pursuant to Section 17.91 of this article. These final designations may differ from the proposed designations on which tenants were invited to comment.

(7) A Unit in a Rental Complex for which a Landlord is required to have available information pursuant to Section 17.91 of this article but for which such information, for any reason, is not fully and timely completed is hereby designated as a nonsmoking Unit as of January 4, 2013.

17.88 Lease terms for all new and existing units in rental complexes.

(a) Every lease or other rental agreement for the occupancy of a Unit in a Rental Complex, including, for example, New Units and existing Units, entered into, renewed, or continued month-to-month after September 4, 2012, shall include the provisions set forth in subsection (b) below on the earliest possible date when such an amendment is allowable by law when providing the minimum legal notice.

(b) Every lease or other rental agreement for the occupancy of a Unit in a Rental Complex, including, for example, New Units and existing Units, entered into, renewed, or continued month-to-month after September 4, 2012, shall be amended to include the following provisions:

(1) A clause providing that as of September 4, 2013, it is a material breach of the agreement to allow or engage in Smoking in the Unit unless the Landlord has supplied written notice that the Unit has not been designated a nonsmoking Unit and no other prohibition against Smoking applies. Such a clause might state, "It is a material breach of this agreement for 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 in the unit as of September 4, 2013 unless landlord has provided written notice that the unit has not been designated a nonsmoking unit and smoking in the unit is not otherwise prohibited by this agreement, other agreements, or by law."

(2) A clause providing that it is a material breach of the agreement for 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 in any Common Area of the property other than a designated Smoking area. Such a clause might state, "It is a material breach of this agreement for 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 in any common area of the property, except in an outdoor designated smoking area, if one exists."

(3) A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating Smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."

(4) A clause expressly conveying third-party beneficiary status to all occupants of the Rental Complex as to the Smoking provisions of the agreement. Such a clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement that concern smoking. As such, other occupants of the property may seek to enforce such provisions by any lawful means, including by bringing a civil action in a court of law."

(c) Whether or not a Landlord complies with subsections (a) and (b) above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which subsections (a) or (b) apply and shall become effective as of the earliest possible date on which the Landlord could have made the insertions pursuant to subsections (a) or (b).

(d) A tenant who breaches a Smoking provision of a lease or other rental agreement for the occupancy of a Unit in a Rental Complex, or who knowingly permits any other Person subject to the control of the tenant or present by invitation

or permission of the tenant, shall be liable for the breach to: (i) the Landlord; and (ii) any occupant of the Rental Complex who is exposed to Smoke or who suffers damages as a result of the breach.

(e) This article shall not create additional liability in a Landlord to any Person for a tenant's breach of any Smoking provision in a lease or other rental agreement for the occupancy of a Unit in a Rental Complex if the Landlord has fully complied with this Section and Section 17.86.

(f) Failure to enforce any Smoking provision required by this article shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

17.89 Additional duties – Landlord of rental complex with less than one hundred percent nonsmoking units.

A Landlord of a Rental Complex with less than one hundred percent (100%) nonsmoking Units shall:

(a) Provide to every prospective tenant, prior to entering into a new lease or other rental agreement for the occupancy of a Unit in a Rental Complex, a copy of the designation documents pursuant to Section 17.86 describing each designated nonsmoking Unit with an accompanying diagram depicting the location of nonsmoking Units in relation to all other Units and any designated Smoking areas.

(b) Keep on file at the rental office or property manager's office and make available for inspection upon request of the tenants, a copy of the designation documents pursuant to Section 17.86 describing each designated nonsmoking Unit with an accompanying diagram depicting the location of nonsmoking Units in relation to all other Units and any designated Smoking areas.

17.90 Smoking prohibited by law in certain areas.

(a) Smoking in a Common Area, on or after September 4, 2010, other than in a designated Smoking Area established pursuant to Section 17.82, is a violation of this article.

(b) Smoking in a New Unit, on or after September 4, 2010, is a violation of this article.

(c) Smoking in a designated nonsmoking Unit, on or after September 4, 2013, is a violation of this article.

(d) No Person shall engage in Smoking in any Nonsmoking Area.

(e) No Person with legal control over any Nonsmoking Area shall permit Smoking in the Nonsmoking Area, except as provided in Section 17.88 (e).

17.91 Required Documents Available For City Inspection.

(a) Required records by this article must be made available for City Inspection upon request by personnel of the City of South Pasadena – Planning and Building Department, including all material and information required by this article and such other materials and information as the City of South Pasadena Planning and Building Department deems necessary for the administration and enforcement of this article.

(b) All material and information required pursuant to this article constitute disclosable public records and are not private or confidential.

17.92 Smoking and smoke generally.

(a) The provisions of this article are restrictive only and establish no new rights for a Person who engages in Smoking. Notwithstanding (i) any provision of this article or other provisions of this Code, (ii) any failure by any Person to restrict Smoking under this article or (iii) any explicit or implicit provision of this Code that allows Smoking in any place, nothing in this Code shall be interpreted to limit any Person's legal rights under other laws with regard to Smoking, including, for example, rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.

(b) Notwithstanding any other provision of this article, Smoking marijuana for medical purposes as permitted by California Health and Safety Code sections 11362.7 *et seq.* is not prohibited by this article.

(c) For all purposes within the jurisdiction of the City of South Pasadena, nonconsensual exposure to Smoke occurring on or drifting into residential property is a nuisance, and the uninvited presence of Smoke on residential property is a nuisance and a trespass.

17.93 Penalties and enforcement.

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

(b) Every instance of Smoking in violation of this article is an infraction subject to a one hundred dollar (\$100) fine. Other violations of this article may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of the City Manager, Community Improvement Coordinator/code enforcement official and/or any peace officer.

(c) Violations of this article are subject to a civil action brought by the City of South Pasadena, 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 compliance with this article. Moreover, no Person shall intentionally or recklessly expose another Person to Smoke in response to that Person's effort to achieve compliance with this article. Violation of this subsection shall constitute a misdemeanor.

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

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

(g) In addition to other remedies provided by this article or otherwise available at law or in equity, any violation of this article may be remedied by a civil action brought by the City Attorney, including, without limitation, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

(h) Any Person, including a legal entity or organization, acting for the interests of itself, its members, or the general public may bring a civil action for injunctive relief to prevent future such violations or sue to recover such actual or statutory damages as he or she may prove.

(i) Except as otherwise provided, enforcement of this article is at the sole discretion of the City of South Pasadena. Nothing in this article shall create a right of action in any Person against the City of South Pasadena or its agents to compel public enforcement of this article against private parties.

17.94 Private enforcement.

(a) Any Person, including a legal entity or organization or a government agency, acting for the interests of itself, its members, or the general public may bring a civil action to enforce this article. Upon proof of a violation, a court shall award the following:

(1) Damages in the amount of either:

(i) upon proof, actual damages; or

(ii) with insufficient or no proof of damages, \$500 for each violation of this article (hereinafter "Statutory Damages"). Each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this article no Person suing on behalf of the general public shall recover Statutory Damages based upon a violation of this article if a previous claim brought on behalf of the general public by another Person for Statutory

Damages and based upon the same violation has been adjudicated, whether or not the Person bringing the subsequent claim was a party to the prior adjudication.

(2) Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, retaliation, or a conscious disregard for the public health.

(b) The Person may also bring a civil action to enforce this article by way of a conditional judgment or an injunction. Upon proof of a violation, a court shall issue a conditional judgment or an injunction.

(c) Notwithstanding any legal or equitable bar against a Person seeking relief on its own behalf, a Person may bring an action to enforce this article solely on behalf of the general public. When a Person brings an action solely on behalf of the general public, nothing about such an action shall act to preclude or bar the Person from bringing a subsequent action based upon the same facts but seeking relief on his, her or its own behalf.

(d) Nothing in this article prohibits a Person from bringing a civil action in small claims court to enforce this article, so long as the amount in demand and the type of relief sought are within the jurisdictional requirements of that court.

SECTION 2. It is the intent of the City Council of the City of South Pasadena 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 South Pasadena 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.

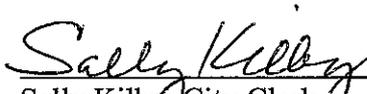
SECTION 3. This ordinance shall take effect thirty (30) days after its final passage and within (15) days after its passage, the City Clerk of the City of South Pasadena shall certify to the passage and adoption of this ordinance and to its approval by the Mayor and City Council and shall cause the same or a summary of the same to be published in a newspaper in the manner required by law.

PASSED, APPROVED, AND ADOPTED this 4th day of August, 2010.


Richard D. Schneider, M.D., Mayor

ATTEST:

APPROVED AS TO FORM:


Sally Kilby, City Clerk


Richard L. Adams II, City Attorney

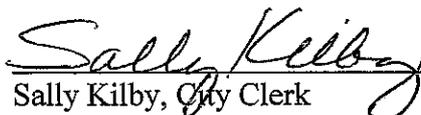
I HEREBY CERTIFY the foregoing ordinance was duly adopted by the City Council of the City of South Pasadena at a regular meeting held on the 4th day of August, 2010, by the following vote:

AYES: Cacciotti, Sifuentes, Ten and Mayor Schneider

NOES: Putnam

ABSENT: None

ABSTAINED: None


Sally Kilby, City Clerk