

**TOWN OF FAIRFAX  
STAFF REPORT**

**To: Mayor, Members of the Town Council**

**From: Michael Rock, Town Manager  
Judy Anderson, Town Clerk**



**Date: September 1, 2010**

**Subject: Introduction and First Reading of Ordinance 754, an Ordinance of the Town Council of the Town of Fairfax amending the Town's Smoking Ordinance to provide Clean Indoor Air and Health Protection including the Regulation of the Exposure to Smoke in Multi-Unit Apartment Buildings**

**RECOMMENDATION**

Motion to waive further reading and to read the title only of Ordinance No. 754, an Ordinance of the Town Council of the Town of Fairfax amending the Town's Smoking Ordinance to provide Clean Indoor Air and Health Protection including the Regulation of the Exposure to Smoke in Multi-Unit Apartment Buildings

Motion to introduce Ordinance No. 754, an Ordinance of the Town Council of the Town of Fairfax amending the Town's Smoking Ordinance to provide Clean Indoor Air and Health Protection including the Regulation of the Exposure to Smoke in Multi-Unit Apartment Buildings

**DISCUSSION**

At the direction of Vice Mayor Bragman, and after two public meetings about the hazards of smoking in multi-unit apartment buildings, the attached ordinance has been drafted for the Council's consideration. The drafting of the ordinance was a collaborative effort with the invaluable assistance of Bob Curry, of Marin County's Tobacco Related Disease Control Program; Pam Granger of the American Lung Association; Elizabeth Emerson, Health Policy Analyst; Judith Derenzo of Bay Area Community Resources; and Jim Karpiak, Fairfax Town Attorney.

**FISCAL IMPACT**

None

**ATTACHMENTS**

1. Draft Ordinance
2. Informational Material

## ORDINANCE NO. 754

### AN ORDINANCE OF THE TOWN OF FAIRFAX AMENDING CHAPTER 8.44 OF THE FAIRFAX TOWN CODE

The Town Council of the Town of Fairfax, California does ordain as follows:

#### **SECTION 1. Municipal Code Amended:**

Chapter 8.44 of the Fairfax Municipal Code is hereby deleted in its entirety and replaced by the following:

#### **CHAPTER 8.44: CLEAN INDOOR AIR AND HEALTH PROTECTION**

- 8.44.010 Findings and purpose
- 8.44.020 Definitions
- 8.44.030 Application of chapter to Town-owned facilities
- 8.44.040 Prohibition of smoking in enclosed public places and places of employment
- 8.44.050 Prohibition of smoking in certain unenclosed public places
- 8.44.060 Prohibition of smoking in certain multi-unit residences
- 8.44.070 Smoking optional areas
- 8.44.080 Duty of person, employer, business or nonprofit entity
- 8.44.090 Posting of signs
- 8.44.100 Regulating the sale of tobacco products
- 8.44.110 Secondhand smoke exposure
- 8.44.120 Enforcement
- 8.44.130 Violations and penalties
- 8.44.140 Non-retaliation
- 8.44.150 Public education
- 8.44.160 Governmental agency cooperation
- 8.44.170 Other applicable laws
- 8.44.180 Effective date

#### **§ 8.44.010 FINDINGS AND PURPOSE.**

The Town Council does find that:

- A. Tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs, as evidenced by the following:
- more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death; and
  - the World Health Organization estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide; and
  - the United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and
  - secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease; and

- 87.9% of non-smokers showed detectable levels of cotinine (a metabolite of nicotine) in their blood, the most likely source of which is secondhand smoke exposure; and
- secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome in infants of mothers who smoke; and
- secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis; exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children; and
- the total cost of smoking in California was estimated as \$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; and
- cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States, causing an estimated 31,200 structure fires and 830 deaths in 2001; and

B. Most Californians do not smoke and a majority favors limitations on smoking in multi-unit residences, as evidenced by the following:

- 84% of Californians are non-smokers; and
- 70% of Californians surveyed approve of apartment complexes requiring at least half of rental units be non-smoking; and
- 67% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings; and

C. Secondhand smoke can seep under doorways and through wall cracks; and

D. There is no Constitutional right to smoke; and

E. State law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke; and

F. A local ordinance that requires residential multi unit residences to restrict or prohibit smoking of tobacco products within the common areas or units is not prohibited by state law; and

G. 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; and

H. Local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance; and

NOW THEREFORE, it is the intent of the Town Council in enacting this ordinance, 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 and tobacco; by reducing the potential for children to associate smoking and tobacco with a healthy lifestyle; by protecting the public from nonconsensual exposure to secondhand smoke and tobacco-related litter and pollution and by affirming the family-friendly atmosphere of the Town's public places.

## **§ 8.44.020 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BAR.** An area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of the beverages. Although a restaurant may contain a bar, the term **BAR** shall not include the restaurant dining area.

**BUSINESS.** Any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes

**COMMON INTEREST COMPLEX.** A Multi-Unit Residence that is a condominium project as defined by California Civil Code section 1351.

**EMPLOYEE.** Any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

**EMPLOYER.** Any person, partnership, corporation, including a municipal corporation or non-profit entity, which employs the services of one or more individual persons or utilizes volunteers.

### **ENCLOSED**

A. any covered or partially covered space having more than fifty percent (50%) of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or

B. any space open to the sky having more than seventy-five (75%) of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard; except that an area open to the sky of three thousand (3000) square feet or more is not enclosed such as, for example, a field in an open-air arena.

**LANDLORD.** Any person who owns real property leased as residential property, any person who lets residential property, or any person who manages such property, except that "landlord" does not include sublessors.

**MINOR.** Any individual who is less than eighteen (18) years old.

**MULTI-UNIT RESIDENCE.** A premises that contains six (6) or more Units.

**MULTI-UNIT COMMON AREA .** Any indoor or outdoor area of a multi-unit residence, Multi-unit commercial facilities, senior citizen residences and nursing homes accessible to and usable by residents of different small units and/or members of the public, including but not limited to halls and paths, lobbies, laundry rooms, common areas, outdoor eating areas, play areas and swimming pools.

**NON-PROFIT ENTITY.** Any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a **NON-PROFIT ENTITY** within the meaning of this chapter.

**NO SMOKING SIGN.** A sign containing the words "No smoking" or the international "No smoking" symbol (consisting of a pictorial representation of a burning cigarette in a red circle or red heart with a red bar across it).

**OPENINGS** shall include main entrances, exits, operable windows and ventilation intake systems.

**PERSON.** Any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or any other legal entity.

**PLACE OF EMPLOYMENT.** Any area under the legal or actual control of an employer or sole proprietor that an employee, contractor or member of the public to enter during the normal course of operations, but regardless of hours of operation, including, but not limited to, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, employee lounges and restrooms, conference and banquet rooms, classrooms, bingo and gaming facilities, long term health facilities, warehouses, and private residences used as child/elder care or health care facilities subject to licensing requirements.

**PREMISES.** A piece of land and any improvements upon it such as is usually described in a deed, deed of trust or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same natural person or by legal persons under common control.

**PUBLIC PLACE.** Any place, public or private, open to members of the general public regardless of any fee or age requirement, including but not limited to, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis, buses, bus shelters, public transportation facilities, hotels and motels, fairs, farmers' markets and theaters. Public place does not mean within private vehicles in or on public places.

**REASONABLE DISTANCE** means a distance of at least twenty (20) feet.

**RENTAL COMPLEX** A multi-unit residence for which fifty percent (50%) or more of Units are let by or on behalf of the same Landlord.

**RETAIL TOBACCO STORE.** A retail store in which the primary merchandise for sale consists of tobacco products and accessories, and in which the sale of other products is merely incidental, and which does not provide any entertainment, or any food or beverage for consumption on the premises.

**RECREATION AREA.** Any area, public or private, open to the general public for recreational purposes, regardless of any fee requirement, including, but not limited to public gardens, children's play areas, sporting facilities, stadiums, and playgrounds.

**SELF-SERVICE MERCHANDISING** means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. This includes point-of-sale tobacco promotional products (such as tobacco industry tee shirts, caps, key chains, give-aways), to which the public has access without the assistance of an employee. A vending machine is a form of self service display.

**SERVICE AREA.** Area at which one or more persons are waiting for a transaction, entry or service of any kind, whether or not such service involves the exchange of money, including, but not limited to ATMs, bank teller windows, telephones, ticket lines, bus stops and cab stands.

**SMOKING** means possessing a lighted pipe, lighted cigar, or lighted cigarette, lighted hookah, or other device of any kind, or the lighting of a pipe, hookah, cigar or cigarette, or other device

containing tobacco, tobacco product, tobacco-like product, spices, or any other plant or herbal materials.

**SPORTS ARENA.** Enclosed or unenclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.

**TOBACCO PARAPHERNALIA.** Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

**TOBACCO PRODUCT** means:

- A. any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation of tobacco; and
- B. any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body by inhalation; but does not include any cessation product specifically approved by the U. S. Food and Drug Administration for use in treating nicotine or tobacco dependence.

**TOBACCO VENDING MACHINE.** Any machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

**TOWN.** The Town of Fairfax.

**UNIT** means:

- A. a dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping, and any private outdoor spaces like balconies and patios; or
- B. senior citizen housing and single room occupancy hotel rooms, as defined in California Health and Safety Code section 50519(b)(1), even where lacking private cooking facilities or private plumbing facilities. "Unit" does not include lodging in a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2).

**VENDOR-ASSISTED** means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

## **§ 8.44.030 APPLICATION OF CHAPTER TO TOWN-OWNED FACILITIES.**

All Town-owned vehicles, including buses and other means of public transit under the authority of the Town, and all enclosed facilities owned and controlled by the Town, including jails, and any board, council, commission and agency of the Town shall be subject to the provisions of this chapter.

## **§ 8.44.040 PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES AND PLACES OF EMPLOYMENT.**

- A. Except as otherwise provided, smoking shall be prohibited in all enclosed public places within the Town of Fairfax, including, but not limited to the following places:
- (1) Places of Employment
  - (2) Buses, taxicabs and other means of public transit under the authority of the Town and ticket, boarding, and waiting areas of public transit depots;
  - (3) Public places
  - (4) Service areas;
  - (5) Any facility which is primarily used for exhibiting motion pictures, stage productions, lectures, musical recitals or other similar performances, except for smoking which is part of such production; and
  - (6) Sports arenas and convention halls.
- B. A minimum of eighty percent of guest rooms in every hotel and motel, and bed-and-breakfast facility must be permanently designated as completely nonsmoking.

### **§ 8.44.050 PROHIBITION OF SMOKING IN CERTAIN UNENCLOSED PUBLIC PLACES.**

A. Except as otherwise expressly authorized by state or federal law, smoking shall be prohibited in any place where food and/or drink is offered for sale, including outdoor dining areas of restaurants and farmers markets, except unenclosed areas of a stand-alone bar.

B. Smoking is prohibited within:

1. A reasonable distance from any entrance, opening or exit of any enclosed area within which smoking is prohibited, except while passing on the way to another destination;
2. A reasonable distance of service areas;
3. Courtyards and other areas where air circulation may be impeded by architectural, landscaping or other barriers;
4. 20 feet of working road or building and construction crews;
5. Recreation areas;
6. Service areas;
7. Public events including but not limited to, sports events, entertainment, speaking performances, ceremonies, pageants, parades, fairs and farmer's markets;
8. Public Places; and
9. Places of employment.

C. No person shall place, cause to be placed, or permit to be placed any ashtray, or tobacco ash collector or receptacle in any area designated a non-smoking area by this chapter.

D. No person shall dispose of smoking waste or tobacco product waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any reasonable distance requirement.

### **§ 8.44.060 PROHIBITION OF SMOKING IN CERTAIN MULTI-UNIT RESIDENCES.**

A. Smoking is prohibited in all multi-unit residence common areas except that a landlord may designate a portion of the outdoor area of premises as a smoking area as provided in paragraph (B) below. Smoking in a Common Area, on or after the effective date of this

ordinance, other than in a designated Smoking area established pursuant to paragraph (B) below, is a violation of this chapter.

B. A designated smoking area:

1. Must be located a reasonable distance from any indoor area where smoking is prohibited;
2. Must not include, and must be a reasonable distance from, outdoor areas primarily used by children including, but not limited to, areas improved or designated for play or swimming;
3. Must be no more than twenty-five (25%) of the total outdoor area of the premises for which it is designated;
4. Must have a clearly marked perimeter;
5. Must be identified by conspicuous signs; and
6. Must not overlap with any area in which smoking is otherwise prohibited by this chapter or other provisions of the Town Code, state law, or federal law.

C. Smoke-Free Buffer Zones: smoking is prohibited on the premises of a multi-unit residence within a reasonable distance of any entrance, opening, or other vent into an enclosed area of a multi-unit residence in which smoking is prohibited by this chapter, other provisions of the Town Code, state law, or federal law. For example, and without limitation, smoking on balconies, porches, or patios within a reasonable distance of a window or door of a non-smoking unit is prohibited. This provision does not apply inside a designated smoking unit pursuant to Section 8.44.060(B).

D. Non-smoking units required in multi-unit residences:

1. New multi-unit residences:
  - (a) In every multi-unit residence substantially completed more than six (6) months after the effective date of this chapter, a landlord may designate up to one hundred percent (100%), but shall designate no less than seventy-five percent (75%), of new units (including private outdoor spaces associated with such units, such as balconies, patios and decks), as non-smoking units. All units may be designated non-smoking.
2. Existing multi-unit residences:
  - (a) In every multi-unit residence existing on the effective date of this chapter, not subject to subsection (a) above, a landlord may designate up to one hundred (100%), but shall designate no less than fifty percent (50%), of existing units (including private outdoor spaces associated with such units, such as balconies, patios, and decks) as non-smoking units. All units may be designated non-smoking units.
3. Location of Non-Smoking Units  
Non-smoking units must be grouped together (e.g., horizontally and/or vertically) and physically separated from smoking units to the maximum extent practicable. Where possible all Units where Smoking may be allowed shall be in a single building of a multi-building multi-unit residence.
4. Smoking in a designated nonsmoking unit on or after the date one year after the effective date of this ordinance is a violation of this chapter.
5. Non-Smoking Units Phase-In Period
  - (a) A landlord who chooses to designate fewer than 100% of the units of a multi-unit residences as nonsmoking shall submit to tenants no later

than one hundred twenty (120) days before the date one year after the effective date of this ordinance the following:

- (1) A written notice of the proposed designation, clearly stating that it will be illegal to smoke in a unit which is designated as a nonsmoking unit as of the date that is one year after the effective date of this ordinance.
- (2) A diagram depicting the location of the designated smoking units in relation to all other units; and
- (3) a copy of this chapter.

E. Required Lease Terms:

1. The renewal of a lease, lease extension or other agreement for the occupancy of a unit in a multi-unit residence shall include:
  - (a) A clause stating that smoking is prohibited in the unit if the unit has been designated as a non-smoking unit;
  - (b) A clause stating that it is a material breach of the lease or agreement to
    - (i) violate any law regarding smoking while on the premises;
    - (ii) Smoke in a non-smoking unit; or
    - (iii) Smoke in any multi-unit residence common area in which smoking is prohibited by the landlord; and
  - (c) A clause stating that all lawful occupants of the multi-unit residence are express third-party beneficiaries of the above required clauses.
2. The lease or agreement terms required by E(1)(a) are hereby incorporated by force of law into any lease or other agreement for the occupancy of a unit in a multi-unit residence made on or after the effective date of the ordinance which adopted this section and which does not fully comply with E(1)(a).
3. A tenant who breaches the smoking regulations of a lease or knowingly allows another person to do so shall be liable to:
  - (a) the landlord; and
  - (b) to any lawful occupant of the multi-unit residence who is exposed to secondhand smoke as a result of that breach. A landlord shall not be liable to any person for a tenant's breach of smoking regulations if the landlord has fully complied with E(1)(a).
4. Failure to enforce any smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this ordinance and shall not prevent future enforcement of any such smoking regulation on another occasion.

F. Disclosure of non-smoking units by landlord: Every landlord shall maintain a list of designated non-smoking units and a floor plan identifying the relative position of smoking and non-smoking units. The floor plan also shall identify the location of any designated smoking areas. A copy of this list and floor plan shall accompany every new lease or other agreement for the occupancy of a unit in a multi-unit residence. If a copy of the list and floor plan is not supplied, the unit subject to the lease shall be a non-smoking unit.

G. Nonsmoking designations for existing units of a common interest complex:

1. All Units of a Common Interest 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 one year after the effective date of the ordinance, provided, however, that a lesser percentage of Units may be designated

nonsmoking Units if a Common Interest Complex fully complies with subsection (3) below.

2. Smoking in a designated nonsmoking unit is a violation of this chapter.

3. By a vote of the membership as provided in subsection (a) below, a Common Interest Complex 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 a - d below. Otherwise all units shall be designated as nonsmoking units. The following procedures and requirements shall apply:

(a) 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 no later than two hundred seventy (270) days after the effective date of the ordinance.

(b) Up to one hundred percent 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, shall be permanently designated as nonsmoking units.

(c) 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.

(d) No later than one year after the effective date of this ordinance, the final designations must be made and the following must be submitted to each unit owner:

(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.

#### H. Prohibitions and Duties Generally:

1. No person shall smoke or knowingly permit smoking in an area of the premises under his or her legal or de facto control in which smoking is prohibited by a lease or agreement term, by this chapter, the Town Code, or any other state or federal law, provided, however, that this prohibition does not apply to a person who is already compelled to act under state or federal law.

2. No person shall knowingly permit the presence or placement of ash trays, cans, or other receptacles within multi-unit residence common areas under his or her legal or de facto control in which smoking is prohibited by this chapter, this Code, or any other state or federal law, including, for example and without limitation, with a reasonable distance of any non-smoking area.

3. "No smoking" signs, with letters of no less than one inch in height or the international "No smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar) shall be clearly and conspicuously posted and maintained by the landlord in every place on the premises in which smoking is prohibited by this chapter or by the landlord, except that signs are not required inside units. Signs must be sufficient to make areas

where smoking is prohibited obvious to a reasonable person. The absence of signs shall not be a defense to a violation of any provision of this chapter.

### **§ 8.44.070 SMOKING OPTIONAL AREAS.**

A. Except as otherwise prohibited by state or federal law, the following areas shall not be subject to the smoking restrictions of this chapter:

- (1) Private single family residences, except when used as a child care or health care facility;
- (2) Retail tobacco stores, except where smoke from such stores enters an adjacent enclosed area where smoking is not permitted.

B. Nothing in this chapter shall be construed to prevent any owner, operator, manager or other person who controls any establishment or facility from declaring and enforcing a nonsmoking policy in the entire establishment or facility or from posting signs as described by Section 8.44.090.

### **§ 8.44.080 DUTY OF PERSON, EMPLOYER, BUSINESS OR NONPROFIT ENTITY.**

A. No person, employer, business, or nonprofit entity shall knowingly permit the smoking of tobacco products in an area which is under the legal or actual control of the person, employer, business, or nonprofit entity and in which smoking is prohibited by law and the person, employer, business or nonprofit entity is not otherwise compelled to act under state or federal law.

B. No person, employer, business, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ashtrays or ash cans, within an area which is under the legal or actual of the person, employer, business, or nonprofit entity and in which smoking is prohibited.

### **§ 8.44.090 POSTING OF SIGNS.**

A. The person, employer, business or non-profit entity with legal or actual control of a building subject to this Chapter shall clearly and conspicuously post "No Smoking" Signs at the entrances of every building, as well as at every other place where smoking is prohibited under this chapter.

B. "No Smoking" Signs shall be clearly and conspicuously posted at every entrance to any building or other place where smoking is prohibited under this chapter.

C. Every retail tobacco store and every vendor of tobacco products shall visibly post Business and Professions Code section 22952 signage that expressly references Penal Code Section 308 at the entrance of any premises subject to regulation under Sections 8.44.040, 8.44.050 and 8.44.060 of this Chapter and applicable state and/or federal law.

### **§ 8.44.100 REGULATING THE SALE OF TOBACCO PRODUCTS.**

A. Any person, business, tobacco retailer or other establishment subject to this chapter shall post plainly visible signs at the point of purchase of tobacco products which comply with the signage requirements of California Business and Professions Code Section 22952, as amended from time to time.

B. Any person, business, tobacco retailer or other establishment subject to this chapter shall post signs at each entrance to any premises on which any tobacco product is offered for sale, plainly visible from outside the premises, which state "Warning: The fine for buying tobacco for anyone under 18 is \$200" in letters at least one half inch (½") tall, and which cite California Penal Code 308(a). These signs shall be updated to conform to any subsequent state or federal requirements and/or amendments to Penal Code Section 308(a).

C. No person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or greater unless the seller has some other clear and convincing basis for knowing the buyer's age.

D. It shall be unlawful for any person, business, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service merchandising, or by any means other than vendor-assisted sales.

E. No person, business, or tobacco retailer shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any vending machine for the purpose of selling or distributing any tobacco product. Any tobacco vending machine in use on the effective date of the ordinance codified in this chapter shall be removed within thirty days after the effective date of the ordinance codified in this chapter.

#### **§ 8.44.110 SECONDHAND SMOKE EXPOSURE.**

The uninvited presence of secondhand smoke in or within a reasonable distance of any entrance opening or other vent into any of the following enclosed places of human habitation is a nuisance and a trespass:

- A. Residential Uses and Structures
- B. Assisted Living Facilities
- C. Board and Care Homes
- D. Child Daycare Facilities
- E. Congregate Care Facilities
- F. Convalescent Hospitals
- G. Dwellings, Dwelling Units or Housing Units
- H. Group Care Facilities
- I. Group Homes
- J. Medical services – Hospitals
- K. Medical services – Extended Care Facilities
- L. Residential Care Facilities for the Elderly
- M. Residential Care Homes
- N. Rooming and Boarding Houses
- O. Skilled Nursing Facilities

#### **§ 8.44.120 ENFORCEMENT.**

A. Notice of these regulations shall be given to all applicants for a business license or renewal thereof; provided, however, lack of such notice shall be no defense to a violation of this chapter.

B. Enforcement of this chapter may be brought through the Administrative Citation process as outlined in Section 1.10 of the Fairfax Town Code. Before a civil penalty is levied, the person charged with the violation shall be given a written warning by the Town staff of the proposed action, including the nature of the violation and the amount of the proposed penalty.

C. The fire department or the health department shall require, while an establishment is undergoing otherwise mandated inspections, certification from the owner, manager, operator or other person having control of such establishment that all requirements of this chapter have been complied with.

D. Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter.

### **§ 8.44.130 VIOLATIONS AND PENALTIES.**

The remedies provided by this chapter are not intended to preclude any other remedy available at law or in equity.

### **§ 8.44.140 NON-RETALIATION.**

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because the employee or applicant exercises any right to a smoke-free environment afforded by this chapter.

### **§ 8.44.150 PUBLIC EDUCATION.**

The Town Manager or his/her designee will engage in a continuing educational program to explain and clarify the purposes and requirements of this chapter, as well as a guide to owners, operators and managers with compliance; provided, however, lack of such education shall be no defense to a violation of this chapter.

### **§ 8.44.160 GOVERNMENTAL AGENCY COOPERATION.**

The Town Manager or his/her designee may annually request other governmental and educational agencies having facilities within the town to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state, county and school district agencies to update their existing smoking control regulations to be consistent with current health findings regarding environmental tobacco smoke.

### **§ 8.44.170 OTHER APPLICABLE LAWS.**

It is the intent of the Town Council of the Town of Fairfax 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. This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**SECTION 2: Validity.**

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 Town Council of the Town of Fairfax 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: Ordinance posting and effective date.**

Copies of the foregoing ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit:

1. Bulletin Board, Town Hall offices;
2. Bulletin Board, Fairfax Post Office;
3. Bulletin Board, Fairfax Women's Club building;

which places are designated for that purpose. This ordinance shall be in full force and effect thirty days from and after its final passage and adoption.

The foregoing ordinance amending the Fairfax Town Code was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held in said Town on September 1, 2010 and was duly passed and adopted at a regular meeting held the \_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote to wit:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
LEW TREMAINE, MAYOR

Attest:

\_\_\_\_\_  
Town Clerk

## Key changes to specific sections of current local Marin tobacco control ordinances that close old loopholes with updated language

**Background:** Marin's local communities are taking steps to update their 16 year old tobacco control laws in response to numerous complaints from the public as well as requests from law enforcement and code enforcement officers that ordinances specify a specific number of feet from entrances or areas where smoking is restricted. Marin's communities are joining over 100 California communities that have already updated their smoke-free ordinances to reflect new scientific studies that show that there is no safe level exposure to second hand smoke (SHS), even in outdoor areas. (For scientific reports go to: [www.smokefreemarin.com](http://www.smokefreemarin.com)).

**Update:** *Marin County, Unincorporated, San Anselmo, Ross and Novato* have updated their ordinances to include some or all of the following changes to existing smoke-free ordinances:

- ✦ Updated criteria based on new scientific findings and Green LEED requirements
- ✦ Smoke-Free restaurants and outdoor dining areas
- ✦ No smoking within 20' of building openings or entrances (include bus shelters)
- ✦ Increase smoke free hotel and motel rooms to reflect the fact that 85% of the Marin public does not smoke
- ✦ Smoke-Free outdoor service waiting lines - new definitions include any area a person waits for service of any kind. This will include ATM's, ticket lines and bus stops.
- ✦ Smoke-free outdoor work areas including construction and road crews to prevent workers from being exposed to secondhand smoke
- ✦ Public outdoor gathering places such as Farmer's Markets, public events, parks, recreational areas
- ✦ Increase protection for residents in multi-unit housing (MUH) including townhouses, condominiums and apartments: (a) no smoking in outdoor multi-unit common areas, (b) declaration of secondhand smoke as a nuisance provides for abatement of such nuisance by a private citizen (c) disclosure about smoke-filled units to new tenants.
- ✦ In addition to SHS concerns the Coalition supports strong Youth Access Ordinances including Tobacco Retailer Licensing and point of purchase exposure to tobacco products.

For more information about resources available to local Marin city councils considering updating their ordinances, contact Bob Curry, Director, Marin County, Health and Human Services, Tobacco Related Disease Control Program, at [rcurry@co.marin.ca.us](mailto:rcurry@co.marin.ca.us) or (415) 507-2559 or visit the website designed to help the public comply with Marin's new tobacco control ordinances: [www.smokefreemarin.com](http://www.smokefreemarin.com)

Or blog your comments on: <http://greenandtobaccofreecities.blogspot.com>

## **Economic Benefits of Smoke-Free Housing Ordinances: Why Multi-Unit Housing Ordinances are Cost-effective for Cities and for Businesses**

### **1. Apartment owners and managers support smoke-free multi-unit housing.**

Recent interviews conducted by the County contractor Bay Area Community Resources (with owners and managers of apartments and condominiums) showed that owners of multi-unit housing are much more supportive of their city passing an ordinance than they were in the past now that they understand how desirable smoke-free housing is for their tenants, how much money they can save in insurance and maintenance costs, as well as time spent on resolving disputes between smoking and non-smoking tenants. According to state-wide rental management studies, refurbishing a smoker's unit costs up to 21 times more than a non-smoking unit.

**2. Tobacco control ordinances are self enforcing** once the County has educated the public as well as the business community on compliance duties. Using state funds, the County Tobacco Related Disease Control Program also writes educational warning letters and provides mediation and resolution, which resolves 98% of complaints, leaving cities with very little follow up work.

### **3. Additional data on the cost of smoking:**

**Cost of smoking:** The average cost of treating smokers for tobacco related diseases is around \$59,000 in a life-span. In Marin County, each smoker costs each taxpayer around \$288 annually, according to a UC Berkeley study conducted in 1999.

<http://www.cdph.ca.gov/programs/tobacco/Documents/CTCPCostOfSmoking1999.pdf> Now, ten years later, those costs may be higher. Health care costs for smokers at any given age are as much as 40 percent higher than those for nonsmokers (Source: UCSF School of Medicine "*Destination Tobacco-Free*" guide).

### **4. There is broad public support for legislated protection of residents (from secondhand smoke) in multi-unit housing:**

**(a) Novato:** The County Tobacco Related Disease Control Program conducted two public opinion polls in the past year, one to measure public response to Novato's progressive tobacco control ordinance. According to a recent public opinion poll conducted in Novato of people who live, work, or shop in Novato, 83% of all respondents are supportive of the quasi- outdoor smoke-free provisions, including building buffer zones and multi-unit housing.

**(b) Central Marin:** Respondents in the central part of the county where cities have not yet updated their tobacco control laws showed that 70.9% are supportive of future adoption of smoke-free protections in outdoor cafes and other buffer zones. Additionally, the County continues to receive requests from

citizens from most local jurisdictions asking for more protection from second hand smoke exposure. Responding to these requests comes at a cost to taxpayers.

**5. Smoke-free multi-unit housing ordinances save cities the cost of responding to fires.** In December, a fire in San Rafael burned 5 apartment units burned in an apartment complex because a smoker lost control of her cigarette. According to the *Marin Independent Journal* article (December 10, 2009) about the fire, "Some 49 firefighters and a dozen police officers responded to the fire and evacuated the residents, said police spokeswoman Margo Rohrbacher." There was a fiscal impact to the City of San Rafael- since it required several fire trucks, police cars, etc. and emergency staff hours. It may be useful to analyze the cost of smoking related fires compared to the cost of the educational mailings that make these laws self enforcing. According to a *Medscape* (Medical Journal) article, the leading cause of deaths from fires is caused by smoking. Tobacco control ordinances can save the cities funds while saving lives of local residents.



Marin IJ photos Robert Tong, *Three Alarm Fire Chars Apartment Building*, article by Marin IJ reporter Gary Klien, December 10, 2009

Fact Sheet developed by Elizabeth Emerson, M.A. for Marin County Tobacco Related Disease Control Program. For more information, go to: [www.smokefreemarin.com](http://www.smokefreemarin.com)

# Smoke-Free Multi-Unit Housing: Fire Hazards, Air Leaks and Legal Issues: Summary of Research Findings

## **Fire Hazards**

Smoking is the most common cause of fatal fires in residential structures after arson.<sup>1</sup>

Arson: 11.7%  
Smoking: 7.8%  
Heating: 3.4  
Electrical: 3.2%  
Cooking: 2.2%

Smoking (2.3%) is also responsible for a greater percentage of dollar losses in residential fires than heating (2%), cooking (1.5%), electrical (1.2%) fires.

## **Air Leakage**

Air leaking between apartment units is a notorious and frequent problem across all types of multi-unit housing sizes, designs, and types of construction. Air leakage is the cause of odors (such as second-hand smoke and cooking odors) and hot or cold air being transferred from one unit to another.

In *Measured Change in Multifamily Unit Air Leakage and Airflow Due to Air Sealing and Ventilation Treatments* (2007), the American Society of Heating, Refrigerating and Air-Conditioning Engineers stated that:

“The nature of apartment-building construction is such that leakage paths between units are invariably present and are often quite numerous when no particular effort is made to eliminate them during construction. Air moves through these leakage paths in response to small differences in pressure between the units. The differences in pressure may be due to natural forces or to mechanical ventilation.”

Their studies on air flow between units also found that “on a building average basis 13% to 26% of the total airflow into units came from other units. Individual units in those buildings were receiving as much as 35% of their total airflow from other units.”

## **Smoke-Free Buildings and Units are Legal<sup>2</sup>**

---

<sup>1</sup> U.S. Fire Administration: Topical Fire Research Series, 2005.

<sup>2</sup> RESPECT, a statewide project of the American Lung Association of the East Bay, “Building on a Smoke-Free Foundation,” < [http://www.respect-ala.org/drift\\_noconstit.htm](http://www.respect-ala.org/drift_noconstit.htm)>.

- Landlords have the legal right to ban smoking in all or part of their property, including individual rental units.
- There is no state or federal right to smoke. Banning smoking is not discrimination.
- “No Smoking” restrictions are the legal equivalent of “No Pets” or “No Loud Noise” rules.
- It is legal to ask tenants to acknowledge in a lease or month-to-month rental agreement that they will not smoke or allow guests to smoke in their units.
- It is legal to advertise a unit as “smoke-free.”

### **There is No Constitutional Right to Smoke**<sup>3</sup>

- No court has ever recognized smoking as a constitutional right.
- Smoking is not protected under the First Amendment “right to privacy.” This right only applies to marriage, contraception, family relationships, and the rearing and education of children.
- Smokers are not a protected class under the equal protection clause of the U.S. or California constitutions. Smoking regulations are not grounds for discrimination claims. Only conditions of birth such as race, national origin, and gender receive protection against discrimination.

The following studies show that while units are separately ventilated, there are many ways in which smoke can infiltrate into neighboring units, in addition to drifting from balconies. (see following page)

---

## **1. Studies about drifting smoke in multi-unit housing settings**

---

<sup>3</sup> Technical Legal Assistance Center (TALC), a project of the Public Health Institute. “There is No Constitutional Right to Smoke” (2004), <<http://www.phi.org/pdf-library/talc-memo-0051.pdf>>.

California Clean Air Project:

<http://www.ccap.etr.org/index.cfm?fuseaction=resources.multiHousing>

<http://tobaccosmoke.org/abcs-of-shs>

<http://www.trdrp.org>

## **2. Reports and Studies about Smoking Related Fires:**

<http://no-smoke.org/document.php?id=613>

[http://www.ehd.org/health\\_tobacco\\_28.php](http://www.ehd.org/health_tobacco_28.php)

[http://www.ucdmc.ucdavis.edu/news/smokingdisaster\\_costs.html](http://www.ucdmc.ucdavis.edu/news/smokingdisaster_costs.html)

[http://firechief.com/mag/firefighting\\_smoking\\_major\\_cause/](http://firechief.com/mag/firefighting_smoking_major_cause/)

<http://www.fema.gov/news/newsrelease.fema?id=18106>

[http://www.usfa.dhs.gov/citizens/all\\_citizens/home\\_fire\\_prev/smoking.shtm](http://www.usfa.dhs.gov/citizens/all_citizens/home_fire_prev/smoking.shtm)

<http://leistikow.ucdavis.edu/SMOKINGFIRES.HTM>

<http://www.medscape.com/viewarticle/412061>

<http://www.ehs.uci.edu/programs/fire/smoking.pdf>

## **3. Legality of ordinances that restrict smoking in multi-unit housing:**

Technical Assistance Legal Center, California Department of Health Services:

<http://www.phlpnet.org/tobacco-control>

Smoke-Free Environments Law Project (overview of North American non-smoking apartment legislation):

<http://www.tcsq.org/sfelp/home.htm>

*(The above summary was compiled by Elizabeth Emerson, M.A. and Judith Derenzo, J.D. of Green and Tobacco Free Cities Program of Marin County Tobacco Related Disease Control Program) for more information go to:*  
[www.smokefreemarin.com](http://www.smokefreemarin.com)

## **Multi-unit Housing and Secondhand Smoke**

### **1. What is secondhand smoke (SHS)?**

Secondhand smoke (SHS) is a mixture of over 4,000 chemicals consisting of gases and fine particles<sup>1</sup>, and is derived from two sources: burning cigarette (sidestream smoke) and exhaled air of smokers (mainstream smoke).<sup>1, 2</sup> SHS contaminates indoor and outdoor air, and at least 250 chemicals in secondhand smoke are toxic or carcinogenic.<sup>3</sup>

### **2. Why is SHS at home an important issue?**

Smoking restrictions have been adopted in public places and the work place, therefore the home is becoming the predominant location for SHS exposure, particularly for children.<sup>2</sup> Also, people spend most of their time at home, which is a confined place for prolonged SHS exposure, especially for people who live with regular smokers.<sup>2, 4</sup>

### **3. How many people live in Multi-unit housing (MUH)?**

In California, approximately 11 million people (34 percent) live in MUH<sup>5</sup>, the second most common type of residential units after single family homes.

### **4. How does smoke travel in MUH and/or inside buildings?**

MUH structures with shared interior walls typically have less airflow into the units compared to single-family detached houses.<sup>2</sup> As a result, SHS becomes trapped inside individual units and can move into an adjacent unit through hallways, cracks in walls and floors, shared ventilation systems, or even through electrical outlets and plumbing fixtures.<sup>2</sup>

### **5. How long can SHS linger in a unit or house?**

Cigarette smoke is absorbed onto walls, floors, furniture, clothes, toys and other household surfaces within minutes to hours after emission.<sup>6</sup> It can then be recycled into the air for hours or months, providing ongoing reservoirs of contamination and causing continual exposures from the hazardous air pollutants in SHS.<sup>6</sup>

**6. Do current heating, ventilating, and air conditioning (HVAC) systems help to prevent secondhand smoke exposure in multi-unit housing?**

No. current HVAC systems cannot control exposure to SHS. HVAC operations can even distribute SHS contaminants throughout an entire building if the HVAC system is not controlled properly.<sup>2</sup>

**7. Is the public aware that secondhand smoke from other apartments can drift into their units?**

Nearly 60 percent of renters believe that SHS can drift from unit to unit and 72 percent believe SHS can drift into a unit from outside.<sup>7</sup> The apartment owners or managers are even better informed; 69 percent believe that SHS can drift from unit to unit and 80 percent believe SHS can drift into a unit from outside.<sup>8</sup>

**8. What are the health effects and economic costs caused by secondhand smoke?**

Studies have reported that SHS exposure causes adverse health effects, including heart disease, lung cancer, respiratory illness, middle ear disease, low birth weight, and sudden infant death syndrome (SIDS).<sup>2,9</sup> Every year, approximately 50,000 deaths in the United States and 4,000 deaths in California are associated with SHS exposure.<sup>10</sup> As a result of SHS exposure, the annual costs of direct medical care and other indirect expenses for mortality and morbidity in the United States are over 10 billion dollars.<sup>11</sup>

**9. Is there any risk-free level of exposure to secondhand smoke?**

No. based on research findings, the U.S. Surgeon General has declared that there is no risk-free level of SHS exposure.<sup>2,9</sup> SHS exposure can be particularly dangerous to sensitive populations such as children, and people who have heart or breathing problems.<sup>9</sup>

**10. Do Californians support smoke-free multi-unit housing? How about smokers? Apartment owners/managers?**

Yes. Californians show support for smoke-free MUH. In 2001, 63 percent of Californians' agreed that half of the MUH units should be smoke-free while in 2006 more than three quarters (76 percent) agreed with the statement.<sup>12,13</sup> The most significant change is observed among smokers. In 2001, 44 percent of smokers agreed that half of the units should be smoke-free. In 2006, 63 percent of smokers supported that statement. Apartment owners or managers were also supportive of smoke-free units. Two-thirds of the owners or managers (66 percent) either somewhat or strongly favored a law that requires a percentage of smoke-free units.<sup>8</sup>

**Notes**

1. CAL/EPA Air Resources Board. Fact sheet: *Environmental Tobacco Smoke: A Toxic Air Contaminant*, 2006.
2. A Report of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, 2006.
3. United States Department of Health and Human Services. *9<sup>th</sup> Report on Carcinogens*. Research Triangle Park (NC): U.S. Department of Health and Human Services, Public Health Service, National Institute of Health, National Institute of Environmental Health Sciences, National Toxicology Program, 2000.
4. Klepeis NE. *An introduction to the indirect exposure assessment approach: modeling human exposure using microenvironmental measurements and the recent National Human Activity Pattern Survey*. Environmental Health Perspectives 1999;107(Suppl2):365-74)
5. U.S. Census Bureau, 2000.
6. Matt, G.E., P. J. E. Quintana, M. F. Hovell, J. T. Bernert, S. Song, N. Novianti, T. Juarez, J. Floro, C. Gehrman, M. Garcia, and S. Larson. *Households Contaminated by Environmental Tobacco Smoke: Sources of Infant Exposures*. *Tobacco Control*, 13:29-37, 2004
7. The Center for Tobacco Policy & Organizing, American Lung Association of California, Survey of California Renters, August 2004, conducted by Goodwin Simon Victoria Research,  
[http://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)
8. The Center for Tobacco Policy & Organizing, American Lung Association of California, Survey of California Apartment Owners and Managers, June 2005, conducted by Goodwin Simon Victoria Research,  
[http://www.center4tobaccopolicy.org/files/files/5239\\_Center%20Apartment%20Owner%20Survey%20Results%20June%202005.pdf](http://www.center4tobaccopolicy.org/files/files/5239_Center%20Apartment%20Owner%20Survey%20Results%20June%202005.pdf)
9. United States Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Secondhand Smoke What It Means to You*. United States Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

10. CAL/EPA, Air Resources Board, Proposed Identification of Environmental Tobacco Smoke as a toxic air contaminant, 2005.
11. Behan, Donald F., Michael P. Eriksen, and Yijia Lin, *Economic Effects of Environmental Tobacco Smoke*, 2005 (the Society of Actuaries).
12. Field Research Corporation. *Statewide Survey of California Adults on Secondhand Smoke, 2001*. Unpublished data.
13. California Department of Public Health. *California Adult Tobacco Survey, 2006*. Unpublished data.

**Suggested citation:**

California Tobacco Control Program. *Multi-unit housing and secondhand smoke* (Fact Sheet). Sacramento: California Department of Public Health, 2008.

City/County	Pop. (2008 est)	When adopted	Indoor Areas	Outdoor Areas	SHS Nuisance Designation	Existing MUH	New MUH	Effective Date
Belmont (San Mateo)	26,078	10/2007	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	100%	100%	Multi-story, incl condos, 1/9/09
Novato (Marin)	52,737	4/2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	50%	75%	10+units, 7/22/08
Calabasas (Los Angeles)	23,725	1/2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	80%	80%	1/1/2012
Loma Linda (San Bernadino)	20,136	6/2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	70%	70%	2+ units, 1/1/2012
Oakland (Alameda)	420,183	12/2007	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Disclosure	Disclosure	12/2007
Albany (Alameda)	16,877	6/2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Disclosure	Disclosure	6/2008
Dublin (Alameda)	46,934	12/2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> 9/06	50%/70%	50%/70%	16 units 2010/2012
Richmond	102,285	7/2009	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	100%	100%	1/1/2011
Rohnert Park	40,496	4/2009	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Limited	50%	75%	2 Units 6/1/2011
Sebastopol	7,600	9/2010	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	100%	100%	2 Units 11/2011