



Superior Court of California, County of San Mateo  
Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063-1655

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July 26, 2018

City Council  
City of Brisbane  
50 Park Place  
Brisbane, CA 94005

Re: Grand Jury Report: "Smoke-Free Multiunit Housing: No Ifs, Ands, Or Butts"

Dear Councilmembers:

The 2017-2018 Grand Jury filed a report on July 26, 2018 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. V. Raymond Swope. Your agency's response is due no later than October 24, 2018. Please note that the response should indicate that it was approved by your governing body at a public meeting.

For all findings, your responding agency shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

Additionally, as to each Grand Jury recommendation, your responding agency shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefore.

Please submit your responses in all of the following ways:

1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.
  - Prepare original on your agency's letterhead, indicate the date of the public meeting that your governing body approved the response address and mail to Judge Swope.

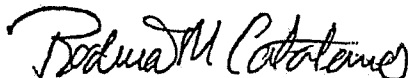
Hon. V. Raymond Swope  
Judge of the Superior Court  
c/o Charlene Kresevich  
Hall of Justice  
400 County Center; 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655.

2. Responses to be placed at the Grand Jury website.
  - Copy response and send by e-mail to: [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org). (Insert agency name if it is not indicated at the top of your response.)
3. Responses to be placed with the clerk of your agency.
  - File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please call the Grand Jury Clerk at (650) 261-5066.

If you have any questions regarding these procedures, please do not hesitate to contact Paul Okada, Chief Deputy County Counsel, at (650) 363-4761.

Very truly yours,



Rodina M. Catalano  
Court Executive Officer

RMC:ck  
Enclosure

cc: Hon. V. Raymond Swope  
Paul Okada

Information Copy: City Manager

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## SMOKE-FREE MULTIUNIT HOUSING: NO IFS, ANDS, OR BUTTS

### ISSUE

Do ordinances in jurisdictions banning smoking in multiunit housing properties protect San Mateo County residents from exposure to secondhand smoke?

### SUMMARY

In the United States alone, exposure to secondhand smoke has killed approximately 2.5 million nonsmokers of all ages over the last 50 years.<sup>1</sup> While California has enacted a statewide ban on smoking in enclosed workplaces,<sup>2,3</sup> the majority of secondhand smoke exposure occurs in the home. Marijuana smoke, another source of secondhand smoke, is also toxic and contains many of the same chemicals and carcinogens as tobacco smoke.<sup>4</sup> Residents of multiunit properties, where smoke in one unit can pass into adjacent ones, are at significant risk of exposure to secondhand smoke.<sup>5</sup> In San Mateo County (the County), there are currently almost 114,000 multiunit households,<sup>6</sup> and the number is expected to grow as jurisdictions work to address increasing housing demands.<sup>7</sup>

In 2007, the City of Belmont passed the nation's first ordinance prohibiting smoking in multiunit housing.<sup>8</sup> Since then, eight additional cities in San Mateo County, as well as the County itself (with respect to its unincorporated areas) have passed similar multiunit housing smoking ordinances.<sup>9</sup>

<sup>1</sup> *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*. Rockville, MD. 2014. U.S. Public Health Service website, accessed June 7, 2018. <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

<sup>2</sup> "AB-13 Fact Sheet - California Workplace Smoking Restrictions. October 1997." State of California. Department of Industrial Relations website, accessed June 7, 2018. [https://www.dir.ca.gov/dosh/dosh\\_publications/smoking.html](https://www.dir.ca.gov/dosh/dosh_publications/smoking.html)

<sup>3</sup> "AB-7 Smoking in the Workplace. (2015-2016)" California Legislative Information website, accessed June 7, 2018. [http://leginfo.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201520162AB7](http://leginfo.ca.gov/faces/billCompareClient.xhtml?bill_id=201520162AB7)

<sup>4</sup> "Marijuana and Tobacco Use, Marijuana: The Basics," California Department of Public Health website, accessed June 7, 2018.

<sup>5</sup> King et al., "Secondhand Smoke Transfer in Multiunit Housing," *Nicotine & Tobacco Research*. November 2010. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3436457/pdf/ntq162.pdf>

<sup>6</sup> Officials in San Mateo county jurisdictions: email messages to the Grand Jury. (See Appendix B.)

<sup>7</sup> "Key Housing Trends in San Mateo County: A report by 21 Elements 2014," 21 Elements website, accessed June 7, 2018. <<http://www.21elements.com/Housing-Needs-and-Demographics/View-category.html>>

<sup>8</sup> Chen, Serena. American Lung Association in California and Bay Area Smokefree Housing Project. *Belmont Case Study: Belmont, CA Secondhand Smoke/Multi-Unit Housing Ordinance*. <https://www.myctb.org/wst/healthylawrence/livewell/TobaccoFreeLiving/American%20Lung%20Association%20Advocates%20Toolbox/Module-3/Belmont-Case-Study.pdf>

<sup>9</sup> Smoking Ordinances in: Belmont <[https://library.municode.com/ca/belmont/codes/code\\_of\\_ordinances?nodeId=CICO\\_CH20.5RESM](https://library.municode.com/ca/belmont/codes/code_of_ordinances?nodeId=CICO_CH20.5RESM)>, Brisbane <

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Through interviews with local law and code enforcement officers, the San Mateo County Civil Grand Jury (the Grand Jury) learned that many of these jurisdictions have not adequately educated residents about their rights and obligations under multiunit housing smoking ordinances. At the time their ordinances were adopted, most of these jurisdictions conducted limited public outreach to residents, and even now, the jurisdictions' online resources detailing tenants' rights and reporting methods are difficult to access. Local officials also indicated that enforcement of their ordinances is constrained by the need to observe smoking violations in progress.<sup>10</sup>

The Tobacco Prevention Program and the Tobacco Education Coalition are the two local entities that educate residents regarding the health effects of smoking, including secondhand smoke. The Tobacco Prevention Program is a part of the County's Health System and is charged with educating the community about tobacco-related health and policy issues. The Tobacco Education Coalition is a community-based group supported by the Tobacco Prevention Program that engages in advocacy relating to reducing the public's use of and exposure to tobacco. Both organizations assist cities that are considering smoking restrictions for their multiunit housing properties. With the quadrupling of the funding allocation from the California Department of Public Health's Tobacco Control Program (from \$150,000 in FY 2016-2017 to \$748,000 in FY 2017-2018), these entities will have the opportunity to greatly expand their operations.<sup>11</sup>

The Grand Jury recommends, among other actions, that:

- Jurisdictions with multiunit housing smoking ordinances take steps to improve their tracking of smoking violation complaints as well as increase their residents' awareness of their rights and obligations, thereby increasing the effectiveness of enforcement efforts;
- The Tobacco Prevention Program and Tobacco Education Coalition increase their educational outreach and support for countywide efforts to protect residents from the dangers of secondhand smoke exposure;
- Cities within San Mateo County that have not yet adopted such ordinances hold public hearings to evaluate issues and hear residents' views on adopting smoking restrictions in multiunit housing in their jurisdictions.

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[https://library.municode.com/ca/brisbane/codes/code\\_of\\_ordinances?nodeId=TIT8HESA\\_CH8.46SMMUITRE](https://library.municode.com/ca/brisbane/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.46SMMUITRE)>, Burlingame < [http://qcode.us/codes/burlingame/view.php?topic=8-8\\_18](http://qcode.us/codes/burlingame/view.php?topic=8-8_18)>, Daly City < [https://library.municode.com/ca/daly\\_city/codes/code\\_of\\_ordinances?nodeId=TIT8HESA\\_CH8.36RESM](https://library.municode.com/ca/daly_city/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.36RESM)>, Foster City < <http://www.codepublishing.com/CA/FosterCity/?FosterCity08/FosterCity0805.html>>, Redwood City < [https://library.municode.com/ca/redwood\\_city/codes/code\\_of\\_ordinances?nodeId=CH15SMRE](https://library.municode.com/ca/redwood_city/codes/code_of_ordinances?nodeId=CH15SMRE)>, San Bruno < <https://qcode.us/codes/sanbruno/>>, City of San Mateo < [http://qcode.us/codes/sanmateo/view.php?topic=7-7\\_40&showAll=1&frames=on](http://qcode.us/codes/sanmateo/view.php?topic=7-7_40&showAll=1&frames=on)>, San Mateo County < [https://library.municode.com/ca/san\\_mateo\\_county/codes/code\\_of\\_ordinances?nodeId=TIT4SAHE\\_CH4.96SM](https://library.municode.com/ca/san_mateo_county/codes/code_of_ordinances?nodeId=TIT4SAHE_CH4.96SM)>, and South San Francisco < [http://qcode.us/codes/southsanfrancisco/view.php?topic=8-8\\_50&showAll=1&frames=off](http://qcode.us/codes/southsanfrancisco/view.php?topic=8-8_50&showAll=1&frames=off)> accessed June 7, 2018.

<sup>10</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>11</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

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## GLOSSARY AND ABBREVIATIONS

**California Healthcare, Research and Prevention Tobacco Tax Act (Proposition 56 or Prop. 56):** A 2016 California state law increasing the excise taxes on tobacco products, including e-cigarettes, by \$2.

**California Tobacco Tax and Health Protection Act (Proposition 99 or Prop. 99):** A 1988 California state law which created a statewide, comprehensive tobacco control program funded through a twenty-five-cent tax on tobacco products.

**Electronic Smoking Devices (ESDs):** Devices containing a nicotine-based liquid that is vaporized and inhaled, used to simulate the experience of smoking tobacco. ESDs are also used as alternatives to smoking marijuana.

**Jurisdictions:** The jurisdictions that have adopted multiunit housing smoking ordinances: Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, San Mateo, South San Francisco, and the County of San Mateo (for its unincorporated areas only).

**Multiunit Households (MUH):** A classification of housing where multiple separate housing units for residential inhabitants are contained within one building. There are currently almost 114,000 MUHs in the county.

**Secondhand Smoke (SHS):** The combination of smoke generated by cigarettes (or other ignited plant material for the purpose of inhalation) as well as the smoke exhaled by the smoker.

**Thirdhand smoke (THS):** The toxic particulate residue from smoke that clings to walls, fabrics, carpets, and other furnishings, lingering on surfaces after active smoking has ceased.

**Tobacco Prevention Program (TPP):** The County of San Mateo Health System established the TPP in 1989 as part of the statewide network to educate the community on tobacco-related health and policy issues.

**Tobacco Education Coalition (TEC):** A community-based group, established per Proposition 99, for the purpose of improving public health by reducing the use of tobacco products in the county.

## BACKGROUND

### Secondhand Smoke

Secondhand smoke (SHS), also known as “involuntary” or “passive” smoke, is a combination of smoke generated by cigarettes (or other ignited plant material for the purpose of inhalation) as well as

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the smoke exhaled by the smoker.<sup>12</sup> Cigarette smoke contains more than 7,000 chemicals, including formaldehyde, cyanide, carbon monoxide, ammonia, and highly addictive nicotine, as well as more than 50 carcinogens. Since 1967, exposure to SHS has killed approximately 2.5 million nonsmokers of all ages in the United States.<sup>13</sup>

In 2010, the U.S. Surgeon General confirmed that even occasional exposure to secondhand smoke is harmful, and that low levels of secondhand tobacco smoke lead to impairment of the lining of the blood vessels, which, in turn, can lead to heart attacks and stroke.<sup>14</sup>

According to the American Lung Association:

Secondhand smoke causes approximately 7,330 deaths from lung cancer and 33,950 deaths from heart disease each year...Secondhand smoke is especially harmful to young children. Secondhand smoke is responsible for between 150,000 and 300,000 lower respiratory tract infections in infants and children under 18 months of age, resulting in between 7,500 and 15,000 hospitalizations each year. It also causes 430 sudden infant death syndrome (SIDS) deaths in the U.S. annually.<sup>15</sup>

Marijuana smoke, another source of secondhand smoke, is also toxic. It contains twice as much tar and ammonia, eight times as much hydrogen cyanide, and many of the same chemicals and carcinogens as tobacco smoke. Studies have shown that exposure to secondhand marijuana smoke impairs blood vessel function temporarily. Moreover, recovery from impairment caused by marijuana takes longer than from tobacco smoke, and repeated exposure to secondhand marijuana smoke can lead to long-term blood vessel impairment.<sup>16</sup>

According to the American Nonsmoker's Rights Foundation:

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<sup>12</sup> *The Health Consequences of Involuntary Exposure to Tobacco Smoke*. A Report of the Surgeon General. Atlanta, GA. 2006. U.S. Public Health Service, Surgeon General website, accessed June 7, 2018.

<https://www.surgeongeneral.gov/library/reports/secondhandsmoke/fullreport.pdf>

<sup>13</sup> *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*. Rockville, MD. 2014. U.S. Public Health Service, Surgeon General website, accessed June 7, 2018.

<https://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>.

<sup>14</sup> "Fact Sheet: How Tobacco Smoke Causes Disease," A Report of the Surgeon General. Centers for Disease Control and Prevention website, accessed June 7, 2018. < [https://www.cdc.gov/tobacco/data\\_statistics/sgr/2010/pdfs/key-findings.pdf](https://www.cdc.gov/tobacco/data_statistics/sgr/2010/pdfs/key-findings.pdf)>

<sup>15</sup> "Health Effects of Secondhand Smoke," American Lung Association website, accessed June 7, 2018.

<http://www.lung.org/stop-smoking/smoking-facts/health-effects-of-secondhand-smoke.html>

<sup>16</sup> "Marijuana and Tobacco Use, Marijuana: The Basics," California Department of Public Health website, accessed June 7, 2018.

<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/MJAndTobaccoUseFac%20Sheet-CDPH-CTCP-5-2017.pdf>

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Smoke is smoke. Both tobacco and marijuana smoke impair blood vessel function similarly. People should avoid both, and governments who are protecting people against secondhand smoke exposure should include marijuana in those rules.<sup>17</sup>

Approximately one in four nonsmoking Americans is subjected to secondhand smoke, including more than one in three who live in rental housing. Exposure to SHS occurs primarily at home, especially for children. An estimated 15 million children ages three to eleven are exposed to SHS.<sup>18</sup>

While all children and adults can be victims of secondhand smoke, nonsmokers in some communities are at an elevated risk of exposure.<sup>19</sup> For example, more than 45 percent of Black nonsmokers are exposed to SHS, in contrast with 23.9 percent of Hispanic Americans and 21.8 percent of non-Hispanic White nonsmokers. In addition, 43.2 percent of nonsmokers with incomes below the poverty level are exposed to SHS.

### **Secondhand Smoke Infiltration in Multiunit Housing (MUH)**

Since Americans spend almost two-thirds of their lives in their residences, nonsmokers living in multiunit properties are at elevated risk of exposure to secondhand smoke.<sup>20</sup> The Centers for Disease Control and Prevention (CDC) reports that secondhand smoke can enter living spaces from other units and/or common areas through ventilation systems, walls, electrical outlets, open windows, or hallways.<sup>21</sup>

The Center for Social Gerontology's 2006 report explains the problem further:

The health hazards of tobacco smoke are magnified in the close living quarters of those who live in multi-family dwellings... Tobacco smoke travels from its point of generation in a building to all other areas of the building. It has been shown to move through light fixtures, through ceiling crawl spaces, and into and out of doorways. Once exposed, building occupants are at risk for irritant, allergic, acute and chronic cardiopulmonary and carcinogenic adverse health effects.<sup>22</sup>

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<sup>17</sup> Matthew Springer, cardiovascular researcher and Associate Professor of Medicine, University of California, San Francisco. "Secondhand Marijuana Smoke: Fact Sheet," American Nonsmokers' Rights Foundation website, accessed June 7, 2018. <https://no-smoke.org/secondhand-marijuana-smoke-fact-sheet/>

<sup>18</sup> "CDC Vital Signs. Secondhand Smoke: An Unequal Danger. February 2015," Centers for Disease Control and Prevention website, accessed June 7, 2018. <https://www.cdc.gov/vitalsigns/pdf/2015-02-vitalsigns.pdf>

<sup>19</sup> "Secondhand Smoke (SHS) Facts." Centers for Disease Control and Prevention website, accessed June 7, 2018. [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm)

<sup>20</sup> King et al., "Secondhand Smoke Transfer in Multiunit Housing." *Nicotine & Tobacco Research*. November 2010. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3436457/pdf/ntq162.pdf>

<sup>21</sup> "Ventilation Does Not Effectively Protect Nonsmokers From Secondhand Smoke," Centers for Disease Control and Prevention website, accessed June 7, 2018. [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/protection/ventilation/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/protection/ventilation/index.htm)

<sup>22</sup> Schoenmarklin, Susan, Esq. *Memorandum: Analysis of the Voluntary and Legal Options of Condominium Owners Confronted with Secondhand Smoke from another Condominium Unit*. Smoke-Free Environments Law Project. The Center for Social Gerontology, Inc. Ann Arbor, MI. May 2006. [http://www.tcsg.org/sfelp/memo\\_06.pdf](http://www.tcsg.org/sfelp/memo_06.pdf)

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### **Smoke Residue (“Thirdhand smoke”)**

Thirdhand smoke (THS) is the toxic particulate residue from smoke that clings to walls, fabrics, carpets, and other furnishings, lingering on surfaces after active smoking has ceased.<sup>23</sup> Arsenic, lead, cyanide, and other carcinogens in thirdhand smoke can be absorbed through inhalation or skin contact, affecting both people and pets.<sup>24</sup>

According to the UCSF Center for Tobacco Control Research and Education:

Infants and small children are likely to have more exposure to THS than adults because THS contaminates house dust and surfaces. Infants and children spend more time on the floor, have frequent hand to mouth behaviors, explore objects in the environment with their mouth, put non-food items in their mouths, engage in active play at home, and breathe in more dust-contaminated air than adults, in relation to their body size.<sup>25</sup>

### **Electronic Cigarette Aerosol (or Vapor)**

Electronic Smoking Devices (ESDs or e-cigarettes) emerged in the U.S. in 2007, as alternatives to smoking tobacco and marijuana. Use of e-cigarettes is commonly referred to as “vaping.” They quickly became popular, in part due to efforts of manufacturers to attract young buyers through tactics such as bubblegum and fruit flavorings.<sup>26</sup> While e-cigarettes and similar devices do not produce tobacco or marijuana smoke, the vapor they emit is also harmful. It contains particulates, propylene glycol or vegetable glycerin, nicotine (in the case of tobacco), metals and other toxins.<sup>27</sup>

## **San Mateo County Health System’s Responses to Secondhand Smoke**

### **Tobacco Prevention Program**

In 1988, the California Tobacco Tax and Health Protection Act (Prop. 99) was passed by the voters, creating a statewide, comprehensive tobacco control program. Prop. 99 levied a twenty-five-cent tax on tobacco products and placed new restrictions on the sale of tobacco. With the revenue generated by

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<sup>23</sup> “California Consortium for Thirdhand Smoke,” University of California San Francisco. Center for Tobacco Control Research and Education website, accessed June 7, 2018. <https://tobacco.ucsf.edu/california-consortium-thirdhand-smoke>

<sup>24</sup> “Be Smoke-free and Help Your Pets Live Longer, Healthier Lives,” U.S. Food and Drug Administration website, accessed June 7, 2018. <https://www.fda.gov/AnimalVeterinary/ResourcesforYou/AnimalHealthLiteracy/ucm520415.htm>

<sup>25</sup> “Frequently Asked Questions,” University of California San Francisco. Center for Tobacco Control Research and Education. California Consortium for Thirdhand Smoke website, accessed June 7, 2018. <https://tobacco.ucsf.edu/frequently-asked-questions-0#Who-has-high-exposure-risk-of-THS>

<sup>26</sup> Samantha Weigel. “County may ban flavored tobacco, including menthol.” *San Mateo Daily Journal*, January 20, 2018. [https://www.smdailyjournal.com/news/local/county-may-ban-flavored-tobacco-including-menthol/article\\_a54ccc9c-fd9f-11e7-8baa-ab201dac2a50.html](https://www.smdailyjournal.com/news/local/county-may-ban-flavored-tobacco-including-menthol/article_a54ccc9c-fd9f-11e7-8baa-ab201dac2a50.html)

<sup>27</sup> “Recreational Vaping 101: What is Vaping?” National Center on Addiction and Substance Abuse website, accessed June 7, 2018. <https://www.centeronaddiction.org/e-cigarettes/recreational-vaping/what-vaping>



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this initiative, the County established the Tobacco Prevention Program (TPP) in 1989 as part of the statewide network to educate the community on tobacco-related health and policy issues.<sup>28</sup> The TPP's 2014-2017 Program Goals and Interventions<sup>29</sup> included:

- Reducing exposure to secondhand smoke by implementing smoke-free multiunit housing policies
- Engaging youth in tobacco control and amending tobacco retail ordinances to broaden the definition of tobacco product
- Reducing the availability of tobacco by eliminating tobacco sales in pharmacies/health care settings

The TPP provides a number of resources for county residents, including a hotline for the public to report problems with exposure to SHS and guidance to address those issues on the Smoke-Free Housing web page.<sup>30</sup>

In 2016, voters passed the California Healthcare, Research and Prevention Tobacco Tax Act (Prop. 56), which increased the excise taxes on tobacco products, including e-cigarettes, by \$2. With this increased tax revenue, the TPP's annual funding allocation from the California Department of Public Health's Tobacco Control Program increased from \$150,000 in FY 2016-2017 to \$784,000 in FY 2017-2018.<sup>31</sup> As a result, the TPP is expanding its operations to include:

- Education initiatives for city officials, residents, property managers, and the public on the dangers of secondhand smoke and effective methods to implement MUH smoking ordinances
- Assistance for MUH communities with signage and monitoring compliance

### Tobacco Education Coalition

Proposition 99 also required that all counties form a community-based group to improve public health by reducing the use of tobacco products. As a result, the County created the Tobacco Education Coalition (TEC) in 1989. The Coalition includes representatives from nonsmoking advocacy groups such as Breathe California, the Youth Leadership Institute, and the American Cancer Society, as well as the San Mateo County Sheriff's Office and San Mateo County Office of Education.<sup>32</sup> The TPP also provides crucial support for the TEC's activities.<sup>33</sup>

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<sup>28</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

<sup>29</sup> "San Mateo County Tobacco Prevention Program 2014-2017 Program Goals and Interventions," County of San Mateo Health System website, accessed June 7, 2018. [https://www.smchealth.org/sites/main/files/file-attachments/2014\\_-\\_2017\\_priorities.pdf](https://www.smchealth.org/sites/main/files/file-attachments/2014_-_2017_priorities.pdf)

<sup>30</sup> County of San Mateo Health System website. Smoke-Free Housing. <https://www.smchealth.org/driftingsmoke>

<sup>31</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

<sup>32</sup> "Tobacco Education Coalition: Advocating change to support a tobacco-free San Mateo County," County of San Mateo Health System website, accessed June 7, 2018. <https://www.smchealth.org/tobaccoeducationcoalition>

<sup>33</sup> "Combined Scope of Work" document provided to the Grand Jury. County of San Mateo Health System, Tobacco Prevention Program. 04/20/18.

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With the goals of raising public awareness, implementing a countywide tobacco control plan, and engaging the public,<sup>34</sup> the TEC works with local governments to undertake the following initiatives:

- Implementing smoke-free multiunit housing policies
- Amending tobacco retail ordinances to broaden the definition of tobacco products
- Eliminating tobacco sales in pharmacies and health care settings
- Collaborating on a statewide healthy stores campaign<sup>35</sup>

As part of the TEC's efforts to promote smoke-free multiunit housing, Coalition members provide city staff with model smoking ordinances. Coalition members also advocate at city council meetings for MUH smoking restrictions.<sup>36, 37</sup>

### **Adoption of Smoking Ordinances for Multiunit Housing**

Starting with Belmont in 2007,<sup>38</sup> local jurisdictions began to pass laws to protect residents from secondhand smoke. Since then Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, San Mateo, South San Francisco, and the County of San Mateo, for its unincorporated areas, have adopted ordinances that restrict smoking in multiunit housing properties.<sup>39</sup> The towns/cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, and San Carlos do not restrict smoking in their multiunit residences, except in some common areas.<sup>40</sup> Atherton, Hillsborough, and Woodside have no multiunit housing.<sup>41</sup> At present, there are almost 114,000

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<sup>34</sup> "San Mateo County Tobacco Education Coalition By-Laws, Article One, Section Two: Goals." County of San Mateo Health System website, accessed June 7, 2018. [https://www.smchealth.org/sites/main/files/file-attachments/tec\\_bylaws\\_v2\\_2015.pdf](https://www.smchealth.org/sites/main/files/file-attachments/tec_bylaws_v2_2015.pdf)

<sup>35</sup> "San Mateo County Tobacco Education Coalition 2014-2017 Objectives," Tobacco Education Coalition: Advocating change to support a tobacco-free San Mateo County, County of San Mateo Health System website, accessed June 7, 2018. [https://www.smchealth.org/sites/main/files/file-attachments/tec\\_objectives\\_2014-2017\\_12-2016.pdf](https://www.smchealth.org/sites/main/files/file-attachments/tec_objectives_2014-2017_12-2016.pdf)

<sup>36</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

<sup>37</sup> "Creating Smokefree Housing. A Model California Ordinance and Checklist," ChangeLab Solutions website, accessed June 7, 2018. <http://changelabsolutions.org/publications/model-ord-smokefree-housing>

<sup>38</sup> Chen, Serena. American Lung Association in California and Bay Area Smokefree Housing Project. *Belmont Case Study: Belmont, CA Secondhand Smoke/Multi-Unit Housing Ordinance*. <https://www.myctb.org/wst/healthylawrence/livewell/TobaccoFreeLiving/American%20Lung%20Association%20Advocates%20Toolbox/Module-3/Belmont-Case-Study.pdf>

<sup>39</sup> Smoking Ordinances in San Mateo county jurisdictions. (See Footnote 8)

<sup>40</sup> Municipal codes for: Colma <https://www.colma.ca.gov/municipal-code/>, East Palo Alto [https://library.municode.com/ca/east\\_palo\\_alto/codes/code\\_of\\_ordinances](https://library.municode.com/ca/east_palo_alto/codes/code_of_ordinances), Half Moon Bay <http://www.codepublishing.com/CA/HalfMoonBay/>, Menlo Park <http://www.codepublishing.com/CA/MenloPark/>, Millbrae <http://www.codepublishing.com/CA/Millbrae/>, Pacifica [https://library.municode.com/ca/pacifica/codes/code\\_of\\_ordinances](https://library.municode.com/ca/pacifica/codes/code_of_ordinances), Portola Valley [https://library.municode.com/ca/portola\\_valley/codes/code\\_of\\_ordinances](https://library.municode.com/ca/portola_valley/codes/code_of_ordinances), and San Carlos <https://www.codepublishing.com/CA/SanCarlos/>.

<sup>41</sup> Officials in Atherton, Hillsborough, and Woodside: email responses to the Grand Jury.

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multiunit residences in the county, of which approximately 94,000 (or 82 percent) are covered by MUH smoking ordinances.<sup>42</sup> (See Appendix B.)

Even though 80 percent of California MUH residents surveyed have indicated that they prefer smoke-free housing<sup>43</sup> and only 6.6 percent of San Mateo County residents smoke,<sup>44</sup> multiunit housing smoking bans remain controversial. The debate centers around the conflict between individual property rights versus the rights of residents to live in a safe, healthy environment.<sup>45, 46</sup> However, no U.S. or California court has found that there is an affirmative right to smoke under either the U.S. Constitution or California Constitution.<sup>47</sup>

Legislative efforts to ban smoking in multiunit housing can take years. For example, in Redwood City it took five years until the city's MUH smoking ordinance was passed in October 2017.<sup>48</sup> In other municipalities, such as Half Moon Bay, the city council is still considering MUH smoking restrictions as of May 2018.<sup>49</sup>

Multiunit housing smoking ordinances generally provide the following:

- Prohibit smoking (which includes the use of e-cigarettes) of tobacco, recreational marijuana, and other plant materials, in individual units of MUH and all in common areas
- Declare secondhand smoke a "nuisance"
- Require landlords to post no-smoking signage
- Require leases to incorporate smoking restrictions
- Prohibit landlords/property managers from "knowingly permitting" smoking and "knowingly or intentionally" permitting ashtrays
- Provide for fines between \$100 - \$250 for smoking violations

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<sup>42</sup> Officials from cities, towns, and San Mateo County: email responses to the Grand Jury.

<sup>43</sup> "Policy Statements. Policy Statement 12: Smoke-Free Housing Choice," California Apartment Association website, accessed June 7, 2018. [https://caanet.org/app/uploads/2015/01/CAA\\_Policy\\_Statements\\_2013-with-TOC.pdf](https://caanet.org/app/uploads/2015/01/CAA_Policy_Statements_2013-with-TOC.pdf)

<sup>44</sup> "California Facts and Figures 2016, Over 25 Years of Tobacco Control in California, September 2016," California Department of Public Health website, accessed June 7, 2018.

<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>

<sup>45</sup> Minutes, City of Half Moon Bay City Council, February 6, 2018.

<sup>46</sup> Video, Redwood City City Council, October 2, 2017, Meetings, Agendas, and Minutes, Redwood City website, accessed June 7, 2018. < <http://www.redwoodcity.org/city-hall/city-council/city-council-meetings-agendas-and-minutes>>

<sup>47</sup> Samantha K. Graff, "There Is No Constitutional Right to Smoke: 2008, March 2008." A Law Synopsis by the Tobacco Control Legal Consortium, Tobacco Control Legal Consortium website, accessed June 7, 2018.

<<http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-constitution-2008.pdf>>

<sup>48</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

<sup>49</sup> Zachary Clark, "Half Moon Bay to adopt smoking restrictions," *San Mateo Daily Journal*, May 17, 2018.

[https://www.smdailyjournal.com/news/local/half-moon-bay-to-adopt-smoking-restrictions/article\\_948a18f0-598a-11e8-a4d4-270086bc37e4.html](https://www.smdailyjournal.com/news/local/half-moon-bay-to-adopt-smoking-restrictions/article_948a18f0-598a-11e8-a4d4-270086bc37e4.html)

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Ordinances vary on certain provisions, such as whether condominiums are included in their definitions of multiunit housing, acceptable distances from building entrances and windows where outdoor smoking is permitted, and whether smoking medical marijuana is exempted from MUH smoking restrictions. For example, the MUH smoking ordinances for the cities of Brisbane, Burlingame, Daly City, and the County of San Mateo for its unincorporated areas do not prohibit smoking medical marijuana in multiunit housing.<sup>50</sup>

## **DISCUSSION**

### **Implementation of ordinances and education**

Successful implementation of the provisions of a multiunit housing smoking ordinance, following its passage, requires residents to be knowledgeable about their rights under the law. Historically, cities have used press releases, mailings, and community meetings to inform the public of the new rules for a period of time immediately after the law has been passed. However, the Grand Jury found that most jurisdictions did not continue engaging the public after the initial awareness campaign, except when ordinances were amended.<sup>51</sup>

MUH smoking ordinances place substantial responsibility for implementation on landlords and property managers. For example, most jurisdictions require landlords to install no-smoking signage, modify leases, and set up any designated smoking areas that they choose to permit at the stated minimum distances from building entrances and windows.<sup>52</sup> However, most city governments have neither assisted in this process nor followed up to ensure that these requirements are being met.<sup>53, 54</sup> As a result, many MUH properties lack the required signage and designated smoking areas.<sup>55</sup>

The jurisdictions' websites provide little information to educate residents, landlords, and property managers on their MUH smoking ordinances. It can be challenging to find information online about the ordinances or how to report a violation. The following examples are illustrative:

- The websites for Burlingame, Daly City, Redwood City,<sup>56</sup> the County of San Mateo, and South San Francisco do not contain any summaries of their MUH smoking ordinances. See Appendices C and D for examples of summaries from cities that do provide them.

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<sup>50</sup> Smoking Ordinances in San Mateo County jurisdictions. (See Footnote 8)

<sup>51</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>52</sup> Smoking Ordinances in San Mateo County jurisdictions. (See Footnote 8)

<sup>53</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>54</sup> "Six-Month Apartment Smoking Prohibitions Review" report to Foster City City Council. June 1, 2015.

<https://fostercityca.civicclerk.com/web/UserControls/DocPreview.aspx?p=1&aoid=306>

<sup>55</sup> On-site observations in Belmont, Daly City, and Foster City.

<sup>56</sup> Redwood City's smoking ordinance is partially implemented: effective January 1, 2018 for all new units and January 1, 2019 for existing units in MUH properties.

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- All but one of the MUH jurisdictions' websites provide links on their home pages for residents to report common nuisances such as potholes, graffiti, and abandoned shopping carts, but they do not provide any such links for reporting smoking violations.<sup>57</sup>
- Only the websites for Brisbane, San Bruno, and Foster City provide readily accessible information on how to report a violation of an MUH smoking ordinance.<sup>58</sup> See Appendix E for an example of a readily accessible notice.
- When entering search terms such as "smoke" and "smoking" in MUH cities' websites, no information regarding multiunit housing smoking ordinances appears in either Burlingame's or Daly City's websites.<sup>59</sup>
- San Bruno and the County of San Mateo (on the County Health System website) are the only MUH jurisdictions that provide information about the TPP or TEC or how to contact them regarding multiunit housing smoking issues.<sup>60</sup>

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<sup>57</sup> The websites for the jurisdictions of Belmont <https://www.belmont.gov>, Brisbane <http://brisbaneca.org>, Foster City <https://www.fostercity.org>, Redwood City <http://www.redwoodcity.org>, San Bruno <https://www.sanbruno.ca.gov>, the City of San Mateo <https://www.cityofsanmateo.org>, San Mateo County and South San Francisco <http://www.ssf.net> have a "How Do I ..." or "I Want To ..." link on their websites, as well as Daly City's "iHelp" link <http://www.dalycity.org>, that lead to information on how to report nuisances such as barking dogs, loud parties, abandoned mattresses, and shopping carts. However, these links do not provide information on how to report MUH smoking violations. Burlingame's website links to Code Compliance from its home page <https://www.burlingame.org>.

<sup>58</sup> Websites for Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, City of San Mateo, San Mateo County, and South San Francisco (See Footnote 56).

<sup>59</sup> City of Burlingame website, accessed June 7, 2018: <<https://www.burlingame.org>> City of Daly City website, accessed June 7, 2018. <<http://www.dalycity.org>>

<sup>60</sup> Websites for Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, City of San Mateo, San Mateo County, and South San Francisco. (See Footnote 56)

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The foregoing examples are summarized in Figure No. 1, below.

**Figure No. 1: Website Content of Jurisdictions with MUH Smoking Ordinances**

Jurisdiction	Search for "Smoke/ Smoking" yields smoking ordinance information?	Provides summary of smoking ordinance?	Provides information on how to make complaints about MUH smoking?	Provides links to report specific nuisances other than smoking?	Provides TPP/TEC info?
Belmont	Yes	Yes	No	Yes	No
Brisbane	Yes	Yes	Yes	Yes	Yes
Burlingame	No	No	No	No	No
Daly City	No	No	No	Yes	No
Foster City	Yes	Yes	Yes	Yes	No
Redwood City <sup>61</sup>	Yes	No	No	Yes	No
San Bruno	Yes	Yes	Yes	Yes	Yes
City of San Mateo	Yes	Yes	No	Yes	No
South San Francisco	Yes	No	No	Yes	No
County of San Mateo	Yes	No	Yes	Yes	Yes

In addition to inadequate website information, Brisbane, Burlingame, Foster City, Redwood City, and San Bruno, the County of San Mateo, and South San Francisco do not require that their mandatory no-smoking signage contain a phone number for reporting violations. The City of San Mateo's ordinance does not require that no-smoking signage be posted.<sup>62</sup>

### **Enforcement and Compliance**

Those jurisdictions with MUH smoking ordinances typically assign the responsibility for enforcement of the ordinances to either their law enforcement or code enforcement personnel. Such enforcement officers generally do not issue citations for first offense violations of MUH smoking ordinances. In fact, it is difficult for them to issue citations at all because they must (1) observe the violation in progress, (2) see other compelling evidence that a violation had occurred, or (3) have the alleged violator admit to law or code enforcement that he or she had been smoking in violation of the MUH smoking ordinance.<sup>63</sup>

<sup>61</sup> Redwood City's smoking ordinance is partially implemented: effective January 1, 2018 for all new units and January 1, 2019 for existing units in MUH properties.

<sup>62</sup> Smoking Ordinances in San Mateo County jurisdictions. (See Footnote 8)

<sup>63</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

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Officers interviewed by the Grand Jury stated that most of the alleged MUH smokers they spoke with in response to a complaint said they were unfamiliar with the smoking ordinance restrictions. Because of this, the officers primarily seek to educate and warn those residents about the requirements of MUH smoking ordinances and potential enforcement.<sup>64</sup> In several jurisdictions, when the alleged smoking offender was not at home, officers would leave a letter, brochure, or door hanger, if their city has one, explaining the smoking ordinance requirements.<sup>65</sup> Complaints data reviewed by the Grand Jury indicates that very few individuals who were contacted by officers regarding alleged smoking ordinance violations were the subjects of subsequent complaints, suggesting that the officers' education approach was effective.<sup>66</sup>

According to enforcement officers interviewed by the Grand Jury, even if residents are aware of their rights, they may be reluctant to make complaints because of fear of retaliation from smoking neighbors or landlords.<sup>67</sup> While Belmont, Brisbane, Daly City, Redwood City, San Bruno, and the County of San Mateo's ordinances expressly prohibit retaliation, the MUH smoking ordinances for Burlingame, Foster City, the City of San Mateo, and South San Francisco do not.<sup>68</sup> The materials published by MUH jurisdictions also do not inform residents that they may complain anonymously about smoking violations. Vulnerable residents, such as undocumented immigrants, may fear that a complaint could result in disclosure, eviction, or deportation.<sup>69</sup>

Local officials interviewed by the Grand Jury opined that enforcement of MUH smoking ordinances might be helped by the use of new smartphone applications (apps) that enable users to take a photo of nuisance code infractions in their jurisdictions, then submit it instantly to enforcement officers. Once received, officers can review the information and follow up with onsite visits. Such photographic evidence of a smoking violation in progress could be deemed the equivalent of an officer viewing the violation, thus allowing the officer to issue a citation to the smoker.<sup>70</sup>

At present, Burlingame, Foster City, Redwood City, San Bruno, the City of San Mateo, South San Francisco, and the County of San Mateo provide such apps (Access Burlingame, Foster City Access, myRWC, San Bruno Responds, mySanMateo,<sup>71</sup> Engage SSF,<sup>72</sup> and Report It! San Mateo County,<sup>73</sup> respectively). Officials in the City of San Mateo have used their app only to receive reports on illegal

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<sup>64</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Smoking Ordinances in San Mateo County jurisdictions. (See Footnote 8)

<sup>69</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>70</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>71</sup> Officials in the City of San Mateo: interview by the Grand Jury.

<sup>72</sup> Official in South San Francisco: interview by the Grand Jury.

<sup>73</sup> Search results for phone applications for all MUH smoking ordinance jurisdictions in San Mateo County.

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dumping and graffiti, but expressed enthusiasm about its potential to use photos as evidence of other violations including smoking.<sup>74</sup>

In the course of its investigation, the Grand Jury learned that certain multiunit properties generate a greater number of smoking complaints than others.<sup>75, 76</sup> Few jurisdictions with MUH smoking ordinances review the data they have in order to identify particular properties where multiple smoking ordinance violations are being reported. In addition, enforcement officers rarely follow up with landlords/property managers at MUH properties where smoking complaints have been received to inform them of the reported violations. Even in jurisdictions where smoking complaints data may be available, the information is not routinely shared with the TPP or TEC.<sup>77</sup> Improvements in complaints data collection, analysis, and sharing could help increase compliance with the ordinances, evaluate trends in smoking complaints, and ultimately protect MUH residents as these laws intended.

In addition to reporting a violation of multiunit housing smoking ordinances to enforcement officers, residents who are exposed to secondhand smoke have several other options:

- Talking to the smoker
- Addressing the issue with the landlord
- Contacting the TPP's smoking hotline (650) 573-3777<sup>78</sup>
- Taking independent legal action based on a "nuisance" claim<sup>79</sup>

### **TPP and TEC Roles**

With an increase in funding allocated by the California Department of Public Health's Tobacco Control Program from \$150,000 in FY 2016-2017 to \$784,000 in FY 2017-2018, the Tobacco Prevention Program and Tobacco Education Coalition (through increased TPP funding) will have the resources to significantly increase their activities in support of smoke-free multiunit housing.

In addition to the areas of expansion already identified by the TPP (See Background) the TPP could also use these funds to improve the content of its web pages. At present, the TPP web pages provide guidance for tenants and landlords seeking to eliminate exposure to secondhand smoke. However, they do not:

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<sup>74</sup> Officials in City of San Mateo: interview by the Grand Jury.

<sup>75</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>76</sup> Data on complaints of smoking in MUH submitted to the Grand Jury by officials from local code and law enforcement agencies.

<sup>77</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>78</sup> "Smoke-Free Housing" County of San Mateo Health System website, accessed June 7, 2018.

<https://www.smchealth.org/driftingsmoke> .

<sup>79</sup> "Legal Options for Tenants Suffering from Drifting Tobacco Smoke" Tobacco Free CA website, accessed June 7, 2018.

< [http://tobaccofreeca.com/wp-content/uploads/2017/11/G-Legal-Options\\_Smokefree-Support-for-Residenets\\_Making-Smokefree-Laws-Work\\_Disability-Factsheet.pdf](http://tobaccofreeca.com/wp-content/uploads/2017/11/G-Legal-Options_Smokefree-Support-for-Residenets_Making-Smokefree-Laws-Work_Disability-Factsheet.pdf)>



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- Summarize a resident's rights and obligations under the relevant MUH ordinance
- Provide links to MUH jurisdictions' smoking ordinances
- Advise multiunit housing residents how to complain about violations of their specific jurisdiction's MUH smoking ordinance

With its additional funding, the TPP could provide the above-referenced information and links for residents in jurisdictions with MUH smoking ordinances. In addition, the TPP could devote more resources to obtaining complaints data from jurisdictions that have MUH smoking ordinances in order to consolidate that information across the county, develop trend information, and assist jurisdictions in analyzing it. To date the TPP has reported only limited success in obtaining such data from jurisdictions.<sup>80</sup>

## **CONCLUSION**

Undoubtedly, progress has been made through these ordinances to protect MUH residents by giving them clear, legal rights to seek protection from the dangers of secondhand smoke exposure. At present, the County and eight of its twenty cities have passed MUH smoking ordinances covering 82 percent of the county's multiunit households.

However, it is difficult to determine the impact that MUH smoking ordinances have made because the TPP, which could consolidate complaints data across the jurisdictions and look for trend information, has reported only limited success in obtaining such data from jurisdictions. Further, not all jurisdictions with MUH smoking ordinances interviewed by the Grand Jury systematically compile complaints data. As a result, decisions on how best to increase compliance with and enforce the ordinances can be difficult to make.

The Tobacco Prevention Program and Tobacco Education Coalition can support compliance by providing signage with a phone number to report violations and reaching out to residents to explain their rights and obligations under the ordinances, as well as assisting jurisdictions with efforts to analyze complaints data.

## **FINDINGS**

**F1:** Since 1967, exposure to secondhand smoke has killed approximately 2.5 million nonsmokers of all ages in the United States.

**F2:** Enforcement officers report that their primary focus when responding to MUH smoking violation complaints is to educate alleged smokers regarding the requirements of the smoking ordinances, and that most alleged smokers report being unfamiliar with the requirements of the ordinance.

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<sup>80</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

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**F3:** The Belmont, Brisbane, Daly City, Redwood City, San Bruno, and the County of San Mateo MUH smoking ordinances expressly prohibit retaliation against individuals who report a violation; however, the MUH smoking ordinances for Burlingame, Foster City, the City of San Mateo, and South San Francisco do not.

**F4:** Searches for “smoking” or “smoke” using the website search tool for Burlingame and Daly City<sup>81</sup> do not yield any information regarding their MUH smoking ordinances, whereas the search tools for each of the other jurisdictions with MUH smoking ordinances do. (See Website Content Table below, column F4.)

**F5:** The websites for Burlingame, Daly City, Redwood City,<sup>82</sup> the County of San Mateo, and South San Francisco do not contain summaries of their MUH smoking ordinances. The websites for each of the other jurisdictions with MUH smoking ordinances do. (See Website Content Table below, column F5.)

**F6:** The websites for Belmont, Burlingame, Daly City, Redwood City,<sup>83</sup> the City of San Mateo, and South San Francisco do not provide specific information on how to make complaints regarding MUH smoking violations. The websites for each of the other jurisdictions with MUH smoking ordinances do. (See Website Content Table below, column F6.)

**F7:** The websites for the cities of Belmont, Brisbane, Foster City, Redwood City,<sup>84</sup> San Bruno, San Mateo, and South San Francisco, as well as the County’s Health System website (for unincorporated San Mateo County) have links on their home pages that lead to information on how to report specific types of nuisances such as barking dogs, loud parties, abandoned mattresses, and shopping carts. However, these links do not provide information on how to report MUH smoking violations. Burlingame’s website links to Code Compliance from its home page.<sup>85</sup> (See Website Content Table below, column F7.)

**F8:** The websites for Brisbane, San Bruno, and the County of San Mateo (on the County Health System website) provide information about the TPP or TEC or how to contact them regarding an MUH smoking issue. The websites for the other MUH jurisdictions do not. (See Website Content Table below, column F8.)

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<sup>81</sup> City of Burlingame website, accessed June 7, 2018. <<http://burlingame.org>> City of Daly City website, accessed June 7, 2018. <<http://www.dalycity.org>>

<sup>82</sup> Redwood City’s smoking ordinance is partially implemented: effective January 1, 2018 for all new units and January 1, 2019 for existing units in MUH properties.

<sup>83</sup> Redwood City’s smoking ordinance is partially implemented: effective January 1, 2018 for all new units and January 1, 2019 for existing units in MUH properties.

<sup>84</sup> Ibid.

<sup>85</sup> <<https://www.belmont.gov>> <<http://brisbaneca.org>> <<https://www.burlingame.org>> <<https://www.fostercity.org>> <<http://www.redwoodcity.org>> <<https://www.sanbruno.ca.gov>> <<https://www.cityofsanmateo.org>> <<http://www.ssf.net>> <<http://www.dalycity.org>>

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**Website Content of Jurisdictions with MUH Smoking Ordinances**

Jurisdiction	F4. Search for "Smoke/Smoking" yields smoking ordinance information?	F5. Provides summary of smoking ordinance?	F6. Provides information on how to make complaints about MUH smoking?	F7. Provides links to report specific nuisances other than smoking?	F8. Provides TPP/TEC info?
Belmont	Yes	Yes	No	Yes	No
Brisbane	Yes	Yes	Yes	Yes	Yes
Burlingame	No	No	No	No	No
Daly City	No	No	No	Yes	No
Foster City	Yes	Yes	Yes	Yes	No
Redwood City <sup>86</sup>	Yes	No	No	Yes	No
San Bruno	Yes	Yes	Yes	Yes	Yes
City of San Mateo	Yes	Yes	No	Yes	No
South San Francisco	Yes	No	No	Yes	No
County of San Mateo	Yes	No	Yes	Yes	Yes

**F9:** In all MUH jurisdictions, the issuance of citations for violations of MUH smoking ordinances is limited by the need to (1) observe the violation in progress, (2) see other compelling evidence that a violation had occurred, or (3) have the alleged violator admit to law or code enforcement that he or she had been smoking in violation of the MUH smoking ordinance.

**F10:** The towns/cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, and San Carlos do not have smoking ordinances that restrict smoking in their multiunit residences, except in some common areas. Atherton, Hillsborough, and Woodside have no multiunit housing.

**F11:** The MUH smoking ordinances for the cities of Brisbane, Burlingame, Daly City, and the County of San Mateo for its unincorporated areas do not prohibit smoking medical marijuana in multiunit housing.

**F12.** The TPP web pages do not include the following information: (a) a summary of residents' rights and obligations under the MUH smoking ordinances in their jurisdictions, (b) links to each jurisdiction's MUH smoking ordinance, and (c) information on how residents of multiunit housing can report violations of MUH smoking ordinances in their specific jurisdictions.

<sup>86</sup> Redwood City's smoking ordinance is partially implemented: effective January 1, 2018 for all new units and January 1, 2019 for existing units in MUH properties.

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**F13:** TPP reported limited success in obtaining MUH smoking complaints data from jurisdictions, making it difficult to assess the efficacy of MUH ordinances and develop trend information.

**F14:** The funding allocation from the California Department of Public Health's Tobacco Control Program for TPP increased from \$150,000 in FY 2016-2017 to \$784,000 in FY-2017-2018.

## **RECOMMENDATIONS**

**R1:** Each jurisdiction with an MUH smoking ordinance (Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, City of San Mateo, South San Francisco and the County of San Mateo for its unincorporated areas) should improve their educational outreach to residents regarding such ordinances, including at a minimum each of the following, by no later than March 31, 2019:

- Publishing summaries of residents' rights and obligations under their MUH smoking ordinances, including on their websites
- Publishing information on how to report violations of MUH smoking ordinances, including on their websites
- Informing residents that they can report violations of MUH smoking ordinances anonymously
- Informing residents, including on their websites, that it is unlawful for any landlord or other person to take any retaliatory action against them for having reported a violation of an MUH smoking ordinance
- Ensuring that information about reporting MUH smoking ordinance violations is just as readily accessible on their websites as information about other forms of nuisance
- Ensuring that, upon typing the word "smoking," or the like in the search features of their websites, users are directed to all information about the jurisdiction's MUH smoking ordinance and related complaints process

**R2:** The cities of Burlingame, Foster City, San Mateo, and South San Francisco should amend their MUH smoking ordinances, by no later than December 31, 2018, to prohibit retaliation against individuals who report violations of the MUH smoking ordinances.

**R3:** The cities of Brisbane, Burlingame, Daly City, and the County of San Mateo for its unincorporated areas should amend their MUH smoking ordinances, by no later than December 31, 2018, to prohibit smoking medical marijuana in multiunit housing.

**R4:** Each jurisdiction with an MUH smoking ordinance (Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, City of San Mateo, South San Francisco, and the County of San Mateo for its unincorporated areas) should, by June 30, 2019, evaluate ways to improve its collection and retrieval of complaints of MUH smoking violations so that:

- Information regarding each complaint of an MUH smoking ordinance violation, and the response to it (complaints data) is recorded in a searchable electronic database

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- The jurisdiction can evaluate trends in the complaints data and the efficacy of the MUH smoking ordinance

**R5:** Each jurisdiction with an MUH smoking ordinance should, by December 31, 2018, make their complaints data (with names of alleged violators deleted) available to the TPP and TEC on at least an annual basis.

**R6:** Each jurisdiction with an MUH smoking ordinance should, by December 31, 2018, conduct a review of current methods used by the public to report MUH smoking violations and possible improvements (including online reporting on their websites and use of mobile phone apps) to ensure ease of reporting.

**R7:** The towns/cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, and San Carlos should, by December 31, 2018, hold public hearings to evaluate issues and hear residents' views on restricting smoking in multiunit housing in their jurisdictions.

**R8:** TPP and TEC should update their web pages by March 31, 2019, to include the following:

- Links to MUH jurisdictions' smoking ordinances and their summaries/FAQs
- Information on how to report violations of MUH smoking ordinances in each applicable jurisdiction

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the City Councils and Board of Supervisors, as applicable, of the following:

- Each of the City of Belmont, the City of Brisbane, the City of Burlingame, the City of Daly City, the City of Foster City, the City of Redwood City, the City of San Bruno, City of San Mateo, the City of South San Francisco, and San Mateo County Board of Supervisors to respond to: R4, R5, and R6.
- Each of the City of Burlingame, City of Foster City, City of San Mateo, and City South San Francisco to respond to R2.
- Each of the City of Brisbane, City of Burlingame, City of Daly City, and the County of San Mateo to respond to R3.
- Each of the Town of Colma, City of East Palo Alto, City of Half Moon Bay, City of Menlo Park, City of Millbrae, City of Pacifica, Town of Portola Valley, and City of San Carlos to respond to R7.
- The San Mateo County Board of Supervisors to respond to R8.

The governing bodies indicated above should be aware that the comments or responses of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

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## **METHODOLOGY**

The Grand Jury reviewed health studies, scientific papers, government fact sheets and reports, national, state, county, and city statistics, smoking ordinances of cities in San Mateo County, data on smoking violations collected by city code and law enforcement officials, by-laws and other documents pertaining to the County's Tobacco Prevention Program and Tobacco Education Coalition, state laws covering smoking, and materials from the following organizations: California Apartment Association, Executive Council of Homeowners, Breathe California, Tobacco Free CA, ChangeLab Solutions, American Lung Association, and Americans for Nonsmokers' Rights.

The Grand Jury interviewed officials in the following cities:

Belmont  
Brisbane  
Daly City  
Foster City  
San Mateo  
South San Francisco

In addition, the Grand Jury interviewed representatives of San Mateo County Health System, as well as the nonprofit California Apartment Association.

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**Brisbane <**

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**APPENDIX A**

**MULTIUNIT HOUSING SMOKING ORDINANCES IN SAN MATEO COUNTY**

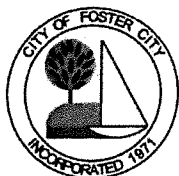
Jurisdiction	Contact #	Penalty	Recreational Marijuana	Medical Marijuana	E-cigs Vaping	Condos Included	Retaliation Prohibited	Notice in Lease	Ordinance Link
Belmont	Business hours 650.637.2966 After hours 650.595.7400	Warning Fine \$100+	Prohibited	Prohibited	Prohibited	Yes	Yes	Yes	<a href="https://library.municode.com/cal/belmont/codes/code_of_ordinances?nodeId=CICO_CH20.5RESM">https://library.municode.com/cal/belmont/codes/code_of_ordinances?nodeId=CICO_CH20.5RESM</a>
Brisbane	415.508.2172	Warning Fine \$100+	Prohibited	Exempted	Prohibited	Yes	Yes	Yes	<a href="https://library.municode.com/cal/brisbane/codes/code_of_ordinances?nodeId=TI18HESA_CH8.46SMIMUITRE">https://library.municode.com/cal/brisbane/codes/code_of_ordinances?nodeId=TI18HESA_CH8.46SMIMUITRE</a>
Burlingame	650.558.7208	Refers to other parts of muni code	Prohibited	Exempted	Not specified	Yes	No	No	<a href="http://qcode.us/codes/burlingame/view.php?topic=8-8_18&amp;showAll=1&amp;frames=on">http://qcode.us/codes/burlingame/view.php?topic=8-8_18&amp;showAll=1&amp;frames=on</a>
Daly City	650.991.8119	Warning Fine \$100+	Prohibited	Exempted	Prohibited	No	Yes	Yes	<a href="https://library.municode.com/cal/daly_city/codes/code_of_ordinances?nodeId=TI18HESA_CH8.36RESM">https://library.municode.com/cal/daly_city/codes/code_of_ordinances?nodeId=TI18HESA_CH8.36RESM</a>
Foster City	650.286.3300	Fine up to \$250 1st violation	Prohibited	Prohibited	Prohibited	Yes	No	Yes	<a href="http://www.codepublishing.com/CA/FosterCity/FosterCity08/FosterCity0805.html">http://www.codepublishing.com/CA/FosterCity/FosterCity08/FosterCity0805.html</a>
Redwood City*	Business hours 650.780.7350 After hours 650.780.7118	Fine between \$250 - \$1,000	Prohibited	Prohibited	Prohibited	Yes	Yes	Yes	<a href="https://library.municode.com/cal/redwood_city/codes/code_of_ordinances?nodeId=CH15SMRE">https://library.municode.com/cal/redwood_city/codes/code_of_ordinances?nodeId=CH15SMRE</a>
San Bruno	County Hotline 650.573.3777 or 650.616.7074	Warning Fine \$100+	Prohibited	Prohibited	Prohibited	Yes	Yes	Yes	<a href="https://qcode.us/codes/sanbruno/view.php?topic=6-6_56&amp;showAll=1&amp;frames=off">https://qcode.us/codes/sanbruno/view.php?topic=6-6_56&amp;showAll=1&amp;frames=off</a>
San Mateo	650.522.7700	Warning Fine \$100+	Prohibited	Prohibited	Prohibited	Yes	No	No	<a href="http://qcode.us/codes/sanmateo/view.php?topic=7-7_40&amp;showAll=1&amp;frames=on">http://qcode.us/codes/sanmateo/view.php?topic=7-7_40&amp;showAll=1&amp;frames=on</a>
South San Francisco	650.829.8645	Follow Public Nuisance Law Penalties	Prohibited	Prohibited	Prohibited	Yes	No	No	<a href="http://qcode.us/codes/southsanfrancisco/view.php?topic=-8-8_50&amp;showAll=1&amp;frames=off">http://qcode.us/codes/southsanfrancisco/view.php?topic=-8-8_50&amp;showAll=1&amp;frames=off</a>
Unincorporated San Mateo County	650.573.3777	Fine up to \$100 1st violation	Prohibited	Exempted	Prohibited	Yes	Yes	Yes	<a href="https://library.municode.com/cal/san_mateo_county/code_of_ordinances?nodeId=TI14SAHE_CH4.96SM">https://library.municode.com/cal/san_mateo_county/code_of_ordinances?nodeId=TI14SAHE_CH4.96SM</a>
Notes		Fines increase with subsequent infractions	Marijuana smoke considered same as any smoke						
*Restrictions effective 1/1/2018 for all new units and 1/1/2019 for all existing units in multiunit housing in Redwood City.									

**APPENDIX B**

<b>Number of Multiunit Housing Residences in San Mateo County</b>	
<b>Jurisdiction</b>	<b>Total MUH</b>
San Mateo	22,511
Daly City	16,626
Redwood City	15,026
Foster City	8,662
South San Francisco	8,506
San Bruno	7,424
Burlingame	6,693
Menlo Park	4,837
Belmont	4,559
Pacifica	3,945
San Carlos	3,440
East Palo Alto	3,395
Millbrae	3,036
Unincorporated County	2,555
Half Moon Bay	1,516
Brisbane	766
Portola Valley	263
Colma	212
Atherton	0
Woodside	0
Hillsborough	0
<b><u>TOTAL MUH</u></b>	<b><u>113,972</u></b>

(Includes apartments, condominiums, townhomes,  
duplexes, triplexes and fourplexes)

## APPENDIX C



### **Foster City Smoking Ordinance** Frequently Asked Questions – Multi-Family Residential Properties (Apartments, Condominiums, Townhomes)

- Q. Are all residential properties in Foster City impacted by this ordinance?**  
A. No. The ordinance applies to multi-family units (apartments, condominiums and townhomes) that share common walls, ventilation, floors, or ceilings.
- Q. Where is smoking prohibited?**  
A. For apartments, condominiums and townhomes, smoking is prohibited within 30 feet of all entrances and doorways, in common areas and inside residential units and on all balconies and patios. This ordinance goes into effect immediately for common areas and all new leases. Units with existing leases are exempt until the lease agreement expires or twelve months after the ordinance's effective date. (The ordinance effective date was 11/5/2014.) Smoking is also prohibited on all sidewalks in or adjacent to common interest developments and apartments.
- Q. Where is smoking permitted?**  
A. Smoking is permitted in designated smoking areas. Outdoor designated areas must be located more than 30 feet from an entrance/doorway and be marked by conspicuous signage. Interior smoking is allowed only if the area is fully enclosed, separately ventilated, and not the only space available for a particular activity or service.
- Q. Are electronic cigarettes included in the ordinance?**  
A. Yes. The city defines "smoke or smoking" as inhaling or exhaling upon, burning or carrying any lighted cigarette, cigar, pipe, hookah, weed, plant or other combustible substance used for the personal habit commonly known as smoking or an activated electronic cigarette or similar device used for the personal habit commonly known as vaping.
- Q. When does the ordinance go into effect?**  
A. The ordinance went into effect on November 6, 2014, for apartment buildings and December 17, 2014, for condominiums and townhomes. Until January 1, 2015, first time violators will be subjected to a warning only.
- Q. What are the fines and penalties?**  
A. Any person who violates the ordinance may be cited for an infraction, punishable by:
- A fine not exceeding two hundred fifty dollars (\$250) for a first violation
  - A fine not exceeding five hundred dollars (\$500) for a second violation within one year
  - A fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year

**Q. How will the ordinance be enforced?**

A. Violations of the notification requirements or designation of smoking areas should be addressed to the Foster City Community Development Department at 650- 286-3225 or [planning@fostercity.org](mailto:planning@fostercity.org). To report a violation in progress ("on-view violation") of the ordinance, call the Police Department at 650-286-3300.

**Q. What are the responsibilities of apartment managers or homeowners associations under the ordinance?**

A. Each owner, operator, manager or other person having control of places within which smoking is regulated shall be in compliance upon conspicuously posting "No Smoking" signs with letters not less than one inch high or 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. At least one sign shall be placed at the entrance to every applicable facility. The City has provided signage guidance at its website (see link at the end of this document). Property owners and operators are also required to notify residents of the new law using a noticing method deemed appropriate by the property owners or operators.

**Q. Can I establish non-smoking policies that are stronger than what is required under the ordinance?**

A. Yes. The ordinance does not prevent property owners from establishing more stringent non-smoking requirements.

**Q. If I rent out a single family home, is smoking allowed in that residence?**

A. Yes. The ordinance applies only to residential units that share walls, ceilings or floors.

**Q. What happens if a resident is complaining about drifting smoke from another unit?**

A. The best course of action is to contact the smoker to remind them that smoking is not permitted in or around residential units that share common walls, ceilings or floors and to inform them of the location of designated smoking areas on the property. If the resident continues to smoking in the unit, violations in progress ("on-view violations") of the ordinance can be reported to the Police Department at 650-286-3300.

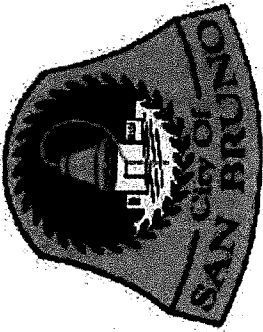
**Q. Where can I go for more information on this ordinance and resources for implementing a non-smoking multi-unit residential community?**

A. General questions about the ordinance may be addressed to Management Analyst Andra Lorenz at 650-286-3215 or [alorenz@fostercity.org](mailto:alorenz@fostercity.org). Questions about the ordinance's signage and notification requirements or designation of smoking areas may be addressed to the Foster City Community Development Department at 650-286-3225 or [planning@fostercity.org](mailto:planning@fostercity.org). To report a violation in progress ("on-view violation") of the ordinance, call the Police Department at 650- 286-3300. California Apartment Association (Tri-County) also has resources available to members and can be contacted at (408) 342-3500.

More information is also available at Foster City's Smoking Ordinance Resource Page: [www.fostercity.org/departmentsanddivisions/citymanager/smokingordinanceupdate.cfm](http://www.fostercity.org/departmentsanddivisions/citymanager/smokingordinanceupdate.cfm)

\*The California Apartment Association served as a resource in development of this document.

## APPENDIX D



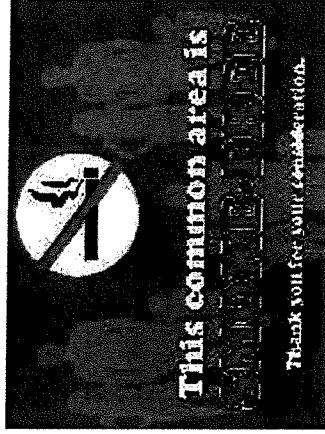
# Did You Know the City Has a Smoking Ordinance?

## WHAT IS COVERED BY THE ORDINANCE?

The City has adopted a new ordinance to regulate exposure to secondhand smoke throughout the City, including in most public places and in multi-unit residences such as apartments, condominiums, and townhomes. Smoking is broadly defined to include any lighted tobacco or nicotine product, weed or plant, including hookah and marijuana, whether delivered by cigarette, pipe, cigar, or any electronic device (vaping).

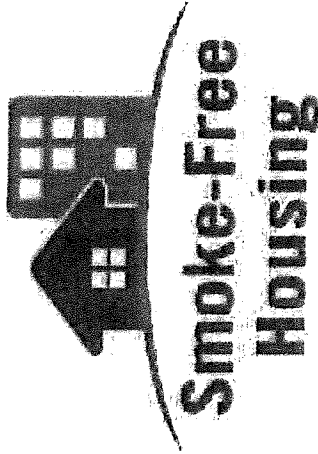
*Where is Smoking Prohibited cont'd*

- In multi-unit residence common areas, such as halls, stairwells, paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, swimming pools, and parking areas.



In most public places in the City, as of **December 22, 2016**, smoking is prohibited:

- In most places of employment, including indoor and outdoor areas, such as businesses, construction sites, employee lounges and break rooms, conference and banquet rooms, bingo and gaming facilities, health facilities, warehouses, retail and wholesale tobacco shops, and child care facilities;

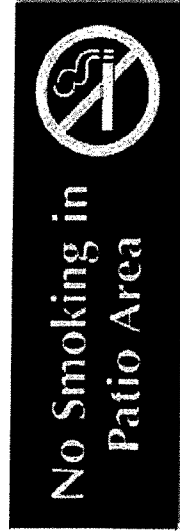


*Change is in the air.*

## WHERE IS SMOKING PROHIBITED?

After a 14-month grace period that expires on **February 22, 2018**, smoking is prohibited:

- In multi-unit residences (including attached patios and balconies), defined as including more than one dwelling unit;

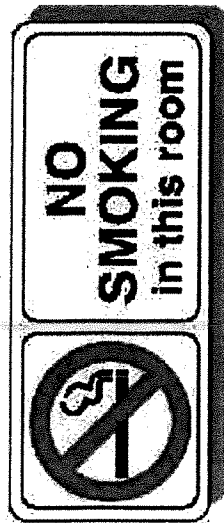


*Where is Smoking Prohibited cont'd*

- In most public places, such as plazas, parking lots, malls, stadiums, parks, playgrounds, farmer's markets, and fairs;

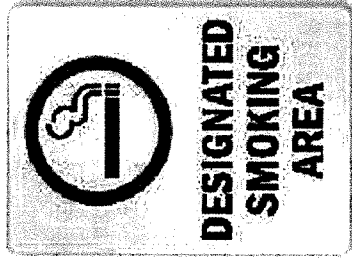


- In service areas, such as ATMs, bank teller windows, ticket lines, bus stops, and cab stands;
- In 90% of all hotel and motel guest rooms.



**WHERE IS SMOKING ALLOWED?**

- Effective February 22, 2018, smoking is allowed only in designated outdoor smoking areas that are at least 20' from operable doors or windows.



As of December 22, 2016, smoking is allowed:

- In single family homes, rooms for rent in single family homes, and detached in-law units;
- In designated outdoor smoking areas that are at least 20' from operable doors or windows;
- On streets, sidewalks, and other outdoor areas that are at least 20' from operable doors and windows or locations where smoking is prohibited, or if the person is actively moving to another destination.

If you have any questions or if you have a smoking complaint please contact the following:

**Step 1:**

Tobacco Prevention Program San Mateo County Health System 310 Harbor Boulevard

Belmont, CA 94002

Tel: (650) 573-3777

Fax: (650) 802-6440

Email: [tobaccoprevention@smcgov.org](mailto:tobaccoprevention@smcgov.org)



**COUNTY OF SAN MATEO**  
HEALTH SYSTEM

If your inquiry is not resolved:

**Step 2:**

Call Code Enforcement at (650) 616- 7074. Please leave your contact information so City staff can return your call and assist in resolving the issue.

If the issue isn't resolved, the City may cite for an infraction (\$100 fine), impose an administrative fine (starting at \$100), or civil fines (starting at \$250).

Visit this website for helpful information and resources:

<http://www.smchealth.org/driftingsmoke>



**APPENDIX E**

**City of Brisbane Apartments, Condos, & Town Homes Residences Are Going Smoke Free!**

**Smoking will be prohibited in:**

**Individual Units**

**Balconies,  
Patios and Decks**

**Common Area**



**Brisbane Municipal Code Chapter 8.46  
Enforceable June 1, 2017**

**Contact Code Enforcement Officer Moneda to  
report violations: (415) 508-2172  
mmoneda@ci.brisbane.ca.us**

