



REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: July 8, 2008

SUBJECT: Ordinance Prohibiting Smoking In and Around New Multi-Unit
Residences Receiving City Funding

Report in Brief

The City Council has previously expressed concerns regarding the impact of second hand smoke on residents of multi-unit buildings. These concerns led to the City Council's adoption of a resolution last April that encouraged landlords and managers of multi-unit residences to designate at least 50% of the units as non-smoking and to provide appropriate locations on their property for smoking. In addition, the City Council directed staff to prepare an ordinance for adoption that would prohibit smoking in and around multi-unit residences that receive City funds. The proposed ordinance has been prepared for the City Council's consideration and is provided as Attachment No. 1 to this report.

Staff recommends that the City Council introduce Ordinance No. _____ adding Chapter 28 and amending section 14A-1-3 of the Woodland Municipal Code relating to prohibiting smoking in and around multi-unit residences receiving City funding.

Background

Following the successful opening of the Terracina at Spring Lake as a smoke free apartment complex in November 2007, the City Council expressed interest in encouraging more such complexes in Woodland. Specifically, the Council expressed interest in mandating that any multi-unit residence that receives City housing funds be smoke free. While the Council expressed some interest in developing an ordinance that would mandate this effort, it was also determined that a presentation on this issue would be more appropriate prior to providing staff with further direction. In response to the Council's comments, staff scheduled a presentation on this issue from Steven Jensen, Tobacco Education Coordinator for the Yolo County Health Department, for the March 18, 2008 Council meeting.

Mr. Jensen's presentation included a summary of actions that other California cities have implemented to regulate smoking within multi family housing. These actions range from a strict

prohibition of smoking in all new and existing apartment/condo units to regulations that are limited to multi family complexes which received a share of a city's housing funds as part of the financing package. The information validated the fact that residents who live in apartment and condo complexes are concerned about the health impacts associated with second hand smoke and support local government's efforts to regulate smoking within multi family housing.

In addition, Cory Koehler, Deputy Director of the Rental Housing Association (RHA) of the Sacramento Valley, presented a letter to the City Council prior to the meeting in support of actions that would encourage smoke free multi family housing. The RHA serves the rental housing industry and understands the health related concerns of many multi family housing residents. One example of an action to encourage more smoke free units is the approval of a resolution by the City Council that supports landlords and property managers who designate a percentage of units within their housing complexes as smoke free. Mr. Koehler also provided a copy of a resolution approved by the Sacramento City Council in December 2006 that designated a minimum level of smoke free units and suggested that a similar resolution in Woodland would be a positive "first step" in encouraging landlords and property managers to take a similar action.

Following the presentation, the City Council directed staff to implement two actions. The first action was to prepare a resolution that will encourage landlords and property managers to designate at least 50% of their multi family rental units as smoke free. The second action directed the City Attorney to develop an ordinance that regulates smoking in multi family rental housing that have received City housing funds as part of their financing package. The City Council approved Resolution No. 4908 on April 15. The City Attorney prepared the ordinance regulating smoking in multi family rental housing that may receive City housing funds and staff has reviewed the language with the RHA. This process facilitated some clarifying changes that have been incorporated into the proposed ordinance presented to the City Council as Attachment No. 1.

Discussion

The City Council's concerns regarding the health related impacts associated with second hand smoke are well justified. Various health authorities and institutes have identified several risks that are generated specifically by second hand smoke. 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. Studies completed by the National Cancer Institute (NCI) have also documented that 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. NCI studies have also documented that 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. Finally, the Office of Environmental Health Hazard Assessment has concluded that 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.

In response to these facts, local governments have taken steps to restrict smoking in public areas and, if the need and support is identified, within semi-public or private areas. Multi-unit residences have been identified as places where second hand smoke exposure is discussed between landlords, property managers, tenants and local governments. As an example of these discussions, recent surveys of apartment renters and owners have identified the need for smoke free units within multi family complexes. A 2004 survey showed that 70% of Californians approve of apartment complexes requiring at least 50% of their units to be non-smoking. In addition, 67% of Californians favor limiting smoking in outdoor common areas apartment buildings.

The health related facts described herein, the discussion between owners, managers and tenants regarding the need to restrict smoking in multi-unit buildings and the acceptance of Terracina at Spring Lake as a smoke free complex suggests that it would be appropriate for the City Council to consider policy actions regarding this issue. The City Council's approval of Resolution No. 4908 did provide a policy action to encourage the designation of smoke free units in multi-unit complexes. However, the resolution is not binding or enforceable. An ordinance that would prohibit smoking in multi-unit complexes under certain conditions would be a stronger policy statement as well as binding and enforceable.

Summary of the Proposed Ordinance

The proposed ordinance would prohibit smoking in and around multi-unit complexes that receive City assistance as part of the financing package and that are completed more than six months after the effective date. For the purpose of the ordinance, "City assistance" means financial support such as funds or City/RDA payment associated with the planning, development, construction, maintenance or operation of the multi-unit residence. It does not mean fee waivers authorized by the City Council or RDA Board.

Other significant elements of the proposed ordinance include:

- Smoking would be prohibited in all units, including the private outdoor spaces associated with units such as patio areas and balconies
- Smoking would be prohibited in all common areas of the multi-unit complex **except** those areas designated by the landlord as a smoking area
- Landlords may designate an area for smoking that is a reasonable distance from a) any indoor area where smoking is prohibited; and b) outdoor areas primarily used by children, including swimming pools and playgrounds
- Leases and/or rental agreements for the multi-unit complexes must include clauses that state a) the prohibition of smoking as stated above; b) violation is a material breach; and c) a tenant who breaches the smoking regulations shall be liable to the landlord and any lawful occupant of the complex

- Smoking of marijuana for medical purposes is not prohibited by the proposed ordinance; however, such use of marijuana may be prohibited by other provisions of the Municipal Code, state law and federal law
- Enforcement of the proposed ordinance could be facilitated through either the City or “private enforcement” wherein the City or a private party could bring a civil action through various legal means, including financial damages of \$500 for each violation, conditional judgment and/or small claims court

As stated previously, the Rental Housing Association (RHA) was invited to review the proposed ordinance prior to bringing this matter to the City Council. The RHA’s Executive Director, Cory Koehler asked for clarifying language in three areas. First, Mr. Koehler requested that the term “City assistance” be clarified. The City Attorney addressed this matter by including language to exempt fee waivers. Second, Mr. Koehler requested that the ordinance include immunity for property managers, agents of the owners and organizations when the lease or rental agreements include the smoking prohibition clauses described herein and a tenant brings forth a claim against another person who may have violated the ordinance. The City Attorney made the requested changes. Finally, Mr. Koehler requested clarifying language as to the placement of signs prohibiting smoking so that it is clear that this section of the proposed ordinance applies to new multi-unit complexes. This request was addressed through the insertion of additional clarifying language by the City Attorney.

Mr. Koehler provided a letter which is included as an attachment that states the RHA’s position on the proposed ordinance as neutral. While remaining neutral, the RHA acknowledges the importance of this issue and the collaborative process which allowed the organization the opportunity to review and comment on the proposed ordinance.

Staff believes the ordinance is drafted in a manner that is fair to both the landlords and the tenants who would benefit from living in a smoke free complex. It is important to note that the proposed ordinance does not force landlords and tenants into a smoke free complex; landlords would accept the responsibility of operating a smoke free complex by agreeing to accept City assistance as defined herein and tenants would make a similar choice by signing the lease or rental agreement. Based on the experience so far at the Terracina at Spring Lake complex, staff does not believe that the City or landlords will be burdened with enforcement of the smoking prohibition. The only concerns associated with the Terracina complex is from adjacent neighbors who dislike the presence of smokers near their homes. This issue would be addressed by working with landlords to designate an outdoor location for smoking as part of their development application.

Fiscal Impact

The primary fiscal impact anticipated by staff is the potential request for additional housing funds to develop more smoke free multi-unit residences. This impact will be addressed by the availability of such funds from the City’s 20% RDA set aside as well as other complimentary public and private sources usually allocated for low and moderate income housing. As stated above, staff does not

believe that the proposed ordinance will generate additional enforcement activity. Provisions within the proposed ordinance allow for the enforcement to be accomplished through civil actions. Based on the experience so far at Terracina, enforcement of the prohibition will not be a burden.

Public Contact

Posting of the City Council agenda. A copy of the agenda and report was provided to Cory Koehler, Executive Director of the Rental Housing Association of the Sacramento Valley.

Alternative Courses of Action

1. Introduce Ordinance No. _____ adding Chapter 28 and amending section 14A-1-3 of the Woodland Municipal Code relating to prohibiting smoking in and around multi-unit residences receiving City funding.
2. Direct staff to make specific changes to the proposed ordinance.
3. Cease further consideration of the proposed ordinance.

Recommendation for Action

Staff recommends that the City Council approve Alternative No. 1.

Mark G. Deven
City Manager

Attachment No. 1: Proposed Ordinance
Attachment No. 2: July 8 Letter from the Rental Housing Association

Ordinance No. _____

AN ORDINANCE OF THE CITY OF WOODLAND ADDING CHAPTER 28 AND AMENDING SECTION 14A-1-3 OF THE WOODLAND MUNICIPAL CODE RELATING TO PROHIBITING SMOKING IN AND AROUND NEW MULTI-UNIT RESIDENCES RECEIVING CITY FUNDING

The City Council of the City of Woodland, California, hereby finds and declares as follows:

WHEREAS, 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;¹ 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;² 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;³ 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;⁴ 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;⁵ and

¹ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Annual Smoking – Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999* MORBIDITY AND MORTALITY WEEKLY REPORT at 51(14):300-303 (2002), available at <http://www.cdc.gov/mmwr/PDF/wk/mm5114.pdf>. (last accessed March 23, 2005).

² U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Reducing Tobacco Use: A Report of the Surgeon General* at 437 (2001), available at http://www.cdc.gov/tobacco/sgr/sgr_2000/chapter8.pdf (last accessed March 23, 2005).

³ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), available at http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed March 23, 2005).

⁴ Nat'l Cancer Inst., *NCI Health Information Tip Sheet for Writers: Secondhand smoke*, available at <http://www.cancer.gov/newscenter/tip-sheet-secondhand-smoke> (last accessed February 28, 2005).

⁵ Office of Env'tl. Health Hazard Assessment, Cal. Env'tl. Prot. Agency, *Health Effects of Exposure to Environmental Tobacco Smoke, Final Report* at 4-30 (1997), available at <http://www.oehha.org/pdf/chapter4.pdf> (last accessed February 28, 2005).

- 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;⁶ exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children;⁷ 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;⁸ and
- cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States,⁹ causing an estimated 31,200 structure fires and 830 deaths in 2001;¹⁰ and

WHEREAS, 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;¹¹ and
- 70% of Californians surveyed approve of apartment complexes requiring at least half of rental units be non-smoking;¹² and
- 67% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings;¹³ and

⁶ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002* at 2 (2004), available at http://www.cdc.gov/nccdphp/aag/aag_osh.htm (last accessed April 6, 2005).

⁷ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), available at http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed April 6, 2005).

⁸ Wendy Max, Dorothy P. Rice, Xiulan Zhang, Hai-Yen Sung, Leonard Miller, Cal. Dept. of Health Servs., *The Cost of Smoking in California, 1999* at 76 (2002), available at <http://www.dhs.ca.gov/tobacco/documents/CostOfSmoking1999.pdf> (last accessed March 4, 2005).

⁹ Bruce N. Leistikow, M.D., M.S., Daniel C. Martin, Christina E. Milano, *Fire Injuries, Disasters, and Costs from Cigarettes and Cigarette Lights: A Global Overview* 91 PREVENTIVE MEDICINE 31 at 91 (2000), available at <http://leistikow.ucdavis.edu/SmokingFires.pdf> (last accessed April 6, 2005).

¹⁰ Nat'l Fire Prot. Ass'n, *The Smoking-Material Fire Problem*, available at <http://www.nfpa.org/itemDetail.asp?categoryID=294&itemID=19303&URL=Research%20&%20Reports/Fact%20sheets/Home%20safety/Smoking%20material-related%20fires> (last accessed March 4, 2005). See also John R. Hall, Jr., Nat'l Fire Prot. Ass'n, *The Smoking-Material Fire Problem*, (Nov. 2004), available at <http://www.nfpa.org/assets/files/PDF/OS.smokesum2.PDF> (executive summary only) (last accessed March 4, 2005).

¹¹ Tobacco Control Section, Cal. Dep't of Health Servs., *California Tobacco Control Update 2004* at 10, available at <http://www.dhs.ca.gov/tobacco/documents/2004TCSupdate.pdf> (last accessed April 7, 2005).

¹² Tobacco Control Section, Cal. Dep't of Health Servs., *2004 Field Research Poll Results* at 16 (2004), available at <http://www.dhs.ca.gov/tobacco/documents/2004TCSupdate.pdf> (last accessed March 4, 2005).

¹³ Ctr. For Tobacco Policy and Org., Am. Lung Ass'n of Cal., *Statewide Tobacco Renter Study* (2004), available at http://www.californialung.org/thecenter/community/documents/SFH-Survey-Data_001.doc (last accessed March

WHEREAS, secondhand smoke can seep under doorways and through wall cracks;¹⁴ and

WHEREAS, there is no Constitutional right to smoke;¹⁵ and

WHEREAS, 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;¹⁶ and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by state law;¹⁷ and

WHEREAS, California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance;¹⁸ and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance;¹⁹ and

WHEREAS, it is the intent of the City 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 where they live and play; and by protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

The City Council of the City of Woodland does ordain as follows:

Section 1. Authority. The City Council enacts this ordinance in accordance with the authority granted to cities by Article XI, Section 7 of the California Constitution.

Section 2. Amendment of Section 14A-1-3. Subdivision (b)(7) of Section 14A-1-3 is hereby amended to read as follows:

(b) The following are specifically declared to be nuisances; however, it is not intended by this enumeration to exclude the designation of other conditions as nuisances:

4, 2005).

¹⁴ J. Wagner et al., *Environmental Tobacco Smoke Leakage from Smoking Rooms*, JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL HYGIENE, 1:110–118 (2004), available at <http://eetd.lbl.gov/IEP/pdf/LBNL-51010.pdf> (last accessed April 7, 2005).

¹⁵ Technical Assistance Legal Ctr., Pub. Health Inst., *There Is No Constitutional Right to Smoke* (2004), available at http://talc.phlaw.org/pdf_files/0051.pdf (last accessed April 8, 2005).

¹⁶ Cal. Lab. Code § 6404.5 (Deerings 2005).

¹⁷ Cal. Legislative Counsel Op., 21547, *Secondhand Smoke in Multi-Unit Housing (Apartments & Condos) Smoking Bans: Residential Rental Property*, (September 23, 1999).

¹⁸ Cal. Civil Code § 3479 (Deerings 2005).

¹⁹ *In Re Jones*, 56 Cal.App.2d 658, 663 (1943). See also, Cal. Const., art. XI, § 7 and Cal. Gov. Code § 38771 (Deerings 2005).

(7) Any act, omission or condition in violation of Chapters 6, 7, 9A, 11, 14, 15, 16, 25 and 28 of this code;

Section 3. Addition of Chapter 28. Chapter 28 is hereby added to the City of Woodland Municipal Code to read in full as follows:

CHAPTER 28.

SMOKING REGULATIONS FOR MULTI FAMILY HOUSING RECEIVING CITY ASSISTANCE

Sec. 28-1. Definitions.

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

(a) “City Assistance” means City or City of Woodland Redevelopment Agency financial assistance, monetary or otherwise, in the planning, development, construction, maintenance or operation of a Multi-Unit Residence. “City Assistance” shall not include any fee waivers authorized by the City or the City of Woodland Redevelopment Agency.

(b) “Landlord” means 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.

(c) “Multi-Unit Residence” means a Premises that contains two (2) or more Units which are unoccupied by a Landlord of the Premises.

(d) “Multi-Unit Residence Common Area” means any indoor or outdoor area of a Multi-Unit Residence accessible to and usable by residents of different Units, including but not limited to halls and paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, swimming pools, and parking areas.

(e) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(f) “Premises” means 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.

(g) “Private Enforcer” means any Person, including a legal entity or organization, acting on behalf of its own interests, its members, or the general public, who may bring a civil action to enforce this Chapter.

(h) “Reasonable Distance” means a distance of at least twenty-five (25) feet in any direction from an area in which smoking is prohibited. This distance should be reasonably sufficient to make it unlikely that secondhand smoke will enter non-smoking areas.

(i) “Smoking” or to “Smoke” means possessing a lighted tobacco product, lighted tobacco paraphernalia, or any other lighted weed or plant (including but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, or lighted cigarette of any kind), or the lighting of a tobacco product, tobacco paraphernalia, or any other weed or plant (including but not limited to, a pipe, a hookah pipe, cigar, or cigarette of any kind).

(j) “Unit” means: (1) 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; and (2) senior citizen housing and single room occupancy hotels, 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).

Sec. 28-2 Smoking prohibited in new multi-unit residences receiving City assistance.

Smoking is prohibited in all Multi-Unit Residences receiving City Assistance substantially completed more than six months after the effective date of this Chapter. Specifically, smoking is prohibited:

(a) in all of the Units of a Multi-Unit Residence subject to this Chapter (including private outdoor spaces associated with such Units, such as balconies, patios and decks)

(b) on the Premises of a Multi-Unit Residence subject to this Chapter 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 this 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 Unit is prohibited.

(c) in the Common Areas of a Multi-Unit Residence subject to this Chapter, except that a Landlord may designate a portion of the outdoor area of Premises as a Smoking area as provided for in Section 28-3.

Sec. 28-3. Designated smoking area.

A Landlord of a Multi-Unit Residence subject to this Chapter may designate a portion of the outdoor area of Premises as a Smoking area. A designated Smoking area:

(a) must be located a Reasonable Distance from any indoor area where Smoking is prohibited;

(b) 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;

(c) must be no more than 25% of the total outdoor area of the Premises for which it is designated;

(d) must have a clearly marked perimeter;

(e) must be identified by conspicuous signs; and

(f) must not overlap with any area in which Smoking is otherwise prohibited by this Chapter or other provisions of this Code, state law, or federal law.

Sec. 28-4. Required lease terms.

(a) Every new lease or other agreement for the occupancy of a Unit in a Multi-Unit Residence subject to this Chapter shall include:

(1) a clause stating that Smoking is prohibited in the Unit;

(2) a clause stating that it is a material breach of the lease or agreement to (i) violate any law regulating Smoking while on the Premises; (ii) Smoke in a Unit; or (iii) Smoke in any Multi-Unit Residence Common Area, except any applicable designated Smoking area; and

(3) a clause stating that all lawful occupants of the Multi-Unit Residence are express third-party beneficiaries of the above required clauses.

(b) The lease or agreement terms required by subsection (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 subsection (a).

(c) A tenant who breaches the Smoking regulations of a lease or knowingly allows another person to do so shall be liable to: (i) the Landlord; and (ii) to any lawful occupant of the Multi-Unit Residence who is exposed to secondhand smoke as a result of that breach. Neither the Landlord nor the property manager, or their agents, shall be liable to any person, entity, or organization for a tenant's breach of Smoking regulations if the Landlord, the property manager, or their agents have fully complied with subsection (a).

(d) 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.

Sec. 28-5. Prohibitions and duties generally.

(a) 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 this 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.

(b) 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, within a Reasonable Distance of any non-smoking area.

(c) “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, 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.

Sec. 28-6. Medical marijuana.

Notwithstanding any other provision of this Chapter, Smoking marijuana for medical purposes as permitted by California Health and Safety Code sections 11362.7 *et seq.* in any Unit of a Multi-Unit Residence is not prohibited by this Chapter. Notwithstanding the forgoing, such use of marijuana may be prohibited by other provisions of this Code, state law, or federal law.

Sec. 28-7. Penalty.

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

(a) Violations of any provision of this Chapter shall be an infraction.

(b) Violation of any provision of Chapter shall subject the violator to any or all of the following: suit for civil remedy including not limited to injunctive relief, or criminal penalty, or the administrative penalties provided in Article VII of Chapter 14A of the Woodland Municipal Code.

Sec. 28-8. Private enforcement.

(a) A Private Enforcer or the City of Woodland may bring a civil action to enforce this Chapter. Upon proof of a violation, a court shall award the following:

(1) Damages in the amount of either:

(i) upon proof, actual damages; or

(ii) with insufficient or no proof of damages, \$500 for each violation of this Chapter (hereinafter “Statutory Damages”). Unless otherwise specified in this Chapter, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this Chapter, no Private Enforcer suing on behalf of the general public shall recover Statutory Damages based upon a violation of this Chapter if a previous claim brought on behalf of the general public by a Private Enforcer or the City for Statutory Damages and based upon the same violation has been adjudicated, whether or not the Private Enforcer was a party to that adjudication.

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

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

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

(d) Nothing in this Chapter prohibits a Private Enforcer from bringing a civil action in small claims court to enforce this Chapter, so long as the amount in demand and the type of relief sought are within the jurisdictional requirements set forth in California Code of Civil Procedure section 116.220.

Section 5. Severability. The provisions of this Ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Ordinance, or the validity of its application to other persons or circumstances.

Section 6. Effective Date and Notice. This Ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City of Woodland.

PASSED AND ADOPTED this _____ day of _____, 2008 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Marlin H. Davies

ATTEST:

Sue Vannucci, City Clerk

APPROVED AS TO FORM:

Ann M. Siprelle, City Attorney



Rental Housing Association of Sacramento Valley

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July 1, 2008

Marlin "Skip" Davies
Mayor
City of Woodland
300 First Street
Woodland, CA 95695

RE: Ordinance Prohibiting Smoking at New Multi-Unit Buildings Receiving City Funding

Dear Mayor Davies:

On Tuesday July 8, the Woodland City Council will consider an ordinance prohibiting the smoking of tobacco products in and around newly constructed multi-unit residences that receive city funding during the development process. Based on the revisions made at our request, the Rental Housing Association of Sacramento Valley (RHA), which represents owners and managers of over 80,000 residential rental housing units in the region including Woodland, remains neutral on the proposed ordinance.

RHA believes that owners and managers should be free to set smoking policies based on market forces in a given area. We recognize that due to the documented health risks of secondhand tobacco smoke, local governments are considering measures to address the issue. RHA supported the resolution adopted by the city that encourages all rental owners to implement a no-smoking policy. We are confident that a sustained education campaign will make significant inroads on this issue in the near future.

Recently, RHA partnered with a coalition of smoke-free housing advocates by mailing to nearly 6,000 rental owners in the County of Sacramento on the benefits of implementing a no-smoking policy. We conducted a similar mailing last year to over 10,000 rental owners in the City of Sacramento. Also, RHA is creating a new section on our website that includes a directory of rental properties with no-smoking restrictions as well as handy resources to assist owners and managers who want to establish these policies at their properties.

We want to thank city staff for working with our association on this issue. If you have any questions about this letter please contact me at (916) 920-1120 ext. 206 or cory@rha.org.

Sincerely,

A handwritten signature in black ink that reads 'Cory Koehler'.

Cory Koehler
Deputy Director

