

ORDINANCE NO. 2014-006

AN ORDINANCE OF THE CITY OF CULVER CITY,
CALIFORNIA, AMENDING CHAPTER 9.11 OF THE CULVER
CITY MUNICIPAL CODE RELATING TO SMOKING
REGULATIONS TO ADD A NEW SUBCHAPTER 9.11.200, *et
seq.*, REGULATING SMOKING IN MULTI-UNIT HOUSING.

WHEREAS, the California Air Resources Board has identified environmental tobacco smoke, or secondhand smoke, as a Toxic Air Contaminant, which may cause and contribute to death or serious illness, including increased risks of cancer, and is especially hazardous to children and people with asthma and other respiratory problems; and

WHEREAS, according to the United States Environmental Protection Agency, any level of exposure to secondhand smoke is harmful; and

WHEREAS, according to the National Fire Protection Association, smoking is the primary cause of fire-related injuries and deaths in the home; and

WHEREAS, according to the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke through doorways, cracks in walls, electrical lines, plumbing and ventilations systems; and

WHEREAS, the Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure; and

WHEREAS, it is the intent of the City Council of the City of Culver City to provide for the public's health, safety, and welfare by discouraging the inherently dangerous activity of tobacco use around non-consenting individuals, protecting children from exposure to smoking where they live and play and protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

1 **NOW THEREFORE**, the City Council of the City of Culver City, California,
2 **DOES HEREBY ORDAIN** as follows:

3 **SECTION 1.** Chapter 9.11 of the Culver City Municipal Code is hereby
4 amended to add a new Subchapter 9.11.200, *et seq.*, Non-Smoking Multi-Unit Housing as
5 follows:

6 **REGULATION OF SMOKING IN MULTI-UNIT HOUSING**

7
8 **§ 9.11.200 PURPOSE.**

9 It is the intent of the City Council of the City of Culver City, in enacting
10 this Subchapter, to provide for the public's health, safety, and welfare by
11 discouraging the inherently dangerous activity of tobacco use around non-
12 consenting individuals, protecting children from exposure to smoking where they live
13 and play and protecting the public from nonconsensual exposure to secondhand
14 smoke in and around their homes.

15
16 **§ 9.11.205 DEFINITIONS.**

17 Notwithstanding the definitions set forth in Subchapter 9.11.100, *et*
18 *seq.*, for the purposes of this Subchapter, the following definitions shall apply
19 unless the context clearly indicates or requires a different meaning.

20 **Adjacent Property** shall mean any Unenclosed Area of property,
21 publicly or privately owned, that abuts a Multi-Unit Residence.

22 **Common Area** shall mean every Enclosed Area or Unenclosed Area
23 of a Multi-Unit Residence that residents of more than one Unit of that Multi-
24 Unit Residence are entitled to enter or use, including, for example, halls and
25 paths, lobbies and courtyards, elevators and stairs, community rooms and
26 playgrounds, gym facilities and swimming pools, parking garages and parking
27 lots, shared restrooms, shared laundry rooms, shared cooking areas, and
28 shared eating areas.

Common Interest Complex shall mean a Multi-Unit Residence that is
a condominium project, a community apartment project, a stock cooperative,
or a planned development as defined by California Civil Code Section 4100.

Designated Smoking Area shall mean an area where smoking is
permissible and has been established in accordance with the provisions of
Section 9.11.215 of this Subchapter.

1 **Enclosed Area** shall mean an area in which outside air cannot
circulate freely to all parts of that area, and includes an area that has:

- 2 1. Any type of overhead cover whether or not that cover includes
vents or other openings and at least three walls or other vertical
3 boundaries of any height whether or not those boundaries
include vents or other openings; or
4 2. Four walls or other vertical boundaries that exceed six feet in
height, whether or not those boundaries include vents or other
5 openings.

6 **Existing Unit** shall mean a Unit in existence on or before November
7 26, 2014.

8 **HOA** shall mean an organization or entity established for the purpose
of managing and/or maintaining a Common Interest Complex.

9 **Landlord** shall mean any Person who owns property let for residential
10 use, any Person who lets residential property, and any Person who manages
such property, except that "Landlord" does not include a master tenant who
11 sublets a Unit as long as the master tenant sublets only a single Unit of a
Multi-Unit Residence.

12 **Multi-Unit Residence** shall mean residential property containing two
13 or more Units and shall include a Rental Complex and a Common Interest
14 Complex. The following types of housing are specifically excluded from this
15 definition:

- 16 1. A hotel or motel;
17 2. A mobile home park;
18 3. A single-family home; and
19 4. A single-family home with a detached or attached accessory
dwelling unit when permitted pursuant to Section 17.400.095 of this
Code.

20 **New Unit** shall mean a Unit that is issued a certificate of occupancy on
or after November 26, 2014.

21 **Nonsmoking Area** shall mean any Enclosed Area or Unenclosed
22 Area of a Multi-Unit Residence in which Smoking is prohibited by: (1) this
23 Subchapter or other law; (2) by binding agreement relating to the ownership,
occupancy, or use of real property; or (3) by designation of a Person with
24 legal control over the area. In the case of a Smoking prohibition established
only by private agreement or designation and not by this Subchapter or other
25 law, it shall not be a violation of this Subchapter for a Person to engage in
Smoking or to allow Smoking in that area unless: (1) the Person knows that
26 Smoking is not permitted; or (2) a reasonable Person would know that
Smoking is not permitted.
27

1 **Rental Complex** shall mean a Multi-Unit Residence for which 50% or
2 more of Units are let by or on behalf of the same Landlord.

3 **Smoke** shall mean the gases and particles, released into the air as a
4 result of combustion when the apparent or usual purpose of the combustion
5 is human inhalation of the byproducts, except when the combusting material
6 contains no tobacco, other weed or plant, or nicotine and the purpose of
inhalation is solely olfactory, such as, for example, smoke from incense. The
term "Smoke" includes, but is not limited to, tobacco smoke and marijuana
smoke, but specifically excludes vapors from electronic smoking devices.

7 **Smoking** shall mean engaging in an act that generates Smoke, such
8 as, for example, the possession of a lighted Tobacco Product, lighted
9 Tobacco Paraphernalia, or any other lighted weed or plant, including a lighted
pipe, lighted hookah pipe, a lighted cigar, or a lighted cigarette of any kind; or
10 the lighting of a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

11 **Tobacco Paraphernalia** shall mean cigarette papers or wrappers,
12 pipes, holders of smoking materials of all types, cigarette rolling machines,
and any other item designed for the smoking, preparation, storing, or
consumption of tobacco products.

13 **Tobacco Product** shall mean any substance containing tobacco leaf,
14 including but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco,
15 snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of
tobacco.

16 **Unenclosed Area** shall mean any area that is not an Enclosed Area.

17 **Unit** shall mean a personal dwelling space, even where lacking
18 cooking facilities or private plumbing facilities, and includes any associated
19 exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a
20 private balcony, porch, deck, or patio. "Unit" includes, without limitation, an
21 apartment; a condominium; a townhouse; a room in a long-term health care
facility, assisted living facility, hospital and a room in a homeless shelter. Unit
includes an Existing Unit and a New Unit.

22 **§ 9.11.210 SMOKING PROHIBITED BY LAW IN CERTAIN AREAS.**

- 23 A. Smoking in a Common Area, other than in a Designated Smoking Area
24 established pursuant to Section 9.11.215, is prohibited and a violation
25 of this Subchapter.
- 26 B. Smoking in a New Unit or Existing Unit, as set forth in Sections
27 9.11.225, 9.11.230 and 9.11.240, is prohibited and a violation of this
28 Subchapter.

- 1 C. Smoking in a designated nonsmoking Unit is prohibited and a violation
of this Subchapter.
- 2 D. Smoking in an exclusive-use Unenclosed Area, such as, for example,
3 a private balcony, porch, deck or patio, as set forth in Sections
4 9.11.220, 9.11.225, 9.11.230 and 9.11.240, is prohibited and a
violation of this Subchapter.
- 5 E. Smoking in an Unenclosed Area of a Multi-Unit Residence within 25
6 feet in any direction of any doorway, window, opening, or other vent
7 into an Enclosed Area that is a Nonsmoking Area, as set forth in
Section 9.11.220.A, is prohibited and a violation of this Subchapter.
- 8 F. Smoking in an Unenclosed Area of Adjacent Property within 25 feet in
9 any direction of any doorway, window, opening, or other vent into an
10 Enclosed Area that is a Nonsmoking Area, as set forth in Section
9.11.220.B, is prohibited and a violation of this Subchapter.
- 11 G. Smoking in any Nonsmoking Area is prohibited and a violation of this
12 Subchapter.

13 **§ 9.11.215 SMOKING PROHIBITED IN COMMON AREAS EXCEPT IN**
14 **DESIGNATED SMOKING AREAS.**

15 A. Smoking is prohibited in all Common Areas, pursuant to Section
16 9.11.210.A, except that a Person with legal control over a Common Area,
17 such as, for example, a Landlord or HOA Board, may designate a portion of
the Common Area as a Designated Smoking Area provided that at all times
the Designated Smoking Area complies with Section 9.11.215.B below.

18 B. A Designated Smoking Area:

19 1. Must be an Unenclosed Area.

20 2. Must be located at least twenty-five (25) feet from any
21 Enclosed Area that is a Nonsmoking Area. A Person with legal control
22 over a Common Area in which a Designated Smoking Area has been
23 established shall modify, relocate or eliminate that Designated
24 Smoking Area so as to maintain compliance with the requirements of
this Section 9.11.215.B as laws change, as binding agreements are
created, and as Nonsmoking Areas on Adjacent Property are
established.

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

1 4. Must be no more than 10% of the total Unenclosed Area
2 of the Multi-Unit Residence for which it is established.

3 5. Must have a clearly marked perimeter.

4 6. Must be identified by conspicuous signs.

5 C. No Person with legal control over a Common Area in which
6 Smoking is prohibited by this Subchapter or other law shall knowingly permit
7 the presence of ash trays, ash cans, or other receptacles designed for or
8 primarily used for disposal of Smoking waste within the area.

9 D. Clear and unambiguous "No Smoking" signs shall be posted in
10 sufficient numbers and locations to make Common Areas where Smoking is
11 prohibited by this Subchapter or other law obvious to a reasonable person.
12 The signs shall have letters of no less than one inch in height or contain the
13 international "No Smoking" symbol (consisting of a pictorial representation of
14 a burning cigarette enclosed in a red circle crossed by a red bar). Such signs
15 shall be maintained by the Person or Persons with legal control over the
16 Common Areas. The absence of signs shall not be a defense to a violation of
17 any provision of this Subchapter.

18 **§ 9.11.220 NONSMOKING BUFFER ZONES.**

19 A. Smoking is prohibited in Unenclosed Areas of a Multi-Unit
20 Residence, including balconies, porches, decks, and patios, within 25 feet in
21 any direction of any doorway, window, opening, or other vent into an
22 Enclosed Area that is a Nonsmoking Area, pursuant to Section 9.11.210.E.

23 B. Smoking is prohibited in Unenclosed Areas of Adjacent
24 Property within 25 feet in any direction of any doorway, window, opening, or
25 other vent into an Enclosed Area that is a Nonsmoking Area, pursuant to
26 Section 9.11.210.F.

27 C. Smoking is prohibited in all exclusive-use Unenclosed Areas
28 associated with a Unit, such as, for example, a private balcony, porch, deck,
or patio, pursuant to Section 9.11.210.D.

**§ 9.11.225 SMOKING RESTRICTIONS IN NEW UNITS OF MULTI-UNIT
RESIDENCES.**

 A. All New Units of a Multi-Unit Residence, including any
associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for
example, a private balcony, porch, deck, or patio, are hereby designated
nonsmoking Units.

1 B. Smoking in a designated nonsmoking Unit is a violation of this
2 Subchapter, as provided in Section 9.11.210.

3 **§ 9.11.230 SMOKING RESTRICTIONS IN EXISTING UNITS OF A**
4 **RENTAL COMPLEX.**

5 A. All Existing Units of a Rental Complex, including any associated
6 exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a
7 private balcony, porch, deck, or patio, are hereby designated nonsmoking
8 Units as of May 26, 2016.

9 B. Prior to the effective date of a new or amended lease, or at
10 least six months prior to May 26, 2016, whichever occurs earlier, a Landlord
11 shall provide each tenant with:

12 1. A written notice clearly stating that all Units, including the
13 tenant's, Unit, are designated nonsmoking Units and that Smoking in a
14 Unit shall be prohibited as of May 26, 2016; and

15 2. A copy of this Subchapter.

16 **§ 9.11.235 REQUIRED AND IMPLIED LEASE TERMS FOR ALL NEW**
17 **AND EXISTING UNITS IN RENTAL COMPLEXES.**

18 A. Every lease or other rental agreement for the occupancy of a
19 Unit in a Rental Complex, including New Units and Existing Units, entered
20 into, renewed, or continued month-to-month after November 26, 2014, shall
21 include the provisions set forth in Section 9.11.235.B below on the earliest
22 possible date such lease or other rental agreement may be amended in
23 accordance with applicable law, including providing the minimum legal notice.

24 B. Every lease or other rental agreement for the occupancy of a
25 Unit in a Rental Complex, including New Units and Existing Units, entered
26 into, renewed, or continued month-to-month after November 26, 2014, shall
27 be amended to include the following provisions:

28 1. A clause providing that as of May 26, 2016, or an earlier
date if the Landlord so determines, it is a material breach of the lease
or other rental agreement to allow or engage in Smoking in the Unit.
Such clause shall be substantially consistent with the following: "It is a
material breach of this agreement for tenant or any other person
subject to the control of the tenant or present by invitation or
permission of the tenant to engage in smoking in the unit as of May 26,
2016 [or an earlier date if the Landlord so determines]."

2. A clause providing that it is a material breach of the lease
or other rental agreement for tenant or any other Person subject to the

1 control of the tenant or present by invitation or permission of the tenant
2 to engage in Smoking in any Common Area of the property other than
3 a Designated Smoking Area. Such clause shall be substantially
4 consistent with the following: "It is a material breach of this agreement
5 for tenant or any other person subject to the control of the tenant or
6 present by invitation or permission of the tenant to engage in smoking
7 in any common area of the property, except in an outdoor designated
8 smoking area, if one exists."

9
10 3. A clause providing that it is a material breach of the lease
11 or other rental agreement for tenant or any other Person subject to the
12 control of the tenant or present by invitation or permission of the tenant
13 to violate any law regulating Smoking while anywhere on the property.
14 Such clause shall be substantially consistent with the following: "It is a
15 material breach of this agreement for tenant or any other person
16 subject to the control of the tenant or present by invitation or
17 permission of the tenant to violate any law regulating smoking while
18 anywhere on the property."

19
20 4. A clause expressly conveying third-party beneficiary
21 status to all occupants of the Rental Complex as to the Smoking
22 provisions of the lease or other rental agreement. Such clause shall be
23 substantially consistent with the following: "Other occupants of the
24 property are express third-party beneficiaries of those provisions in this
25 agreement that concern smoking. As such, other occupants of the
26 property may seek to enforce such provisions by any lawful means,
27 including by bringing a civil action in a court of law."

28
29 C. Whether or not a Landlord complies with Sections 9.11.235.A
30 and 9.11.235.B above, the clauses required by those subsections shall be
31 implied and incorporated by law into every lease or other rental agreement to
32 which Sections 9.11.235.A and 9.11.235.B apply and shall become effective
33 as of the earliest possible date on which the Landlord could have made the
34 insertions pursuant to Sections 9.11.235.A and 9.11.235.B.

35
36 D. A tenant who breaches a Smoking provision of a lease or other
37 rental agreement for the occupancy of a Unit in a Rental Complex, or who
38 knowingly permits any other Person subject to the control of the tenant or
39 present by invitation or permission of the tenant, shall be liable for the breach
40 to:

41 1. The Landlord; and

42 2. Any occupant of the Rental Complex who is exposed to
43 Smoke or who suffers damages as a result of the breach.

44
45 E. This Subchapter shall not create additional liability in a Landlord
46 to any Person for a tenant's breach of any Smoking provision in a lease or

1 other rental agreement for the occupancy of a Unit in a Rental Complex if the
2 Landlord has fully complied with this Section and Section 9.11.230.

3 F. Failure to enforce any Smoking provision required by this
4 Subchapter shall not affect the right to enforce such provision in the future,
5 nor shall a waiver of any breach constitute a waiver of any subsequent
6 breach or a waiver of the provision itself.

7 **§ 9.11.240 SMOKING RESTRICTIONS IN EXISTING UNITS OF A**
8 **COMMON INTEREST COMPLEX.**

9 A. All Existing Units of a Common Interest Complex, including any
10 associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for
11 example, a private balcony, porch, deck, or patio, are hereby designated
12 nonsmoking Units as of May 26, 2016.

13 B. At least six months before May 26, 2016, an HOA board shall
14 provide each tenant with:

15 1. A written notice clearly stating that all Units, including the
16 homeowner's Unit, are designated nonsmoking Units and that
17 Smoking in a Unit shall be prohibited as of May 26, 2016; and

18 2. A copy of this Subchapter.

19 **§ 9.11.245 REQUIRED TERMS TO BE INCLUDED IN RULES AND**
20 **REGULATIONS FOR ALL NEW AND EXISTING UNITS IN**
21 **COMMON INTEREST COMPLEXES.**

22 A. All existing rules and regulations for a Common Interest
23 Complex shall include the provisions set forth in Section 9.11.245.B below on
24 the earliest possible date such rules and regulations may be amended in
25 accordance with applicable law, including providing the minimum legal notice.

26 B. All existing rules and regulations for a Common Interest
27 Complex shall be amended to include the following provisions:

28 1. A clause providing that as of May 26, 2016, or an earlier
date if the HOA board so determines, it is a violation of the rules and
regulations to allow or engage in Smoking in a Unit. Such clause shall
be substantially consistent with the following: "It is a violation of these
rules and regulations for a homeowner or any other person subject to
the control of the homeowner or present by invitation or permission of
the homeowner to engage in smoking in the unit as of May 26, 2016
[or an earlier date if the HOA board so determines]."

1 2. A clause providing that it is a violation of the rules and
2 regulations for the homeowner or any other Person subject to the
3 control of the homeowner or present by invitation or permission of the
4 homeowner to engage in Smoking in any Common Area of the
5 property other than a Designated Smoking Area. Such clause shall be
6 substantially consistent with the following: "It is a violation of these
7 rules and regulations for a homeowner or any other person subject to
8 the control of the homeowner or present by invitation or permission of
9 the homeowner to engage in smoking in any common area of the
10 property, except in an outdoor designated smoking area, if one exists."

11 3. A clause providing that it is a violation of the rules and
12 regulations for homeowner or any other Person subject to the control
13 of the homeowner or present by invitation or permission of the
14 homeowner to violate any law regulating Smoking while anywhere on
15 the property. Such clause shall be substantially consistent with the
16 following: "It is a violation of these rules and regulations for a
17 homeowner or any other Person subject to the control of the
18 homeowner or present by invitation or permission of the homeowner to
19 violate any law regulating smoking while anywhere on the property."

20 C. Whether or not an HOA board complies with Sections
21 9.11.245.A and 9.11.245.B above, the clauses required by those subsections
22 shall be implied and incorporated by law into all rules and regulations of a
23 Common Interest Complex to which Sections 9.11.245.A and 9.11.245.B
24 apply and shall become effective as of the earliest possible date on which the
25 HOA board could have amended such rules and regulations pursuant to
26 Sections 9.11.245.A and 9.11.245.B.

27 D. A homeowner who violates a Smoking provision of the rules and
28 regulations for a Common Interest Complex, or who knowingly permits any
other Person subject to the control of the homeowner or present by invitation
or permission of the homeowner, shall be liable for the violation to:

1. The HOA board; and

2. Any occupant of the Common Interest Complex who is
exposed to Smoke or who suffers damages as a result of the violation.

E. This Subchapter shall not create additional liability in an HOA
board to any Person for a homeowner's violation of any Smoking provision in
the rules and regulations for a Common Interest Complex if the HOA board
has fully complied with this Section and Section 9.11.240.

F. Failure to enforce any Smoking provision required by this
Subchapter shall not affect the right to enforce such provision in the future.

1 **§ 9.11.250 REMEDIES NOT EXCLUSIVE.**

2 The provisions of this Subchapter are restrictive only and establish no
3 new rights for a Person who engages in Smoking. Notwithstanding (1) any
4 provision of this Subchapter or other provisions of this Code, (2) any failure
5 by any Person to restrict Smoking under this Subchapter, or (3) any explicit or
6 implicit provision of this Code that allows Smoking in any place, nothing in
7 this Code shall be interpreted to limit any Person's legal rights under other
8 laws with regard to Smoking, including, for example, rights in nuisance,
9 trespass, property damage, and personal injury or other legal or equitable
10 principles.

11 **§ 9.11.255 PENALTIES AND ENFORCEMENT.**

12 Notwithstanding the penalties and enforcement provisions set forth in
13 Section 9.11.130 of this Chapter, for a violation of this Subchapter 9.11.200,
14 et seq., the following provisions shall apply:

15 A. Except as otherwise provided in Section 9.11.255.B below, a
16 violation of this Subchapter is not a misdemeanor or an infraction. The
17 enforcement of this Subchapter shall be by the private parties involved.

18 B. A violation of Sections 9.11.215.B, 9.11.215.C, 9.11.215.D,
19 9.11.230.B, 9.11.235.A, 9.11.235.B, 9.11.240.B, 9.11.245.A and 9.11.245.B
20 of this Subchapter:

- 21 1. In the discretion of the City Attorney, may be prosecuted as
22 an infraction or misdemeanor. The penalties for a violation
23 of the aforementioned Sections shall be consistent with the
24 penalties set forth in Sections 1.01.040 and 1.01.045 of this
25 Code, but in no event shall such penalties exceed the
26 maximum penalties permitted under State law;
- 27 2. Is subject to a civil action brought by the City Attorney,
28 punishable by a civil fine not less than \$100 and not
 exceeding \$1,000 per violation; and
3. Is subject to enforcement through the imposition of an
 administrative fine as set forth in Chapter 1.02 of this Code.

 C. Under no circumstances shall the City have any responsibility or
 obligation to enforce or seek any legal redress, civil or criminal, for any
 violation of this Subchapter. Nothing in this Subchapter shall create a right of
 action in any Person against the City of Culver City or its agents to compel
 public enforcement of this Subchapter against private parties.

1 D. The remedies provided by this Section 9.11.255 and Section
2 9.11.260 are cumulative and in addition to any other remedies available at
law or in equity.

3 E. Causing, permitting, aiding, abetting, or concealing a violation of
4 any provision of this Subchapter shall also constitute a violation of this
Subchapter.

5 F. Any violation of this Subchapter is hereby declared to be a
6 public nuisance.

7 G. No Person shall intimidate, harass, or otherwise retaliate
8 against any Person who seeks compliance with this Subchapter. Moreover,
9 no Person shall intentionally or recklessly expose another Person to Smoke
in response to that Person's effort to achieve compliance with this
Subchapter.

10 H. Any Person acting for the interests of itself, its members, or the
11 general public may bring a civil action to enforce this Subchapter in
12 accordance with the provisions in Section 9.11.250 below.

13 **§ 9.11.260 PRIVATE ENFORCEMENT.**

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

17 1. Damages in the amount of either:

18 a. Upon proof, actual damages; or

19 b. With insufficient or no proof of damages, \$500
20 for each violation of this Subchapter (hereinafter "Statutory
21 Damages"). Each day of a continuing violation shall constitute a
22 separate violation. Notwithstanding any other provision of this
23 Subchapter, no Person suing on behalf of the general public
24 shall recover Statutory Damages based upon a violation of this
25 Subchapter if a previous claim brought on behalf of the general
26 public by another Person for Statutory Damages and based
upon the same violation has been adjudicated, whether or not
the Person bringing the subsequent claim was a party to the
prior adjudication.

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

1 B. The Person may also bring a civil action to enforce this
2 Subchapter by way of a conditional judgment or an injunction. Upon proof of
3 a violation, a court shall issue a conditional judgment or an injunction.

4 C. Notwithstanding any legal or equitable bar against a Person
5 seeking relief on its own behalf, a Person may bring an action to enforce this
6 Subchapter solely on behalf of the general public. When a Person brings an
7 action solely on behalf of the general public, nothing about such an action
8 shall act to preclude or bar the Person from bringing a subsequent action
9 based upon the same facts but seeking relief on his, her or its own behalf.

10 D. Nothing in this Subchapter prohibits a Person from bringing a
11 civil action in small claims court to enforce this Subchapter, so long as the
12 amount in demand and the type of relief sought are within the jurisdictional
13 requirements of that court.

14 **§ 9.11.265 CONFLICT OF PROVISIONS.**

15 In the event of any conflict between this Subchapter and any other provision
16 of this Code, including Subchapter 9.11.100, et seq., this Subchapter shall control.

17 **SECTION 2.** Based on the addition of new Subchapter 9.11.200, et seq.,
18 the Table of Contents for Chapter 9.11 is hereby replaced with the following Table of
19 Contents:

20 ***Regulation of Smoking in Outdoor Areas***

21 § 9.11.100 Purpose

22 § 9.11.105 Definitions

23 § 9.11.110 Smoking prohibited in outdoor dining areas

24 § 9.11.115 Smoking prohibited in city parks and recreational areas

25 § 9.11.120 Other prohibitions and requirements

26 § 9.11.125 Exemptions

27 § 9.11.130 Penalties and enforcement

28 § 9.11.135 Conflict of provisions

1 **Regulation of Smoking in Multi-Unit Housing**

- 2 § 9.11.200 Purpose
- 3 § 9.11.205 Definitions
- 4 § 9.11.210 Smoking Prohibited By Law in Certain Areas
- 5 § 9.11.215 No Smoking Permitted in Common Areas Except in Designated
- 6 Smoking Areas
- 7 § 9.11.220 Nonsmoking Buffer Zones
- 8 § 9.11.225 Smoking Restrictions in New Units of Multi-Unit Residences
- 9 § 9.11.230 Smoking Restrictions in Existing Units of a Rental Complex
- 10 § 9.11.235 Required and Implied Lease Terms for All New and Existing
- 11 Units in Rental Complexes
- 12 § 9.11.240 Smoking Restrictions in Existing Units of a Common Interest
- 13 Complex
- 14 § 9.11.245 Required Terms to be Included in Rules and Regulations for All
- 15 New and Existing Units In Common Interest Complexes
- 16 § 9.11.250 Remedies Not Exclusive
- 17 § 9.11.255 Penalties and Enforcement
- 18 § 9.11.260 Private Enforcement
- 19 § 9.11.265 Conflict of Provisions

20 **SECTION 3.** The City Council hereby directs that, 12 months after full

21 implementation of the Ordinance, the City Manager, or designees, shall review the

22 effectiveness of the private and limited City enforcement of this Ordinance and provide an

23 informational memorandum to the City Council regarding the City Manager's findings.

24

25 **SECTION 4.** Pursuant to Section 619 of the City Charter, this Ordinance

26 shall take effect thirty (30) days after the date of its adoption. Pursuant to Sections 616

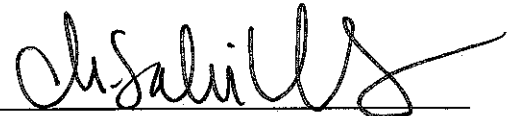
27 and 621 of the City Charter, prior to the expiration of fifteen (15) days after the adoption,

28

1 the City Clerk shall cause this Ordinance, or a summary thereof, to be published in the
2 Culver City News and shall post this Ordinance or a summary thereof in at least three
3 places within the City.



4
5 **SECTION 5.** The City Council hereby declares that, if any provision, section,
6 subsection, paragraph, sentence, phrase or word of this ordinance is rendered or declared
7 invalid or unconstitutional by any final action in a court of competent jurisdiction or by
8 reason of any preemptive legislation, then the City Council would have independently
9 adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases
10 or words of this ordinance and as such they shall remain in full force and effect.

11
12 **APPROVED AND ADOPTED** this 27th day of October, 2014.

13
14 

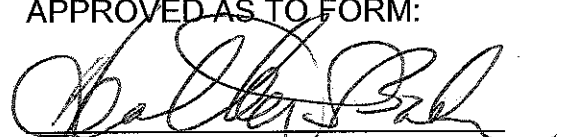

15 MEGHAN SAHLI-WELLS, Mayor
16 City of Culver City, California

17 ATTEST:

18 
19 
20 MARTIN R. COLE, City Clerk

21 A14-00233

22 APPROVED AS TO FORM:

23 
24 
25 CAROL A. SCHWAB, City Attorney