

ORDINANCE NO. 2008-239

**AN ORDINANCE OF THE CITY OF CALABASAS
REGULATING SECOND-HAND SMOKE IN MULTI-FAMILY
RENTAL HOUSING AND AMENDING THE CALABASAS
MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF CALABASAS DOES ORDAIN AS
FOLLOWS:**

SECTION 1. CODE AMENDMENT. Section 8.12.020 of the Calabasas Municipal Code is hereby amended to read as follows:

SEC. 8.12.020 PURPOSE

The purposes of this chapter are to:

A. Protect the public health, safety and general welfare by prohibiting smoking in public places and in multi-family rental housing under circumstances where other persons will be exposed to second-hand smoke,

B. Ensure a cleaner and more hygienic environment for the City, its residents, and its natural resources, including its creeks and streams,

C. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children, to breathe smoke-free air, recognizing the threat to public health and the environment which smoking causes,

D. Recognize the right of residents and visitors to the City to be free from unwelcome second-hand smoke.

SECTION 2. CODE AMENDMENT. Section 8.12.030 of the Calabasas Municipal Code is hereby amended to read as follows:

8.12.030 DEFINITIONS.

The following definitions shall govern construction of this chapter unless the context clearly requires otherwise:

(A) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an Employee.

(B) "Common Area at a Shopping Mall" means any indoor or outdoor common area of a Shopping Mall accessible to and usable by the occupants or customers of

more than one retail establishment, including but not limited to halls, lobbies, outdoor eating areas, Playgrounds and parking lots.

(C) "Employee" means any person who is employed or retained as an independent contractor by any Employer or any person who volunteers his or her services for an Employer, association, or Nonprofit Entity.

(D) "Employer" means any person, partnership, corporation, association, nonprofit or other entity who or which employs or retains the service of one or more Employees.

(E) "Enclosed Area" means:

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

(2) any space open to the sky (hereinafter "uncovered") having more than 75% of its perimeter walled or otherwise closed to the outside such as, for example, a courtyard;

(3) except that an uncovered space of three thousand (3,000) square feet or more is not an Enclosed Area, such as, for example, a field in an open-air arena.

(F) "Landlord" means any Person other than a sublessor who owns real property leased as residential property, who lets residential property, or who manages such property.

(G) "Multi-Unit Residence" means a Premises that contains two or more Units rented or available to be rented and not occupied by a Landlord of the Premises. Multi-Unit Residence does not include a condominium as that term is defined in section 17.90.020 of this code.

(H) "Multi-Unit Residence Common Area" means any indoor or outdoor area of a Multi-Unit Residence accessible to and usable by residents of more than one Unit, including but not limited to halls and paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, Playgrounds, swimming pools, and parking areas.

(I) "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this

section.

(J) "Place of Employment" means any area under the legal or de facto control of an Employer, Business or Nonprofit Entity that an Employee or the general public may enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, Employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, and, while Employees, children or patients are present, private residences that are used as child-care or health-care facilities subject to licensing requirements.

(K) "Playground" means any park or Recreational Area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on city property.

(L) "Premises" means a parcel 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.

(M) "Present" means within a Reasonable Distance.

(N) "Private Enforcer" is defined in section 8.12.080(B) of this code.

(O) "Public Place" means any public or private place open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, plazas, bars, restaurants, clubs, stores, stadiums, parks, Playgrounds, taxis, and buses.

(P) "Reasonable Distance" means a distance of twenty feet or, with respect to a designated Smoking area, such larger area as the city manager reasonably determines in writing to be necessary in a given circumstance to ensure that occupants of an area in which Smoking is prohibited are not exposed to secondhand Smoke created by smokers outside the area.

(Q) "Recreational Area" means any public or private area open to the public for recreational purposes whether or not any fee for admission is charged, including without limitation, parks, gardens, sporting facilities, stadiums, and Playgrounds.

(R) "Shopping Mall" means any parcel of land zoned and used for retail sales by more than one retailer that is jointly operated or which includes shared parking facilities.

(S) "Smoking" or to "Smoke" means possessing or to possess 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).

(T) "Tobacco Product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(U) "Unenclosed area" means any area which is not an Enclosed Area.

(W) "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 associated private outdoor spaces such as 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 or 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).

SECTION 3. CODE AMENDMENT. Section 8.12.035 of the Calabasas Municipal Code is hereby adopted to read as follows:

8.12.035 SECONDHAND SMOKE GENERALLY

For all purposes within the jurisdiction of the city, nonconsensual exposure to secondhand smoke in violation of this chapter is a nuisance, and the uninvited presence of secondhand smoke on property in violation of this chapter is a nuisance and a trespass.

SECTION 4. CODE AMENDMENT. Section 8.12.040 of the Calabasas Municipal Code is hereby amended to read as follows:

8.12.040 PROHIBITION OF SMOKING

(A) Public and Other Places Where Smoking Prohibited. Except as otherwise provided by this chapter or by state or federal law, Smoking is prohibited everywhere in the city, including but not limited to:

(1) Public Places;

(2) Places of employment;

(3) Multi-unit Residence Common Areas;

(4) Enclosed and unenclosed places of hotels, Businesses, restaurants, and bars, and other public accommodations.

(B) Places Where Smoking Permitted. Notwithstanding subsection (A) of this section, Smoking is permitted in the following locations within the city, unless otherwise provided by state or federal law:

(1) Private residential property, other than (a) those used as a child-care or health-care facility subject to licensing requirements when Employees, children or patients are present or (b) as provided in section 8.12.051 to 8.12.055 of this chapter with respect to Multi-Unit Residences. Nothing in this chapter shall require a person or entity who or which owns or controls a private residential property, including but not limited to a condominium association or an apartment owner, to permit Smoking and such a person may prohibit Smoking throughout the property he, she or it owns or controls.

(2) In up to twenty (20) percent of guest rooms in any hotel or motel, if the hotel or motel permanently designates at least eighty (80) percent of its guest rooms as nonsmoking rooms, appropriately signs nonsmoking rooms and permanently removes ashtrays and matches from them. Smoking rooms shall be segregated from nonsmoking rooms on separate floors, wings, or portions of either; Smoking and nonsmoking rooms shall not be interspersed. Nothing in this chapter shall require a hotel or motel to provide Smoking rooms and the owner or operator of a hotel or motel may choose to prohibit Smoking throughout the property.

(3) Designated Unenclosed Areas in Shopping Mall common areas ("smokers' outposts"), provided that (i) there is not more than one square foot of Unenclosed Area designated for Smoking for every twenty thousand (20,000) square feet of rentable enclosed or unenclosed space of the Shopping Mall (provided that each Shopping Mall may have at least one smokers' outpost of forty (40) or fewer square feet in area, (ii) the area is prominently marked with signs, (iii) it is located the greatest distance practicable, and at least five feet, from any doorway or opening into an Enclosed Area or any access way from parking facilities to the retail areas of the Shopping Mall, (iv) smoke is not permitted to enter adjacent area in which Smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of the adjacent property, and (v) the location(s) of the smokers' outpost(s) is or are approved in writing by the city manager of the city based on the standards of this subsection and the goals of this chapter.

(4) Any outdoor area in which no nonsmoker is present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive.

(C) No person shall dispose of Smoking waste or place or maintain a receptacle for Smoking waste in an area in which Smoking is prohibited by this chapter or other law, including within any Reasonable Distance required by this chapter.

SECTION 5. CODE AMENDMENT. Section 8.12.050 of the Calabasas Municipal Code is hereby amended to read as follows:

8.12.050 REASONABLE DISTANCE REQUIRED

No person shall Smoke in an area in which Smoking is otherwise permitted by this chapter or other law within a Reasonable Distance from any entrance, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of that Enclosed Area.

SECTION 6. CODE AMENDMENT. Sections 8.12.051, 8.12.053, 8.12.055, 8.12.057 and 8.12.059 of the Calabasas Municipal Code are hereby adopted to read as follows:

8.12.051 NO SMOKING COMMON AREAS, DESIGNATED SMOKING AREA

(A) Notwithstanding the prohibition of Smoking in all Multi-Unit Residence Common Areas established by section 8.12.040 of this chapter, a Landlord of a Multi-Unit Residence shall designate a portion of the outdoor area of the Premises as a Smoking area as provided in paragraph (B) below.

(B) A designated Smoking area must:

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

(2) not include, and be a Reasonable Distance from, outdoor areas primarily used by children including, but not limited to, Playgrounds and other areas improved or designated for play or swimming;

(3) be no more than 25% of the total outdoor area of the Premises on which it is located;

(4) have a clearly marked perimeter;

(5) be identified by conspicuous signs; and

(6) not overlap any area in which Smoking is otherwise prohibited by this

chapter, other provisions of this code, or other law.

(7) If the requirements set forth in subdivision (B)(1) or subdivision (B)(2) of this section cannot be satisfied due to unique circumstances affecting a Multi-Unit Residence, the city manager may approve a Smoking area that meets the requirements of this section to the extent practicable or, if in his or her judgment such an area cannot be designed, the city manager may exempt the Landlord from the requirement to designate a Smoking area.

8.12.053 SMOKE-FREE BUFFER ZONES

Smoking is prohibited (i) on the Premises of a Multi-Unit Residence and (ii) in any Public Place 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, or other law. For example, and without limitation, Smoking on balconies, porches, or patios of a non-Smoking Unit is prohibited.

8.12.055 SMOKE-FREE MULTI-UNIT RESIDENCES

(A) Except as provided in subsection (B) of this section, on or before January 1, 2012, at least 80% of the Units in all Multi-Unit Residences shall be designated as non-smoking Units, and Smoking shall be prohibited inside such Units. Upon designating non-smoking Units and not later than January 1, 2012, the Landlord shall give written notice to every lawful tenant(s) then in occupancy of each non-smoking Unit, informing the tenant(s) that Smoking is prohibited inside that Unit. If fewer than all Units in a Multi-Unit Residence are designated as non-smoking Units, non-smoking Units shall be grouped together (*e.g.*, horizontally and/or vertically) and physically separated from Smoking Units to the maximum extent practicable; if a Multi-Unit Residence is comprised of more than one building, smoking units shall be contained in as few buildings as possible.

(B) Upon designating non-smoking units and not later than January 1, 2012, each Landlord of an existing Multi-Family Residence that is not a "new" Multi-Family Residence shall give written notice to every lawful tenant(s) who has continuously occupied a Unit in the Multi-Family Residence from February 1, 2008 to the date the notice is given, informing the tenant(s) of his or her right to make a written request to the Landlord that his or her Unit be designated a Smoking Unit during his or her tenancy. Upon such a request, the inside of such Unit shall not be subject to the Smoking restrictions of this section while such tenant(s) continuously occupy(ies) the Unit. If such tenant(s) subsequently relocates from that Unit to another Unit within the same Multi-Unit Residence, both such Units shall thereafter be subject to the Smoking restrictions of this section unless either is designated as a Smoking unit as permitted by paragraph A above. A Multi-Unit Residence shall be considered

“new” for purposes of this section if a certificate of occupancy for any Unit is first issued by the city after February 1, 2008.

(C) By July 1, 2008, each Landlord of a Multi-Family Residence in the city shall report, in writing, to the city manager, the number and locations of (i) designated non-smoking units in the Multi-Family Residence, (ii) any Unit in the Multi-Family Residence which is designated as a grand-fathered Unit under paragraph (B) of this section, (iii) designated smoking units in the Multi-Family Residence, and (iv) the location of any smoking area designated pursuant to paragraph (B) of section 8.12.051 of this code. Each Landlord of a Multi-Family Residence in the city shall make this written report annually thereafter until the Multi-Unit Residence for which the report is made complies with the 80% smoke-free requirement of paragraph (A) of this section, exclusive of grand-fathered smoking units under paragraph (B) of this section.

8.12.057 REQUIRED LEASE TERMS

(A) Every new lease or other agreement entered into after the effective date of this section for the occupancy of a Unit in a Multi-Unit Residence, other than a renewal of an existing lease to a tenant subject to section 8.12.055(B), shall include:

(1) a clause stating that Smoking is prohibited in the Unit, if the Unit has been designated as a non-smoking Unit;

(2) a clause stating that it is a material breach of the lease or agreement to (i) violate any law or rule regulating Smoking while on the Premises; (ii) Smoke inside a non-smoking Unit or (iii) Smoke in any Multi-Unit Residence Common Area in which Smoking is prohibited by the Landlord or by law; and

(3) a clause stating that all lawful occupants of Units in the Multi-Unit Residence are third-party beneficiaries of the clauses required by subsections (A)(1) and (A)(2) of this section.

(B) The lease or agreement terms required by subsection (A) of this section 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 this section which lease does not fully comply with subsection (A).

(C) A tenant who breaches the Smoking regulations included in a lease pursuant to subsection (A) of this section, or incorporated into a lease by subsection (B) of this section, or who knowingly allows another person to do so shall be liable to: (i) the Landlord; and (ii) to any lawful occupant of a Unit in the Multi-Unit Residence who is exposed to secondhand smoke as a result of that breach.

(D) A Landlord shall not be liable to any person for a tenant's breach of Smoking regulations if:

(1) the Landlord has fully complied with subsection (A) of this section, and

(2) upon receiving a signed written complaint regarding prohibited Smoking, the Landlord provides a written warning to the offending tenant, stating that such tenant may be evicted if another complaint is received. Upon receipt of a second signed, written complaint against the offending tenant, the Landlord may evict such tenant, but will not be held liable for the failure to do so.

(E) 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 section and shall not prevent future enforcement of any such Smoking regulation.

8.12.059 DISCLOSURE OF UNITS SUBJECT TO SMOKING RESTRICTIONS BY LANDLORD

Every Landlord shall maintain a list of designated non-Smoking Units and a floor plan identifying the relative positions of Smoking and non-Smoking Units. The floor plan also shall identify the location of any designated Smoking Areas. A copy of this list and floor plan shall accompany every new lease or other agreement for the occupancy of a Unit in a Multi-Unit Residence entered into after the sooner of (i) the date non-smoking units are first designated by the Landlord under this chapter or (ii) January 1, 2012.

SECTION 7. CODE AMENDMENT. Section 8.12.060 of the Calabasas Municipal Code is hereby amended to read as follows:

8.12.060 ALLOWING, AIDING OR ABETTING SMOKING

(A) No person, Employer, Business, or Nonprofit Entity shall knowingly permit Smoking in an area under his, her, or its legal or de facto control in which Smoking is prohibited by this chapter or other law.

(B) No person, Employer, Business, or Nonprofit Entity shall allow the placement or maintenance of a receptacle for Smoking waste in an area under his, her, or its legal or de facto control in which Smoking is prohibited by this chapter or other law.

(C) Notwithstanding any other provision of this chapter, any owner, Landlord, Employer, Business, Nonprofit Entity, or other person who or which has legal or de facto control over any property may declare any area in which Smoking would

otherwise be permitted to be a nonsmoking area and, provided that signs are posted giving notice of the Smoking restriction, Smoking in or within a Reasonable Distance of that area shall constitute a violation of this chapter.

(D) "No Smoking" or "Smoke Free" signs, with letters of not 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 with a red bar across it) or any alternative signage approved by the city manager shall be conspicuously posted by the person, employer, business, or nonprofit entity who or which has legal or de facto control of such place at each entrance to a public place in which Smoking is prohibited by this chapter or any other place where the city manager reasonably determines that Smoking in violation of this chapter has occurred, or is likely to occur. The city manager shall post signs at each entrance to a public place in which Smoking is prohibited by this chapter which is owned or controlled by the city. Signage required by this subsection shall not be subject to Chapter 17.30 ("Signs") of this code. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter, except as to an area in which Smoking is prohibited only by subsection (C) of this section.

SECTION 8. CODE AMENDMENT. Paragraph (A) of Section 8.12.070 of the Calabasas Municipal Code is hereby amended to read as follows:

(A) A violation of this chapter shall constitute a misdemeanor punishable pursuant to chapter 1.16 of this code unless the prosecutor determines to prosecute it as an infraction as authorized by section 1.16.010(a).

SECTION 9. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Calabasas hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 10. CONSTRUCTION. The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent. To the extent the provisions of the Calabasas Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code prior to the effectiveness of this Ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 11. EFFECTIVE DATE. Except as otherwise provided herein, this Ordinance shall take effect thirty days after its adoption pursuant to California Government Code section 36937.

SECTION 12. CERTIFICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

PASSED, APPROVED AND ADOPTED, this ___ day of _____ 2008.

James R. Bozajian, Mayor

ATTEST:

Robin Parker, City Clerk

APPROVED AS TO FORM:

Michael G. Colantuono, City Attorney