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To: Mayor and City Council

From: Alison Foulis, City Clerk

**Subject: Adoption of an ordinance of the City of Belvedere amending Chapter 8.18, “Smoking and Tobacco Regulations,” of the Belvedere Municipal Code**

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**Recommended Motion/Item Description**

That the City Council adopt the ordinance.

**Background**

The public hearing to introduce this ordinance was held at the September 12, 2016, regular City Council meeting. At that meeting, Council heard a presentation from Bob Curry, Marin County Department of Health and Human Services, on the negative effects of secondhand smoke. There was one public comment during the hearing in support of the ordinance. During Council’s discussion of the ordinance, concerns were raised regarding the signage requirements imposed under §8.18.080(B) and whether it would lead to an undesirable amount of signs placed around the City. Ultimately, the Council approved the introduction and first reading of the ordinance, but requested staff reach out to the Belvedere Land Company again about the requirements of the ordinance.

Following the meeting, staff contacted the Belvedere Land Company (BLC) a second time to discuss the ordinance and to bring §8.18.080(B) to their attention. In response, the City received an email from Jim Allen dated September 23, 2016, (included in attachments). In his letter, along with questioning the purpose of adopting the ordinance, Mr. Allen states his concern that §8.18.080(B) will add needless expense to BLC and the City by requiring signage and a complaint phone number.

***Signage Requirements***

The proposed ordinance includes requirements that signs be posted at the point of ingress and one other location in an area where smoking is prohibited. It is important to note that the ordinance does not require signs be posted on every unit or building, only in the general area where smoking is prohibited. A possible sign placement scenario for the Belvedere Land Company properties could be one sign each at the entrances on Teal, Beach, and Peninsula Roads. However it is also important to note that enforcement of the ordinance will be complaint driven and the City will likely not be actively checking for sign compliance (similarly, the City will not be monitoring smoking activity in private residences, but will respond if a complaint is

received.) The City Council has made clear its concerns over excessive signage at the previous public hearing so any enforcement actions for this section of the ordinance will keep those concerns in mind.

With regards to signage on public property, staff has determined that it would be appropriate to install signs at two locations each in Community Park, Tom Price Park, and Land Company Park to comply with the ordinance. Initial estimates from a local sign-making shop have come in at around \$20/sign, depending on how many are ordered. The signs will be placed around the general entrances to the parks and one additional location.

#### ***Toll-Free Phone Number***

Section 8.18.080(B) also requires that at least one sign include a toll-free number where complaints can be directed. This number will be a County phone number operated by the Dept. of Health and Human Services. The County acts as the first line of contact for complaints from other Marin cities and towns and has found the issue is often resolved in that one phone call. Repeat issues or more complex problems will be referred to the City for further action or enforcement. It has come to staff's attention that the County's complaint phone number is not toll-free, so that word has been struck from the final ordinance for adoption as a minor correction.

#### **Findings**

The proposed ordinance brings the City's current smoking ordinance up to similar standards of other Marin County cities and towns. While smoking may not be seen as a large problem in Belvedere, adopting this ordinance provides those residents of multi-family housing that seek relief from smoke intrusion into their home with a tool to accomplish that goal. Adoption of this ordinance also serves to improve the public health of the Belvedere community.

#### **Attachments**

- Email from Jim Allen, Belvedere Land Company, dated September 23, 2016.
- Ordinance.

## **Alison Foulis - City Clerk**

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**From:** James Allen  
**Sent:** Friday, September 23, 2016 7:05 AM  
**To:** Mary Neilan - City Manager; Alison Foulis - City Clerk; Mary Neilan - City Manager; Alison Foulis - City Clerk  
**Subject:** non smoking ordinance

Alison, thanks for your recent delivery of the proposed ordinance to the Land Company office.

I see that in July the staff was instructed to request any feedback from the Land Company.

I was away all of July this year and never received any notice prior to last week. Please excuse what may seem like a last minute response.

There are so few smokers left in Marin County and more specifically in Belvedere and Tiburon, that an ordinance now is nearly useless as far as prohibiting smoking in living units and public areas. It has already happened. BLC introduced no smoking rules into its leases years ago. While our language is not as specific as the proposed language of the ordinance, the effect of enforcing our rules has eliminated smoking inside of units and in areas around units.

We have only one smoker remaining in our units. He is well trained to smoke outside and in fact frequently sits near the sidewalk on City Property for his occasional smokes. I wonder if the City really wants to involve itself in getting him to smoke elsewhere. He is smoking in a public area. We have had no more than 3 complaints per year for the past few years involving smoking. The culprit has always been a guest or employee of our tenants. They have complied with our requests to quit smoking on BLC property.

While I feel that the entire ordinance addresses a non-existent problem, there are two concepts in 8.18.080 B that place a needless expense on BLC and the City--the signage requirements and the "toll free phone number" for complaints. Does the city want to add an expense to it's already long list of expenses? Who will answer the complaint messages? Who will respond to them? That burden is placed equally on the City and BLC and we object. The signage requirement will clutter an area that we try diligently to keep beautiful and attractive. Each duplex will need at least two no smoking signs and one complaint phone number sign. To comply we will need at least 60 signs at the entrances of our duplex units plus many many more to comply with the multi-family buildings. The city will need many also. It will start to look like Walmart.

The Town of Tiburon enacted a similar ordinance requiring no smoking signs a few years ago. We never complied. They never inspected for compliance. No one ever complained and smokers complied with out tenant rules without any government help.

This whole issue strikes me as "political correctness." The city is trying to act like all other governments and take action. However, there is not any issues re: smoking on BLC properties to act on.

Please think carefully about what you might be requiring of Landlords and the City-- multiple signs and a complaint system that will be an annoyance and probably never used.

At Farley Place where I am on the Board of Directors we have one smoker. Her lease allows her to smoke in her unit because she lived there years before there were smoking ordinances. All other units are strictly no smoking units. I hope the City will not join the maze of tenant-landlord law and try to force Farley management of enforce mutually exclusive rules.

Please pass this email to all the City Council members.

Thank you,  
Jim Allen

**CITY OF BELVEDERE**

**ORDINANCE NO. 2016-**

**AN ORDINANCE OF THE CITY OF BELVEDERE  
AMENDING CHAPTER 8.18, "SMOKING AND TOBACCO REGULATIONS,"  
OF THE BELVEDERE MUNICIPAL CODE**

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

**SECTION 1.     Findings.**

- A. Title 8, Chapter 18, of the Belvedere Municipal Code currently regulates smoking and tobacco use in certain public places.
- B. The City Council directed staff to develop an ordinance to expand the City's smoking restrictions
- C. Tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following according to the US Department of Health and Human Services, Centers for Disease Control and Prevention: tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year; and scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth.
- D. Exposure to secondhand smoke causes death and disease and tobacco use and exposure to secondhand smoke impose great social and economic costs.
- E. The U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed.
- F. Although electronic cigarettes have not been fully studied, the American Lung Association has stated that initial studies show that electronic cigarettes contain nicotine and many add other harmful chemicals, including known carcinogens and lung irritants.
- G. Smoking is the primary cause of fire-related injuries and deaths in the home.
- H. Nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, which has been demonstrated to have negative health impacts
- I. Most Californians do not smoke and a majority favor limitations on smoking indoors, outdoors, and in multi-unit residences.
- J. 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 nonsmokers from exposure to secondhand smoke where they live, work, and play.

**SECTION 2.**     **Repeal.** Chapter 8.18, “Smoking and Tobacco Regulations,” of the Belvedere Municipal Code is hereby repealed.

**SECTION 3.**     **Addition.** Chapter 8.18, “Smoking and Tobacco Regulations,” is hereby added to the Belvedere Municipal Code to read as follows:

Chapter 8.18

SMOKING AND TOBACCO REGULATIONS

Sections:

- 8.18.010     Definitions.
- 8.18.020     Prohibition of Smoking.
- 8.18.030     Nonsmoking buffer zones.
- 8.18.040     Nonsmoking designations for new and existing Units of a Multi-Unit Residence
- 8.18.050     Nonsmoking designations for new and existing Units of a Common Interest Complex.
- 8.18.060     Required lease terms for all new and existing Units in Rental Complex.
- 8.18.070     Procedures and requirements for mandated submissions.
- 8.18.080     Other requirements and prohibitions.
- 8.18.090     Smoking prohibitions violations and penalties.
- 8.18.100     Regulating the sale of Tobacco Products
- 8.18.110     Other applicable laws.
- 8.18.120     Construction with state law.

8.18.010 Definitions. The following words and phrases, whenever used in this Chapter, are defined as follows:

- A.     "Bar" means an area that is devoted to the serving of alcoholic beverages for consumption by patrons on the Premises and in which the serving of food is incidental to the consumption of such beverages. Although a restaurant may contain a Bar, the term "Bar" shall not include the restaurant Dining Area.
- B.     "Business" means any sole proprietorship, joint venture, corporation, or other business entity formed for profit making purposes.
- C.     "City" shall mean the City of Belvedere.
- D.     "Common Area" means every area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example, halls, paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pools, parking garages and Parking Lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

E. "Common Interest Complex" means 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, as may be amended from time to time..

F. "Dining Area" means any area, including streets and sidewalks, which is available to or customarily used by the general public or Employees, and which is designed, established, or regularly used for consuming food or drink.

G. "Electronic Smoking Device" shall mean an electronic or battery operated device that delivers vapors for inhalation. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, and electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

H. "Employee" means any person who is employed by any Employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a Non-Profit Entity.

I. "Employer" means any person, partnership, corporation, including a municipal corporation, or Non-Profit Entity, which employs the services of one or more individual persons or utilizes volunteers.

J. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by portions which do not extend to the ceiling or are not solid, such as "office landscaping" or similar structures.

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

L. "Minor" shall mean any individual who is less than eighteen (18) years old.

M. "Multi-Unit Residence" means a property containing two (2) or more Units, including for example, Rental Complexes, Common Interest Complexes, senior citizen residences, and nursing homes. "Multi-Unit Residence" does not include the following specifically excluded types of housing:

1. A hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2);
2. Mobile home park;
3. Campground;
4. Marina or port;
5. Single-family home;
6. Single-family home with an attached or detached residential second unit, such as a Second Unit or Junior Second Unit, when permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections.

7. Property containing two (2) or more Units, if the Units are separated by a distance of 20 or more feet in any direction.

N. "New Unit" means a Unit that is issued a final inspection after November 9, 2016, and also means a Unit that is let for residential use for the first time after November 9, 2016.

O. "Non-Profit Entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social, religious or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a "Non-Profit Entity" within the meaning of this Section.

P. "No Smoking Sign" means a sign containing the words "No smoking" or the international "No smoking" symbol (consisting of a pictorial representation of a burning cigarette in a red circle or red heart with a red bar across it).

Q. "Parking Lot" means any place, publicly or privately owned, which is open to the general public and used for the parking of motor vehicles.

R. "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

S. "Place of Employment" means any area under the legal or actual control of an Employer that an Employee or the general public may have cause to enter in the normal course of operation, regardless of the hours of operation, including, but not limited to, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, Employee lounges and restrooms, conference and banquet rooms, Employee cafeterias, warehouses, long-term health care facilities, and lobbies and hallways. A private residence is not a Place of Employment unless it is used as a child care or health care facility.

T. "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.

U. "Public Place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

V. "Recreational Area" means any area, permanent or temporary (as in special events), that is publicly or privately owned and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes, but is not limited to, parks, picnic areas, playgrounds, sports fields and arenas, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, amusement parks, and beaches.

W. "Rental Complex" means a Multi-Unit Residence for which fifty percent (50%) or more of Units are let by or on behalf of the same Landlord.

X. "Retail Tobacco Store" means a retail store utilized primarily for the sale of Tobacco Products, Tobacco Paraphernalia or Smoking products, and in which the sale of other products is merely incidental.

Y. "Service Area" means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to wait for or receive a service or make a transaction, whether or not such service or transaction involves the exchange of money. The term "Service Area" includes but is not limited to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, transit shelters, ferry terminals, mobile vendor lines, or cab stands.

Z. "Smoke" means the gases and particles released into the air by combustion, electrical ignition or vaporization, including from an Electronic Smoking Device, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the resulting gases, particles or vapor combustion products, such as, for example, tobacco smoke or marijuana smoke, except when the combusting material contains no tobacco, marijuana, or similar substance, and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense.

AA. "Smoking" means engaging in an act that generates Smoke, such as for example, but not limited to: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, an operating Electronic Smoking Device, a lighted cigarette of any kind or a lighted smoke inhalation device of any kind that generates Smoke, or the act of lighting or igniting a pipe, a hookah pipe, a cigar, a cigarette or Smoke inhalation device of any kind that generates Smoke.

AB. "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of Smoking materials of all types, cigarette rolling machines, Electronic Smoking Devices and/or any other item designed for the Smoking, preparation, storing, or consumption of tobacco, marijuana, or other similar products.

AC. "Tobacco Product" means:

1. Any substance containing tobacco leaf, including but not limited to cigarettes, Electronic Smoking Devices, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, blunts, clove cigarettes, or any other preparation of tobacco; and

2. Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body by inhalation; but does not include any cessation product specifically approved by the U. S. Food and Drug Administration for use in treating nicotine or tobacco dependence.

AD. "Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products, Tobacco Paraphernalia, or Smoking products within City limits. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

AE. "Unenclosed Area" means any area that is not an Enclosed Area.

AF. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated

exclusive-use enclosed area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; or a mobile home.

8.18.020 Prohibition of Smoking. A. Smoking shall be prohibited in the following Enclosed and Unenclosed Areas within the City of Belvedere:

1. Places of employment for Business or Non-Profit Entities
2. Recreational Area(s).
3. Service Area(s).
4. Dining Area(s) and Bar(s).
5. Parking Lot(s).
6. Facilities and properties owned and controlled by the City.
7. Public Places when being used for a public event, including a farmers' market, parade, fair, festival, or any other event (i.e., special event) which may be attended by the general public, provided that Smoking is permitted on streets and sidewalks being used in a traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this Chapter or other law.
8. All City-owned vehicles, including jitneys and buses and other means of public transit under the authority of the City.
9. All new and existing Units of a Multi-Unit Residence as detailed in Sections 8.18.040 and 8.18.050.

B. Enclosed Areas.

1. Smoking shall be prohibited in all Enclosed Areas in Public Places within the City of Belvedere.
2. Smoking is prohibited in any Enclosed Area used as a child care or health care facility subject to licensing requirements.
3. Smoking shall be prohibited in all Enclosed Areas that are Common Areas.
4. Smoking shall be prohibited in all Enclosed Areas that are guestroom accommodations in a hotel, motel, bed and breakfast or similar transient lodging establishment, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio.
5. Unless otherwise prohibited by law, Smoking is not prohibited in the following Enclosed Areas:
  - a. Smoking at theatrical production sites is not prohibited by this subsection if Smoking is an integral part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of Smoking in an effective way to a reasonable member of the anticipated audience.
  - b. Smoking inside a Retail Tobacco Store is not prohibited if:
    - i. The Retail Tobacco Store does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the Business Premises;

ii. The Retail Tobacco Store prohibits Minors from entering the store at all times; and

iii. The Premises of the Retail Tobacco Store is an independent freestanding building unattached to any other structure or use.

C. Unenclosed Areas.

1. Designated Smoking areas. Smoking shall be prohibited in all Multi-Unit Residence Common Areas, provided that a Person with legal control over a Common Area may designate a portion of an Unenclosed Area of a Common Area as a designated Smoking area if the area meets all of the following criteria:

a. The area must be located 20 feet in any direction from any area where Smoking is prohibited by this Chapter or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a Person with legal control over the property. In the case of a nonsmoking area created by agreement or designation, this provision does not apply unless the Person designating the Smoking area has actual knowledge of, or has been given notice of, the agreement or designation. A designated Smoking area may require modification or elimination as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established.

b. The area must not include, and must be 20 feet in any direction from, Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses;

c. The area must be no more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;

d. The area must have a clearly marked perimeter;

e. The area must be identified by conspicuous signs;

f. The area must be completely within an Unenclosed Area; and

g. The area must not overlap with any Enclosed or Unenclosed Area in which Smoking is otherwise prohibited by this Chapter or other provisions of this Code, state law, or federal law.

2. Unless otherwise prohibited by law, Smoking is not prohibited in a Multi-Unit Residence unenclosed Parking Lot if the designated Smoking area meets all criteria listed above in Section 8.18.030(C).

3. Notwithstanding the above, a written request may be made by a Person in control of a Common Area to the Director of Planning and Building to approve a designated Smoking area that does not meet all of the criteria set forth in Section 8.18.020(C)(1)(a)(g) but is consistent with the purpose of this Chapter. The Director's decision on the request may be appealed to the City Manager, whose decision shall be final.

8.18.030 Nonsmoking buffer zones. Smoking shall be prohibited within 20 feet in any direction from any doorway, window, opening, or vent into an Enclosed or Unenclosed Area in which Smoking is prohibited, except while actively passing on the way to another destination and provided Smoke does not enter any Enclosed Area in which Smoking is prohibited.

8.18.040 Nonsmoking designations for new and existing Units of a Multi-Unit Residence. 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.

B. All units of a Multi-Unit Residence that are not new Units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio, are hereby designated nonsmoking Units as of November 9, 2017.

C. Smoking in a designated nonsmoking Unit is a violation of Chapter as provided in Section 8.18.090.

8.18.050 Nonsmoking designations for new and existing Units of a Common Interest Complex. A. All new Units of a Common Interest Complex, 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.

B. All units of a Common Interest Complex that are not new units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio, are hereby designated nonsmoking Units as of November 9, 2017.

C. Smoking in a designated nonsmoking Unit is a violation of this Chapter as provided in Section 8.18.090.

8.18.060 Required lease terms for all new and existing units in a Rental Complex. A. Every lease or other rental agreement for the occupancy of a new or existing unit in a Rental Complex entered into, renewed, or continued month-to-month after November 9, 2016, shall be amended to include the following provisions while providing the minimum legal notice:

1. For existing and new Units:

a. Existing: A clause providing that as of November 9, 2017, it is a material breach of the agreement to allow or engage in Smoking in the unit. Such a clause shall substantially state, "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 November 9, 2017."

b. New: A clause providing that as of November 9, 2016, it is a material breach of the agreement to allow or engage in Smoking in the Unit. Such a clause shall substantially state, "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 November 9, 2016."

2. A clause providing that it is a material breach of the 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 any Common Area of the property other than a designated Smoking area. Such a clause shall substantially state, "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 any common area of the property, except in an outdoor designated Smoking Area, if one exists."

3. A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating Smoking while anywhere on the property. Such a clause shall substantially state, "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 violate any law regulating smoking while anywhere on the property."

4. A clause expressly conveying third-party beneficiary status to all occupants of the Rental Complex as to the Smoking provisions of the agreement. Such clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement that concern Smoking. As such, other occupants may seek to enforce such provisions by any lawful means, including by bringing a civil action in a court of law."

B. This Chapter shall not create additional liability in a Landlord to any Person for a tenant's breach of any Smoking provision in a lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence if the Landlord has fully complied with this Section.

C. Failure to enforce any Smoking provision required by this Chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

8.18.070 Procedures and requirements for mandated submissions. A. Documents maintained pursuant to this Chapter must include all material and information required by this Chapter as well as other materials and information as the City Manager or his or her designee deems necessary for the administration and enforcement of this Chapter.

B. All documents maintained pursuant to this Chapter shall be available for the City Manager or his or her designee to access and review during regular business hours or upon 24 hours written notice.

C. All material information maintained pursuant to this Chapter and requested by the City Manager or his or her designee shall constitute disclosable public records and are not private or confidential.

8.18.080 Other requirements and prohibitions. A. No Person, Landlord, Employer, or Non-Profit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or actual control of the Person, Landlord, Employer or Non-Profit entity and in which Smoking is prohibited by law, including, without limitation, within 20 feet in any direction from any area in which Smoking is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of Smoking in violation of any provision of this Chapter.

B. No Person shall dispose of used Smoking, Tobacco Product, or other Smoking product waste within the boundaries of any area within City limits, except in a designated waste receptacle. A Person, Landlord, Employer, or Non-Profit Entity that has legal or actual control of an area in which Smoking is prohibited by this Chapter shall post a clear, conspicuous and unambiguous No Smoking Sign or "smoke-free" sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include 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). Signs posted on the exterior of buildings to comply with this section shall include the prohibition on smoking within 20 feet of the entrance to the building. At least one sign with a phone number where complaints can be directed must be conspicuously posted in each place in which Smoking is prohibited. For purposes of this Section, the City Manager or his or her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City. Notwithstanding this Section, the presence or absence of signs shall not be a defense to a charge of Smoking in violation of any other provision of this Chapter.

C. No Person, Landlord, Employer, or Non-Profit Entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this Chapter. Moreover, no person shall intentionally or recklessly expose another person to Smoke in response to that person's effort to achieve compliance with this Chapter.

D. Notwithstanding any other provisions of this section, nothing in this chapter prohibits any Person, Landlord, Employer, or Non-Profit Entity with legal control over any property or facility from declaring the entire property or facility as nonsmoking and prohibiting Smoking on any part of such property or facility, even if Smoking is not otherwise prohibited in that area.

E. Each instance of Smoking in violation of this Chapter shall constitute a separate and continuing violation. For violations other than for Smoking, each day of a continuing violation of this Chapter shall constitute a separate and continuing violation.

8.18.090 Smoking prohibitions violations and penalties. A. It shall be unlawful for any person to Smoke in any area where Smoking is prohibited under this Chapter. Each instance of Smoking in violation of this Chapter shall constitute a separate and continuing violation.

B. It shall be unlawful for any Person who owns, manages, operates or otherwise controls the use of any Premises subject to regulation under this Chapter to refuse to comply with any of its provisions, or to permit any Employee or patron to violate this Chapter.

C. It shall be unlawful to cause, permit, aid, abet, or conceal a violation of any provision of this Chapter.

D. Any Person, Business, tobacco retailer, or owner, manager or operator of any establishment subject to this Chapter who violates any provision of this Chapter shall be deemed guilty of an infraction and upon conviction shall be subject to payment of a fine not to exceed the limits set forth in Government Code section 36900, as may be amended from time to time.

8.18.100 Regulating the sale of Tobacco Products. A. Any Person, Business, tobacco retailer, or other establishment subject to this Chapter shall post plainly visible signs at the point of purchase of Tobacco Products which state "THE SALE OF TABACCO PRODUCTS BY PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID REQUIRED." The letters of said sign shall be at least one quarter (1/4) inch high.

B. No Person, Business, tobacco retailer, or owner, manager, or operator of any establishment subject to this Chapter shall sell, offer to sell, or permit to be sold any Tobacco Product to an individual without requesting and examining identification establishing the purchaser's age as eighteen year of greater unless the seller has some reasonable basis for determining the buyer's age.

C. It shall be unlawful for any Person, Business, or tobacco retailer to sell, permit to be sold or offer for sale any Tobacco Product by means of self-service displays or by any other means other than vendor-assisted sales.

D. No Person, Business, tobacco retailer or other establishment subject to this Chapter shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her, or its Premises any vending machine for the purpose of selling or distributing any Tobacco Product. Any tobacco vending machine in use on the effective date of the ordinance codified in this Chapter shall be removed within thirty (30) days after said effective date.

E. Any Person, Business, tobacco retailer, or owner, manager, or operator of any establishment subject to this Chapter who violates any provision of this Section shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine as provided for in Penal Code section 308(a), as may be amended from time to time.

8.18.110 Other applicable laws. This Chapter shall not be interpreted or construed to permit Smoking or the sale of Tobacco Products where it is otherwise restricted by other applicable laws.

8.18.120 Construction with State Law. To the extent that any provisions of this Chapter are preempted by state law, including but not limited to, California Labor Code section 6404.5 or California Government Code section 7596, then the applicable state law shall prevail and the provisions of this Chapter shall not apply.

**SECTION 3. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Ordinance are declared to be severable.

**SECTION 4. Effective Date.** This ordinance shall take effect and be in force thirty (30) days after the date of its passage. Within fifteen (15) days following its passage, a summary of the ordinance shall be published with the names of those city council members voting for and against the ordinance and the city clerk shall post in the office of the city clerk a certified copy of the full text of the adopted ordinance along with the names of the members voting for and against the ordinance.

**INTRODUCED AT A PUBLIC HEARING** on September 12, 2016, and adopted at a regular meeting of the Belvedere City Council on \_\_\_\_\_ by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**APPROVED:** \_\_\_\_\_  
James Campbell, Mayor

**ATTEST:** \_\_\_\_\_  
Alison Foulis, City Clerk