



OPEN MEETING

REGULAR MEETING OF THE UNITED LAGUNA WOODS MUTUAL  
GOVERNING DOCUMENTS REVIEW COMMITTEE

Monday, April 22, 2019 – 1:30 p.m.  
Laguna Woods Village Community Center, Sycamore Room  
24351 El Toro Road, Laguna Woods, CA 92637

**NOTICE & AGENDA**

1. Call to Order
2. Acknowledgment of Media
3. Approval of the Agenda
4. Approval of the Report from March 25, 2019
5. Chair's Remarks
6. Member Comments (Items Not on the Agenda)

Consent:

*All matters listed under the Consent Calendar are considered routine and/or informational and will be enacted by the Committee by one motion. In the event that an item is removed from the Consent Calendar by members of the Committee, such item(s) shall be the subject of further discussion and action by the Committee.*

None.

Reports:

None.

Items for Discussion and Consideration:

7. Review and Discuss the Proposed Updates to the Policy for Distribution of Material by Residents and Resident Organizations in Regards to the New Canvassing Law
8. Review and Discuss the Mutual's Current Smoking Policy

Concluding Business:

9. Committee Member Comments
10. Future Agenda Items
11. Date of next meeting is May 27, 2019
12. Adjournment

Maggie Blackwell, Chair  
Siobhan Foster, Staff Officer



UNITED LAGUNA WOODS  
M U T U A L

**OPEN MEETING**

**REGULAR MEETING OF THE UNITED LAGUNA WOODS MUTUAL  
GOVERNING DOCUMENTS REVIEW COMMITTEE**

Monday, March 25, 2019 – 1:30 PM  
Laguna Woods Village Community Center, Sycamore Room  
24351 El Toro Road, Laguna Woods, CA 92637

**MEMBERS PRESENT:** Maggie Blackwell – Chair, Anthony Liberatore, Juanita Skillman, Susan Margolis for Andre Torng, Advisors Bevan Strom and Mary Stone

**MEMBERS ABSENT:** Andre Torng

**OTHERS PRESENT:** Dick Rader, Cash Achrekar, Sherri Davis

**STAFF PRESENT:** Siobhan Foster, Tim Moy, Blessilda Wright, Susan McInerney, Christine Spahr, Pamela Bashline, Eve Morton

**REPORT**

**1. Call to Order**

Chair Blackwell called the meeting to order at 1:30 p.m.

**2. Acknowledgement of Press**

No press was present.

**3. Approval of the Agenda**

President Skillman moved to approve the agenda. The committee was in unanimous support.

**4. Approval of Report from the February 25, 2018 Meeting**

Director Liberatore made a motion to approve the Report. The Report was approved by consensus.

**5. Chair's Remarks**

None.

## **6. Member Comments (Items not on the agenda)**

None.

### Consent Calendar:

*All matters listed under the Consent Calendar are considered routine and will be enacted by the Committee by one motion. In the event that an item is removed from the Consent Calendar by members of the Committee, such item(s) shall be the subject of further discussion and action by the Committee.*

None.

### Reports:

## **7. Review and Discuss Fees for Golf Cart Charging Violations**

Ms. Wright from Compliance discussed this issue with the committee.

President Skillman moved to approve Staff's recommendation. Director Margolis seconded. The committee was in unanimous support.

The committee requested this item be placed onto the next Finance committee agenda (5/28/19).

### Items for Discussion and Consideration:

## **8. Review and Discuss the Possibility of Allowing Roommates**

The committee reviewed Staff's list of pros and cons and United attorney's memo on this topic.

Discussion ensued.

Director Skillman moved to not allow roommates in United. Director Margolis seconded. The motion passed with one abstention, Director Liberatore.

## **9. Review and Discuss the Election Rules as They Relate to the Bylaws**

The committee made some updates to the current United election rules.

The committee requested that Staff ask the new Inspectors of Elections to also review the current election rules and to make any recommendations for changes. Then, Staff is requested to send all the proposed updates to the Board for approval.

## **10. Review and Discuss the New State Law Regarding the Canvassing Policy**

The committee felt that the current United policy regarding distribution of materials and solicitation by residents, resident organizations, and sponsored outside entities is with the new law. Updates were made to the current policy to cover the concerns.

The committee recognized that procedures and approval for gate access by outsiders are under GRF regulation.

The committee requested that the updated policy be brought back to the next meeting as written.

### Concluding Business:

## **11. Committee Member Comments**

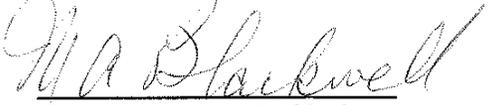
None.

## **12. Future Agenda Items**

- Review the committee updates to the current policy regarding distribution of materials by residents and resident organizations (canvassing).

## **13. Date of next meeting is April 22, 2019**

## **14. Adjournment at 3:25 p.m.**

  
Maggie Blackwell, Chair

**CONFIDENTIAL – ATTORNEY CLIENT PRIVILEGED**

**MEMO**

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**To:** United Board of Directors, c/o Governing Document Review Committee  
UNITED LAGUNA WOODS VILLAGE

**From:** Jeffrey A. Beaumont, Esq., BEAUMONT TASHJIAN

**Date:** March 14, 2019, and further discussion at April 22, 2019, meeting

**Subject:** Solicitation and Canvassing Policy (Civil Code §4515)

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As you know, Civil Code Section 4515 went into effect January 1, 2018. In sum, it allows residents of common interest developments to peacefully participate in politically expressive activities related to common interest developments within their community. This includes, but is not limited to, the ability to peacefully assemble, utilize the common areas for meetings and gatherings, and to canvass and petition within the community pertaining to association elections and legislation.

The applicability of the law as to United, which has no common area meeting spaces, is limited; specifically, only Civil Code Section 4515, Subsections (b)(4) - (5) and (d) apply as follows.

Civil Code Section 4515(b)(4)-(5) provides:

“The governing documents, including bylaws and operating rules, shall not prohibit a member or resident of a common interest development from doing any of the following:

...

(4) Canvassing and petitioning the members, the association board, and residents for the activities described in paragraphs (1) and (2) at reasonable hours and in a reasonable manner.

(5) Distributing or circulating, without prior permission, information about common interest development living, association elections, legislation, election to public office, or the initiative, referendum, or recall processes, or other issues of concern to members and residents at reasonable hours and in a reasonable manner.”

Civil Code Section 4515(d) provides:

“A member or resident of a common interest development who is prevented by the association or its agents from engaging in any of the activities described in this

section may bring a civil or small claims court action to enjoin the enforcement of a governing document, including a bylaw and operating rule that violates this section. The court may assess a civil penalty of not more than five hundred dollars (\$500) for each violation.”

Therefore, Members must be allowed to circulate information of concern, including petitioning and canvassing members and/or the association’s board, in a reasonable manner. It is important to note, violations of the code by the association permit a member to recover up to five hundred dollars for each violation.

An operating rule must be reasonable, in writing, within the authority of the board conferred by law or other governing documents and consistent with same. (Civil Code §4350.) Rules and regulations are generally considered reasonable if they are rationally related to the protection, preservation and proper operation of the property and the purposes of the association as set forth in its governing instruments, and are fair and nondiscriminatory. (Friars Village Homeowners Assn. v. Hansing (2013) 220 Cal. App. 4th 405, 405.) An “unreasonable” rule/regulation is one that is arbitrary and capricious, violates the law or a fundamental public policy or imposes an undue burden on property. (Nahrstedt v. Lakeside Village Condominium Assn. (1994) 8 Cal. 4th 361, 377.) An operating rule must be “tethered to reasonableness,” which is defined as a standard for the development as a whole, not for an individual member.

Therefore, boards may adopt “reasonable” rules regarding these matters, including, without limitation, the following:

- Limiting/specifying the hours and days of the week when a member may solicit/canvas;
- Prohibiting soliciting on specified holidays;
- Wearing identification;
- Prohibiting contact with any members/residents whose units have “no soliciting” or similar signs;
- Prohibiting solicitors from leaving print material at doors, etc. (i.e., leafletting/door hangers).

There is little case law on the “reasonableness” of solicitation bans in common interest developments, but California law is generally deferential to boards when the rule or restriction is properly adopted and not arbitrary or capricious.

Currently, United does not have a canvassing policy enacted. I previously discussed this with the Board, and at the time the Board decided a canvassing policy was not needed. However, I understand GRF may have adopted its own canvassing policy. Since GRF will adopt their own canvassing policy, I previously recommended the Board reconsider adopting a canvassing policy analogous to the GRF policy, and to Third’s policy (assuming they have one). Passing a similar canvassing policy will allow residents to follow a uniform, fixed policy across all communities. Thus, residents will not have to distinguish between various sets of regulations when they are canvassing throughout the Village, giving standard and streamlined procedures for all members and the community at large.

If you and the Committee want to re-introduce this to the Board I recommend that you consider having me work with GRF and Third to finalize a draft policy applicable to the Village, as a whole. Otherwise, we can focus just on United.

## GRF Resolution Regarding Canvassing

### **RESOLUTION 90-18-11** **Civil Code Section §4515**

**WHEREAS**, California Civil Code Section §4515 went into effect as of January 1, 2018; and

**WHEREAS**, Civil Code Section §4515 expresses the legislative intent that members and residents of common interest developments have the ability to exercise their rights under law to peacefully assemble and freely communicate with respect to common interest development living or for social, political or educational purposes; and

**WHEREAS**, Civil Code Section §4515 precludes the governing documents of common interest developments from prohibiting members or residents from those activities prescribed in Section §4515 (b)(1)-(5).

**NOW THEREFORE, BE IT RESOLVED**, March 6, 2018, that to the extent the

provision of any prior resolution violates Civil Code Section §4515, that Section §4515 supersedes the provision and the provision shall not be enforced; and

**RESOLVED FURTHER**; that the officers and agents of this Corporation are hereby authorized on behalf of the Corporation to carry out this resolution.

Resolution 01-15-03

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**Policy for Distribution of Materials by Residents and Resident Organizations**

**RESOLVED**, ~~January 13~~May 14, 2015~~2019~~, the Board of Directors of this Corporation hereby ~~establishes~~amends the following policy for the distribution of publications, advertisement, announcements, campaign material, petitions, and related printed literature (hereinafter "Material") by residents or resident organizations on property owned and managed by the United Laguna Woods Mutual; and

**RESOLVED FURTHER**, any materials for social, political, or educational purposes, including petitions to gather signatures, to be distributed to United Mutual residents shall bear identification as to its source and any individual or entity distributing such material shall comply with all of the following conditions:

1. Distribution of Material

a. Door-to-door distribution of Material shall be permitted, as long as the act of distributing such Material does not rise to the level of creating a nuisance for Laguna Woods Village residents.

b. Material that is distributed door-to-door may only be **secured under the doormat or near** on the thresholds of front doors. ~~Material may not be~~ hung from doorknobs but may not be ~~nor~~ placed in USPS delivery points, nor or left on vehicles ~~in carports anywhere~~.

~~b.c.~~ Closed gates may not be opened.

2. Petitions

a. Only Mutual Members or their designated agents are permitted to gather signatures on petitions.

b. The petition must remain in the possession of the signature gatherer (there can be no unattended petitions).

3. Posting of Material

a. Posting locations are limited to those areas reserved for posting, such as Laundry Room bulletin boards and are available only for residents.

b. Only one posting per subject matter, per organization, or per candidate, is allowed ~~on the posting site~~.

c. The size of the posting shall not exceed 5.5" by 8.5" (**one half page**) to allow space for other postings.

d. Each posting by a resident, or resident organization, must identify the posting individual's name, and posting date.

e. Any Material considered lewd or vulgar will be subject to removal.

f. Non-election Postings~~postings~~ shall be removed after thirty (30) days or after the election date.

g. All Material must comply with state and federal laws.

h. Removing postings of others is prohibited.

4. Knocking on Doors

a. Knocking on doors to contact residents is only permitted weekdays from 10 a.m. to dusk, excluding national holidays.

~~h.b.~~ Any solicitation or "Do Not Disturb" signs must be honored.

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Postings that do not comply with these rules will be subject to removal.



**CONFIDENTIAL – ATTORNEY CLIENT PRIVILEGED**

**MEMO**

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**To:** Board of Directors, United Laguna Woods Mutual; Governing Documents Committee  
**From:** Jeffrey A. Beaumont, Esq.  
**Date:** April 15, 2019  
**Subject:** Reconciling Conflicts in the United Non-Smoking Policy

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On February 14, 2017 the United Laguna Woods Mutual Board (“United”) passed its Non-Smoking Policy (this “Policy” is attached hereto as Exhibit “1”) which in part is modeled off of and incorporates the City of Laguna Woods smoking regulations contained in Chapter 7.16 of the Municipal Code. (Frequently Asked Questions regarding Chapter 7.16 attached hereto as Exhibit “2”.) A dispute has arisen regarding whether smoking is permitted if done at least 20 feet from any building. While the Policy appears to allow smoking only within the interior of manors and within enclosed patios and balconies, Section III(g) suggests smoking in common areas is permissible as long as the smoker is 20 feet from buildings. Given this conflict and the resulting dispute, it is recommended the Governing Documents Committee determine the original intent of the Policy, and revise the Policy according to the following.

The Policy prohibits smoking in enclosed areas of all public places, common areas accessible and useable by more than one residence, and balconies and patios in residential facilities unless enclosed so as to prevent the escape of smoke. “Common area” is defined in Section II(a) as area available for use by more than one person. By eliminating enclosed public areas and unenclosed common areas from places where

smoking is permitted, the Policy effectively leaves only the interior of manors plus enclosed patios and balconies in which to smoke. The requirement that smoke not escape from enclosed patios and balconies suggests the windows and doors of manors must be kept closed while smoking, though the Policy does not expressly state this.

The conflict arises with the incorporation of language from Laguna Woods Municipal Code Chapter 7.16 which prohibits smoking 20 feet from any entrance. Section III(g) of the Policy prohibits smoking in any common area not within 20 feet from any building so long as smoke does not enter any enclosed area in which smoking is prohibited. While this section is an express prohibition, the “so long as smoke does not enter any enclosed area” language effectively establishes smoking areas 20 feet from buildings. However, this “smoking area” conflicts with the express language of Section III(c) because any area within 20 feet of a building is common area useable by more than one residence, on which smoking is expressly prohibited. Even if the drafters of the Policy meant to set up common area smoking areas 20 feet from buildings, it raises the difficulty of determining when smoke is entering enclosed areas where smoking is prohibited. Further, beginning with Section III (f) the section appears to shift from prohibited to permissible smoking areas. Section III (i) permits the smoking of marijuana inside the residence, and III (h) appears to authorize smoking in private residences, so long as adequate ventilation is used. Section III (f) states “in an enclosed vehicle” and appears to be a permissible smoking area, but all of Section III is a prohibition, and so this subdivision is confusing.

To clarify the above it is recommended that permissible smoking areas under the Policy be stated in the affirmative. That is, smoking might be prohibited in the entirety of United Laguna Woods Village, other than in the following areas:

- The interior of manors as long as smoke is not permitted to escape the manor;
- The interior of enclosed balconies and enclosed patios as long as smoke is not permitted to escape the foregoing enclosures;

- Enclosed vehicles as long as smoke is not permitted to escape the vehicle;
- Any other authorized smoking areas established by the Committee.

This alleviates the conflict between Sections III(c) and III(g), eliminates the ambiguity of listing permissible smoking areas within a section setting out prohibitions, including whether or not smoking within enclosed vehicles is permitted. Section II(g) defines smoking to include, “. . . inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, e-cigarette, pipe, cannabis, or other combustible substance in any manner or in any form.” This definition encompasses smoking marijuana, so that the reference to marijuana in Section III(i) is unnecessary, and under the proposed policy, is already permitted within the first two bullet points above. (Recreational use of marijuana is legal only within residences and so would not be included within vehicles or designated smoking areas as a matter of law.)

## United Smoking Policy

### United Non-Smoking Policy Adopted February 14, 2017 Resolution 01-17-26

The purpose of this document is to define the policies of United Laguna Woods Mutual (ULWM) regarding smoking in private units and common area.

#### II. Definitions

For the purposes of this policy:

- a. Common area means the area which is available for use by more than one person.
- b. Community Rules are defined as the Bylaws, Occupancy Restrictions, Articles of Incorporation, or any rules and regulations of ULWM.
- c. Enclosed is defined as an area closed in by a roof and contiguous walls or windows, connected floor to ceiling with appropriate opening for ingress and egress.
- d. Member is defined as any person entitled to membership in ULWM.
- e. Multi-unit residential facility means a building or portion thereof that contains more than one dwelling unit.
- f. Private residence is defined as that portion of any Cooperative which is not in common with other owners.
- g. Smoking is defined as inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, e-cigarette, pipe, cannabis, or other combustible substance in any manner or in any form.

#### III. Conditions

Smoking is prohibited in the following areas:

- a. Enclosed areas of all public places, including lobbies, elevators, hallways and other areas used by members of the public.
- b. Elevators, hallways, recreation rooms, laundry rooms, stairs, and other common areas in multi-unit residential facilities.
- c. Unenclosed hallways, entryways, breezeways, stairways and other common areas accessible and useable by more than one residence.

- d. Balconies and patios in residential facilities. For the purpose of this policy, balconies and patios shall include unenclosed and screened patios and balconies as well as enclosed patios and balconies unless windows and doors are closed to prevent the escape of smoke.
- e. Carports and parking areas.
- f. In an enclosed vehicle.
- g. Any common area within 20 feet from any building so long as smoke does not enter any enclosed area in which smoking is prohibited.
- h. Private residence with open windows and/or doors.
- i. Smoking marijuana is only permitted inside a residence.

#### IV. Enforcement

ULWM is authorized to take disciplinary action against a Member found to be in violation of the Non-Smoking Policy. When a violation occurs the Board is obligated to evaluate and impose if appropriate, member-discipline as set forth in the governing documents. The Board of Directors has the authority to impose monetary fines, suspend Member privileges, and/or bring forth legal action.

The Member is entirely responsible for ensuring that the rules, regulations, and policies are following by anyone they allow into the community. This includes any Co- occupant, lessee, or guest, care provider, vendor, invitee, or contractor.

Per Resolution 01-08-21, adopted February 12, 2008, the following guidelines define the responsibility for remediation costs associated with second-hand smoke infiltration:

- a. Remediation costs considered reasonable would be paid for by the Member responsible for the second-hand smoke.
- b. Remediation costs due to defects or damages to property which is ULWM responsibility would be paid for by ULWM.
- c. Remediation costs beyond those which would be construed as reasonable would be borne by complainant.

A complaint may be registered with the Compliance Department by calling 949-268- CALL or by calling the Security Department at 949-580-1400

## City of Laguna Woods - Municipal Code Regarding Smoking

### CHAPTER 7.16. - SMOKING

#### Sec. 7.16.010. - Purpose and intent.

This chapter recognizes the right of persons within the City to be free from unwelcome secondhand smoke, which is deemed to be a public nuisance. The purpose and intent of this chapter is to promote and protect public health, safety, and welfare by prohibiting smoking in, and in certain locations near, multi-unit residence common areas, places of employment, and public places, as well as on governmental property and during certain hazardous fire conditions, where persons would be exposed to unwelcome secondhand smoke and also to the risks and dangers associated with fires. This chapter is further intended to ensure a cleaner and more hygienic environment for the City and its residents, businesses, visitors, and natural resources.

(Ord. No. 17-10, § 3(Exh. A), 11-15-2017)

#### Sec. 7.16.020. - Definitions.

The following definitions shall govern the meaning of words and phrases used in this chapter:

- (05) *Electronic smoking device* shall mean an electronic device that can be used to deliver an inhaled dose of tobacco, nicotine, marijuana, or other substance, including any component, part, or accessory of such device, whether or not sold separately. This definition includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic vaporizer, an electronic hookah, an electronic bong, an electronic waterpipe, or any other product name or descriptor, including any component, part or accessory of such device, whether or not sold separately.
- (10) *Employee* shall mean any person who is employed by an employer for direct or indirect monetary wages or profit.
- (15) *Employer* shall mean any person who employs the services of an individual person or persons.
- (20) *Enclosed* shall mean closed in by a roof and four walls with appropriate openings for ingress and egress.
- (25)

*Multi-unit residence* shall mean a building or portion thereof that contains more than one dwelling space consisting of essentially complete independent living facilities for one or more persons including, but not limited to, apartments, condominiums, cooperatives, dormitories, and group homes. "Multi-unit residence" does not include single-family residences regardless of occupancy, or facilities licensed by the State of California.

(30) *Multi-unit residence common area* shall mean any enclosed area, as well as any of the following unenclosed areas, that are accessible to and usable by the occupants or their guests for more than one dwelling space: breezeways, entryways, hallways, stairways, and other common areas in a multi-unit residence, as well as covered or semi-covered parking lots or structures. "Multi-unit residence common area" shall also mean any unenclosed patio or balcony.

(35) *Place of employment* shall have the same meaning as set forth in California Labor Code § 6404.5, as may be amended from time to time. "Place of employment" shall also include, but is not limited to, retail or wholesale tobacco shops as that term is defined in subdivision (e)(2)(B) of California Labor Code § 6404.5, as may be amended from time to time.

(40) *Public place* shall mean any enclosed or unenclosed area publicly or privately owned and open to the general public including, but not limited to, athletic courts and fields, auditoriums, bars, bed and breakfast establishments, breezeways, bus and other transportation shelters, businesses, cinemas, eating areas, elevators, entryways, golf courses, gymnasiums, halls, health care facilities, health club facilities, hiking trails, hospitals, hotels, libraries, lobbies, meeting rooms, motels, offices, parking lots and structures, parks, picnic areas, play areas, plazas, pools, recreation facilities, restaurants, restrooms, seating areas, shops, stairways, streets, stores, and theaters. "Public place" shall also mean any enclosed or unenclosed place being used for an event that is open to the general public including, but not limited to, a craft fair, concert or other performance venue, farmers' market, parade, festival, or polling place, as well as City Hall and all enclosed areas owned, leased, or operated by the City of Laguna Woods.

(45)

*Smoke* shall mean the gases, particles, chemicals, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting material contains no tobacco, nicotine, or marijuana and the purpose of inhalation is solely olfactory, such as, for example, aromatherapy or smoke from incense. "Smoke" specifically includes, but is not limited, to electronic smoking device vapors of any kind, marijuana smoke, and tobacco smoke.

- (50) *Smoking* shall mean the release of gases, particles, chemicals, or vapors into the air as the result of combustion, electrical ignition, or vaporization and/or inhaling, exhaling, burning or carrying any lighted, heated or ignited cigar, cigarette, cigarillo, pipe, hookah, or any combustible plant product, including but not limited to tobacco and marijuana, intended for human inhalation. "Smoking" specifically includes, but is not limited to, the use of electronic smoking devices.
- (55) *Unenclosed* shall mean not closed in by a roof and four walls with appropriate openings for ingress and egress.
- (60) *Unenclosed patio or balcony* shall mean patios or balconies that are attached to multi-unit residences, except where such patios or balconies are fully enclosed with all windows and doors closed.

(Ord. No. 17-10, § 3(Exh. A), 11-15-2017)

Sec. 7.16.030. - Smoking prohibited in public areas.

- (a) In addition to all places where smoking is prohibited under state or federal law, in which case those laws shall also apply, no person shall smoke in, and smoking areas shall not be established or designated in, multi-unit residence common areas, places of employment, or public places, or in any unenclosed area within 20 feet of an entrance, exit, window, door, opening, crack, or vent to an enclosed multi-unit residence common area, place of employment, or public place, except while actively passing on the way to another destination provided that smoke does not enter any such area.
- (b)

Nothing in this chapter prohibits any person with control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

(Ord. No. 17-10, § 3(Exh. A), 11-15-2017)

Sec. 7.16.040. - Smoking prohibited on other governmental property.

Smoking is prohibited in any enclosed or unenclosed area owned, leased, or operated by other governmental bodies including, but not limited to, the State of California, the County of Orange, special districts, and school districts, when such other governmental body has consented, in writing, to the City enforcing the provisions of this chapter on such property.

(Ord. No. 17-10, § 3(Exh. A), 11-15-2017)

Sec. 7.16.050. - Smoking prohibited in fire hazard severity zones.

When deemed necessary by the Fire Chief, for the effective duration of any red flag warning issued by the National Weather Service which includes the City, and except when precluded by applicable law, smoking is prohibited in any unenclosed area that is located within any one or more of the City's fire hazard severity zones, as set forth in Chapter 10.13 of this Code. If, after being provided with verbal or written notice of the effectiveness of this prohibition, or if notices are posted, and a person fails to cease smoking or subsequently begins to smoke in such prohibited area, he or she shall be deemed to be in violation of this chapter.

(Ord. No. 17-10, § 3(Exh. A), 11-15-2017)

Sec. 7.16.060. - Operations and posting requirements.

- (a) No employer, owner, operator, manager, employee, or other person working in or having control of an area where smoking is prohibited by this chapter shall knowingly or intentionally permit smoking in such area. This subsection does not require the physical ejection of any person who is smoking from an area in which smoking is prohibited by this chapter or the taking of any action to prevent smoking under circumstances that would involve a risk of injury, physical harm, or property damage.

(b)

The employer, owner, operator, manager, or other person having control of an enclosed area where smoking is prohibited by this chapter shall cause a sign stating "No Smoking" or "Smoking is Prohibited Except in Designated Areas", as the case may be, to be clearly and prominently posted at each entrance to the building or structure. Notwithstanding this subsection, the presence, absence, wording, or condition of any one or more signs shall not be a defense to any violation of this chapter.

- (c) The employer, owner, operator, manager, or other person having control of an unenclosed eating area that is a public place shall cause a sign stating "No Smoking" to be clearly and prominently posted at each entrance to such area. The employer, owner, operator, manager, or other person having control of an unenclosed eating area that is a public place shall also cause signs not less than two inches by two inches including the international "No Smoking" symbol to be placed on each table within an unenclosed eating area that is a public place. Notwithstanding this subsection, the presence, absence, wording, or condition of any one or more signs shall not be a defense to any violation of this chapter.
- (d) The employer, owner, operator, manager, employee, or other person working in or having control of an unenclosed area where smoking is prohibited by this chapter shall ensure that no ashtray or receptacle for smoking waste is located or otherwise made available to any person in such area.

(Ord. No. 17-10, § 3(Exh. A), 11-15-2017)

#### Sec. 7.16.070. - Exemptions.

The following areas are exempt from the provisions of this chapter:

- (1) Inside private residences, with the exception of areas that are considered to be multi-unit residence common areas.
- (2) Inside motor vehicles, with the exception of motor vehicles regulated by California Labor Code § 6404.5, as may be amended from time to time, and motor vehicles parked in an area where smoking is prohibited by this chapter unless such motor vehicles are fully enclosed with all windows and doors closed.
- (3) Twenty percent of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment.

- (4) Medical research or treatment sites, if smoking is integral to the research or treatment being conducted.
- (5) Patient smoking areas in long-term health care facilities, as that term is defined in California Health and Safety Code § 1418, as may be amended from time to time.

(Ord. No. 17-10, § 3(Exh. A), 11-15-2017)

Sec. 7.16.080. - Enforcement.

- (a) The provisions of this chapter may be enforced by City personnel, the Orange County Sheriff's Department, the Orange County Fire Authority, and other persons designated by the City Manager.
- (b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of this chapter.
- (c) Any person who is found to violate any provision of this chapter shall be deemed guilty of an infraction and shall be punishable by:
  - (1) A civil fine not exceeding \$100.00 for the first violation;
  - (2) A civil fine not exceeding \$200.00 for a second violation within one year from the date of the first violation; and
  - (3) A civil fine not exceeding \$500.00 for a third or subsequent violation within one year from the date of the first violation.
- (d) Any aggrieved person may enforce the provisions of this chapter by means of a civil action on his or her own behalf pursuant to California Civil Code § 3501 et seq.

(Ord. No. 17-10, § 3(Exh. A), 11-15-2017)

Sec. 7.16.090. - Other applicable laws.

- (a) This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited by other applicable laws.
- (b) This chapter regulates smoking in places of employment only to the extent that such regulation is consistent with California Labor Code § 6404.5, as may be amended from time to time.

(Ord. No. 17-10, § 3(Exh. A), 11-15-2017)