

MUTUAL OPERATIONS**RESIDENT REGULATIONS****Secondhand Smoke/Nuisance Policy – Mutual Eight****A. Background on Secondhand Smoke/Nuisance Policy**

The Board of Directors (“Board”) of the Seal Beach Mutual No. Eight (“Mutual”) is charged with ensuring that the Mutual is in compliance with the law and its Governing Documents, while considering the interests of all of its shareholders and residents.

It is well-known that exposure to secondhand smoke is dangerous to individual and public health.¹ This includes exposure from tobacco and marijuana smoke, in addition to smoke from other sources such as e-cigarettes, pipes, cigars, hookahs, fire pits, and barbecues, among other things.

Accordingly, the Board has crafted the policy below in an effort to address secondhand smoke within the Mutual community (“Community”).

B. California Law and Local Regulations on Smoking and Nuisance

California has prohibited smoking in places of employment, in or around public buildings, and within 25 feet of a playground or tot lot. (Labor Code §6404.5; Gov. Code §7596 – 7598, Code of Regulations §5148.)

In addition, California property owners/landlords have the right to make their properties completely smoke-free, anywhere on the property, including common area, units, private balconies, and patios. Civil Code §1947.5

The concept of nuisance can be used to describe an activity or condition that is harmful or annoying to others and interferes with their right to “quiet enjoyment.” Examples include: (1) doing something that causes loud noises or objectionable odors; (2) the harm caused by such an activity or condition; and, (3) the legal liability that arises from a combination of these two. (Civil Code §3479 *et seq.*; Civil Code §3480; Civil Code §3481; and Civil Code §3483.)

The Seal Beach Municipal Code defines a public nuisance as follows:

1. A public nuisance is any violation of the code or anything injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by a neighborhood or by a considerable number of persons even when the damage inflicted is unequal.

¹ See, eg <https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/index.htm>

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2. Each of the following constitutes a public nuisance: emission of noxious fumes or odors.

(Seal Beach Municipal Code 7.35.010(A)-(B).)

C. Secondhand Smoke and Nuisance Policy

This policy is intended to address secondhand smoke within the Community.

The Mutual Eight Occupancy Agreement states: "...Member[s] shall not...interfere with the rights of other occupants... nor commit or permit any nuisance on the premises..." Mutual Eight Occupancy Agreement, Article 5 ("Occupancy Agreement").

Accordingly, the following are the Mutual's rules regarding secondhand smoke within the Community:

1. No shareholder or occupant shall cause a nuisance to any other occupant due to his/her smoking of any substance.
2. Any nuisance caused by a shareholder or occupant shall be treated by the Mutual as a violation of these rules and the Occupancy Agreement.
3. In the event that any new shareholders anticipate that there may be any secondhand smoke within their Units, such shareholders shall have their Units insulated at the close of escrow, paid for by the new shareholders. **Please see Policy 7708.08 – Listing Inspections**
4. All insulation of shareholder Units as set forth above shall be conducted by GRF and/or a vendor of GRF, who will then invoice the shareholder for the cost.
5. In no case shall the Mutual pay for the insulation of a Unit, and/or the mitigation of the effects of a shareholder's/resident's secondhand smoke.
6. Any damages and/or liability arising from the emission of secondhand smoke by a shareholder and/or a resident/occupant/guest, will be borne by the shareholder of the offending Unit.
7. There shall be no smoking of any kind on a patio that is not enclosed and insulated.

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8. Upon the complaint of any shareholder or resident regarding a potential nuisance due to secondhand smoke, the Mutual and/or GRF will conduct an informal investigation regarding the allegations and facts.
 - a. Following the investigation, if GRF and/or the Mutual deems the complaint to be valid, the shareholder who is the subject of the complaint will be provided the opportunity to insulate his/her Unit, at his/her expense.
 - b. If he/she does not insulate the Unit or take any other steps toward resolving the issue, the Board may call the shareholder to a hearing regarding the complaint, with proper notice.
 - c. If, after the hearing, a determination is made by the Board that the shareholder and/or resident is causing a nuisance due to secondhand smoke and/or other noxious odors within his/her Unit, the shareholder shall have his/her Unit insulated at shareholder's expense.
 - d. The Board may also impose additional requirements for mitigating the issue, and/or take any disciplinary action for a violation of these rules.
 - e. All insulation shall take place within 30 days of the agreement to insulate or a determination by the Board.
9. In the event of a violation of these rules, the Mutual reserves the right to pursue any remedy under the law and its Governing Documents, including, but not limited to, imposing a fine after notice and hearing, and engaging in internal dispute resolution pursuant to Mutual Policy 7731.G, among other things.
10. If any shareholder or resident believes that he/she is entitled to an exception to any of these rules as a reasonable accommodation of a disability, he/she may submit such a request. All requests will be considered on a case-by-case basis.

MUTUAL**ADOPTION**

EIGHT: