

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

The Board of Directors (“Board”) of Seal Beach Mutual No. Two (“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.

Pursuant to Article V, Section 2(d), the Board has the power “to promulgate...rules and regulations pertaining to use...of the premises as may be deemed proper and which are consistent with these By-Laws and Articles of Incorporation.”

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.)

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.
2. Each of the following constitutes a public nuisance emission: of noxious fumes or odors
(Seal Beach Municipal Code 7.35.010(A)-(B).)

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

MUTUAL OPERATIONS**RESIDENT REGULATIONS****Secondhand Smoke/Nuisance Policy – Mutual Two****C. Secondhand Smoke and Nuisance Policy**

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

The Mutual No. Two Occupancy Agreement (“Occupancy Agreement”) states: “...Member[s] shall not...interfere with the rights of other occupants... nor commit or permit any nuisance on the premises...” Mutual Two Occupancy Agreement, Article 5.

The emission of secondhand smoke from devices including, but not limited to cigarettes, cigars, pipes, and/or hookahs or similar items, may create conditions that interfere with the use and enjoyment of other shareholders and residents’ units, thereby constituting a nuisance in violation of the Occupancy Agreement.

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

1. Any shareholder and/or a resident/occupant/guest within the community who wishes to smoke any substance (such as cigarettes, cigars, pipes, and/or hookahs or similar items) outside of a dwelling unit may not do so within twenty (20) feet of any building structure.
2. If the Board elects to designate sections within the common area where smoking of a substance is allowed, shareholders and/or a residents/occupants/guests may only do so in those designated as areas.
3. Any shareholder and/or a resident/occupant/guest who is in violation of this rule shall be in violation of the Occupancy Agreement.
4. Any damages and/or liability arising from the emission of secondhand smoke in violation of this rule by a shareholder and/or a resident/occupant/guest, will be borne by the shareholder of the offending Unit.
5. If any shareholder or resident believes that s/he is entitled to an exception to any of these rules as a reasonable accommodation of a disability, s/he may submit such a request. All requests will be considered on a case-by-case basis.
6. 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.