



City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: JUNE 14, 2022
FROM: COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT WARDS: ALL
SUBJECT: SMOKE FREE MULTI-UNIT HOUSING ORDINANCE

ISSUE:

Consideration of a proposed ordinance to regulate smoke-free multi-unit housing requirements in the City of Riverside.

RECOMMENDATIONS:

That the City Council:

1. Approve and adopt an ordinance, Riverside Municipal Code Chapter 6.27 - Smoke Free Multi-Unit Housing, to regulate smoking in multi-unit housing throughout the City.

BACKGROUND:

Smoke-free multi-unit housing policies are local laws and ordinances that regulate smoking in all residential units with shared walls, most typically rental units in apartment buildings. Some policies also include owner-occupied condominiums and townhomes with shared walls, hotels, motels, and various other multi-unit housing types.

According to the Riverside University Health System, more than 100 cities and counties in California have adopted some form of smoke-free multi-unit housing policies that restrict or prohibit smoking in multi-unit residential housing. California law states landlords and property owners of residential dwelling units have the authority to prohibit smoking on their property, in the unit, and on the premises where the unit is located (Civ. Code §§ 1947.5).

The California Department of Public Health states that secondhand smoke is toxic and can travel through vents, pipes, windows and small cracks in drywall, and plaster between adjoining units. Smoke can also be absorbed into carpets, drapes, furniture, clothes and toys and the harmful chemicals found in smoke can be present in the air for months after exposure. Because of this, the separation of smoking from non-smoking residences or units does not eliminate exposure to secondhand smoke. The California Department of Public Health also states that the only way to completely prevent exposure to secondhand smoke in apartments/multi-unit housing is by implementing a smoke-free policy for all units.

The Riverside University Health System reports that 93% of residents in multi-unit housing are

non-smokers, 55% have reported exposure to secondhand smoke, and 84% preferred to have their entire complex be smoke-free.

Currently, Riverside Municipal Code 6.23 (Attachment 1) prohibits smoking, including the use of electronic cigarettes, in public places and states specifically:

“It is unlawful for any person to smoke or to dispose of any lighted match or cigarette, cigar ashes or any flaming or glowing substance in any public place including any place within the city, public or private, that is open to the general public regardless of any fee or age requirement, including for example, city buildings, facilities, parks and community centers, bars, restaurants, stores, stadiums, service areas such as gas stations or ATM lines, playgrounds, taxi, bus or public transit stops.”

The Riverside Municipal Code does not currently regulate smoking in multi-unit housing. On May 19, 2021, the Safety, Wellness and Youth Committee (Committee) unanimously voted to direct staff to prepare Smoke-free Multi-unit Housing ordinance language and return to the Committee for consideration.

On October 20, 2021, Staff brought back the proposed ordinance for discussion. The Committee had additional requests for further information that have been addressed in the revised proposed ordinance. (Attachment 3)

On February 16, 2022, after some discussion, Committee directed staff to bring the attached ordinance to City Council for consideration.

City Council considered and adopted the ordinance on April 26, 2022.

On May 10, 2022, prior to the second reading of the ordinance, Councilmember Perry requested the item be continued to allow staff to make a non-substantive correction to the proposed ordinance as follows:

Proposed 6.27.060 (c) read:

*“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 rental complex if the landlord has fully complied with this section *and subsections B and C of Section 6.27.060.*”*

This statement is redundant and refers back to itself. The corrected language is:

“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 rental complex if the landlord has fully complied with this section.”

DISCUSSION:

It is the purpose of the proposed ordinance “to protect the public health, safety, and welfare of the residents of the city by regulating the inherently dangerous behavior of smoking around non-tobacco users, by protecting children from exposure to smoking where they live and play, and by protecting the public from nonconsensual exposure to secondhand smoke in and around their

homes.”

The proposed ordinance (Att. 3) would:

- 1) Apply to all smoking including electronic vaping devices, medicinal and recreational marijuana, tobacco products, cigars, pipes, cigarettes and any other similar kind of smoking equipment, device, or article.
- 2) Apply to all multi-family homes which are defined as a residential property that contains two (2) or more units rented and not occupied by the landlord not including condominiums, townhomes, mobile home parks, hotels, motels or any other detached or attached dwelling unit on a single-family zoned property.
- 3) Require the posting of signs conspicuously throughout the property indicating that the property is “smoke-free.”
- 4) Require lease terms for any new leases or at time of lease renewal or renegotiation that deem the unit a smoke-free dwelling.
- 5) Allow for the designation of an area of the property as a smoking area as long as such area is not enclosed, has a clearly marked perimeter and signage and be at least 25 feet from a play/recreation area, enclosed area or other non-smoking area.
- 6) Establish a framework and authorize landlords to enforce the provisions of this chapter through a private civil action.

Authority to enact such an ordinance

Cities can regulate smoking within their territorial boundaries under the police powers granted to them under Article XI, Section 7 of the California Constitution, but such regulations must bear a relation to public health, safety, morals, or general welfare. In terms of regulation marijuana use, the California Health and Safety Code section 11362.3(a)(2) prohibits any person from smoking cannabis or cannabis products where smoking tobacco is prohibited. As discussed above, cities have the police power to prohibit smoking in multi-unit residences, including within residential units. The City may prohibit marijuana (i.e. cannabis) use everywhere it prohibits smoking.

Enforcement

In general terms, enforcement of this chapter of the municipal code is subject to the same authorities as granted by RMC 1.17 – Administrative Code Enforcement Remedies as with any other chapter of the Riverside Municipal Code. Further, the proposed ordinance states:

“Nothing in this Chapter shall limit or preclude the enforcement of any other applicable laws or remedies available for violations of this chapter, including but not limited to, the enforcement provisions of Chapter 1.17 of the Riverside Municipal Code.”

The proposed chapter further expands enforcement authority by empowering private landlords and owners to bring a civil action against any person violating the provisions of this Chapter.

This provides the broadest range of tools available for City staff as well as landlords to apply the provisions in the proposed ordinance. From a practical standpoint, the best option for enforcement would be that the City applies those sections that require non-smoking lease language as well as the requirements for signage and the location of designated smoking areas, while the act of smoking itself be addressed via civil action and landlord-tenant processes. This is not to say that under some circumstances, City staff could not enforcement all provisions of the proposed code.

Outreach

Community outreach regarding a smoke-free housing ordinance has included public discussion at Committee, outreach with various advocate groups in the public health field, engagement with the Greater Riverside Chambers of Commerce (GRCC) and discussions with fourteen other local agencies that have adopted such an ordinance. The GRCC also conducted independent outreach and business community meetings wherein Riverside University Health System provided a presentation to members of the Chamber.

STRATEGIC PLAN ALIGNMENT:

This item contributes to **Strategic Priority 2 - Community Well-being**; specifically, **Goal 2.4** – Support programs and innovations that enhance community safety, encourage neighborhood engagement, and build public trust.

This item aligns with the following Cross Cutting Threads:

1. **Community Trust** – This item was discussed at the Safety, Wellness and Youth Committee and a draft ordinance was prepared by considering public feedback, Committee recommendations and best practices from surrounding communities. In addition, staff communicated with numerous advocates from various public health related organizations on this topic. The Greater Riverside Chambers of Commerce was also engaged in this process and conducted their own community outreach.
2. **Equity** – The proposed ordinance would create a healthier living environment for the segment of the population that lives in multi-unit housing and apartments. People living in more dense housing environments are disproportionately affected by second-hand smoke and this ordinance would offer them some protection from the negative effects of this smoke.
3. **Fiscal Responsibility** – This proposed ordinance is structured in such a way that would place the responsibility of enforcement on private property owners through lease terms. As such, adoption would have a minimal impact on staff time and resources while still creating an effective policy.
4. **Innovation** – There is strong support in the community for programs and policies that promote a greater degree of public health and well-being. Smoke-free Multi-unit Housing Policies would be innovative and respond to the community's desire for healthy neighborhoods.
5. **Sustainability & Resiliency** – Healthier living environments foster sustainability and resiliency by promoting the health and well-being of a city's populace. Eliminating the negative effects of second-hand smoke suffered by families living in multi-unit housing will have a positive impact on the lives of several generations of family members living in these residences.

FISCAL IMPACT:

There is no fiscal impact associated with this report. It is uncertain if the addition of new smoking regulations might require public enforcement of private matters. Additional code provisions could impact staff and resources depending on the volume of complaints it might generate in the future.

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availability of funds: Edward Enriquez, Interim Assistant City Manager/CFO/Treasurer
Approved by: Rafael Guzman, Assistant City Manager
Approved as to form: Phaedra A. Norton, City Attorney

Attachments:

1. Existing RMC 6.23 – Smoking in Public Places Prohibited
2. RMC 6.27 – Smoke Free Multi-Unit Housing Ordinance
3. Exhibit A - Ordinance