



Safety, Wellness and Youth Committee Memorandum

City of Arts & Innovation

TO: SAFETY, WELLNESS AND YOUTH COMMITTEE MEMBERS **DATE: MAY 19, 2021**

FROM: COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT **WARDS: ALL**

SUBJECT: WORKSHOP TO RECEIVE A REPORT AND PROVIDE GUIDANCE ON SMOKE-FREE MULTI-UNIT HOUSING POLICY DEVELOPMENT - DIRECT SUBMITTAL

ISSUE:

Hold a workshop to discuss potential regulatory and policy frameworks for smoke-free multi-unit housing requirements.

RECOMMENDATIONS:

That the Safety, Wellness and Youth Committee:

1. Receive a report on smoke-free multi-family housing policies; and
2. Provide guidance regarding desired regulatory and policy framework for developing smoke-free multi-unit housing requirements in the City of Riverside and direct staff to bring an ordinance back to the Safety, Wellness and Youth Committee prior to City Council for action.

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-housing residential units. 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 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. This workshop is intended to solicit feedback from the Safety, Wellness and Youth Committee as to whether or not the City should consider developing and implementing a smoke-free multi-housing code and if so, what the regulatory framework should be.

DISCUSSION:

Staff has surveyed 14 local cities to develop a “best practices” model to use to potentially develop a smoke-free multi-housing code for the City of Riverside. A comparative analysis of the critical points for each city’s code is included in **Attachment A**.

A fundamental smoke-free multi-unit housing law includes provisions that address a multitude of issues that differ from one jurisdiction to another. In comparing the 14 surveyed cities and researching model codes for such a law, there are several key components that form the minimum standards for the law and each surveyed city shares these commonalities:

- 1) **APARTMENTS**: The law universally applies to multi-family apartments.
- 2) **HOTELS/MOTELS**: The law does not apply to hotels/motels since these properties are not considered long-term residential uses. If there is a residential portion of the hotel, then the law could apply. Most hotels/motels have their own policies in place regarding smoking.
- 3) **COMMON AREAS**: Smoking is not permitted in common areas. Common areas include interior or exterior halls, paths, lobbies, courtyards, elevators, stairs, community rooms, recreation areas or rooms, playgrounds, gym facilities, swimming pools, jacuzzis, parking garages, parking lots, restrooms, laundry rooms, cooking areas, and eating areas.
- 4) **PATIOS/BALCONIES**: Smoking is not permitted in private outdoor areas such as patios and balconies.
- 5) **SIGNAGE**: There are specific signage requirements for each property. “No Smoking” signs must be posted in sufficient numbers and locations of the property to make it obvious to a reasonable person that smoking is prohibited throughout the property.
- 6) **LEASE AGREEMENTS**: Lease agreements must contain a provision for the occupancy of a unit notifying the tenant that it is a material breach of the lease or other rental agreement to allow or engage in smoking on the property.
- 7) **APPLICABILITY**: The smoking regulations apply to traditional tobacco smoke, electronic

cigarettes/vaping devices, and recreational marijuana smoke.

There are some areas where each city's laws differ and are based on the individual approach each city is taking regarding with their smoke-free multi-unit housing law. The following areas provide an opportunity for the City of Riverside to have a discussion on how to shape a smoke-free multi-housing policy:

- 1) CITYWIDE BANS: Aside from the multi-unit housing ban, some cities also ban smoking citywide including all public areas, parks, streets, sidewalks, and areas accessible to the public (such as restaurants and venues) whether for a fee or not. Per RMC 6.23, the City of Riverside currently has such a citywide ban.
- 2) CONDOS/TOWNHOMES: Not all cities include privately owned condominiums or townhome type housing projects in their smoke-free multi-unit housing laws and limit applicability to apartments only. Because condominiums/townhomes are privately owned, there is a certain degree of private property rights and the use and enjoyment of one's property that is implied in homeownership. Banning smoking in these privately owned units does carry with it some perceptions of infringing on these rights and invasion of privacy. The negative impacts of secondhand smoke, however, is as applicable to a condo/townhome with shared walls as it is an apartment building in most cases. Private Homeowners Associations (HOA's) can legally regulate smoking on their grounds. Several cities do include the framework for banning smoking even in condominiums/townhome type developments in their code.
- 3) MEDICAL MARIJUANA: The use of medical marijuana is included in several smoke-free multi-unit housing laws, but the majority of the cities surveyed do exempt medical marijuana use from their smoking bans although they ban recreational use. Secondhand smoke, whether from combustible or aerosolized tobacco or marijuana products, spreads throughout multi-unit dwellings. Multi-unit residential property owners may have the legal authority to make their properties smoke-free, which includes prohibiting the smoking or vaping of medically prescribed marijuana in individual units and common areas, even in jurisdictions in which the use of medical marijuana is permitted by state law.
- 4) EVICTION: The majority of the cities surveyed did not include language pertaining to eviction of a tenant as a result of violating smoke-free multi-unit housing laws. Two jurisdictions addressed it by creating a path to eviction for landlords after a second offense. Most other cities were either silent on the issue or simply stated that violating a no smoking policy is considered a material breach of a lease or rental agreement. The enforcement of lease terms does fall into a landlord/property owner's area of responsibility and the City of Riverside has not historically been involved in enforcing private leases or pursuing evictions in private properties.
- 5) ENFORCEMENT: Most surveyed cities include some combination of city enforcement and private/civil enforcement. Enforcement options are discussed at length in the following section.

ENFORCEMENT

Enforcement of the code will be fully dependent on which model the City decides to adopt, whether that be enforcement through private civil action between landlords and tenants, City enforcement of restrictions, or some combination of the two.

As with other violations of the Riverside Municipal Code (RMC), administrative remedies described in RMC 1.17 would apply to violations of a smoke-free multi-unit housing law. Enforcement Officers are defined as any Code Enforcement Officer, Fire Prevention Inspector,

Parking Services Officer, and any other City employee authorized to enforce the provisions of the Municipal Code. Enforcement Officers are authorized to enter upon any property or premises within the City to ascertain whether the property or premises is in compliance with the Riverside Municipal Code, and to make any inspection as may be necessary in the performance of their enforcement duties.

Violations of the Riverside Municipal Code can be prosecuted as infractions or misdemeanors and are subject to administrative citations and/or administrative civil penalties. The amount of fines to be imposed for a violation of this code and assessed by means of an administrative citation is \$100.00 for the first occurrence of a violation, \$200.00 for the second occurrence of the same type of violation, and \$500.00 for the third and each subsequent occurrence of the same type of violation. Any responsible party can be cited, so in the case of a smoke-free violation and depending on the nature of the violation, the landlord and/or tenant can be cited. For example, if the violation is regarding improper signage at a complex, the property owner/landlord would be cited. If the violation is the actual act of smoking, the person smoking could be cited.

In the case of Administrative Civil Penalties, an Enforcement Officer can cause an administrative hearing to be held in which a hearing officer may assess from between \$0-\$1,000 per day for violations until compliance is achieved. This action can again be taken against the responsible party as determined by the enforcement officer.

All administrative code enforcement remedies include due process and appeal rights.

Enforcement of a smoke-free multi-unit housing law, from a practical standpoint, can be challenging to enforce via traditional means through City code enforcement. In order for enforcement action to be taken, an Enforcement Officer needs to observe a violation actually occurring. In general, staff need to receive a complaint and investigate. This investigation occurs anywhere between one to five days from the date of receipt of the complaint. Staff will then need to make contact with the party allegedly committing the offense and actually observe them violating the code provision. Because of the difficulty and impracticality of this occurring, many cities have opted to defer enforcement of the actual act of smoking to private civil enforcement via lease terms and other legal action between landlords and tenants.

City enforcement would be more viable in terms of applying other components of a smoke-free multi-unit housing law such as required signage throughout an apartment complex or the inclusion of smoke-free terms in new leases.

Of the Cities surveyed, the majority reported very few actual complaints of violations of their smoke-free multi-unit housing code. The average number of complaints was approximately five per year. These cities, however, were smaller jurisdictions. Given this information and Riverside's population relative to those cities surveyed, staff anticipates approximately twenty complaints per year for various violations of the code. This additional workload would be absorbed by existing staff and not cause a hardship in terms of staffing/resources/fiscal impact. If the City of Riverside's expectation however, was that City staff was to enforce all provisions of the code, including the actual act of smoking inside a housing unit, this would likely cause a sharp increase in the number of cases, and result in the need for additional staffing/resources dependent on the volume of work.

FISCAL IMPACT:

There is no fiscal impact resulting from this workshop. The impacts of the policy directions are addressed in the body of this report and will be discussed during the workshop.

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Certified as to

availability of funds: Edward Enriquez, Chief Financial Officer/City Treasurer

Approved by: Rafael Guzman, Assistant City Manager

Approved as to form: Kristi J. Smith, Interim City Attorney

Attachments:

1. RMC 6.23 – Smoking in Public Places
2. Presentation
3. Survey Results (Attachment A)