



Safety, Wellness and Youth Committee Memorandum

City of Arts & Innovation

TO: SAFETY, WELLNESS AND YOUTH COMMITTEE MEMBERS **DATE: OCTOBER 20, 2021**

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

SUBJECT: SMOKE- FREE MULTI-UNIT HOUSING POLICY – PROPOSED ORDINANCE

ISSUE:

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

RECOMMENDATIONS:

That the Safety, Wellness and Youth Committee:

1. Receive a report on smoke-free multi-unit housing policies;
2. Recommend that City Council adopt the proposed ordinance (Attachment 2) to regulate smoke-free multi-unit housing in the City of Riverside; or
3. Provide guidance regarding desired regulatory requirements for developing a smoke-free multi-unit housing policy in the City of Riverside and direct staff to prepare a revised ordinance for adoption by City Council.

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 (Attachment 2).

DISCUSSION:

At the May 19, 2021 Safety, Wellness and Youth Committee meeting, all Committee members were supportive of adopting a smoke-free multi-housing ordinance with self-enforcement being the preferred method of enforcement for landlords/property owners. Committee members directed staff to develop a draft ordinance which specifically did not include hotels/motels or mobile homes in the policy, banned all smoking including medical marijuana, created designated smoking areas within the complex, and did not empower the City to cause or force evictions of tenants related to violations of any section of the ordinance. The Committee had the following specific requests for further information that have been addressed in the proposed ordinance and the body of this report:

- 1) Phase in period or grandfather clause for existing leases

The proposed ordinance states that the Smoke-free ordinance would apply to all new leases in multi-unit residences from the date of adoption moving forward. All existing leases would remain in place until such a time that a new lease or an amendment to an existing lease that extends its expiration is signed. In terms of other sections of the code such as the signage requirements or the creation of designated smoking areas that comply with the standards set forth herein, the Committee could determine a phase in period, but staff would recommend no less than 90 days from adoption.

- 2) Case law regarding condominiums/townhomes

Cities can regulate smoking within their territorial boundaries under the police powers granted to them under Article XI, Section 7 of the California Constitution. See e.g., City of San Jose v. Dep’t of Health Servs. (1998) 66 Cal.App.35, 43. This broad authority includes the authority to regulate smoking in owner-occupied condominiums and townhomes. The City Attorney’s Office searched

for and did not find any caselaw or other examples of challenges to local government prohibitions of smoking in owner-occupied condos and townhomes. Many cities throughout California regulate smoking in owner-occupied condominiums and townhomes including Culver City, Jurupa Valley, Beverly Hills, Manhattan Beach, Pasadena, and Santa Monica. It is worth noting that the exercise of a city's police power must bear relation to the public health, safety, morals or general welfare. See e.g., Disney v. City of Concord (2011) 194 Cal.App.4th 1410, 1415. While a prohibition against smoking in a condominium or townhome where units share walls or are in close proximity to one another would be deemed a valid exercise of a city's police powers, a prohibition against smoking in, for example, a single-family residence, may not (more below).

3) Designated smoking areas

The proposed ordinance sets forth standards for designated smoking areas, which would be permitted under this Code. Property owners would not be required to create such a designated area, but if they chose to do so, it would need to comply with standards set forth in the ordinance as follows:

- A. Not be in any enclosed area;
- B. Be located at least twenty-five (25) feet from any enclosed area;
- C. Not include and must be at least twenty-five (25) feet from play or recreation areas including, but not limited to, areas improved or designated for swimming or other sports, playgrounds, etc.;
- D. Be no more than twenty-five (25) percent of the total outdoor area of the multi-unit residence property;
- E. Have a clearly marked perimeter;
- F. Be identified by conspicuous signs as provided in Section 6.XX.050 of this Code; and
- G. Not overlap with any area in which smoking is otherwise prohibited by this chapter or other law.

4) Application to Accessory Dwelling Units (ADU's)

As stated above, a City's exercise of its police powers granted to it by the California Constitution must bear relation to public health, safety, morals, or general welfare. While a prohibition against smoking in condominiums and townhomes, even though those are owner-occupied, could be justified as a measure to protect the health and safety of residents who share walls or live-in close proximity to smokers, it may be more difficult to legally justify that prohibition in a single-family residence or accessory dwelling unit (ADU).

Of the 6 cities cited above that prohibit smoking in condominiums and townhomes, four (Jurupa Valley, Culver City, Beverly Hills, Manhattan Beach) specifically exempt ADU's from smoking prohibitions, while two (Pasadena, Santa Monica) include ADU's in smoking prohibitions. There are no instances of a city prohibiting smoking inside a single-family residence.

5) Ability to regulate medical marijuana use

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. Of the six cities cited above that prohibit smoking in apartments and condominiums/townhomes, all

but one (Santa Monica) prohibited smoking marijuana wherever it prohibited smoking.

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 GRCC members. Based on this outreach, GRCC appears to be generally supportive of a smoke-free multi-unit housing policy for the City of Riverside.

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.

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

Attachments:

1. RMC 6.23 – Smoking in Public Places
2. Proposed Ordinance
3. Presentation