



# SMOKE FREE MULTI-UNIT HOUSING – PROPOSED ORDINANCE

Community & Economic Development

Safety, Wellness and Youth Committee

October 20, 2021

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1

## BACKGROUND

### What is a smoke free multi-unit housing policy?

1. Local laws that regulate smoking in residential units with shared walls such as apartments, condominiums, townhomes and hotels/motels.

### Who adopted a smoke free multi-unit housing code?

1. According to Riverside University Health System (RUHS), more than 100 cities in California.
2. Local cities include, Jurupa Valley, Loma Linda, Temecula, Irvine, Dana Point, Culver City, Laguna Beach, and Pasadena, etc.

### Why adopt a smoke free multi-housing policy?

1. Secondhand smoke is toxic and travels between residential units through walls, cracks, windows, pipes, etc.
2. Chemicals found in smoke are present in air, carpet, drapes, toys, and furniture for months.
3. RUHS reports 93% of multi-unit housing residents are non-smokers.
4. 84% of these residents prefer a smoke free complex.



2

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2

## BACKGROUND

### What does Riverside currently do about smoking?



1. RMC 6.23 prohibits smoking in public places and states:

*“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.”*

2. Riverside does not currently regulate smoking in multi-unit housing.
3. Multi-unit housing means a residential property that contains two (2) or more units rented or available to be rented and not occupied by a landlord of the premises. This does not include condominiums, mobile home parks, hotels or motels.



3

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3

## BACKGROUND

1. 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.
2. All Committee members supported the creation of a Smoke-free Multi-unit Housing Ordinance.
3. The Committee directed staff to draft an ordinance which:
  - A. Did not include hotels/motels/condominiums/townhomes/mobile homes
  - B. Banned all smoking including medical marijuana
  - C. Allowed for designated smoking areas
  - D. Did not empower City to view violations as cause to evict or compel eviction of tenants



4

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4

## DISCUSSION

The Committee had the following questions/requests:

1. Phase in period for existing leases

- New ordinance would apply to:
  - A. Any new lease from date of adoption moving forward
  - B. Existing leases at such a time that lease is renegotiated or amended to extend expiration date
- Committee could set phase in period for other code provisions such as signage requirements and designated smoking areas (staff recommends at least 90 days)



5

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5

## DISCUSSION

2. Case law regarding application to 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.
- 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 condominiums and townhomes.
- Many cities throughout California regulate smoking in owner-occupied condominiums and townhomes (Culver City, Jurupa Valley, Beverly Hills, Manhattan Beach, Pasadena, and Santa Monica).
- The exercise of a city's police power must bear relation to the public health, safety, morals or general welfare.



6

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6

## DISCUSSION

### 3. Designated smoking areas

- Proposed ordinance authorizes creation of designated smoking areas but does not mandate it. Smoking areas would need to:

- 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.



7

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7

## DISCUSSION

### 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
- It may be more difficult to legally justify prohibition in a single-family residence or accessory dwelling unit (ADU) with walls not attached.
- Of the six 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



8

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8

## DISCUSSION

### 5. Legal ability to regulate prescribed 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
- 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.
- Medical Marijuana can be administered in other ways (ie.: edibles, tinctures, etc.)



9

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9

## DISCUSSION

Community outreach regarding this item has included:

- Public Discussion at Committee.
- Engagement with advocate groups and public health experts as well as involved citizens.
- Outreach to 14 local agencies regarding their ordinances.
- Engagement with the Greater Riverside Chambers of Commerce who also conducted independent outreach with the community.
- Coordination with City Council Members regarding their constituent's feedback and perspectives.



10

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10

# STRATEGIC PLAN ALIGNMENT

## Envision Riverside 2025 Strategic Plan Priorities

 #2 Community Well-being

### Cross-Cutting Threads



Community Trust



Fiscal Responsibility



Sustainability & Resiliency



Equity



Innovation



11

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11

# RECOMMENDATIONS

That the Safety, Wellness and Youth Committee:

1. Receive a report on smoke-free multi-family 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.



12

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12