

**City of Culver City, California
Agenda Item Report**

Meeting Date: 08/11/14		Item Number: <u>A-1</u>	
CITY COUNCIL AGENDA ITEM: Continued Discussion of Draft Ordinance Regulating Smoking in Multi-Unit Housing and Direction to Staff.			
Contact Person/Dept.: Heather Baker/City Attorney		Phone Number: (310) 253-5660	
Fiscal Impact: Yes ☐ No ☒		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Commission Action Required: Yes ☐ No ☒		Date: _____	
Public Notification: PUBLICATION: Culver City News (07/10/14 and 07/24/14); EMAIL: Meetings and Agendas – City Council (07/10/14, 07/29/14 and 08/06/14); Meetings and Agendas – Smoking – Multi-Unit Housing (07/10/14, 07/29/14 and 08/04/14); Approximately 153 Property Owners and 8 Homeowners’ Associations of Multi-Unit Housing (07/10/14, 07/29/14 and 08/04/14); County of Los Angeles Department of Health Services (07/10/14, 07/29/14 and 08/04/14), Culver City Chamber of Commerce (07/10/14, 07/29/14 and 08/06/14); Coalition for Smoke-Free Living in Culver City (07/10/14, 07/29/14 and 08/04/14); California Apartment Association – Los Angeles (07/10/14, 07/29/14 and 08/04/14); and Coalition for a Tobacco Free LA County (comprised of over 70 organizations – this notification was emailed courtesy of the County of Los Angeles Department of Health Services) (07/29/14 and 08/05/14); USPS: 348 Property Owners of Multi-Unit Housing; 17 Homeowners Associations (08/01/14).			
Department Approval: Carol Schwab (08/05/14)		City Attorney Approval: Carol Schwab (08/05/14)	
Chief Financial Officer Approval: Jeff Muir (by M. Noller) (08/06/14)		City Manager Approval: John Nachbar (08/06/14)	
<u>RECOMMENDATION:</u> Staff recommends the City Council continue its discussion regarding a draft ordinance regulating smoking in multi-unit housing (Discussion Draft Ordinance - Attachment 1) and provide direction to staff as deemed appropriate. <u>BACKGROUND:</u> During prior City Council meetings, as well as through correspondence to City Council Members, the organization Coalition for Smoke-Free Living in Culver City requested the City Council consider the issue of regulating smoking in multi-unit housing and possibly adopting an ordinance in this regard. At the City Council meeting of May 13, 2013, there was a consensus to agendize this matter for discussion. On August 26, 2013, the City Council had a general policy discussion regarding this issue and directed staff to return with a draft ordinance including a “menu of options” for consideration and discussion. In addition, the City Council wanted more information regarding other cities’ experiences since adoption of their ordinances.			

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On March 24, 2014, staff returned with the Discussion Draft Ordinance, including a “menu of options” for City Council’s discussion. During that meeting, the City Council received public comment, discussed various policy issues, and requested that a survey be conducted about how property owners and Homeowners Associations (HOAs) are handling the issue of smoking in their buildings and on their properties. In addition, City Council directed staff to notify all apartment complex owners and HOAs regarding the continued dialogue on this matter.

Public Comment

- March 24, 2014 City Council Meeting: Public comment was received both in favor of and opposed to regulating smoking in multi-unit housing. Some members of the public that submitted cards left prior to the item being heard due to the lateness of the evening. Of those still in attendance, the following is a summary of comments received.
 - ***Opposition***: Four speakers (including the California Apartment Association and the Culver City Chamber of Commerce) felt that municipal regulation in this area is unnecessary and that the issue should be resolved between landlords and tenants. These speakers further believed that the trend in multi-unit housing is that more non-smoking units and/or non-smoking buildings are available to renters. Although these speakers were opposed to City regulation, they requested that, if the City were to regulate smoking in multi-unit housing, then they would like to see particular issues addressed: 1) ensure that landlords are not liable to tenants for enforcing (or not enforcing) the regulations and that the City partner with landlords to make the regulations effective; 2) provide property owners with sufficient time (i.e. 15 months) to implement the requirements of the ordinance; and 3) address the application of smoking prohibition to the smoking of medical marijuana.
 - ***Support***: The remaining six speakers (including a representative from the Coalition for Smoke-Free Living in Culver City) were in support of the City Council adopting regulations prohibiting smoking in multi-unit housing, citing that the migrating smoke through doors, windows, walls, electrical outlets, and ventilation systems creates significant health impacts and a nuisance, particularly for children and the elderly living in apartments and condominium/townhome communities.
- Written Public Comment Received on or After March 24, 2014: Attached to this report are copies of all written public comment received on or after the March 24th meeting up through and including the date this report was posted to the City’s website (Attachment 2).

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- Additional Public Comment: In addition, staff compiled comments received during the course of conducting a survey of property owners and HOAs as directed by the City Council (the survey is discussed further below). These comments were either included with the survey responses or received by telephone (Attachment 3).

City Council Discussion

The City Council had a lengthy discussion, but did not come to a consensus on what elements to include in an ordinance. It was agreed that further discussion needed to take place after an expanded public notification process and a survey of property owners and HOAs with regard to how they are addressing smoking in their buildings and on their properties. A brief summary of the City Council's discussion (based on staff's review of the meeting webcast) is included in the Discussion section of this report under the applicable policy issues.

Smoke-Free Policy Survey

In order to further inform the discussion of this issue, the City Council requested that a survey be conducted to determine how many apartment complexes and/or condominium/townhome communities have smoke-free policies, or any policy at all with regard to smoking.

Staff sent out a Smoke-Free Policy Survey for Multi-Unit Housing (Survey) (Attachment 4) to 507 property owners of rental housing and 25 HOAs of condominium/townhome communities. Of the 532 Surveys sent out, the City received 41 responses (approximately 7.5% returned). A breakdown of the survey results is as follows:

- Rental properties: Of the 507 surveys that were sent to rental housing property owners, staff received 39 responses (approximately 7.5% returned).
 - **3 or fewer units:** Of the five responses received for three or fewer units, only one property has an existing smoking policy (smoking is prohibited in indoor common areas and in 100% of the units and such policy is set forth in the lease document). The four other properties that responded do not have an existing smoking policy.
 - **More than 3 units:** Of the 35 responses received for properties with more than three units, 10 properties have smoking policies in one form or another and 20 properties have no policy. Of those that have existing policies, the following table identifies the specific restrictions in each policy and whether such policy is in writing:

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# of Units	Smoking Prohibited in Common Areas?	% Non-Smoking Units	Written Policy?
4	No	100% for new tenants	In lease
4	Yes (indoor)	100%	In lease
4	Yes (indoor & outdoor)	100%	In lease
5	Yes (indoor)	100%	No
6	Yes (indoor & outdoor)	100%	In lease
6	Yes (indoor & outdoor)	100%	No
6	Yes (indoor)	100%	In lease
30	Yes (indoor & outdoor)	5%	No
53	Yes (indoor & outdoor)	None	No
690	Yes (indoor)	None	Lease stipulates smoking in apartments may not cause nuisance to other tenants.

- Condominium/Townhome Communities: Of the 25 surveys that were sent to condominium/townhome communities, five responses were received (2% returned). Of the five HOAs that responded, four have existing policies (two prohibit smoking in both indoor and outdoor common areas; two prohibit smoking in indoor common areas and allow smoking in outdoor areas, with a few restrictions in place; all policies are included in the HOAs' rules and regulations). The fourth HOA that responded does not have an existing smoking policy.
- Other Responses: Three of the survey responses are not applicable, as two are rental properties and one property only has one unit, which does not meet the definition of multi-unit housing. In addition, one response affirmatively declined to participate in the survey (her comments are included as part of Attachment 3).

Next Steps

If the City Council determines to consider the adoption of an ordinance regulating smoking in multi-unit housing, there are various elements that may be included in such an ordinance, some or all of which may be of interest to the City Council. These policy considerations are set forth in the Discussion Draft Ordinance and discussed later in this report. Staff requests the City Council discuss these policy issues and provide direction as deemed appropriate.

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DISCUSSION:

Existing Law¹

Existing federal and state laws have certain limited provisions relating to smoking in multi-unit housing.

- Labor Code §6404.5: Indoor common areas (including hallways, stairwells, laundry rooms, and recreation rooms) may be subject to the workplace smoking prohibitions contained in Labor Code §6404.5, if these areas are places of employment. For example, an indoor common area may be considered a place of employment if the complex has an employee, such as an on-site property manager, security guard, or maintenance staff who works on the property at any time.
- Civil Code §1947.6: Landlords and condominium associations may prohibit smoking on any portion of the property or in any portion of the buildings, including inside individual dwelling units, in accordance with the requirements of Civil Code §1947.6.²
- FHA and FEHA: Tenants of multi-unit residences who have certain disabilities relating to smoke sensitivity may have other legal remedies available under federal and state law to address problems with smoke entering their unit from other units.³

Currently, the Culver City Municipal Code (CCMC) does not include any prohibitions or restrictions relating to smoking in multi-unit housing.

City's Authority to Regulate

Although currently there are no prohibitions contained in state law against smoking in multi-unit housing (other than common areas that are considered to be "places of employment"), the City is not preempted from establishing its own regulations. Pursuant to Civil Code §1947.5, local governments may adopt regulations and policies that prohibit smoking or tobacco product use in residential dwellings. In addition, it is well established in case law that there is no fundamental right to smoke, nor are laws that prohibit smoking considered discriminatory against smokers as a particular group. Therefore, in adopting such laws, the City need only have a rational basis that is related to a legitimate governmental purpose.

In this case, providing for the public health, safety, and welfare is a sufficient, rational basis for establishing a prohibition against smoking in multi-family dwellings.

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Other Cities' Regulations

Eleven other cities in Los Angeles County, including Baldwin Park, Burbank, Calabasas, Carson, Compton, Glendale, Huntington Park, Pasadena, Santa Monica, South Pasadena and Temple City (collectively, "Comparison Cities"), have adopted some type of regulations relating to smoking in multi-unit housing. Many of the Comparison Cities' ordinances also apply to owner-occupied condominiums. Please see the attached matrix for more information regarding the various elements of each city's ordinance (Attachment 5).

Policy Considerations

If the City Council determines to establish smoking regulations in multi-unit housing, there are many options to consider for inclusion in an ordinance. These options are identified in the Discussion Draft Ordinance and further discussed below. In addition, a "checklist" is included as Attachment 6 to help facilitate the City Council's discussion.

1. Applicability of Regulations:

- a. Definition of multi-unit residence.** An important initial step in establishing regulations is to define the type of dwellings that will be subject to the regulations (i.e. apartments, condominiums, long-term health care facilities, single room occupancy hotels (SRO), and motels). The general definition of "multi-unit residence" is a property containing two or more units. However, the City Council has the option of excluding certain types of property from this definition, such as hotels/motels that meet certain requirements, a mobile home park, a single-family home, a single-family home with a detached or attached second unit, a long-term health care facility, an SRO, etc. Seven of the Comparison Cities apply their non-smoking regulations to all condominiums and one additional Comparison City applies its regulations to condominium rental units only. (See Section 9.11.205 of the Discussion Draft Ordinance)

City Council Members' comments at 03/24/14 Meeting: At least two Council Members voiced support for regulations of rental housing, while one of those two Council Members wanted the City Council to further discuss the applicability of the regulations to condominium/townhome communities, since there is property ownership in the unit in most cases. A third Council Member stated that condominium/townhome residents need to lobby their neighbors and put pressure on HOAs to establish policies. A fourth Council Member agreed that they would like to see this issue first addressed with the landlords and HOAs and proposed that the City Council consider establishing guidelines requiring large apartment complexes and HOAs to take some type of action to establish a policy (whether that policy was to prohibit or allow

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smoking), and that such policy should be revisited every two years. A fifth Council Member indicated that they were in favor of controlling smoking in multi-unit housing and that they were more inclined to support an ordinance versus guidelines. That Council Member also expressed a concern about applying such regulations to condominium/townhome communities.

There was no discussion or direction from the City Council to include long-term health care facilities, SROs and motels. Based on the input thus far, staff recommends these facilities be excluded from the definition, if the City Council determines to move forward with a proposed ordinance.

- b. Existing and/or new units.** The City may prohibit smoking in individual units that are in existence at the time of the effective date of an ordinance or new units that receive a certificate of occupancy after the ordinance is in effect, or both. According to the Community Development Department, depending on the scope of the regulations, any adopted ordinance could potentially affect 8,793 multi-family units.
- i. Designation of existing units. The ordinance may apply to *all* existing units, as is the case in the Comparison Cities of Compton and Pasadena. In the alternative, the ordinance may require a landlord to designate a certain percentage of existing units as non-smoking units. The Comparison Cities of Baldwin Park, Calabasas and South Pasadena require 80% of existing units be designated as non-smoking units. It appears that the remaining Comparison Cities do not require a minimum number of designated non-smoking units, but do require that they designate units as either “smoking” or “non-smoking” through a designation process as described in the “phase-in plan” section below. (See Sections 9.11.230 and 9.11.245 of the Discussion Draft Ordinance)
 - ii. New units. With the exception of Carson, all of the Comparison Cities prohibit smoking in newly constructed units. With this provision, the City Council has the option of setting the percentage of new units that are designated non-smoking and the timing of when new units are subject to the regulations. The City can provide for 100% of all new units to be non-smoking or it can designate a lesser percentage, i.e. up to 100%, but no less than 80% (or some other number). In addition, in defining “new unit,” the City Council may choose to “grandfather” new units that are already under construction at the time of adoption of an ordinance and require compliance of new units built or leased for the first time over 180 days after the effective date of an ordinance. (See Section 9.11.225 of the Discussion Draft Ordinance)

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City Council Members' Comments at 03/24/14 Meeting: One Council Member was in favor of, and another Council Member was open to discuss, applying regulations to both new and existing units. Other Council Members did not address this issue.

- iii. Phase-in Plan. A "phase-in plan" in general is one approach used by some of the Comparison Cities to balance the public health needs against the potential inconvenience an ordinance may place on smoking tenants and landlords who must implement a new policy. Specifically, a 12-month phase-in plan is generally considered to strike a good balance between the potential legal rights of tenants under existing rental agreements and the legal authority of landlords to modify such rental agreements in compliance with a newly adopted ordinance. Such a phase-in plan could include a period of time for the landlord to notify tenants of proposed designated non-smoking units (i.e. 60 days); a period of time to notify tenants of the final designation of non-smoking units (i.e. 90 days); a deadline for landlords to submit designation documents to the City (i.e. 120 days); and an "effective date" on which the non-smoking regulations will be enforced (i.e. 365 days). Staff received information from the City of Glendale that pre-education of the laws and implementing the new regulations gradually have been key factors in gaining cooperation from landlords and tenants.

City Council Members' Comments at 03/24/14 Meeting: Council Members in support of establishing regulations were also in support of a phase-in plan. Other Council Members agreed that if the City were to adopt regulations, then a phase-in plan would be important.

c. Definition of Smoking.

- i. Electronic cigarettes (E-cigarettes). The City's current smoking regulations (smoke-free parks and outdoor dining areas) do not include E-cigarette use in the definition of smoking. The City Council should consider whether to include E-cigarettes in the definition of smoking for purposes of regulating smoking in multi-unit housing. Four of the Comparison Cities (Baldwin Park, Huntington Park, Glendale and South Pasadena) include E-cigarettes in their prohibitions of smoking in multi-unit housing. Recently, several cities have considered or are considering expanding their smoking regulations in general to prohibit the use of E-cigarettes in all places where smoking is prohibited. (See Section 9.11.205 of the Discussion Draft Ordinance) **[NOTE: The general discussion of regulating E-cigarettes has also been agendized by the City Council for discussion this evening.]**

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City Council Members' Comments at 03/24/14 Meeting: Two Council Members indicated that E-cigarettes should not be included in the definition of smoking. Other Council Members did not address this issue.

- ii. Medical Marijuana. State Health and Safety Code Section 11362.79(a) provides that nothing in the Compassionate Care Act of 1996 (the Act which allows the use of medical marijuana) authorizes the use of medical marijuana in any place where smoking is prohibited by law. Therefore, without a specific exemption called out in an ordinance, the smoking of medical marijuana would be prohibited in non-smoking units. Of the 11 Comparison Cities, it appears that South Pasadena is the only city that specifically exempts smoking of medical marijuana from its multi-unit housing regulations. The remaining Comparison Cities do not have such an exemption. (See Section 9.11.255 of the Discussion Draft Ordinance)

City Council Members' Comments at 03/24/14 Meeting: Two Council Members were in concurrence that medical marijuana should not be exempt from any regulations that may be adopted. Other Council Members did not address this issue.

- 2. Locations Where Smoking is Prohibited: There are various options for prohibiting smoking in certain locations.

- a. **Common areas.** The City may prohibit smoking in indoor and/or outdoor common areas and may provide a landlord or homeowners' association with the authority to designate a portion of a common area as a designated smoking area, subject to certain requirements (i.e. must be an unenclosed area, located a certain distance from a designated non-smoking area or area primarily used by children or used for physical activity, such as a tennis court). (See Sections 9.11.205 and 9.11.215 of the Discussion Draft Ordinance)

- i. Indoor common areas. All of the Comparison Cities have adopted non-smoking provisions for indoor common areas. An indoor common area is generally defined as an enclosed area that residents of more than one unit are entitled to enter or use (i.e. lobbies, hallways, laundry rooms, elevators, stairs, community rooms, gym facilities, parking garages, etc.).
- ii. Outdoor common areas. All of the Comparison Cities, except for Burbank, Carson and Temple City, have prohibited smoking in outdoor common areas. An outdoor common area is generally defined as an unenclosed area that residents of more than one unit are entitled to enter or use (i.e. pathways, courtyards, swimming pools, parking lots, etc.).

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City Council Members' Comments at 03/24/14 Meeting: One Council Member stated that it was very important to have a designated smoking area within the common areas if smoking were prohibited. Another Council Member indicated they were open to suggestions as to locations where smoking would be prohibited. Other Council Members did not address this issue.

- b. Individual balconies and patios.** Seven of the Comparison Cities prohibit smoking on individual balconies and patios, including Baldwin Park, Burbank, Compton, Glendale, Huntington Park, Santa Monica and Pasadena. Such a restriction is best accomplished by including exclusive-use areas in the definition of "unit." (See Section 9.11.205 of the Discussion Draft Ordinance)

City Council Members' Comments at 03/24/14 Meeting: One Council Member was in strong support of prohibiting smoking on patios and balconies, indicating that there seems to be a lot of complaints from residents regarding these areas and that it seems to be a place that is least regulated but causes the most problems. Other Council Members did not address this issue.

- c. Smoke-free buffer zones.** Such a provision would prohibit smoking in unenclosed areas of a multi-unit residence (i.e. balconies, porches, decks and patios) that are located within a certain distance (i.e. 25 feet) of the doorway, window, opening or other vent into an enclosed non-smoking area. Only four of the Comparison Cities have adopted these smoke-free zones: Baldwin Park, Calabasas, Huntington Park and South Pasadena. This restriction could apply to exclusive-use balconies, porches, decks, and patios of units where smoking would otherwise be allowed, if these areas are within 25 feet of a non-smoking unit or other designated non-smoking area. (See Section 9.11.220 of the Discussion Draft Ordinance)

City Council Members' Comments at 03/24/14 Meeting: Two Council Members supported smoke-free buffer zones. Other Council Members did not address this issue.

- d. Individual units.** As discussed in further detail in Section 1 above, many of the Comparison Cities prohibit smoking in existing and/or new individual units. If less than 100% of the units are required to be designated non-smoking units, then there are certain requirements that may be imposed to restrict the location of the "smoking" units (i.e. no sharing of ventilation system with non-smoking units; to the maximum extent possible, grouping of non-smoking units together or in a single building). In addition, a designation process would need to be implemented, which may require additional staff resources to be allocated to this effort. (See Sections 9.11.225, 9.11.230 and 9.11.245 of the Discussion Draft Ordinance)

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City Council Members' Comments at 03/24/14 Meeting: Two Council Members supported designation of non-smoking units. One Council Member was open to discuss a designation of less than 100% of the units if it was possible to locate such units in a detached building. Other Council Members did not address this issue.

3. Enforcement: If the City Council adopts regulations, enforcement methods may include City enforcement, private enforcement, or both. The enforcement provisions of any ordinance would be written to provide options for enforcement and encourage and promote self-regulation and compliance (i.e. clear, conspicuously posted "no smoking" signs; providing residents with a right of private civil action).

a. **City enforcement.** Regulations, if adopted, would be included with the City's other smoking regulations and could be subject to the same methods of enforcement, including, but not limited to, administrative citations, infraction and/or misdemeanor citations, civil action, if the City Council so determines. In the event the City would need to take an enforcement action, it would be handled as resources permit, taking into consideration the existing work plans of the Community Development Department – Enforcement Services Division, the Police Department, and the City Attorney's Office. Should the City Council elect to provide City enforcement and determine it wishes to make it a higher priority, additional resources would need to be dedicated to this effort. (See Section 9.11.260 of the Discussion Draft Ordinance) **[Note from the Community Development Director: The Community Development Department will likely handle the implementation and enforcement of any ordinance that is adopted. Depending on the scope of the regulations, this could require a significant amount of staff time. Due to limited staff resources, the Director recommends that the City Council consider private enforcement of any adopted regulations. Alternatively, the City Council may need to consider adding enforcement staff to accommodate the potential workload associated with enforcing the ordinance which may impact 8,793 multifamily units.]**

- b. **Private enforcement.** Consistent with the City's enforcement provisions for other smoking regulations, any adopted multi-unit housing non-smoking regulations may be enforced by a private person. If the City Council wanted to limit enforcement of the non-smoking regulations in multi-unit housing to private enforcement only, it could do so. There are other sections in the CCMC that are limited solely to enforcement by the private parties involved. For example, the enforcement provision in CCMC Section 9.12.060.A, relating to View

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Preservation (Obstruction from Trees), states: "A violation of this Chapter is not a misdemeanor or infraction. The enforcement of this Chapter shall be by the private parties involved. The complainant shall have the right to bring injunctive action to enforce...this Chapter." Enforcement of smoking complaints in multi-unit housing could be similarly limited in this manner. (See Section 9.11.265 of the Discussion Draft Ordinance)

c. Comparison Cities.

- i. Local government enforcement. The cities of Compton, Glendale and Pasadena provide for local government enforcement of their non-smoking multi-unit housing ordinances. The City of Glendale has one person specifically assigned to implementation of its ordinance, and its code enforcement staff are the primary enforcers. The City of Pasadena's Department of Public Health enforces its regulations, with one dedicated enforcement officer. They conduct field investigations in response to complaints. They give a warning first and then issue administrative citations to repeat violators. Most issues are resolved after the warning with some being resolved after the first citation. It has been rare that they have had to issue a second citation.
- ii. Private enforcement. The cities of Huntington Park and Santa Monica provide for private enforcement only. The City of Santa Monica does limited City enforcement for violations pertaining to required signage, but for smoking violations it provides for private enforcement by tenants through small claims court.
- iii. Hybrid of both city and private enforcement. The cities of Baldwin Park, Calabasas, South Pasadena and Temple City provide for both local government enforcement and private enforcement. The City of Calabasas, where a majority of its community are non-smokers, has been successful mostly with private self-regulation of its ordinance. The City of South Pasadena has also been successful with its regulations being self-enforced. Its code enforcement department has issued warning letters, which have been very effective, and it has not had a need to issue citations.

As of the writing of this report, staff is still awaiting information from some of the other Comparison Cities. Supplemental information may be provided during City Council's discussion of this item, if received prior to the City Council Meeting.

- d. Culver City's current enforcement of other smoking laws in the City.** The City prohibits smoking in parks and outdoor dining areas. In

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addition, state law prohibits smoking in the workplace, which includes bars and restaurants.

- i. Outdoor dining areas. The City's Enforcement Services Division ensures that the outdoor dining areas have the required "no smoking" signs. If no signage is posted, then a "warning" is given to the business owner and a "sample" sign is provided for their use. Approximately three years ago, shortly after the adoption of the Ordinance prohibiting smoking in outdoor dining areas, the Enforcement Services Division conducted a directed enforcement in the downtown area and issued approximately four administrative citations for noncompliance, after warnings were given and ignored. Eventually, all downtown restaurants with outdoor dining complied, and the Enforcement Services Division has not had any issues with missing signage since that time. If a complaint regarding smoking in the outdoor dining areas is made, the Police Department will respond, issue a "warning," and "educate" the individual regarding the law. The Police Department rarely gets complaints of smoking in outdoor dining areas and cannot recall that a citation has ever been issued, as the warnings have been very effective.
- ii. Parks. If patrons are observed smoking in the parks, they are advised by Park Patrol of the no smoking regulations and required to put out cigarettes. There is also signage in the parks. To date, no citations have been issued for smoking in the park; however, Park Patrol has issued approximately 10 warnings per month over the last two months.
- iii. Workplace. The Police Department is responsible for enforcing the smoking in the workplace laws set forth in Labor Code §6404.5. They rarely get complaints of workplace smoking, such as in restaurants and bars (except for the occasional complaint received by members of fraternal organizations, i.e. American Legion, Elks, etc.). When complaints are received, it is handled in the same manner as for outdoor dining areas — issue a warning and educate. They do not recall that a citation has ever been issued.

City Council Members' Comments at 03/24/14 Meeting: One Council Member indicated that private enforcement was ideal, as they did not want it to be a significant burden on City resources; however, they also did not want to turn people away when the City's assistance is needed. They requested additional information regarding private enforcement, as well as what other cities are doing that are enforcing the regulations through both City and private enforcement (discussed above). Another Council Member liked the way enforcement is handled in Santa Monica (city enforcement for signage

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issues and private enforcement for smoking complaints). A third Council Member indicated that their primary concern in adopting regulations is enforcement, and they are not inclined to put the City in a position where it is the enforcer of these regulations. This Council Member also wanted additional information on how current enforcement is handled for the other smoking laws in Culver City, which was addressed at the meeting (and discussed further above). Other Council Members did not address this issue.

4. Penalties:

a. City enforcement. If the City Council determines to provide for City enforcement of non-smoking multi-unit housing regulations, staff recommends that the penalties imposed be consistent with the City's other smoking regulations and the general penalty provisions of the CCMC. For example, if an administrative citation were issued for a violation, the fines are as follows: \$100.00 for a first violation; \$200.00 for a second violation within one year; and \$500.00 for each additional violation within one year. As mentioned above, City enforcement may require additional staff resources to be allocated (see Section 9.11.260 of the Discussion Draft Ordinance).

b. Private enforcement. If the City Council determines to provide for a comprehensive scheme for private enforcement of an ordinance, a "plaintiff" could pursue actual, statutory, and punitive damages (see Section 9.11.265 of the Discussion Draft Ordinance).

5. Outreach and Education: If the City Council directs staff to return with a proposed ordinance for consideration and introduction, staff will also return with a proposed program for providing outreach to and educating landlords, tenants and condominium associations. Outreach would likely include, but not be limited to, multiple notifications and meetings with effected property owners and HOAs. Many of the Comparison Cities have resources and materials from their outreach and education programs that may be helpful to Culver City if the City Council determines to move forward with the adoption of an ordinance.

Staff recommends the City Council consider the above policy issues and provide direction to staff as deemed appropriate.

FISCAL ANALYSIS:

There is no fiscal impact to discussing this item. If an ordinance were to be adopted by the City Council, the additional regulations prohibiting smoking in multi-unit housing may require increased enforcement activity by the Enforcement Services Division, the Police Department and the City Attorney's Office. In addition, staff time

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would be required to: 1) prepare and disseminate information about the newly adopted regulations; and 2) implement the provisions of the ordinance, which could be significant depending on the scope of the regulations. These costs cannot be easily quantified at this time. If the City Council directs staff to return with a proposed ordinance and provides policy direction as to the scope of the regulations, staff may be able to return with an estimate of these costs. The more comprehensive the regulations, particularly if the City Council determines to incorporate a “designation process” for less than 100% of the units in a multi-family housing complex, the more staff time that will be involved with educating, implementing, and enforcing those regulations.

ATTACHMENT:

1. Discussion Draft Ordinance
2. Written Public Comments received on or after the March 24, 2013 City Council meeting
3. Additional Public Comments received during Survey process and from telephone calls
4. Smoke-Free Policy Survey for Multi-Unit Housing
5. County of Los Angeles Public Health Tobacco Control and Prevention Program Matrix of Non-Smoking Multi-Unit Housing Ordinances in Los Angeles County
6. Non-Smoking Multi-Unit Housing Ordinance Checklist

MOTION:

That the City Council:

Discuss the draft Ordinance regulating smoking in multi-unit housing and provide direction to staff as deemed appropriate.

¹ *Tobacco Laws Affecting California 2012*, ChangeLab Solutions, www.changelabsolutions.org (formerly Public Health Law & Policy Technical Assistance Legal Center). ChangeLab Solutions (CLS) is a non-partisan, neutral organization (not a lobbying organization) funded by Prop 99 (one of the cigarette taxes) and comprised of legal experts in the area of smoking laws. Part of the Prop 99 money is specifically earmarked toward legal assistance for local communities in addressing smoking and tobacco control issues, which is how/why CLS was created.

² Civil Code §1947.5 requires that landlords who exercise their authority to prohibit smoking must comply with all federal, state and local laws regarding changes to the terms of a lease or rental agreement.

³ Federal Fair Housing Act; California Fair Employment and Housing Act