

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

Meeting Date: 08/26/13		Item Number: <u>A-2</u>	
CITY COUNCIL AGENDA ITEM: Discussion of Regulating Smoking in Multi-Unit Housing and Direction to Staff.			
Contact Person/Dept.: Heather Baker/City Attorney Martin Cole/City Manager		Phone Number: (310) 253-5660 (310) 253-6000	
Fiscal Impact: Yes ☐ No ☒		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Public Notification: Notice Published in the Culver City News (08/22/13); Meetings and Agendas – City Council (08/15/13 and 08/20/13); County of Los Angeles Department of Health Services, Culver City Chamber of Commerce, Downtown Business Association (08/20/13); Coalition for Smoke-Free Living in Culver City 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) (08/15/13); USPS – Courtesy Notice Mailed to 57 Homeowners Associations (08/20/13).			
Department Approval: Carol Schwab (by H. Baker) (08/20/13)		City Attorney Approval: Carol Schwab (by H. Baker) (08/20/13)	
Chief Financial Officer Approval: Jeff Muir (08/20/13)		City Manager Approval: John Nachbar (08/20/13)	
<u>RECOMMENDATION:</u> Staff recommends the City Council discuss regulating smoking in multi-unit housing and provide direction to staff as deemed appropriate. <u>BACKGROUND:</u> Over the past several months, at prior City Council meetings and through correspondence with 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. If the City Council were to determine 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 and discussed later in the staff report.			

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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.

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In this case, as stated in the attached *Model California Ordinance Regulating Smoking in Multi-Unit Residences*⁴ (Attachment 1), providing for the public health, safety, and welfare is a sufficient, rational basis for establishing a prohibition against smoking in multi-family dwellings.

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 to each city's ordinance (Attachment 2).

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.

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.
- 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.
 - 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

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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.

- ii. 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).

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

- a. **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.).
- b. **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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- c. **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.
 - d. **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, including Baldwin Park, Calabasas, Huntington Park and South Pasadena.
 - e. **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.
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 the public with a right of private civil action).
- a. **City enforcement.** Regulations, if adopted, would be included with the City’s other smoking regulations and may 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 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 determine it wishes to make enforcement of any adopted regulations a higher priority, additional resources would need to be dedicated to this effort.
 - 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

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do so. There are other sections in the CCMC (specifically, the view preservation provisions) that are limited solely to enforcement by the private parties involved.

- c. ***Comparison Cities.*** The cities of Compton, Glendale and Pasadena provide for local government enforcement of their non-smoking multi-unit housing ordinances. The cities of Huntington Park and Santa Monica provide for private enforcement only. The cities of Baldwin Park, Calabasas, South Pasadena and Temple City provide for both local government enforcement and private enforcement.
4. **Penalties:** If the City Council determines to provide for City enforcement of non-smoking multi-unit housing regulations, if adopted, 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.
5. **Outreach and Education:** If the City Council directs staff to return with a proposed ordinance adopting non-smoking multi-unit housing regulations, staff will also return with a proposed program for providing outreach to and educating landlords, tenants and condominium associations.

Other procedural items would need to be included in any adopted regulations, which will be provided in a proposed ordinance, should the City Council direct staff to move forward.

Information Provided by the California Apartment Association

In response to the public notice sent on this agenda item, the City Attorney's Office received a phone call from the California Apartment Association ("CAA") offering their assistance in this process. Attached is CAA's policy statement, which sets forth its position that this should be a market driven issue and landlords should be able to set their own policies, which many landlords have already done (Attachment 3). The CAA also indicated that if the City Council decides to move forward with such regulations, it would work cooperatively with the City to ensure a policy is adopted that works for all parties involved.

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

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FISCAL ANALYSIS:

There is no fiscal impact to discussing this item this evening. If an ordinance were to be eventually 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 would be required to prepare and disseminate information about the newly adopted regulations. These costs cannot be easily quantified.

ATTACHMENTS:

1. Model California Ordinance Regulating Smoking in Multi-Unit Residences
2. County of Los Angeles Public Health Tobacco Control and Prevention Program Matrix of Non-Smoking Multi-Unit Housing Ordinances in Los Angeles County
3. California Apartment Association's Policy Statement 12: Smoke-Free Housing Choice and White Paper

MOTIONS:

That the City Council:

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

¹ *Tobacco Laws Affecting California 2012*, Public Health Law & Policy, www.phlpnet.org

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

⁴ This model ordinance was issued by the Public Health Law & Policy, Technical Assistance Legal Center, in April 2005 and revised in December 2009.