

City of Culver City, California

Agenda Item Report

Meeting Date: 10/13/2014		Item Number: A-1	
CITY COUNCIL AGENDA ITEM: Introduction of an Ordinance Amending Chapter 9.11 of the Culver City Municipal Code Relating to Smoking Regulations to Add a New Subchapter 9.11.200, et seq., Regulating Smoking in Multi-Unit Housing.			
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 (09/25/14 and 10/09/14); EMAIL: Meetings and Agendas – City Council (09/24/14, 10/04/14 and 10/09/14); Timely Topics – Smoking – Multi-Unit Housing (09/24/14, 10/04/14 and 10/09/14); Approximately 153 Property Owners and 8 Homeowners’ Associations of Multi-Unit Housing (09/24/14, 10/04/14 and 10/09/14); County of Los Angeles Department of Health Services (09/24/14, 10/04/14 and 10/09/14), Culver City Chamber of Commerce (09/24/14, 10/04/14 and 10/09/14); Coalition for Smoke-Free Living in Culver City (09/24/14, 10/04/14 and 10/09/14); California Apartment Association – Los Angeles (09/24/14, 10/04/14 and 10/09/14); 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) (10/02/14 and 10/09/14); USPS: 351 Property Owners of Multi-Unit Housing; 17 Homeowners Associations (09/25/14).			
Department Approval: Carol Schwab (10/06/14)		City Attorney Approval: Carol Schwab (10/06/14)	
Chief Financial Officer Approval: Jeff Muir (10/08/14)		City Manager Approval: John M. Nachbar (10/09/14)	
<u>RECOMMENDATION:</u> Staff recommends the City Council consider the introduction of a proposed ordinance amending Chapter 9.11 of the Culver City Municipal Code (CCMC) relating to smoking regulations to add a new Subchapter 9.11.200, et seq., regulating smoking in multi-unit housing (Attachment 1). <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.			

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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 requested additional information regarding other cities’ experiences since adoption of their ordinances.

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.

On August 11, 2014, staff returned with the additional information requested by City Council, which included smoking policy survey results, enforcement practices of other cities and public comment. (For more detail regarding this information, please see the August 11, 2014 City Council Agenda Item Report, a copy of which is attached to this report as Attachment 2.)

Public Comment

- August 11, 2014 City Council Meeting: Public comment was received both in favor of and opposed to regulating smoking in multi-unit housing. In addition, other public speakers took a neutral position on the adoption of an ordinance, but did express concerns with local regulation. The following is a summary of comments received.
 - ***Opposition or Neutral Position:*** Five speakers (including the California Apartment Association, the Culver City Chamber of Commerce, the Meadows Apartments’ Assistant Manager, a member of one of the Culver City HOAs and a local Culver City realtor) felt that municipal regulation in this area is unnecessary and that the issue should be resolved between landlords and tenants or by HOA boards. 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. A few of the speakers indicated they were not opposed to an ordinance per se, but 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. 18 months) to implement the

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requirements of the ordinance; and 3) address the application of smoking prohibition to the smoking of medical marijuana.

- **Support:** The remaining seven 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 August 11, 2014: Attached to this report are copies of all written public comment received on or after the August 11th meeting up through and including the date this report was posted to the City's website (Attachment 3).

City Council Discussion

During the August 11th meeting, after consideration of the information in the staff report and receiving public testimony and written comments, the City Council continued its discussion of regulating smoking in multi-unit housing and directed staff to return with a proposed ordinance to include the following:

- Applicability to all existing and new units of multi-unit housing of two units or more, including condominiums and townhomes (excluding hotels/motels and mobile home parks);
- Smoking prohibition in individual units, as well as in exclusive-use areas associated with a unit, such as patios and balconies;
- Smoking prohibition in common areas, with designated smoking areas being permitted if they meet certain criteria (i.e. must be located at least 25 feet from non-smoking areas);
- Phase-in period of 18 months or the renewal of a lease, whichever occurs first;
- Broadest definition of tobacco product, but exclude electronic smoking devices;
- No exemption for the smoking of medical marijuana; and
- Enforcement of ordinance by private parties—no City enforcement.

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DISCUSSION:

Proposed Ordinance

In accordance with the City Council's direction provided on August 11, 2014, the proposed ordinance contains the following key provisions:

1. **Applicability of Regulations:**

- a. *Definition of multi-unit residence.*** "Multi-unit residence" has been defined as a property containing two or more units, excluding hotels/motels, mobile home parks, single-family homes and single-family homes with detached or attached accessory dwelling units when permitted by the Zoning Code. The City Council specifically did not exclude common interest complexes (i.e. condominiums and townhomes). (See Section 9.11.205 of the proposed ordinance).
- b. *Existing and/or new units.*** The City Council included all existing and new units in the smoking prohibition.
- c. *Phase-in Plan.*** The City Council felt that an 18-month phase-in plan will 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. In addition, this should give HOA boards sufficient time to amend their rules and regulations to address the City's smoking prohibitions. Such a phase-in plan includes a required period of time within which landlords and HOA boards must notify tenants and homeowners, as applicable, of the new smoking regulations and the "effective date" on which the non-smoking regulations will be enforced (18 months after the effective date of the ordinance). The City's outreach to and education of those affected by the new regulations will likely be important factors in gaining cooperation from landlords, tenants, HOA boards, and condominium/townhome residents.
- d. *Definition of Smoking.*** The City Council directed that the broadest definition of smoking be utilized; however, electronic smoking devices (e-cigarettes) should be excluded. In addition, per the City Council's direction, there is no exemption for the smoking of medical marijuana.

2. **Locations Where Smoking is Prohibited:**

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- a. **Common areas.** The proposed ordinance prohibits smoking in both indoor and outdoor common areas. It also provides a landlord or HOA board 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 at least 25 feet from a nonsmoking area or area primarily used by children or used for physical activity). (See Sections 9.11.205 and 9.11.215 of the proposed ordinance)
 - b. **Exclusive-use areas, such as balconies and patios.** This restriction is accomplished by including exclusive-use areas in the definition of "Unit," as well as a specific prohibition against smoking in these areas. (See Sections 9.11.205, 9.11.210, 9.11.225, 9.11.230 and 9.11.240 of the proposed ordinance)
 - c. **Smoke-free buffer zones.** This provision prohibits smoking in unenclosed areas of a multi-unit residence or adjacent property within 25 feet in any direction of any doorway, window, opening, or other vent into an enclosed non-smoking area. (See Sections 9.11.210 and 9.11.220 of the proposed ordinance)
 - d. **Individual units.** Per the City Council's direction, smoking is prohibited in 100% of all individual units. (See Sections 9.11.210, 9.11.225, 9.11.230 and 9.11.240 of the proposed ordinance)
3. **Enforcement:** The City Council determined that its preference is to provide for private enforcement at this time due to limited City resources. A comprehensive provision for private enforcement through civil remedies is included in the proposed ordinance. (See Sections 9.11.255 and 9.11.260 of the proposed ordinance) There are also provisions of the proposed ordinance that are intended to encourage and promote self-regulation and compliance (i.e. clear, conspicuously posted "no smoking" signs).

***Outstanding Enforcement Issue:** Although smoking violations will be enforced by private parties, staff would like clarification as to whether the City Council wants City staff to enforce other types of regulations (i.e. required signage, requirements for designated smoking areas, requirements to provide notice to tenants and homeowners regarding the smoking regulations, requirements to amend lease agreements and rules and regulations, etc.). Staff requests the City Council provide further direction in this regard. If the City Council determines to provide some limited enforcement regarding these types of issues, then it would be subject to the same methods of enforcement as other existing smoking-related regulations, including, but not limited to, administrative citations, infraction and/or misdemeanor citations, and civil

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action. If such limited enforcement is desired, staff will work with other Departments to consider options for conducting inspections to ensure required signage is posted and designated smoking areas meet the minimum requirements. 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 and the City Attorney’s Office. Should the City Council elect to provide limited City enforcement in this regard and determine it wishes to make it a higher priority, additional resources would likely need to be dedicated to this effort.

Outreach and Education

If the City Council ultimately adopts an ordinance regulating smoking in multi-unit housing, City staff, including the Community Development Department and City Attorney’s Office, will implement various methods of outreach and education to those affected by and subject to the new regulations, including property owners, tenants, HOA boards and condominium/townhome residents. Outreach and education may include, but is not limited to, multiple notifications, publication, community meetings, and a dedicated page on the City’s website containing comprehensive information about the regulations (including effective date, enforcement, deadlines, etc.). Several other cities that have adopted similar regulations have resources and materials from their outreach and education programs that may be helpful to Culver City and will be reviewed by City staff prior to implementing the City’s outreach/education program.

Staff recommends the City Council consider the proposed ordinance for introduction and provide additional direction to staff as deemed appropriate.

FISCAL ANALYSIS:

Should the ordinance be introduced this evening and subsequently adopted by the City Council, the additional regulations prohibiting smoking in multi-unit housing may require increased enforcement activity by the Community Development Department - Enforcement Services Division and the City Attorney’s Office, depending on whether the City Council determines to provide limited City enforcement of certain regulations (i.e. required signage, designated smoking area requirements, etc.). In addition, staff time would be required to 1) prepare and disseminate information about the newly adopted regulations; and 2) conduct outreach to affected property owners, tenants, HOA boards and condominium/townhome residents, which may include community meetings. These costs are not easily quantifiable at this time.

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ATTACHMENTS:

1. Proposed Ordinance
2. August 11, 2014 City Council Agenda Item Report (without attachments)
3. Written public comment received on or after the August 11th meeting up through and including the date this report was posted to the City's website

MOTION:

That the City Council:

- (1) Provide clarification and direction related to enforcement; and,
- (2) Introduce an ordinance amending Chapter 9.11 of the Culver City Municipal Code (CCMC) relating to smoking regulations to add a new Subchapter 9.11.200, et seq., regulating smoking in multi-unit housing.