AGENDA REPORT

Meeting Date: September 19, 2017
Item Number: D-5
To: Honorable Mayor & City Council
From: Logan Phillippo, Senior Management Analyst
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING CHAPTER 4 OF TITLE 5 OF THE BEVERLY HILLS MUNICIPAL CODE TO REGULATE SMOKING IN MULTI-UNIT RESIDENCES AND COMMON INTEREST DEVELOPMENTS
Attachments: 1. Ordinance
2. September 19, 2017 City Council Study Session Staff Report (without attachments)

RECOMMENDATION
Staff recommends the City Council move to approve an Ordinance Amending Chapter 4 Title 5 of the Beverly Hills Municipal Code to Regulate Smoking in Multi-Unit Residences and Common Interest Developments.

INTRODUCTION
In August 2016, City Council directed staff to pursue a policy that would expand smoking regulations in multi-unit housing and tasked the Health and Safety Commission to further review the issue and to report back to Council with findings or recommendations. Staff is recommending City Council approval of the Ordinance.

At the June 26, 2017, Health and Safety Commission Regular Meeting, the Commission voted to recommend a proposed ordinance that would amend Chapter 4 of Title 5 of the Beverly Hills Municipal Code and regulate smoking in multi-unit residences ("Smoke-Free Multi-Unit Housing Ordinance" or "Ordinance"). The Ordinance is included in this report as Attachment 1.

The Ordinance and regulations were additionally discussed at the July 17, 2017, City Council Health and Safety Commission Liaisons Meeting. The City Council Liaisons concurred with the Commission's recommendations.
A more detailed overview of the Ordinance can be found in the September 17, 2019 City Council Study Session Staff Report related to this topic, which is included in this report as Attachment 2.

DISCUSSION

At the Monday, June 26, 2017, Health and Safety Commission Regular Meeting, the Commission voted (3-1) to recommend City Council adoption of the Ordinance that would prohibit smoking at apartments and condominiums in all indoor and outdoor common areas (laundry rooms, hallways, courtyards, etc.) as well as private enclosed spaces (personal dwellings) and private outdoor spaces (balconies, patios, decks, etc.). The recommendation includes a one-year phase-in period for units with existing leases and a two-year phase-in period for condominium units. *One Commissioner was not in attendance due to a scheduled conflict.

The proposed policy would rely primarily on the City for enforcement. The Community Development Department, Code Enforcement Program (“Code Enforcement”) currently responds to the majority of smoking complaints or code violations. Code Enforcement would continue to be the primary enforcement unit for no-smoking violations. Existing code enforcement protocols can address violations that occur “after the fact.” An educational compliance system can be used to educate alleged code violators regarding smoking restrictions. Only if the violation is observed, and after multiple attempts to achieve compliance through education of the municipal code and City restrictions, the City may attempt to remedy the situation through the issuance of a misdemeanor citation. The burden of enforcement, including payment for related investigation costs and, if sufficiently escalated, any prosecution costs, would be left primarily on the City. This approach is consistent with input from the Health and Safety Commission and the community, which provided input during two special meetings soliciting public input as well as 10 additional public Commission where the development of this policy was agendized.

The Ordinance has been recommended by the Health and Safety Commission in a 3-1 vote at the June 26, 2017, Health and Safety commission Regular Meeting. The Ordinance and regulations were additionally discussed at the July 17, 2017, City Council Health and Safety Commission Liaisons Meeting.

The Ordinance will be presented for City Council consideration and discussion during the September 19, 2017, City Council Study Session. If City Council directs any minor modifications to the Ordinance as a result of Study Session discussions, the item will be modified accordingly and introduced during this Evening Session. If the City Council directs substantive modifications, this Ordinance, along with the proposed modifications, will be brought to City Council for approval at a future meeting.

A more detailed overview of the Ordinance and planned enforcement mechanisms can be found in the September 17, 2019 City Council Study Session Staff Report related to this topic, which is included in this report as Attachment 2.

FISCAL IMPACT

Costs associated with the implementation of the ordinance will consist of an initial public outreach period. In the past, this has included citywide mailers and newspaper advertisements. Based on previous expenditures it is estimated to cost approximately
$7,500 to $10,000. Funding for these purposes is available in the Policy and Management Department Communications program operating budget for advertisements and print materials.

It is anticipated that the City Code Enforcement program will be the primary enforcement unit for smoking complaints and violations related to this Ordinance. Staff anticipates that Code Enforcement program will fold enforcement of this program into existing operations at the current budget and staffing level. As part of the policy development process, the City has received phone calls and emails expressing concerns over neighbors’ smoking in multi-unit residences. However, because there is no established baseline, it is difficult to estimate the number of complaints or violations. There is currently no request for additional funding or staffing. Staff will continue to evaluate impacts on Code Enforcement and the Police Department as the proposed regulations go into effect and return to City Council with an update if additional resources are needed.

Pamela Mottice Muller
Approved By
Attachment 1
ORDINANCE NO. 17-O-_______

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING CHAPTER 4 OF TITLE 5 OF THE BEVERLY
HILLS MUNICIPAL CODE TO REGULATE SMOKING IN
MULTI-UNIT RESIDENCES AND COMMON INTEREST
DEVELOPMENTS

WHEREAS, tobacco use causes death and disease and continues to be an urgent public
health threat, as evidenced by the fact that 480,000 people die prematurely in the United States
from smoking-related diseases every year, making tobacco use the leading cause of preventable
death. Tobacco use can cause disease in nearly all organ systems and is responsible for 87
percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths,
and 32 percent of coronary heart disease deaths.2 The World Health Organization estimates that
tobacco accounts for the greatest cause of death worldwide accounting for nearly 6 million
deaths per year.3

WHEREAS, secondhand smoke has repeatedly been identified as a health hazard as
evidenced by the U.S. Surgeon General concluding that there is no risk-free level of exposure to
secondhand smoke;4 the California Air Resources Board placing secondhand smoke in the same
category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air
contaminant for which there is no safe level of exposure,5 6 and the California Environmental
Protection Agency including secondhand smoke on the Proposition 65 list of chemicals known to
the State of California to cause cancer, birth defects, and other reproductive harm.7

1 U.S. Department of Health and Human Services. The Health Consequences of Smoking — 50 Years of Progress A
Report of the Surgeon General Executive Summary. 2014. Available at:

2 U.S. Surgeon General. Factsheet: The Health Consequences of Smoking — 50 Years of Progress: A Report of the
Surgeon General. 2014. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/fact-
sheet.html.

3 World Health Organization. Tobacco Fact Sheet No. 339. June 2016. Available at:

4 U.S. Department of Health and Human Services, 2006 Surgeon General’s Report - The Health Consequences of
Involuntary Exposure to Tobacco Smoke. 2006. Available at:

5 California Environmental Protection Agency Air Resources Board. Environmental Tobacco Smoke: A Toxic Air
Contaminant. California Environmental Protection Agency Air Resources Fact Sheet. 2006. Available at:
www.arb.ca.gov/toxics/ets/factsheetets.pdf.

6 California Environmental Protection Agency Air Resources Board. California Identifies Secondhand Smoke as a

Available at: https://oehha.ca.gov/proposition-65/proposition-65-list.
WHEREAS, since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke. Secondhand smoke is responsible for an estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States. Secondhand smoke kills more than 400 infants every year. Secondhand smoke exposure adversely affects fetal growth with an increased risk of low birth weight and of Sudden Infant Death Syndrome in infants of mothers who smoke. Just 30 minutes of exposure to secondhand smoke is sufficient to damage blood vessels in a healthy nonsmoker.

WHEREAS, secondhand aerosol emitted from electronic smoking devices has been identified as a health hazard as evidenced by research finding at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, and toluene to be present in electronic smoking devices.

WHEREAS, it is the intent of the City Council of the City of Beverly Hills to provide for the public’s health, safety, and welfare by discouraging the inherently dangerous activity of smoking around non-consenting individuals, protecting children from exposure to smoking

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8 Centers for Disease Control and Prevention. Secondhand Smoke (SHS) Facts. Available at: https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/


where they live and play, and protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Section 5-4-1 (DEFINITIONS) of Chapter 4 (SMOKING REGULATIONS) of Title 5 (PUBLIC HEALTH, WELFARE, AND SANITATION) of the Beverly Hills Municipal Code is hereby amended to add the following definitions, in alphabetical order, with all other provisions of Section 5-4-1 remaining in effect without amendment:

“COMMON AREA: Every interior or exterior area of a multi-unit residence or common interest development that residents of the multi-unit residence or owners of the common interest development are entitled to enter or use, including, for example, halls, paths, lobbies, courtyards, elevators, stairs, community rooms, recreation areas or rooms, playgrounds, gym facilities, swimming pools, jacuzzis, parking garages, parking lots, restrooms, laundry rooms, cooking areas, and eating areas. Common area shall also mean “common area” as defined in California Civil Code section 4095, or any successor legislation.”

“COMMON INTEREST DEVELOPMENT: Shall mean (1) a community apartment project as defined in California Civil Code section 4105, or any successor legislation, (2) a condominium project as defined in California Civil Code section 4125, or any successor legislation, (3) a planned development as defined in California Civil Code section 4175, or any successor legislation, and (4) a stock cooperative as defined in California Civil Code section 4190, or any successor legislation.

“EXISTING LEASE: Any lease or rental agreement that allows a person to occupy a unit that was entered into before January 1, 2018.”

“HOME OWNERS ASSOCIATION or HOA: An organization or entity established for the purpose of managing and/or maintaining a common interest development. A homeowners association shall also mean “association” as defined in California Civil Code section 4080, or any successor legislation.”

“LANDLORD: Any person who owns property let for residential use.”

“MIXED HOTEL/COMMON INTEREST DEVELOPMENT PROJECT: A project that is comprised of both a hotel and a common interest development. The project can be in any configuration such as, but not limited to, the hotel and common interest development being located in separate buildings, or the hotel and common interest development being located on separate floors of the same building.”

“MULTI-UNIT RESIDENCE: A residential property containing two or more units on the same lot, where one or more of the units is offered for rent. The following types of housing are specifically excluded from this definition:

1. A single-family home;
2. A detached or attached accessory dwelling unit on a single-family zoned property;

3. A hotel;

4. A common interest development; and

5. A mixed hotel/common interest development project.

“NEW LEASE: Any lease or rental agreement that allows a person to occupy a unit that was entered into, amended, or renewed on or after January 1, 2018. This includes any month-to-month lease that is renewed after January 1, 2018.

“OWNER: The owner of a “separate interest” as that term is defined in California Civil Code section 4185, or any successor legislation.”

“UNIT: Any personal dwelling space in a multi-unit residence or common interest development. A unit shall include any associated exclusive-use area, such as, for example, a private balcony, porch, deck, or patio. A unit shall also have the same meaning as “separate interest” as that term is defined in California Civil Code section 4185, or any successor legislation.”

Section 2. Code Amendment. Section 5-4-18 (PENALTIES AND ENFORCEMENT) is hereby renumbered as Section 5-4-20 (PENALTIES AND ENFORCEMENT) and a new Section 5-4-18 (SMOKING REGULATIONS FOR MULTI-UNIT RESIDENCES) is added to Chapter 4 (SMOKING REGULATIONS) of Title 5 (PUBLIC HEALTH, WELFARE, AND SANITATION) of the Beverly Hills Municipal Code to read as follows:

“5-14-18: SMOKING REGULATIONS FOR MULTI-UNIT RESIDENCES:

Smoking in multi-unit residences shall be governed by the following rules:

A. Beginning January 1, 2018, the following regulations apply:

1. Smoking is prohibited in all common areas.

2. Smoking is prohibited in all units governed by a new lease.

3. A landlord shall not permit the presence of ash trays, ash cans, or other receptacles designed for, or primarily used for, the disposal of smoking waste within any common area.

4. Every new lease shall include a provision substantially consistent with the following: “Beverly Hills Municipal Code section 5-4-18 prohibits smoking in all common areas in a multi-unit residence, and in all units governed by a lease that was entered into, renewed, or amended after January 1, 2018. It is a material breach of this lease for the tenant, or any other person subject to the control of the tenant or present by invitation or
permission of the tenant, to engage in smoking on the property, including in the unit and common areas (as those terms are defined in Beverly Hills Municipal Code section 5-4-1), or to violate any law regulating smoking while anywhere on the property.”

B. On or before January 1, 2018, the following regulations apply:

1. The landlord shall post, or shall cause to be posted, clear and unambiguous “No Smoking” signs in sufficient numbers and locations in the multi-unit residence to make it obvious to a reasonable person that smoking is prohibited in all common areas. The signs shall have letters of no less than one inch in height or contain the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar). Such signs shall be maintained by the landlord. The absence of signs shall not be a defense to a violation of any provision of this chapter.

2. The landlord shall provide written notice to all tenants whose units are governed by existing leases stating that (1) smoking is prohibited in all common areas of the multi-unit residence beginning January 1, 2018, (2) any unit that is governed by a lease that was entered into on or after January 1, 2018 is designated as a non-smoking unit, and (3) any unit that is governed by a lease that was entered into before January 1, 2018 will be designated as a non-smoking unit when the lease is renewed or extended, or January 1, 2019, whichever is earlier, unless an earlier date is chosen by the landlord. The landlord does not need to comply with this provision if smoking is already prohibited in all common areas and units in the multi-unit residence.

C. In addition to the above, beginning January 1, 2019, smoking is prohibited in all units governed by an existing lease.

D. If the landlord has fully complied with Sections 5-4-18(A)(4) and B(1) and (2), the landlord shall not be criminally or civilly liable to any person for a person’s breach of any smoking provision while on the multi-unit residence.”

Section 3. Code Amendment. Section 5-4-19 (SMOKING REGULATIONS FOR COMMON INTEREST DEVELOPMENTS) is hereby added to Chapter 4 (SMOKING REGULATIONS) of Title 5 (PUBLIC HEALTH, WELFARE, AND SANITATION) of the Beverly Hills Municipal Code to read as follows:

“5-4-19: SMOKING REGULATIONS FOR COMMON INTEREST DEVELOPMENTS:

Smoking in common interest developments shall be governed by the following rules:

A. Beginning January 1, 2018, the following regulations apply:

1. Smoking is prohibited in all common areas.

2. The HOA, or any person having legal ownership over the common areas of a common interest development, shall not permit the presence of ash trays, ash cans, or other receptacles designed for, or primarily used for, the disposal of smoking waste within any common area.
3. If an owner enters into a new lease to lease a unit to a tenant, that unit shall be designated as a non-smoking unit until such time as the owner resumes the occupancy of the unit. Any new lease for the occupancy of a unit in a common interest development entered into, renewed, or amended on or after January 1, 2018, shall include a provision notifying the tenant that it is a material breach of the lease or other rental agreement to allow or engage in smoking in the common interest development. Such clause shall be substantially consistent with the following: "It is a material breach of this agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to engage in smoking on the property, including in the unit and common areas (as those terms are defined in Beverly Hills Municipal Code section 5-4-1), or to violate any law regulating smoking while anywhere on the property."

B. On or before January 1, 2018, the following regulations apply:

1. The HOA, or any person having legal ownership over the common areas of the common interest, shall post clear and unambiguous "No Smoking" signs in sufficient numbers and locations in the common interest development to make it obvious to a reasonable person that smoking is prohibited throughout the common interest development. The signs shall have letters of no less than one inch in height or contain the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar). Such signs shall be maintained by the HOA or any person with legal control over the common areas of the common interest development. The absence of signs shall not be a defense to a violation of any provision of this chapter.

2. The HOA shall provide written notice to all owners of units clearly stating that (1) smoking will be prohibited in all common areas of the common interest development beginning January 1, 2018, and (2) that all units will become non-smoking beginning January 1, 2020. The HOA does not need to comply with this provision if smoking is already prohibited in all common areas and units in the common interest development.

C. In addition to the above, beginning January 1, 2020, smoking is prohibited in all units.

D. If the HOA Board has fully complied with Sections 5-4-19 (A)(2), and (B)(1) and (2), the HOA shall not be criminally or civilly liable to any person as a result of a owner or any other person violating the smoking regulations while on the common interest development’s property. If an owner has fully complied with Section 5-4-19(A)(3), then the owner shall not be criminally or civilly liable to any person for a tenant or a tenant’s guest violating the smoking regulations while on the common interest development’s property.

E. The above-referenced regulations will apply to a mixed hotel/common interest development project except as follows:

1. The regulations will not apply to the buildings, portions of the buildings, or any other areas that are designated as part of the hotel including, but not limited to, hotel rooms, and common areas that are used by hotel patrons and guests.
2. The regulations will not prohibit the designation of a smoking area in the hotel portion of the project regardless of whether the designated smoking area can be used by both hotel patrons and owners.

3. The regulations will not prohibit smoking at hotel swimming pools consistent with Section 5-4-2.”

Section 4. Code Amendment. Section 5-4-20 (PENALTIES AND ENFORCEMENT) of Chapter 4 (SMOKING REGULATIONS) of Title 5 (PUBLIC HEALTH, WELFARE, AND SANITATION) of the Beverly Hills Municipal Code is hereby amended to add a new subsection E to read as follows:

“E. No provision of this Chapter shall authorize a criminal prosecution prohibited by Health and Safety Code sections 11362.71, et seq. or 11362.1, et seq. In the event of any conflict between the penalties enumerated under Title 1 of the Beverly Hills Municipal Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.”

Section 5. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant adverse effect on the environment because the Ordinance only expands upon existing smoking use restrictions. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

Section 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 7. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation, published and circulated in the city within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk’s certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this city.

Section 8. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

LILI BOSSE
Mayor of the City of Beverly Hills

-7-
ATTEST:

________________________________________ (SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager
INTRODUCTION

In August 2016, City Council directed staff to pursue a policy that would expand smoking regulations in multi-unit housing and tasked the Health and Safety Commission to further review the issue and to report back to Council with findings or recommendations.

At the June 26, 2017, Health and Safety Commission Regular Meeting, the Commission voted to recommend an ordinance that would amend Chapter 4 of Title 5 of the Beverly Hills Municipal Code and regulate smoking in multi-unit residences ("Smoke-Free Multi-Unit Housing Ordinance" or "Proposed Ordinance"). The Proposed Ordinance is included in this report as Attachment 1. The commission recommendation is discussed on Page 6 of this report.

The Ordinance and regulations were additionally discussed at the July 17, 2017, City Council Health and Safety Commission Liaisons Meeting. The City Council Liaisons concurred with the Commission’s recommendations.

Staff is seeking City Council input and direction on the Proposed Ordinance.

DISCUSSION

At the Monday, June 26, 2017, Health and Safety Commission Regular Meeting, the Commission voted (3-1) to recommend City Council adoption of the Proposed Ordinance that would prohibit smoking at apartments and condominiums in all indoor and outdoor common areas (laundry rooms, hallways, courtyards, etc.) as well as private enclosed spaces (personal dwellings) and private outdoor spaces (balconies, patios, decks, etc.). The recommendation includes a one-year phase-in period for units with existing leases and a two-year phase-in period for condominium units.
Background

According to a 2010 report from the Los Angeles County Department of Public Health, approximately 8% of the Beverly Hills adult population smokes, which is lower than the Los Angeles County average smoking rate of 14%. A smoke-free multi-unit housing policy in the City of Beverly Hills could impact up to 63% of the housing stock in the City. Of this stock, 82% are apartments and 18% are condominiums.

In order to promote healthy living, over the past several years, the City has enacted no-smoking policies, which include an ordinance to include “vaping” in the City’s definition of “smoking”, the prohibition of smoking in Beverly Canon Gardens, the prohibition of smoking in the public right of way, and increase in the open air dining area buffer zone from 5 feet to 20 feet.

To protect and promote the public health, the City of Beverly Hills regulates smoking in accordance with both state and local regulations. A summary of where smoking/vaping is not permitted includes, but is not limited to, the follow areas shown below.

- On public school property (State law)
- In vehicles with minors (State law)
- In or within 20 feet of public buildings (BHMC 5-4-6, CGC 7597)
- In enclosed spaces at places of employment (BHMC 5-4-7, CLC 6504.6)
- At City parks and the Beverly Canon Gardens (BHMC 5-4-16)
- In or within 20 feet of open air dining areas (BHMC 5-4-2)
- Within public rights-of-way (sidewalks, streets, alleyways, etc.) unless actively travelling (BHMC 5-4-17)
- At farmers markets (BHMC 5-4-13)
- At public and private plazas (BHMC 5-4-14)
- At outdoor public events (BHMC 5-4-15)
- At outdoor service lines such as ATM lines, ticket lines, etc. (BHMC 5-4-12)
- In City-owned vehicles (BHMC 5-4-11)

Community Engagement

The City has solicited public input on the policy prohibiting smoking at two Health and Safety Commission special meetings soliciting public input that were advertised in local newspapers and in postcard mailers to all multi-family residences. One meeting was held in the afternoon on November 28, 2016. Another meeting was held in the evening on December 13, 2016. The Commission also discussed the topic at 10 public meetings where public comment was heard on the topic. Organizations such as Smokefree Air for Everyone (S.A.F.E), American Nonsmokers’ Rights Foundation, and the Los Angeles County Department of Public Health have attended multiple meetings. A representative from the Apartment Association of Greater Los Angeles attended one of the special meetings soliciting public input and indicated that most owner’s want to go smoke-free, citing health issues and maintenance costs associated with units where smoking is allowed. This item was additionally discussed at a City Council Health and Safety Commission Liaisons Meeting.

Additionally, staff conducted a survey, which received 78 complete responses that consisted primarily of Beverly Hills multi-unit housing renters and landlords. The survey demonstrated community support for increased smoking regulations in multi-unit housing. More information on the survey can be found in Attachment 2. The City’s smoking webpages have been updated regularly with all reports and videos related to the development of smoking policies, resources and smoking cessation information.
City has also distributed a press release to local news outlets encouraging public comment at this Study Session Meeting.

Residents that have attended public meetings have supported smoking restrictions. Staff has also received letters from members of the Community which have been read into the public record at Commission meetings. Letters have been in support of smoking restrictions. Two individuals expressed non-support due to regulation of activities within privately owned dwellings.

Staff has continued to accept phone calls and emails on the topic since the Commission’s vote in June. Questions since the Commission’s vote to recommend have consisted of specific elements of the regulations. All calls but one and all emails have demonstrated support for the regulations. In one call, a resident expressed concerns that in certain circumstances, leased condominium units with a term of more than one year could potentially be a smoking-permitted unit beyond the January 1, 2019 implementation date for apartment units. Irrespective of these circumstances, however, on January 1, 2020, smoking would not be permitted within any unit.

**Proposed Ordinance Provisions**

Key provisions include those discussed in items (1) through (4) below.

1. **Prohibited Areas**

   Under proposed regulations, smoking, which includes vaping and marijuana smoking, would be prohibited in the following areas.
   - Residences containing two or more units on the same lot
     - This includes condominium and apartment complexes.
     - This includes duplexes.
     - This includes hotel/condominium projects, but only areas designated exclusively for condominium users. Regulations would exclude areas designated for hotel uses.
     - Single-family homes with accessory dwelling units and hotels are excluded from this definition.
   - All common indoor and outdoor areas, which includes, but is not limited to, hallways, pathways, lobbies, courtyards, elevators, stairs, community rooms, laundry facilities, etc.
   - All private enclosed spaces such as personal dwelling spaces
   - All private exclusive use areas such as balconies, porches, decks, or patios
   - Both renter-occupied units and owner-occupied units

2. **Landlord and Home Owners Association Responsibilities**

   The following proposed requirements would also apply to landlords and home owners associations.
   - Removal of the presence of ash trays, ash cans or similar receptacles used primarily for smoking waste
   - Posting of “no smoking” signage
   - Distribution of written notice to tenants regarding smoking restrictions
   - Inclusion of language prohibiting smoking in all new leases after January 1, 2018.
     - Effective one year after, all leases, regardless of the start date, would fall under these regulations.
Three dates would guide the implementation of the smoking restrictions. A graphic summary is included in Attachment 3.

January 1, 2018: Smoking would be prohibited in all common areas of multi-family residences and condominium complexes. All new leases or leases that were extended/renewed for units in multi-family residences and condominiums would be designated as non-smoking.

January 1, 2019: Smoking would additionally be prohibited within apartment units, including associated exclusive use areas, regardless of the start or renewal date of a lease.

January 1, 2020: Smoking would additionally be prohibited within all condominium units and associated exclusive use areas, inclusive of all owner-occupied units and regardless of the start date of a renter’s lease.

The Commission closely evaluated various options for the implementation of the regulations for various types of units. Additional details are discussed in the ‘Commission Recommendation’ section of this report on Page 6.

(4) Hotel/Condominium Projects

Certain developments in the City contain a mixture of both condominium units and hotels. Representatives of local hotels have expressed concerns regarding expanded regulations in hotels, noting that the inability to smoke at a hotel may influence international visitors to stay elsewhere. The Proposed Ordinance would not modify the municipal code as it relates to hotel areas. While smoking would be prohibited in condominium units and in common areas reserved for the exclusive use of condominium owners, the regulations would not apply to the buildings, portions of the buildings, or any other areas that are designated as part of the hotel including, but not limited to, hotel rooms and common areas that are used by hotel patrons and guests. State regulations of hotels would remain intact.

Marijuana Smoke

Due to a provision the Control Regulate and Tax Adult Use of Marijuana Act (Proposition 64), California Health and Safety Code prohibits the smoking of cannabis or cannabis products in a location where smoking tobacco is prohibited. The City’s proposed regulations would also apply to marijuana smoke.

Proposed Enforcement Method

The mechanisms for enforcement of the policy was a key topic of discussion when the Commission solicited public input. These comments were primarily focused on the strength of the policy and the option to report violations anonymously.

• Having a ‘stronger’ enforcement policy: many of those who spoke about the enforcement part of the policy desired it to have a meaningful enforcement aspect, and this was typically insinuated to mean City enforcement. Comments about private enforcement typically surrounded issues like straining the landlord-tenant or tenant-tenant relationships and the sensitivity of not being able to report violations anonymously.
Meeting Date: September 19, 2017

- **Options to report violations anonymously:** one of the running themes throughout the community input meetings is the desire to report smoking violations anonymously. As reported during the meetings, anonymous reporting is especially important when there is fear of retaliation from the violating party. Support of anonymous reporting is typically associated with City enforcement, as private enforcement requires the reporting party to bring the violator to civil court.

The proposed policy would rely primarily on the City for enforcement. The Community Development Department, Code Enforcement Program (“Code Enforcement”) currently responds to the majority of smoking complaints or code violations. Code Enforcement would continue to be the primary enforcement unit for no-smoking violations. Under current practices, smoking-related complaints are typically received by a telephone call, written correspondence, or through the City’s Ask Bev customer relationship management system. Most complaints are received after an alleged code violation has already taken place, limiting the ability for Code Enforcement staff to witness the violation and subsequently issue any citations.

Existing code enforcement protocols can address violations that occur “after the fact.” An educational compliance system can be used to educate alleged code violators regarding smoking restrictions. When a complaint is received, Code Enforcement staff collects relevant information from the complaining party. If the alleged code violating party is identified, the City will send a notice with information regarding the municipal code. In many cases, the notice may make the alleged violating party aware of the violation and remedy the situation. If a complaint continues, Code Enforcement staff would follow up with a phone call or request a meeting to continue education of the City’s smoking restrictions. If the situation continues to persist, staff will continue to collect information and identify in patterns in the alleged violations. The City may request that the alleged violating party meet with the City for further education regarding the municipal code restrictions. In cases where the alleged smoking violation continues on a routine and regular basis by a same alleged violating party, the City could attempt to schedule site inspections to verify the violation.

Only if the violation is observed, and after multiple attempts to achieve compliance through education of the municipal code and City restrictions, the City may attempt to remedy the situation through the issuance of a misdemeanor citation. According to Code Enforcement and Police Department staff, it would be difficult to make an observation of a violation, as a cigarette could be extinguished before a door is answered and there would also be no assurance that a person would open a door when the City responded to a complaint, thus limiting the ability for the City to issue a citation.

A proposed smoking enforcement process workflow is provided in Attachment 4. Code Enforcement, the Police Department and the City Prosecutor have coordinated on the enforcement issues. The burden of enforcement, including payment for related investigation costs and, if sufficiently escalated, any prosecution costs, would be left primarily on the City.

**Other Municipalities Multi-Unit Housing Regulations**

Currently by state law, California landlords have the right to designate their multi-unit buildings as smoke-free if they choose, but cities have implemented stricter policies that require all multi-unit housing to be smoke-free regardless of the preference of the landlord. Approximately 69 California cities have regulated smoking in multi-family residences. For more information please see Attachment 5. Some cities such as South Pasadena, Pasadena, and Manhattan Beach have enacted stronger restrictions on
smoking, while other cities such as Burbank have implemented more lenient standards. Other cities such as West Hollywood and Los Angeles have not enacted regulations prohibiting smoking in multi-unit residences. The strongest smoke-free multi-unit housing policies are those that entirely restrict smoking within all existent and newly built units, including condominiums and apartments (including balconies and patios). For example, the City of Manhattan Beach has adopted an ordinance that prohibits smoking in all multi-unit housing, including condominiums and apartments.

The City of Santa Monica has enacted regulations that prohibit smoking in all multi-unit housing, including condominiums and apartments. Existing occupants must designate the unit as “smoking” or “non-smoking” and update the designation annually. Once a unit becomes vacant or is sold, the unit is thereafter designated “non-smoking”, regardless of its prior designation.

Commission Recommendation
The Commission voted (3-1) to recommend City Council adoption of the Proposed Ordinance. One Commissioner was not present due to a scheduled conflict. One Commissioner did not vote in favor of the Proposed Ordinance, expressing concerns over two provisions. The first was regarding an addition to the Municipal Code 5-4-19 Section A Subsection 3. This section of the Code addition would allow a leased condominium, which was “non-smoking” after January 1, 2018, to then allow smoking if the owner of the condominium were to occupy the unit before a January 1, 2020 effective date for condominium units (see Example below).

Example: Smoking would not be permitted in condominium rental unit leased on February 2, 2018. If the leased expired on February 1, 2019 and the unit was subsequently occupied by the owner, the owner could smoke in the unit until January 1, 2020.

Additionally, at the May 22, 2017, Commission Regular Meeting, staff provided a timeframe for implementation that included tentative implementation dates. During this meeting, the Commission discussed using January 1 implementation dates and committed to a two-year notification/compliance timeframe for condominium units. At the June 26, 2017 meeting, staff presented regulations that included a revised implementation timeline of January 1, 2018, 2019, and 2020. New laws often come into effect on January 1, therefore staff recommended using this date. Additionally, the January 1 dates would appear more cohesive, would be more straightforward to implement, and would allow time for staff to conduct outreach after adoption of the Proposed Ordinance. The Commissioner pointed out that a June 30, 2019 compliance date for condominium units, would provide a similar two-year timeframe and still provide ample notification to condominium unit dwellers and owners. The Commissioner indicated that the timeframe could start from the passage of the ordinance (then estimated in August 2017) as discussed in the May meeting, rather than from January 1, 2018. The same Commissioner noted support for all other key provisions.

FISCAL IMPACT
Costs associated with the implementation of the ordinance will consist of an initial public outreach period. In the past, this has included citywide mailers and newspaper advertisements. Based on previous expenditures it is estimated to cost approximately $7,500 to $10,000. Funding for these purposes is available in the Policy and Management Department Communications program operating budget for advertisements and print materials.
It is anticipated that the City Code Enforcement program will be the primary enforcement unit for smoking complaints and violations related to this Proposed Ordinance. Staff anticipates that Code Enforcement program will fold enforcement of this program into existing operations at the current budget and staffing level. As part of the policy development process, the City has received phone calls and emails expressing concerns over neighbors’ smoking in multi-unit residences. However, because there is no established baseline, it is difficult to estimate the number of complaints or violations. There is currently no request for additional funding or staffing. Staff will continue to evaluate impacts on Code Enforcement and the Police Department as the proposed regulations go into effect and return to City Council with an update if additional resources are needed.

**RECOMMENDATION**

The Proposed Ordinance has been recommended by the Health and Safety Commission, discussed in the ‘Commission Recommendation’ section of this report on Page 6. Additionally, this item was presented at the City Council Health and Safety Commission Liaisons in July 2017, which expressed support for the regulations.

Staff is seeking City Council input and direction. The following options are available for consideration.

1. **City Council supports the regulations as presented:** The Proposed Ordinance would be presented for the First Reading on the September 19, 2017, Formal Meeting Consent Agenda, following this Study Session Meeting. Staff would conduct extensive public outreach and closely monitor the implementation with regular updates to the Health and Safety Commission.

2. **City Council supports the regulations with modifications:** If City Council directs any minor modifications to the Ordinance as a result of Study Session discussions, the Proposed Ordinance will be modified accordingly and introduced during the September 19, 2017, City Council Evening Session. If the City Council directs substantive modifications, this Ordinance, along with the proposed modifications, will be brought to City Council for approval at a future meeting.

3. **City Council chooses an alternate approach to regulation:** City Council may direct staff to consider other options for a multi-unit smoking policy.

_Pamela Mottice Muller_

Approved By