



CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: Health & Safety Commission

FROM: Kevin Kearney, Senior Management Analyst

DATE: September 26, 2016

SUBJECT: Smoke-Free Multi-Unit Housing Policy

ATTACHMENTS:

1. City Council Staff Report – August 16, 2016
2. Surrounding Cities with Multi-Unit Family Smoking Policies
3. Matrix of Strong Local Smoke-Free Multi-Unit Housing Policies

INTRODUCTION

During the August 16, 2016 Study Session, the City Council decided to pursue a smoke-free multi-unit housing policy, and tasked the Health and Safety Commission with the project and to report back with their findings and recommendations to the Council at a subsequent meeting.

This report focuses on cities in Los Angeles County, provides preliminary research and offers recommendations on how to proceed with such a policy. As this report details, there are many complexities associated with crafting a policy and cities have tackled this issue in multiple ways.

Smoke-free multi-unit housing regulations are comprehensive and often require extensive research, planning, and implementation phases that can last several years. The complexities of these policies encompass six core questions:

1. What is the outreach strategy to gain input for designing a policy?
2. Who should be impacted by the policy?
3. How restrictive is the policy to be?
4. Which enforcement strategy should be adopted?
5. How should the policy be implemented?
6. How should awareness of the policy be raised?

Multifamily residential, or multi-unit housing, is a classification of housing where multiple separate housing units for residential inhabitants are contained within one building or several buildings within one complex. A common form is an apartment building. Sometimes units in a multifamily residential building are condominiums, where the units are owned individually, rather than leased from a single apartment building owner. Unlike apartments, which are leased by their tenants, condominium units are owned outright. Many cities, such as Calabasas, South Pasadena, Huntington Park, and Pasadena, define multi-unit housing in their smoking policies as a residential property containing two or more dwelling units.

DISCUSSION

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.

According to 2015 data collected by the Beverly Hills Code Enforcement Department, there were fifteen (15) complaint calls received that were related to smoking in general, and it is estimated that five (5) of these calls were related to multi-unit housing. It should be noted that these numbers are estimates because the Code Enforcement Department does not record specific detail on single vs. multi-unit housing complaints.

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 permitted and not permitted is outlined in the following table below:

Areas where Smoking is Permitted	Areas where Smoking is Not Permitted
<p>According to State Law:</p> <ul style="list-style-type: none"> • Designated hotel/motel rooms and areas • Private smoker lounges • Private single family residence 	<p>According to State Law:</p> <ul style="list-style-type: none"> • Inside public buildings • Near windows of public buildings • Outdoor areas within 20 ft. of public buildings • Enclosed space at places of employment • Public school property • In a vehicle with a minor
<p>Areas Currently Not Regulated:</p> <ul style="list-style-type: none"> • Sidewalks • Alleyways • Beyond 5 ft. of outdoor dining areas • Beyond 20 ft. of operable doors and windows of public buildings 	<p>According to City Regulations</p> <ul style="list-style-type: none"> • City parks and recreational facilities • Open air dining areas located on private and public property, including public right of way • Within 5 ft. of open air dining areas, except while actively passing by • City-owned vehicles • Outdoor public gathering events • Outdoor service lines (e.g. ATM and movie/theatre ticket lines) • Farmers Markets • Public and private plazas (except for clearly marked designated smoking areas on private plazas located beyond 20 ft. of operable doors)

The Beverly Hills Municipal Code currently mentions that landlords may prohibit smoking within their buildings, including electronic cigarettes, as provided by the California Civil Code section 1947.5. A smoke-free multi-unit housing policy would expand upon this State legislation by prohibiting smoking within multi-unit housing, instead of leaving it as a choice for landlords.

Smoke-Free Multi-Unit Housing Policies in Southern California

At present, sixty-nine – out of approximately 482 incorporated cities - throughout California have taken action to regulate smoking inside multi-family housing structures and common areas. Some cities such as Huntington Park, Baldwin Park, and South Pasadena have imposed relatively stronger constraints on smoking inside multi-unit housing, while other cities such as Burbank have implemented more lenient standards. California landlords have had the right to

designate their multi-unit buildings as smoke-free if they choose, but some cities, such as those listed above, have implemented policies that require all multi-unit housing to be smoke-free regardless of the preference of the landlord. Thus, 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). Less stringent regulations, in Burbank for instance, are those that ban smoking only in certain areas, such as enclosed common areas, or within 5 feet of all entrances, exits, walkways, and hallways, while still allowing smoking inside the unit itself.

Every community is different in the way smoking is viewed by its residents, and the expectations of those residents may vary regarding both the freedom to smoke versus the extent of their desire to be protected from second-hand smoke. Thus, the design of a smoke free multi-unit housing policy should consist of an in-depth understanding of the community's desires.

Outreach Phase I

It is recommended that the first phase of the policy process be to gather information from residents and other key stakeholders. This may be facilitated by conducting an opinion survey and meeting with residents, homeowners' associations (HOAs), and other stakeholders with the intent of gaining insight on their smoking preferences. Specifically, these preferences include the extent to which residents have the desire to smoke freely versus their preference for the right to be protected from second-hand smoke.

A survey could be utilized to better understand residents' opinions. Pasadena, for instance, relied on volunteers to survey residents in public places over a 3-4 month period. This introductory outreach phase could include tasks such as surveying and information gathering, combined with potential stakeholder meetings. Once this initial outreach is completed, the process of designing the policy may begin.

Enforcement Provisions

The enforcement provisions of a policy present a layer of complication. In summary from the cities surveyed, there are five primary considerations with regards to enforcing smoke-free multi-unit housing policies. They are -

1. Whether to define second-hand smoke as a nuisance?
2. Whether landlords are given the right to evict tenants who violate the provision?
3. Who will be given permission to enforce the policy?
4. What will be the penalties or mechanisms of enforcement?
5. Will the policy cover apartments, condominiums, or both? Further, will the policy completely prohibit smoking in all areas of the building or will property managers and owners be able to designate particular smoking areas?

If a city defines second-hand smoke as a nuisance, that city can use the leverage of the legal ramifications associated with a legal nuisance, such as fines and criminal sentences. Cities must also be careful, however, that their policy does not place landlords and tenants into a state of conflict. In practice, this means that cities must determine if their ordinance will give landlords the right to evict tenants for violation of a smoke-free housing policy.

With regards to enforcement powers, some cities' provisions give enforcement power only to landlords or other tenants who are directly affected by the smoking, while other ordinances have a broader definition of who can enforce the provision. The penalties and mechanisms of enforcement have implications regarding the actual cost of implementation to the city, and can be used as policy levers to set how 'harsh' or 'lenient' the policy will play out in practice.

Whether the policy will cover apartment buildings and condominiums and whether property managers or owners can create specific smoking areas will also moderate the comprehensiveness of the policy. It should be noted that if landlords are given the power to enforce these provisions, then they must bring action in small claims court for violation as the complaining party.

Along with the variety of fines imposed on those who are convicted of violating the ordinance, the ways that such policies are enforced can rely mostly on landlords, as in Santa Monica, or can rely more on city staff as in Pasadena. In Pasadena, for example, those who violate the smoke-free housing ordinances are subject to infractions and can receive administrative citations from law enforcement personnel or code enforcement. In other cases (like the City of Santa Monica), written warnings must be issued first by landlords or tenants, and civil/criminal charges can then be pursued if the smoking persists; but landlords cannot use smoking as grounds to terminate a tenancy. Because the City of Santa Monica does not issue citations, private residents (landowners or other tenants) must go to small claims court to seek remedies for violations of this policy. Should a person be found guilty in small claims court, the charges can range from one-hundred dollars (\$100) to five-hundred dollars (\$500) per incident depending on the number of violations within a one-year period. In contrast, those who violate the ordinance in the City of Huntington Park are subject to relatively higher fines that range from a minimum of two-hundred-fifty dollars (\$250) to one-thousand dollars (\$1,000). Similarly, in the City of Baldwin Park, violators of the ordinance are subject to fines ranging from five-hundred dollars (\$500) to one-thousand dollars (\$1,000). In Huntington Park and Baldwin Park, citations can be issued by the police and by the code enforcement department, but private residents (landlords or other tenants) also have the option of pursuing remedies in small claims court.

On the contrary, if code enforcement staff and/or police are the primary enforcers, such as in Pasadena, Huntington Park, and Baldwin Park, the overall time frame of enforcing the provision on a case-by-case basis may be lengthy. For instance, once a resident experiences second-hand smoke and contacts the code enforcement staff and/or police to complain, it can take additional time/resources for said personnel to arrive at the site of the violation and resolve the complaint through issuing a citation or otherwise compelling the violator to stop smoking, if they have not already finished.

Medical Marijuana

The California Compassionate Use Act allows registered individuals to use medical marijuana, but does not override local laws that are designed to protect the health of others. Therefore, cities would not need to provide medical marijuana users with exemptions from following a smoke-free multi-unit housing policy. This is corroborated by the fact that medical marijuana can be consumed through other methods that are smoke-free (i.e. pills or food). If the resident in question can smoke only inside the unit and is unable to consume medical marijuana through smoke-free methods such as pills or edibles, smoking might be permissible under the "reasonable accommodations" standard for disabilities. In the process of raising awareness of the policy, a portion of the informational campaign could potentially be dedicated to ensuring

that residents and landlords are made aware of relevant details pertaining to medical marijuana smoking in multi-unit housing.

Implementation

Several nearby cities were surveyed, and it was discovered that the overall implementation of multi-unit housing policies can last from two months to several years. For example, the City of Calabasas had a four-year implementation period because the city implemented their policy in 2007-08 and the ordinance required that at least 80% of all multi-unit apartment units be smoke-free by 2012. In this case, the 80% threshold was established internally as a goal that would serve as a reasonable compromise between those who smoke and those who do not smoke. Other cities, such as Huntington Park, provided only two (2) months for landlords to inform tenants that 100% of existing units were to become non-smoking before the ordinance went into effect. Santa Monica's implementation process was more gradual, allowing tenants to designate their unit as smoking or non-smoking, and then requiring every unit that is leased after the effective date of the ordinance to be designated as non-smoking thereafter.

Outreach Phase II

This segment of the process requires creating awareness of the policy and creating a system of information sharing to keep tenants and landlords aware of the policy and its implications. In essence, these tasks constitute the second phase of the outreach process, which is the actual implementation of the policy. Specifically, this second phase could entail providing informational packets and guides to residents, landlords, and HOAs to raise awareness of the new policy and what actions it will require on behalf of landlords and tenants. For instance, the ordinances of many cities, including Santa Monica, Huntington Park, Compton, Calabasas, Glendale, and Pasadena, require landlords to provide all tenants with documentation that outlines the smoking prohibitions. Additionally, the Santa Monica Municipal Code requires landlords to post 'no-smoking signs' in conspicuous locations.

Summary

Our research has found that smoke-free multi-unit housing ordinances are highly intricate policies that require in-depth research and development, may take several years to create and implement, and are subject to further complications with respect to landlord-tenant relationships, enforcement and implementation time frames.

To recap, items to consider when designing these policies fall into six main areas:

1. How should the policy be crafted and what will be the outreach strategy of the policy to gain input in the design process?
2. Who should be impacted by the policy; apartments, condominiums, or both?
3. How restrictive is the policy to be; full smoking ban or only in certain areas?
4. Which enforcement strategy should be adopted; who will be given primary enforcement power and how strong will be the penalties be designed?
5. How should the policy be implemented; immediately or over several years?
6. How should awareness of the policy be raised; sending out information packets, requiring landlords to post signs, requiring landlords to provide documentation to all tenants, or a combination of these approaches?

FISCAL IMPACT

At present, the financial impacts are unknown, as the costs are dependent on the nature of the final policy design. While additional time will certainly need to be allocated for the implementation of this policy, the amount of additional resources, such as staffing, needed by code enforcement, the police or general staff is also unknown. Generally speaking, the costs associated with these policies include:

- *Outreach costs – Phase I*
This first phase of public outreach takes the form of time spent on research (e.g. developing surveys & informational campaigns) and actual costs associated with conducting surveys in public and distributing informational materials. It should be noted that surveys could be done at varying levels of cost.
- *Enforcement costs*
These potential costs are in the form of additional staff salaries/wages by code enforcement and/or the police, if required by the final policy outcome.
- *Outreach costs – Phase II*
This second phase of public outreach may entail costs to educate landlords, tenants and HOAs on the newly implemented policy. For example, the City of Santa Monica allocated \$150,000 to help raise public awareness of the city's smoking regulations, and Pasadena requested \$58,000 including \$8,000 for administrative costs such as materials, supplies, and costs related to signage and mailing notifications.
- *Staff research costs*
These costs come in form of extensive time spent on policy design and implementation throughout the entire process.

RECOMMENDATION

It is recommended that the Health and Safety Commission review this report, which will assist in future discussions when crafting a smoke-free multi-unit housing policy. It is also recommended that the Health and Safety Commission move forward with discussions on the Phase I Outreach portion of the policy to gain community input.

Pamela Mottice-Muller

Approved By