



**CITY OF BEVERLY HILLS**  
**POLICY AND MANAGEMENT**

**MEMORANDUM**

**TO:** Health & Safety Commission

**FROM:** Kevin Kearney, Senior Management Analyst

**DATE:** November 28, 2016

**SUBJECT:** Discussion on Smoking Regulations for a Multi-Unit Housing Policy

**ATTACHMENTS:**

1. Multi-Family Zoned Parcels – City of Beverly Hills
2. Tenant Landlord Rights & Responsibilities – City of Beverly Hills
3. Flow Chart, Dog Barking Enforcement Program – City of Beverly Hills
4. Sample Compliant Letter, Dog Barking – City of Beverly Hills
5. Making a New Smokefree Housing Law Work – ChangeLab Solutions
6. Ordinance – City of Huntington Park
7. Ordinance – City of Temple City
8. Ordinance – City of Laguna Woods
9. FAQs, Smoking Regulations – City of Laguna Woods
10. Previous Commission Staff Report – October 25, 2016

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**INTRODUCTION**

During the August 16, 2016 Study Session, the City Council decided to pursue a policy regulating smoking for multi-unit housing. The Council 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. On September 26, 2016 and October 24, 2016, the Health and Safety Commission was presented with initial information on the framework for such a policy. As a result of the September meeting, two separate community input events were scheduled for November 28<sup>th</sup> and December 13<sup>th</sup>. During the October meeting, the Commission requested additional information on the legalities and enforcement of such a policy.

This report discusses the legalities which allows the City to create a policy regulating smoking in multi-unit housing and further details the enforcement options. Additionally, this report provides information on the Tenant Landlord Rights and Responsibilities document and reviews recent Marijuana provisions. During the Commission meeting, Staff will focus on enforcement portion of this issue, and Staff from the Code Enforcement Department will be present to answer any questions from the Commission.

**DISCUSSION**

A growing body of research has been demonstrating how exposure to secondhand smoke is dangerous, which is supported by a number of governmental organizations. In 1994, the United States Environmental Protection Agency classified secondhand smoke as a Group A

Carcinogen, which the most dangerous class of carcinogens with asbestos, arsenic, benzene and radon gas. In 2006, the United States Surgeon General concluded that there is no risk-free level of exposure to second hand smoke, and the California Air Resources Board, in 2007, has placed secondhand smoke exposure in the same category as the most toxic automotive and industrial air pollutants, categorizing it as a toxic air contaminant, for which there is no safe level of exposure.

While exposure to secondhand smoke creates a health risk, exposure could potentially be more prevalent with the close proximities of units in apartment and condominium units. Based on several studies, an estimated 44 percent to 53 percent of multi-unit housing residents that do not allow smoking in their unit have experienced second hand smoke infiltration from elsewhere in or around their building. To address these exposures, the State currently allows landlords to adopt smoking regulations in their housing complexes.

It's been recent that the State of California has passed California Civil Code 1947.5 which protects landlords adopting of policies regulating smoking in rented residential dwelling units. In January 2012, California Governor Jerry Brown signed a law which provides legal protection for adoption of smoking regulation policies in units, on balconies, patios and in common areas. The law, California Civil Code 1947.5, was initiated by Senator Alex Padilla, now the current California Secretary of State. If a landlord or management company chooses to regulate smoking, leases or rental agreements for new tenants must specify the areas of the property where smoking is not permitted. For leases or rental agreements entered into before January 1, 2012, a no smoking policy in any portion of the property where smoking was previously permitted must be considered a change in the terms of tenancy and requires adequate notice in writing.

While the State has taken action to allow landlords to regulate smoking in their residential dwelling units, the State also directs local municipalizes to protect residents from general risks. California Health and Safety Code 101450 provides cities with a broad latitude to take measures necessary to preserve and protect the public health by adoption of ordinances, regulations and orders. This could include policies that regulate smoking in multi-unit housing.

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. A map of the City's multi-unit housing zoning is located in ATTACHMENT 1.

## **OUTREACH**

A phase in this policy process would be to gather information from residents and other stakeholders. During the September 26, 2016 Health and Safety Commission meeting, the Commission decided to conduct two separate community outreach meetings to gain community feedback. These meetings are currently scheduled for the following dates/times:

- November 28, 2016 at 6:00  
Beverly Hills City Hall – Room 280A  
455 N. Rexford Drive, Beverly Hills, CA 90210
- December 13, 2016 at 3:00  
Beverly Hills City Hall – Council Chambers  
455 N. Rexford Drive, Beverly Hills, CA 90210

A website has been created to share the progression of the policy with the public. The community meetings will be video recorded and posted on the website, for those unable to attend the events. The website additionally contains an opinion survey to facilitate the understanding of the residents' desires to smoke freely versus their preferences for the right to be protected from second-hand smoke. To date, there have been 52 online survey respondents. Surveys in paper format will also be available to those in attendance at the community input meetings.

To further increase awareness of this policy discussion, the City has sent out postcard mailers, advertised in the local newspapers and posted information on Facebook and Twitter. Postcard mailers were sent to all multi-unit housing tenants and landlords to raise awareness of the community meetings, outreach website and survey. Ads were also displayed in the City's three major local newspapers: the Beverly Press, the Beverly Hills Weekly and the Courier.

During the upcoming Commission meeting on December 19, 2016, Staff will summarize the outreach results to the Commission. This includes survey results, feedback during community meetings and a summary of phone calls and emails that Staff has been receiving.

### **POLICY DESIGN – POLICY PROVISIONS**

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

As part of the September 26, 2016 and October 24, 2016 Commission meeting, Staff presented a series of questions that should be answered when crafting a policy. One of these questions centered around the potential of requiring landlords to alert tenants to the new changes. As a means to relay the smoking policy provisions to tenants, the Commission may consider utilizing the City's current Tenant Landlord Rights & Responsibilities document to advise both the landlords and tenants of the smoking regulations.

#### *Tenant Landlord Rights & Responsibilities Document*

Unique compared to other municipalities, the City publishes the Tenant Landlord Rights & Responsibilities document, and the Commission may desire to use this document to instill language to make both landlords and tenants aware of the smoking regulations in multi-unit housing. On May 18, 2014, the City of Beverly Hills City Council adopted revisions to the Municipal Code 4-6-5. The Code requires that at least twenty-four (24) hours prior to the execution of a lease or rental agreement by a tenant, the landlord shall provide written notice to the prospective tenant advising of certain rights of the tenant and landlord. If the landlord does not relay these rights, the landlord may be subject to an administrative penalty in the amount of \$500. The City publishes the Tenant Landlord Rights & Responsibilities as a way for landlords to notify their tenants of these rights. The Commission may desire to instill language in this document (ATTACHMENT 2) to make both landlords and new tenants aware of the smoking regulations in multi-unit housing.

### *Marijuana Provisions*

On November 8, 2016, California voters legalized marijuana with the passage of Proposition 64, also known as the Adult Use of Marijuana Act (AUMA). AUMA is an elaborate, 62-page initiative which writes hundreds of new provisions and regulations into state law. In summary, AUMA provides for the following:

- Allows adults 21 years and older to possess up to one ounce of marijuana and cultivate up to six plants for personal use,
- Regulates and taxes the production, manufacture, and sale of marijuana for adult use, and
- Rewrites criminal penalties as to reduce the most common marijuana felonies to misdemeanors and allow prior offenders to petition for reduced charges.

As part of AUMA, smoking marijuana is permitted in a private residence or at a business licensed for on-site marijuana consumption. However, driving while impaired by marijuana is illegal and so is smoking in public places. AUMA allows local governments to establish certain regulations of smoking marijuana, which includes the regulation of smoking in multi-unit housing.

A policy regulating smoking in multi-unit housing would provide for “reasonable accommodations” for disabilities, which would accommodate for the smoking of marijuana should a person not be able to consume the drug through other methods that are smoke free, such as pills or edibles. If the resident in question can only smoke inside the unit and is unable to consume marijuana products through smoke-free methods, smoking may be permissible under the “reasonable accommodations” but the enforcement mechanisms established in the designed policy will need to handle this on a case-by-case basis.

### **POLICY DESIGN – ENFORCEMENT PROVISIONS**

The City of Beverly Hills currently has a number of smoking regulations throughout the City. This includes smoking regulations in farmers markets, public and private plazas, in outdoor public gathering events, in City parks and recreational facilities, etc. The primary point of contact for smoking complaints is the City’s Code Enforcement Department, but the Police Department can also enforce the regulations, if needed. Enforcement of smoking violations are typically done by Code Enforcement and can be in the form of either an infraction or criminal misdemeanor citation. Typical citation fines issued by the City are for about \$100 to \$200, but the City’s Municipal Code (BHMC 5-4-16) does allow for some flexibility in the choice of remedy. Code Enforcement has found that starting with infraction citations, typically associated with a fine, allows them to progress to a misdemeanor for repeat offenders, thus resulting in higher compliance.

#### *Enforcement Provisions in Other Cities*

With policies enforcing smoking in multi-unit housing, 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 mechanisms of enforcement have implications regarding the actual cost of implement to the city and can be used as policy levers to set how 'harsh' or 'lenient' the policy will play out in practice.

Along with a variety of fines imposed on those who are convicted of violating the ordinance, the ways that such policies are enforced can rely mostly on private parties, as in Santa Monica, or on city staff, such as 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. Because the City of Santa Monica does not issue citations, private residents (landowners or other tenants) must go to civil court to seek remedies for violations of this policy.

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 civil 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.

When developing this policy, the City may use existing procedures to model, such as the excessive animal noise/barking dog enforcement program. Described below are two different enforcement mechanisms, city enforcement & private enforcement, that can be included in the multi-unit housing policy that regulates smoking. The designed policy can include just one or both of these strategies.

#### *Designating City Enforcement in the Policy*

One option is to designate the City to enforce smoking regulations in multi-unit housing. With this type of enforcement, the City may initiate administrative or legal proceedings against the alleged violator. The alleged violation may be an infraction (fine/petty crime) or a misdemeanor (a minor crime).

The City may use existing procedures, such as the Code Enforcement Department's excessive dog enforcement program (ATTACHMENT 3), to use as a model for the new enforcement program. The following demonstrates the steps of the excessive animal noise/barking dog enforcement program:

- Step 1 The City receives an animal noise compliant, usually through a phone call to the Code Enforcement Department.
- Step 2 The City responds to the compliant by issuing a Letter Notice (ATTCHMENT 4) to the offender via mail. The letter details that the City has received an excessive animal noise compliant and explains that animal owners shall not keep/maintain/permit the keeping of an animal that unreasonably disturbs other persons though loud or continues cry, bark, howl or other sound, as detailed in BHMC 5-1-210. The letter explains that a Code Enforcement officer has been

assigned to the case and should be contacted to discuss alternatives to reduce excessive dog barking and to avoid future violations which could result in the issuance of a citation. Additionally, the letter is accompanied by a Dog Barking flyer that further elaborates on the animal related regulations in the City's municipal code. The filer also provides information on better understanding canine communication, as well as a link to the Humane Society of America that offers tips on how to stop a dog from barking.

- If there are no further complaints received approximately 14 days after the letter has been issued, the Code Enforcement Department will close the case.
- Step 3 If the Code Enforcement Department receives further complaints after the letter has been issued, an officer will make contact with the offender or a letter will be issued by the City Prosecutor to schedule a voluntary meeting with City Staff and the City Prosecutor to discuss the complaints and further enforcement consequences if the complaints continue.
  - If there are no further complaints received after approximately 14 days of the conference meeting, the Code Enforcement Department will close the case.
- Step 4 If complaints continue after the conference meeting, the assigned Code Enforcement officer will make periodic site inspections at the property to verify violations. Once violations are verified, the officer will issue a citation.
  - If complaints stop after approximately 14 days of the initial citation, the Code Enforcement Department may continue periodic site inspections, but the case will eventually close if complaints stop and site inspections show improvement.
- Step 5 If complaints continue and inspections continue to verify violations, the Code Enforcement department will continue to issue citations moving from infraction to misdemeanor violations for continual repeat offenders.

#### *Designating Private Enforcement in the Policy*

Another option would be to include a provision that allows enforcement by private individuals, either a landlord, resident or general member of the public, and involves a judicial proceeding through Small Claims Court. This process would require private citizens to gather evidence of violations and bring it forth to court. As a result, the City is not involved in enforcing the smoking policy, as it becomes a civil issue. An example of this process can be found in ATTACHMENT 5, which details the various pros and cons of both the private and city enforcement. The attachment creates a real world situation where the city has crafted a policy that allows for both city and private enforcement. The example introduces "Nancy Nonsmoker" who has called the city and her landlord to complain about another resident, known as "Tommy Tobacum", who is smoking in their complex. Not seeing results of her complaining to the city and her landlord, Nancy brings Tommy to civil court to privately enforce the smoking regulations. The attachment is fictional but provides for a detailed walkthrough on the steps needed for the private enforcement of a smoking regulatory policy.

Overall, there are two distinct options when developing a policy that regulates smoking in multi-unit housing. The policy can allow for city enforcement, private enforcement, or both. The benefits of City enforcement means residents can contact the City when issues arises, and they

can remain anonymous. This path also has greater local control, as enforcement is a part of the city. The down side is it could be a strain on City resources, depending on the volume of calls. On the other hand, the policy could allow for private enforcement. In this scenario, landlords or other residents bring the violator to civil court to enforce the policy. The positive side to this option is that this does not create quite the strain on City resources. The negative aspect of this path is that it could potentially strain landlord/tenant or tenant/tenant relations, as the process is not anonymous. As other cities have done, the policy could designate both city and private enforcement; therefore, providing residents with multiple options to tackle an issue.

## **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*  
The public outreach phase takes the form of time spent on research and sending out informational mailers to all the City's multi-unit housing. The cost for the postcard mailer was \$7,746.00. Additionally, the costs for the advertisements in the Courier, Beverly Hills Weekly and the Beverly Press totaled \$1,377.45.
- *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. Currently, the additional resources needed for the City to enforce a smoking policy are unknown. No such smoking regulatory policy exists for multi-unit housing, so determining the volume of complaints is difficult to determine. Depending on quantity of complaints, Code Enforcement may need to hire an additional secretary or a dedicated code enforcement officer.
- *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. There may be additional costs incurred, should there be Community Outreach meetings to educate landlords and tenants. Should an additional mailer be sent to landlords and tenants in multi-unit housing throughout the City, the cost may be approximately \$7,746.00.
- *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 Commission review this report and provide feedback to Staff. Additionally, the Commission is recommended to review the attached ordinances (ATTACHMENTS 6, 7 & 8), as these attachments may assist the Commission in becoming more familiar with crafting a recommended ordinance for the City Council's review.

After the November 28, 2016 Commission meeting at 6:00pm, the public will have the opportunity to voice their opinion on this discussed policy potentially regulating smoking in multi-unit housing. There will be another community input meeting on December 13, 2016 at 3:00pm. As always, the public is welcome to speak on this matter during public comment at any of the future Health and Safety Commission meetings.

During the December 19, 2016 Commission meeting, Staff will summarize the outreach results to the Commission. This includes survey results, feedback during community meetings and a summary of phone calls and emails that Staff has been receiving. During the January 23, 2017 meeting, Staff will be presenting to the Commission a simplified array of options, similar to a checklist, that will guide the Commission in building a policy regulating smoking in multi-unit housing.

Pamela Mottice-Muller

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Approved By