



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

**MEMORANDUM**

**TO:** Health & Safety Commission

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

**DATE:** October 25, 2016

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

**ATTACHMENTS:**

1. Surrounding Cities with Multi-Unit Family Smoking Policies
2. Smoke-Free Housing Ordinance Checklist
3. Smoke-Free Housing Model Ordinance
4. Handout – Implementing & Enforcing a Smoke-free Multi-Unit Housing Ordinance
5. Ordinance – City of Culver City
6. Ordinance – City of Pasadena
7. Ordinance – City of Burbank
8. Ordinance – City of Manhattan Beach
9. Local California Smoke-Free Multi-Unit Housing Policies
10. Outreach Survey

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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, the Health and Safety Commission was first presented with initial information on the framework for such a policy. The Commission, during the September meeting, scheduled two separate outreach events for November and December, and directed staff to create an outreach website and draft an opinion survey.

The report for this meeting provides a detailed analysis of four main categories in drafting a policy regulating smoking in multi-unit housing, which include Outreach Phase I, Policy Design, Council Adoption and Outreach Phase II. Staff will be presenting an overview of these phases during the meeting, so that there is a thorough understanding of the development of the policy leading up to the Community Outreach meetings in November and December. Staff will be available to field questions and comments. Additionally, Staff from the Code Enforcement Department will also be present to answer any questions from the Commission.

**DISCUSSION**

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.

Staff has surveyed a number of cities in the greater Los Angeles region and found policies regulating smoking in multi-unit housing are comprehensive and often require extensive research, planning, and implementation phases that can last several years. As a research and surveying surrounding cities, Staff felt that the phases of crafting such a policy should be broken down into four main categories, which include Outreach Phase I, Policy Design, Council Adoption and Outreach Phase II:

- The Outreach Phase I would be to gather information from residents and other stakeholders, so that the policy may be crafted with the understanding of the community's desires for such a policy.
- The Policy Design phase, which consists of Policy Provisions and Enforcement Provisions, is designed to construct the actual ordinance by answering a series of questions.
- Once an ordinance is drafted, the Commission may report back their findings, recommendations and a potential ordinance to the City Council, concluding the Council Adoption phase.
- Should the Council decide to formally adopt the Commission's recommended ordinance, the Commission may embark on the Outreach Phase II, which may include creating awareness of the policy and creating a system of information sharing to keep tenants and landlords aware of the policy and its implementations.

As way of background, 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.

### *Smoking in Beverly Hills*

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.

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:

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

Each year, the American Lung Association issues its State of Tobacco Control report, which designates a letter grade to local cities on their overall tobacco regulations. Currently, the City of Beverly Hills has a designated “C” grade for not having smoking regulations in multi-unit housing. Therefore, once a policy is in place, it is expected that the American Lung Association will designate a local grade for the City as an “A” as this is the last major section of smoking regulations within the City.

Both the City’s Code Enforcement Department and Police Department have the ability to enforce smoking regulations in the City, although the Code Enforcement Department are typically the primary point of contact for smoking complaints. 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. Additionally, the Police Department has received past smoking complaints in multi-unit housing, but typically in the form of marijuana smoke complaints.

*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 (ATTACHMENT 9). 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, which leads into the Outreach Phase I of the policy process.

### **OUTREACH PHASE I**

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 from 6:00 – 8:00pm  
Beverly Hills City Hall – Municipal Gallery  
455 N. Rexford Drive, Beverly Hills, CA 90210
- December 13, 2016 from 3:00 – 5:00pm  
Beverly Hills City Hall – Municipal Gallery  
455 N. Rexford Drive, Beverly Hills, CA 90210

A website has been created to share the progression of the policy with the public, and the community meetings will be video recorded and posted on the website, for those unable to attend the events. Public comment can also be heard during regularly scheduled Commission meetings too. The website will additionally contain an opinion survey (ATTACHMENT 10) to facilitate the understanding of the residents' desires to smoke freely versus their preferences for the right to be protected from second-hand smoke. Postcard mailers will be sent to all multi-unit housing tenants and landlords in November to raise awareness of the community meetings, outreach website and survey.

### **POLICY DESIGN - POLICY PROVISIONS**

There are a number of questions that should be answered when crafting a multi-unit housing smoking regulations policy, and these questions can be most visible in the attached Smoke-free Housing Ordinance Checklist (ATTACHMENT 2). The Checklist can be used as a guide when developing a policy regulating smoking in multi-unit housing. Additionally, the Smoke-free Housing Model Ordinance (ATTACHMENT 3) coincides with the Checklist by demonstrating a standardized ordinance, with annotations. The following major questions should be addressed when crafting such a policy:

1. Will the policy cover apartments, condominiums, or both?

In crafting a policy, it must be determined if the policy will cover apartments, condominiums, or both. A common form of multi-unit housing is a rented apartment. Condominiums, on the other hand, are owned individually, rather than leased from a single apartment building owner. Unlike apartments, which are leased by their tenants, condominiums units may be owned outright.

2. How many dwelling units fall under the policy?

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. It should be noted that the City of Beverly Hills typically defines multi-unit housing as two units.

3. Will the policy regulate smoking of traditional tobacco products (such as cigarettes and cigars), electronic smoking devices (e-cigarettes) and/or marijuana?

The policy may decide to regulate traditional tobacco products (such as cigarettes and cigars), electronic smoking devices (e-cigarettes) and/or marijuana smoke.

4. How will the policy treat new units versus existing units, and will there be a phase in period?

The policy may address new and existing units and a related section that defines the phasing in period. A new unit could be defined as a unit constructed after the ordinance has passed. An existing unit could be defined by a unit that is already built and occupied when the ordinance is already adopted. The newly constructed policy may decide to implement an almost immediate implementation period for newly constructed units since there is not a current renter affected. Similarly, the new policy could decide to implement the policy for existing units within a short timeframe or provide existing tenants with a reasonable phase-in period, followed by a specific date in which everyone is required to abide by the new regulations. 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.

5. Will the policy completely prohibit smoking inside the units and/or outside areas within the complex?

In crafting the new policy, the policy may decide if it will regulate inside the units and/or outside the areas in the complex. Restrictions can be made to inside the units and indoor common areas, such as hallways, stairwells, lobbies, etc. Outside areas that can potentially be regulated are patios, decks, balconies and porches associated with all individual units, outdoor buffer zones within 25 feet of multi-unit residences doorways and windows, and outdoor common areas, such as courtyards, parking areas, pools, etc.

6. Will property managers and owners be able to designate smoking areas?

The policy has the option of designating a smoking area on the premises, depending on the decided upon restrictions. Should there not be a smoking area designated, a person may go off-site to smoke, or remain on the property and potentially use a smokeless tobacco product or an FDA-approved nicotine replacement therapy (e.g., nicotine gum or nicotine patch). Should an area be designated for smoking, the policy may outline the specifications of such an area. For example, it could be decided to designate an area that is unenclosed, within twenty-five feet from an area used by children and physical activity (i.e. playground, tennis court, swimming pool, etc.). The policy could potentially make the designated area clearly marked with signs.

7. Will the policy require landlords to post signage about the policy in conspicuous locations?

The policy has the option of requiring landlords to post signage about the policy in conspicuous locations. This could be spelled out in the policy by requiring clear and unambiguous “no smoking” signs be posted in locations where smoking is prohibited and/or in common areas where it would be obvious to a reasonable person that smoking is prohibited.

8. Will the policy require landlords to include the smoking regulations in a lease and will the policy require the landlord to alert tenants to the new changes?

The newly crafted policy has the option of requiring landlords to include the smoking regulations as a provision in their rental agreements. By including these provisions in the lease agreements, smoking may become a violation of both the lease and the local ordinance. Thus, landlords may enforce the smoking lease terms just like any other condition in the rental agreement, such as common provisions regarding noise, use of laundry facilities, and damage to common areas.

*Disabilities in Relation to a Policy*

The California Compassionate Use Act allows individuals to use medical marijuana, but does not override local laws, such as a city’s multi-unit housing policy. 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). Additionally, users of tobacco could use smokeless products or FDA-approved nicotine replacement therapy (e.g., nicotine gum or nicotine patches). If the resident in question can only smoke inside the unit and is unable to consume medical marijuana or tobacco products through smoke-free methods, such as pills, edibles, gums, or patches, smoking may potentially be permissible under the “reasonable accommodations” standard for disabilities.

**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. As seen in some cities, violating smoking provisions in the City of Beverly Hills is not a nuisance, which could lead to harsher penalties, depending on the circumstances. Typical citation fines issued by the City are for about \$100 to \$200 dollars, 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.

Overall, there are two main questions to be answered as part of a policy dealing with smoking regulations in multi-unit housing:

1. Who will be given permission to enforce the 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 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. It should be noted that if landlords are given the power to enforce these provisions, then they must bring action in civil 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 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.

2. What will be the penalties of enforcement?

With the City of Santa Monica, 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).

Staff has noticed that other cities have addressed in their policies about the ability or inability to terminate residence as a result of violating a smoking ordinance; for example, the City of Santa Monica does not allow termination as a result of violating smoking regulations. The landlords in the City of Beverly Hills may terminate a tenancy for no reason (no-cause termination) with either a 30-day or 60-day written notice in accordance with state law. Therefore, it may not be necessary to create policy that may contradict this regulation, since the City already has a no-cause termination policy.

## **OUTREACH PHASE II**

Once the Commission has drafted an ordinance, the Commission may report back their findings and recommendations to the City Council. After the ordinance has been formally adopted by the Council, the Commission may embark on the 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. 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. The Outreach Phase II deals with spreading awareness of the policy and ensuring both landlords and tenants are aware of the new regulations.

## **TIMELINE**

The following is a tentative timeline based on the initial discussion at the September Commission meeting:

### **October 2016**

- October 24, 2016  
Regularly scheduled Health and Safety Commission meeting, 4:00pm  
The Commission to hear an overview of a multi-unit housing smoking regulations policy

### **November, 2016**

- November 28, 2016  
Special Health and Safety Commission meeting, 3:00pm – 6:00pm  
The Commission to continue the discussion of a multi-unit smoking regulations policy
- November 28, 2016  
Community Outreach Meeting, 6:00pm – 8:00pm  
The Commission to hold a community outreach meeting in the evening to gain feedback from the community

### **December, 2016**

- December 13, 2016  
Community Outreach Meeting, 3:00pm – 5:00pm

The Commission to hold a community outreach meeting during the day to gain feedback on the community

- December 19, 2016  
Regularly scheduled Health and Safety Commission meeting, 4:00pm  
The Commission will hear a summary of the survey and community outreach meetings

#### January, 2017

- January 23, 2017  
Regularly scheduled Health and Safety Commission meeting, 4:00pm  
The Commission to continue the discussion on policy recommendations

#### February, 2017

- February 27, 2017  
Regularly scheduled Health and Safety Commission meeting, 4:00pm - 5:00pm  
The Commission to continue the discussion on policy recommendations. A draft ordinance may be produced and reviewed by the Commission

#### March, 2017

- March 27, 2017  
Regularly scheduled Health and Safety Commission meeting, 4:00pm  
A draft ordinance may be produced and reviewed by the Commission. Based on the review, the Commission may be ready to present their recommended ordinance and findings to the City Council.

#### April, 2017

- April, 2017  
Regularly scheduled City Council meeting, 2:30pm  
The Health and Safety Commission's recommended ordinance and findings may be presented to the City Council at an April Study Session.

#### May, 2017

- May 22, 2017  
Regularly scheduled Health and Safety Commission meeting, 4:00pm  
Should the City Council have had decided to move forward with the Commission proposed ordinance and recommendations at the April Council Study Session, the Commission may be either be discussing the actual implementation of the Phase II outreach to educate landlord and tenants of the crafted ordinance.

### **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 upcoming postcard mailer will be \$7,746.00.
- *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. 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, so that Staff may further assist the Commission with crafting a recommended policy and ordinance to the City Council. Specifically, there are a number of questions in the Policy Design phase that Staff will need direction from the Commission, which will facilitate in the creation of a recommended ordinance.

Staff recommends that the Commission specifically review the attached ordinances (ATTACHMENTS 5, 6, 7 & 8) and the smoke free housing ordinance checklist (ATTACHMENT 2) and model ordinance (ATTACHMENT 3), as these attachments may assist the Commission in better understanding the proposed policy questions being asked in this report and may help the Commission become more familiar with crafting a recommended ordinance for the City Council’s review.

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Pamela Mottice-Muller  
Approved By