



## **REPORT TO THE CITY COUNCIL**

**DATE:** Meeting of May 14, 2019

**TO:** Members of the City Council

**SUBMITTED BY:** J. Patrick Tang, City Attorney  
David Biggs, City Manager

**SUBJECT:** Consider Adopting Additional Restrictions To Limit Smoking In Common Areas Of Multi-Unit Residences, And to Prohibit Smoking Inside Dwelling Units In Any Multi-Unit Residence Comprised Of Ten (10) Or More Units

### **RECOMMENDED ACTION:**

Waive the second reading, and adopt an ordinance to establish additional restrictions on smoking in common areas of multi-unit residences, and to prohibit smoking inside dwelling units in any multi-unit residence comprised of ten (10) or more units.

### **BACKGROUND:**

On July 24, 2018, the City Council had a preliminary discussion about the desirability of restricting smoking in multi-family units. In a follow up meeting on March 26, 2019, after hearing public comment and after discussion of the proposal, the Council directed staff and the City Attorney to prepare a draft ordinance for the Council's consideration that would prohibit smoking within multi-family housing units when there are ten or more units in the development. The prior staff reports are provided as Attachment 1, and the draft Ordinance is provided as Attachment 2.

The City contracts with the County for animal control services, plan check and building inspection services, and some limited code enforcement. If adopted, smoking enforcement would not be part of the contract services currently provided by the County. The County's Health Services has expressed a willingness to serve as a resource, but would not be able to provide actual enforcement services unless contracted to do so with the City required to reimburse the County for services provided. As such, City staff has expressed concern that the adoption of a non-smoking ordinance for multi-family units

would create expectations for enforcement which the City would not be able to fulfill. In response to this concern, the Council at its March 26, 2019 meeting directed staff to draft an ordinance that would restrict smoking in multi-unit housing when there are ten or more units.

## **DISCUSSION:**

**Prohibition on Smoking in Multi-unit Housing with ten or more units.** Exposure to Secondhand Smoke (SHS) is linked to many illnesses, including lung cancer and heart disease. Among children, SHS is also associated with serious respiratory problems, including asthma, pneumonia and bronchitis, sudden infant death syndrome, and low-birth weight. A number of jurisdictions have enacted legislation in an attempt to limit the effects of second hand smoke in public, the workplace, and in residential settings.

The proposed changes to the City's existing Smokefree Ordinance are modelled after the restrictions adopted by the Contra Costa County Board of Supervisors in 2018 to address the effects of second hand smoke in residential settings within the County's jurisdiction. The pertinent provisions from the County's ordinance have been added to the City's existing ordinance, and are indicated by redline and strikeout in Attachment 2. The primary distinction is that the City's restrictions would apply only to residences in multi-unit complexes containing ten or more units.

The draft ordinance if adopted would require multi-unit housing of ten or more units to be smoke-free starting July 1, 2019. This will require that leases and rental agreements reflect the new requirements as follows:

- Every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence of ten or more units that is entered into, renewed, or continued month-to-month must include that smoking is prohibited within those dwelling units starting July 1, 2019.
- Every existing lease of a dwelling unit in multi-unit housing of ten or more units that specifically allows smoking must contain a clause stating that smoking is prohibited when the lease is renewed, or no later than July 1, 2019, whichever is earliest.

**Additional Restrictions on Smoking in Common Areas.** The City's Smokefree Ordinance already prohibits smoking in common areas of all multi-unit residences regardless of the number of units, as follows:

“In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least twenty-five (25) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.” (HMC Section 5-6.109(k)).

The draft ordinance would amend Section 5-6.109(k) to incorporate additional County restrictions that prohibit designating a common area a “smoking area” when primarily used by children, and to require that the perimeter of a designated “smoking area” be marked clearly and identified with signage:

“In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least twenty-five (25) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited. **A designated smoking area of an outdoor common area of a multi-unit residence must not include areas used primarily by children; must have a clearly marked perimeter; and must be identified by conspicuous signs.**”

#### ATTACHMENTS:

- 1: March 26, 2019 and July 24, 2018 Staff Reports to Council.
- 2: Draft of Proposed Ordinance.