



REPORT TO THE CITY COUNCIL

DATE: Meeting of January 26, 2021

TO: Members of the City Council

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

SUBJECT: Update on Smoking Ordinance Restrictions for Multi-Unit Residence Comprised of Ten (10) Or More Units

RECOMMENDED ACTION: Receive Report, Discuss, and Provide Direction, if any.

DISCUSSION:

At the City Council meeting of January 12, 2021, the City Council agreed to agendaize for discussion at a future meeting an update on the City's non-smoking ordinance as it relates to smoking in Multi-Family housing with ten or more units.

On May 14, 2019, the City Council gave final approval to and adopted amendments to the City's non-smoking ordinance which added restrictions for multi-family units in buildings with 10 or more units. The staff reports from the initial consideration and final adoption of these amendments are provided as Attachment 1.

To allow for a period of notification and given that the impacted properties were typically condominiums with individual owners, these expanded restrictions did not take effect until July 1, 2020. After the effective date, staff sent notification to all impacted units and the Homeowners Associations in which these units were located. These letters are included as Attachment 2. In October 2020, Staff identified and mailed notices to over 450 owners and tenants of buildings with 10 or more units in the Devonwood, Glenwood, and Railroad Avenue live-work communities.

At the time the ordinance amendments were considered and adopted by the City Council, while the importance of promoting a smoke free environment was recognized, staff and the staff reports indicated that without a dedicated code enforcement unit the City would not have the capacity to enforce the ordinance. That continues to be the case. Hence, while we have been providing residents with information and resources, we have noted that the primary enforcement mechanism is the private enforcement action provisions in the ordinance:

“(f) Notwithstanding any other provision of this Chapter, an employee or private citizen may bring legal action to enforce this Chapter.

(g) In addition to the remedies provided by the provisions of this Section, the City Manager or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.” Hercules Smokefree Ordinance, Secs. 5-6.116(f-g).

By inclusion of the above quoted provisions, the ordinance creates a private cause of action for those affected by second hand smoke in residential units covered under the ordinance. This means that the affected persons can pursue a remedy through their homeowner’s association, or in court by suing the responsible parties directly for injunctive relief, or in the alternative seeking monetary damages in small claims court or superior court.

The City has also recently updated information on the resources available regarding smoking and the smoking ban on the City’s web site:

<https://www.ci.hercules.ca.us/government/building/code-enforcement/smoking-prohibitions>

ATTACHMENTS:

- 1: Staff Reports
- 2: Notification Letters
- 3: [City of Hercules Smokefree Ordinance](#)