

City Council weighs benefits, concerns of smoking ban on multi-family units

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The City Council Monday, Oct. 19, treaded into waters banning cigarette smoking in multi-unit residences while trying not to trample on owners' or tenants' rights.

They gave staff the green light to continue developing a multiunit smoke-free housing ordinance that would apply to any residence, of a duplex or larger, including senior housing and condominiums.

However, both Councilors Jason Greenough and Alex Fallman continued their objection to the ordinance since it was first brought up in August.

For Greenough, it's a liberty issue.

"I wasn't for this last time and I'm still not," Greenough told his colleagues. "This is a burden on property owners and on the people who actually live in those spaces. I believe in property rights. I believe people should be able to use their property as they feel they should be able to. It should be up to the property owner to regulate that."

Fallman said there are parts he definitely supports, but as a concept there are parts he cannot get behind. Namely, the fine that's levied against tenants.

"That's going to levy a stigma against addicts and smokers in general. And now they're going to have levied a fine for what is ultimately a disease," Fallman said. "Before we levie fines against some of the poorest and hardest working in our community, we should be funding program cessation efforts, or a sales tax on cigarettes."

Fallman also wanted to see more definitive penalties or fines for landlords who don't adhere to the new ordinance.

"I want to support it at some point, but what's in front of me now, I cannot support," he added.

After a long discussion, the City Council unanimously agreed to send the draft ordinance back to staff to address more responsibility and accountability for property owners and give City Attorney Martha Rice a chance to research her concerns with possibly inserting mandates in a contract between private citizens.

"I'm concerned about a requirement that certain terms be inserted into leases," she told the councilors, adding she'd only just begun reviewing the proposal. "I'm not real comfortable with that at this point. Requiring notices and allowing landlords and tenants make insert provisions into their leases is more than fine. I advise council to reconsider to require inserting certain terms into private contracts."

An ad hoc committee formed in August and met six times, comprised of council members Mayor Pro Tem Heidi Kime and Isaiah Wright, public members and city staff. They hammered out an ordinance for Crescent City based off a sample provided by Oakland nonprofit ChangeLab Solutions.

With the help of planning consultant Ethan Lawton of SHN Engineering, the ad hoc committee first defined multiunit residence is as any property containing two or more residential units which has two or more units intended for single family living or sleeping and containing a kitchen. Their ordinance then included the following highlights:

- Prohibit smoking in any unit of a multiunit residence
- Prohibit smoking in exclusive use enclosed and unenclosed areas, including private balcony, porch, or patio
- Prohibit smoking in common areas of a multiunit residence, such as hallways, courtyards and playgrounds
- Allow landlords to designate smoking areas within a common area, with several restrictions
- Prohibit smoking within 25 feet of any multiunit residence
- Implements a timeline guideline to allow transition period for renters and owners
- Require landlords to amend leases
- Prescribes fines of up to \$1,000 for violations.

Lawton said if the ordinance is approved, smoking restrictions in apartments and other multi-unit housing facilities would apply to new units after the law takes effect. The smoking ban would be imposed on existing units a year after the ordinance goes into effect, he added.

"It requires landlords to amend existing lease agreements and be included in new leases as specified in the ordinance," Lawton explained. "And it establishes exposure of smoke as a nuisance. It prescribes fines from \$250 up to \$1,000 for violations."

Crescent City Police Chief Richard Griffin spoke in favor of the ordinance, saying it fits within his department's Crime-Free Multi-Housing Program. He said though the ordinance does impose fines of up to \$1,000 for violations, law enforcement would begin by educating people about the law before issuing citations. Griffin compared the ordinance as similar to confronting landlords who were renting to tenants who were dealing drugs out of the property.

"We don't go to the straight letter of the law, we are to go by the spirit of the law — and we go to education, education, education," he said. "We want to work with people. This would go with our Crime-Free Multi-Housing program and making it a better place to live for everyone, including the ones that have voices and the ones that don't."

Mayor Blake Inscore said he has gained a lot of education on the issues of renting units previously occupied by smokers, from health hazards to the costly expenses of upkeep and maintenance. He agreed with Fallman that it needed to contain equal accountability, but added it shouldn't be set aside for who it ultimately concerns.

"I agree that if the city is to put an ordinance on the books, and clearly a property owner is not enforcing that, there should be equal accountability. If we haven't written that in there, that needs to be clearly articulated," Inscore said. "My third point is children don't have a say in where they live. So the city has a responsibility to all the populous, not just voters. I think we represent those children as well."