

October 7, 2009

CITY OF RANCHO CUCAMONGA
CITY COUNCIL MINUTES
FIRE PROTECTION DISTRICT MINUTES
REDEVELOPMENT AGENCY MINUTES

SPECIAL MEETING

A. CALL TO ORDER

A special meeting of the Rancho Cucamonga City Council/Fire Protection District/Redevelopment Agency was held on Wednesday, October 7, 2009, in the Tri-Communities Room in City Hall, located at 10500 Civic Center Drive, Rancho Cucamonga, California. Mayor Pro Tem/Vice-Chairman/Vice-President L. Dennis Michael called the meeting to order at 3:35 p.m.

Present were Councilmembers/Boardmembers/Agencymembers: Rex Gutierrez, Sam Spagnolo and Mayor Pro Tem/Vice President/Vice Chairman L. Dennis Michael. Councilmember/Boardmember/Agencymember Diane Williams arrived at 3:40 p.m. and Mayor/President/Chairman Donald J. Kurth arrived at 3:45 p.m.

Also present were: Jack Lam, City Manager/Executive Director; Pamela Easter, Assistant City Manager; Fabian Villenas, Principal Management Analyst/CMO; Erika Lewis-Huntley, Management Analyst II/CMO; Amy Alpert, Intern/CMO; Kristen Compean, Intern/CMO; Joshua Torres, Intern/CMO; James Markman, City Attorney; Kurt Keating, Code Enforcement Supervisor; and Shirr'l Griffin, Deputy City Clerk.

B. PUBLIC COMMUNICATIONS

B1. Jerie Lee commented that the Council members were elected for the betterment of the City not to manage citizen behavior. She expressed a concern with the meeting being held in the day and indicated that she did not receive notice of the meeting. Ms. Lee said the City takes cigarette tax money but does not want to provide places for smokers to smoke and is trying to regulate smokers in their own apartments. She questioned how the City would enforce smoking restrictions during these economic times and implored Council not to take away people's rights.

B2. Bill Hanlon said the meeting did not start on time, was being held when most people are at work and that he was not given adequate notice of the meeting. He noted American Cancer Society statistics regarding secondhand smoke comparing it to exposure from car exhaust and smog. Mr. Hanlon felt it was not fair to ban smoking of cigarettes in the City since it might open the door to something much worse, marijuana.

B3. Jim Moffatt stated that smoking should be left alone. He felt a ban would be hypocritical particularly in locations where smoking is allowed near food and children. Mr. Moffatt distributed a brochure showing photos of military personnel and asked if the City would tell them they didn't have the right to smoke in Rancho Cucamonga. He thought it was fine to restrict smoking at City facilities but suggested having smoking areas.

B4. Hilda Philips spoke about her volunteering experience at the Cultural Center having to inform patrons about no smoking. She noted there is no smoking signage at the west parking (structure) area and (from the east) on the library building but she felt that posting more signage in areas where smokers congregate might be more beneficial. Ms. Philips asked if schools were receiving no smoking information and whether it was being taught in schools.

B5. Khalilah Durlae (DuRouse) was present representing the Apartment Association, Greater Inland Empire and the California Apartment Association. She said the Associations' positions are to let apartments decide when to go smoke-free as the percentage of smoke-free units is a decision best left to each apartment community. Ms. DuRouse stated the two newest National Community Renaissance (CORE or National CORE) will be 100% smoke-free. Lewis properties built after 2002 currently have an 18% smoke-free rate due in large part to market demand. Ms. DuRouse stated that the industry is experiencing a 7% vacancy rate up 2 percentage points from last year due to the current economic downturn. She recommended adoption of a resolution similar to that of the City of Sacramento which states that any community that has a 25% or greater smoke-free rate would receive some type of recognition (special designation). There is a smoke-free registry that could be utilized as well.

B6. John Lyons felt that visitors should be informed but not cited for smoking. He noted house fire statistics from the 1980s and remembered when restaurants allowed smoking. Mr. Lyons entertains friends who smoke at restaurants that allow smoking outdoors, or goes to other cities whose restaurants allow smoking. He wondered about restriction enforcement, noting that for some tenants living conditions can be difficult as well as complex. Smokers should be considerate of other people.

B7. Donna Newton, Project Director for In the Zone, Tobacco-FREE-Project, said staff from the Project conducted an "on the street" survey at Victoria Gardens, Albertsons and Wal-Mart last spring. A large sample of cigarette butts was collected from the children's play area and near the theater at Victoria Gardens. Ms. Newton quoted statistics from their survey.

B8. Patricia Gonzalez with the American Lung Association shared data on the health risk of breathing secondhand smoke. She said they are asking for designated smoking areas in public spaces such as Victoria Gardens. Ms. Gonzalez noted that the Lung Association receives a significant amount of phone calls from people who live in apartment complexes where shared walls and ventilation systems allow them to be exposed to secondhand smoke and indicated that their health is being affected.

B9. Beverly Jones-Wright, Coordinator for the Public Health Department TURN Program (Tobacco Use Reduction Now), said their mission is to reduce exposure to secondhand smoke. She supported the City's opportunity to enact measures to help ensure the best possible environment for all citizens.

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C. ITEM OF DISCUSSION

1. DISCUSSION OF PHASE II OF SMOKING REGULATIONS AND POSSIBLE AMENDMENTS TO CHAPTER 8.21 OF THE RANCHO CUCAMONGA MUNICIPAL CODE

Jack Lam, City Manager, introduced Fabian Villenas, Principal Management Analyst/CMO, who presented the staff report. Mr. Villenas gave an overview outlining and reviewing topics for the discussion. He stated that the findings of the Environmental Protection Agency (EPA) declare secondhand smoke a Group A carcinogen. Group A carcinogens are linked to a number of diseases and conditions including cancer and heart disease. The U.S. Surgeon General has concluded there is no risk free level of exposure to secondhand smoke and the California Air Resources Board has determined it to be a Toxic Air Contaminant (TAC) equivalent to vehicle exhaust.

Mr. Villenas reported that a comprehensive State law adopted in the mid-1990's restricted smoking in places of employment. He summarized current laws regulating smoking and indicated that State law explicitly allows cities to enact local laws above and beyond State restrictions.

Mr. Villenas stated that in 2007 and 2008 the City began looking at its own smoking restrictions compared to other cities and State law. The City Council passed an initial ordinance designating all City facilities and

the surrounding properties smoke-free environments for residents to enjoy and directed staff to bring back information regarding no smoking policies in non-City owned public areas (streets and sidewalks; hotel guest rooms and common areas, outdoor dining, transit stops, outdoor service lines, outdoor shopping centers and apartment units and common areas). Staff returned with information related to what other cities had done to prohibit smoking in these public areas. The City Council then completed an exercise expressing their interests regarding a no smoking policy in these public areas and determined that public input was needed before moving forward.

Before obtaining public input, Mr. Villenas reported that the Council interests were categorized into three options: 1) complete restriction, 2) no additional restriction beyond State law, or 3) somewhere "in-between." He addressed the outreach campaign, including press releases, flyers, posters, postings on RC-TV3 and sending out letters in spring (2009). The campaign consisted of three approaches: 1) a community survey meant to generally gauge whether the community felt smoking regulations were a good or bad idea; 2) facilitated public workshop discussions which allowed those interested in the issue and stakeholders to give specific input and suggestions (which yielded valuable information); and 3) specific outreach to stakeholders to insure the City received their input.

Mr. Villenas indicated that an informal survey was presented two ways: 1) online through a quick and anonymous survey from the City's homepage where 85% of the participants completed the survey; and 2) hardcopies of the survey were available at all City public counters providing 15% of the participants who completed the survey. He stated that efforts were made to avoid mass duplication. 773 surveys were collected.

Mr. Villenas introduced Amy Alpert, Intern/CMO, who discussed the survey results. Ms. Alpert stated that the survey results were approximations, and survey participant demographics were comparable to the City population. The survey results listed in the staff report were discussed. As part of the outreach campaign, workshops were held at Central Park on April 30th and May 27th. Over 400 invitations were sent to restaurants, hotels and apartment managers in the City and to advocacy groups like the American Lung Association and In the Zone. The workshops were also advertised. Mr. Villenas reported that staff facilitated discussion of the 20-25 individuals at each meeting. He indicated that the workshop participants felt that any restriction should: 1) Be a business decision not mandated by government; 2) Not be about restricting smoker's rights, but separating smokers from non-smokers, particularly where non-smokers are captive, such as transit stops and service lines. Other areas such as outdoor dining areas may also make non-smokers captive when a neighboring diner is a smoker, or for someone in an apartment as well. Conversely, no restriction may be needed for momentary or passing exposure to secondhand smoke such as on streets and sidewalks. 3) Let the free market decide whether to prohibit smoking in hotels and apartments; and 4) Balance no smoking policies between smokers and non-smokers for outdoor shopping centers.

Mr. Villenas addressed the final outreach effort targeting specific stakeholders. Staff presented a report to the Chamber of Commerce and offered them the opportunity to take a formal position to support, oppose or remain neutral not taking a position. The Chamber surveyed its members but response was low and results unclear, so the Chamber decided not to take a position. Staff met with Victoria Gardens management who expressed concerns about the impact of enforcing smoking restriction on their security staff whose primary duty is public safety and crime prevention. Although management was not generally interested in a no smoking policy, they expressed a willingness to take small steps and suggested examples for designated smoke-free areas. Also, staff made an effort to reach out to apartments through the Apartment Association of the Greater Inland Empire and attended one of their regional meetings. While the Association did not take a formal position, they expressed their opinion that regulations regarding smoking should be a business decision. Mr. Villenas noted that a representative was present at today's meeting to reiterate their opinion.

In conclusion, Mr. Villenas indicated that the workshop was scheduled today to determine the appropriate next steps. If the Council wishes to enact an Ordinance above and beyond State restrictions, direction is needed regarding what specific regulations are desired in the Ordinance. If at the end of the workshop the Council decides not to pursue additional local regulations, no further action would be required.

In response to Councilmember Gutierrez, Mr. Villenas clarified that approximately 80% of survey participants were City residents. As these are tough economic times, Mayor Pro Tem Michael supported a fair solution with apartment owners and businesses. He recommended restricted smoking areas where large numbers of people congregate and children are present. Rather than adding general comments, he suggested Council review the chart item-by-item. Councilmember Spagnolo stated that hotels make market-driven decisions and noted that as a former rental property owner it was easier to rent property where no smoking was allowed. He proposed tying in an element of Healthy RC to hotels through recognition incentives related to the percentage of smoke-free rooms and supported improved signage at City facilities and parks. Councilmember Gutierrez commented that apartments and businesses know what's best for their businesses and indicated that there already is a problem with excessive government regulation. He stressed that a stronger financial commitment would be needed from the City in order to enforce any regulations.

In response to Mayor Kurth, City Attorney James Markman reported that the City could not ban the sale of cigarettes (tobacco products) due to the United States Constitution Interstate Commerce clause, and clarified that there is no Constitutional right to smoke.

Councilmember Williams said there may be solutions through a signage method as well as working with businesses. She stated she did not want Rancho Cucamonga to be known for over regulation and agrees with Councilmember Gutierrez about adopting regulations without providing for enforcement resources. She concurs with complete restriction for outdoor dining and in children's play areas. Councilmember Williams indicated that the City should offer more low-cost smoking cessation opportunities to residents through Community Services and felt that multi-family units will be self-regulated based on resident needs.

Mayor Kurth believed that the rights of smoking and non-smoking citizens needed to be protected but felt that it was important to protect the health of children and the public. He noted that self-enforced restriction works.

Mayor Pro Tem Michael stated that the Council adopted the Phase I Ordinance that designated City facilities smoke-free in part to demonstrate consideration for the issue regardless of enforcement. He noted that particularly for areas where Council does not reach a consensus some type of incentives and/or recognition for healthy dining and smoke-free hotels and apartments should be advertised. Also, the information be available online.

Mayor Kurth proposed putting forth a motion to move forward with a Phase II Ordinance. Council determined to first revise the related information to determine whether codifying a new Ordinance was warranted. Mr. Lam clarified the meaning and use of the "in-between" designation. After some discussion Council again determined somewhere "in-between" for streets and sidewalks, and asked staff to return with further information from other cities that have adopted regulations for comparison.

Staff member Villenas presented *Hotels - Guest Rooms*. Taking into account the recommendation for hotel guest rooms, Mayor Kurth agreed with no additional restrictions and giving special recognition to hotels that have at least 75% of their rooms designated smoke-free. He proposed that the City work with hotels to develop a five-year, voluntary plan to further minimize smoking at their establishments. Councilmember Williams noted that corporate policy is already doing a good job with restrictions. She concurred that the City should acknowledge, reward and encourage businesses. Council determined to move the designation from somewhere "in-between" to no additional restrictions and recognize hotels with a certain percent of smoke-free rooms. Mr. Villenas indicated most hotels in Rancho Cucamonga already exceed 75% as most have between 90% – 95% smoke-free guest rooms.

Staff member Villenas presented *Hotels – Common Areas*. Council addressed hotel common areas and determined the decision was best left to the businesses. Councilmember Williams recommended recognition and distinguishing hotels that have at least 90% smoke-free common areas as part of the

Healthy RC program. Council changed the designation from somewhere "in-between" to no additional restrictions.

Staff member Villenas presented *Outdoor Dining areas*. Mayor Kurth proposed that each restaurant designate a non-smoking outdoor area. Councilmembers Spagnolo and Williams concurred and felt business should ultimately make the decision to designate a non-smoking outdoor area based on market conditions. Council discussed possible alternatives available to restaurants as restaurants desiring to have an outdoor smoking area would have to meet certain conditions such as having two separate patios. Mayor Kurth said that the survey results conveyed that 75% of the participants wanted an ordinance prohibiting smoking. He felt that the State is behind since it receives cigarette/tobacco tax money and noted that the City is going above and beyond State restrictions and much more than other cities to protect residents. Mayor Kurth noted that when the State passed the indoor dining smoking restriction restaurants were fearful, but it has increased business to the industry's advantage. He felt that in this same way it would attract people to Rancho Cucamonga and increase business at restaurants. In response to Councilmember Gutierrez, Mr. Villenas noted that other cities enacting a no smoking policy rely on community education, proper signage and self-enforcement of restrictions. In response to Mayor Pro Tem Michael, Kristen Compean, Intern/CMO, noted that her parents are restaurant owners and members of the California Restaurant Association (CRA) which would be a resource for providing further information.

Mr. Villenas recommend that staff return with more information for the City Council from CRA and restaurant businesses. Councilmember Gutierrez pointed out that additional conditions would create more red tape for businesses.

MOTION: Moved by Williams, seconded by Kurth, to look at an ordinance that would continue the complete restriction on outdoor dining areas allowing restaurants to apply for a separate smoking outdoor dining area away from non-smoking diners. Motion failed 2-3, with Gutierrez, Michael and Spagnolo voting no.

Council addressed the topic of outdoor dining areas for further for clarification.

MOTION: Moved by Michael, seconded by Gutierrez, to change the outdoor dining designation from complete restriction to somewhere "in-between" pending further information and data. Motion carried, 5-0.

Staff member Villenas presented *Transit Stops*. Mr. Villenas explained that transit stops are privately owned structures in a public right-of-way such as bus stops and train platforms, with a complete restriction of no smoking within 20 feet. He clarified for Councilmember Williams that specific conditions of policy would be worked out prior to the adoption of the Ordinance and that staff would bring back recommendations. Councilmember Spagnolo recommended changing the designation from somewhere "in-between" to a complete restriction. Council concurred.

Staff member Villenas presented *Service Lines*. Council agreed to maintain the designation as a complete restriction.

Staff member Villenas presented *Shopping Centers*. Mayor Kurth suggested a percentage, such as 10%, for smoking areas in shopping centers. He felt businesses needed to have parameters but could decide where the designated areas would be. Councilmember Spagnolo thought that partnering-up with Victoria Gardens and the suggested management plan was good. He believed that Victoria Gardens already included smoking parameters. Although the Council considered changing the designation from somewhere "in-between" to no additional restrictions, Mayor Kurth questioned whether no additional restrictions allocated a practical environment at shopping centers for the public who are affected by smoke. He expressed that he was in favor of maintaining the designation of somewhere "in-between."

MOTION: Moved by Spagnolo, seconded by Williams, to have no additional restrictions on outdoor shopping centers. Motion carried 4-1, Kurth voting no. (This motion effectively changed the designation from somewhere "in-between" to no additional restrictions.)

Staff member Villenas presented Apartments - *Multi-Family Units*. Mr. Villenas said apartment managers would be required to include in apartment lease agreements that no smoking is allowed. Implementation would be done in percentages over time. Councilmember Spagnolo said the City should make a connection with the apartment owners, recognizing the apartments that are already moving in the right direction and partnering-up rather than imposing restrictions. Mayor Kurth concurred with Councilmember Spagnolo and suggested that the ordinance put in place guidelines for the smoke-free registry and recognition of apartment complexes with at least 75% smoke-free units. Councilmember Williams agreed although she was concerned with outdoor patio areas, noting the impact of smoke on anyone with their windows open.

MOTION: Moved by Spagnolo, seconded by Kurth, to have no additional restrictions for Multi-Family Units. Motion carried 5-0.

Staff member Villenas presented *Multi-Family Common Areas*. Councilmember Spagnolo suggested moving multi-family common areas from somewhere "in-between" to no additional restrictions in order to be consistent with prior designations. He proposed apartment complexes partner-up with the City on a voluntary basis and those with no smoking amenities be promoted. Mayor Pro Tem Michael recommended encouraging apartment owners to partner-up under the Healthy RC program designating specific common areas for smoking. Mayor Kurth advised monitoring the topic by working with the Apartment Association. Councilmember Williams stated that the City Council has declared their goal to protect citizens from secondhand smoke. No additional restrictions would permit flexibility, and if necessary, the City Council could revisit the subject of multi-family common areas.

MOTION: Moved by Spagnolo, seconded by Williams, to have no additional restrictions for Multi-Family Common Areas and to include the proposed City Council guidelines and recommendations. Motion carried 5-0.

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D. ADJOURNMENT

MOTION: Moved by Gutierrez, seconded by Williams, to adjourn the Meeting. Motion carried 5-0.

Mayor Kurth adjourned the meeting at 5:50 p.m.

Respectfully submitted,

Shirr'l Griffin
Deputy City Clerk

Approved: November 18, 2009



Phase II Secondhand Smoke Regulations Worksheet

This worksheet is provided to assist you in evaluating the scope of regulations desired for each item listed below.

*The arrows reflect changes in designation during the Phase II
Special Meeting Workshop held at 3:30 p.m. Wednesday, October 7, 2009.
No changes in designation were made for Streets and Sidewalks or Service Lines.*

	Complete Restriction	No Additional Restrictions	Somewhere "In-between"
Streets and Sidewalks			X
Hotels-Guest Rooms		←	X
Hotels-Common Areas		←	X
Outdoor Dining Areas	X	→	
Transit Stops		←	X
Service Lines	X		
Shopping Malls		←	X
Multi-Family Units		←	X
Multi-Family Common Areas		←	X