



## Agenda Report

19-630

Agenda Date: 7/9/2019

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### REPORT TO COUNCIL

#### SUBJECT

Informational Report on Smoking Ordinance - Training, Policy and Enforcement of Section 8.35.130 "Possession of Tobacco by Persons Under 21 Years of Age"

#### BACKGROUND

On February 5, 2019, the Santa Clara City Council adopted Smoking and Tobacco Regulations Ordinance No. 1996 that expanded restrictions in many public areas and multi-unit residences. These regulations aim to protect Santa Clara residents, employees and visitors from the harmful effects of secondhand smoke.

For the purposes of the law, smoking means inhaling, burning and carrying any lit or heated cigarette, cigar or pipe, electronic and/or battery-operated cigarette or vaporize device and cannabis. Smoking is prohibited in open-air dining areas, public parks, service areas, such as ATMs and transit stops, public places when being used for a public event, such as farmers' markets and parades, and within 30 feet of any operable doorway, window opening, and vent into any enclosed or any unenclosed areas in which smoking is prohibited. Additionally, smoking will be prohibited in multi-unit residences, effective August 1, 2019.

#### DISCUSSION

During the two public meetings on this topic, several organizations (e.g. Santa Clara County Public Health, NAACP, etc.) expressed concern regarding Municipal Code Section 8.35.130 "Possession of Tobacco by Persons Under 21 Years of Age." It states, "It shall be unlawful for persons under the age of twenty-one (21) years to possess tobacco or tobacco products (including electronic smoking devices and e-liquids whether or not they contain nicotine or tobacco), as defined in Penal Code §308 and Business and Professions Code §22950.5, in the City of Santa Clara. This section shall not apply to active duty military personnel of at least 18 years of age."

The addition of this section was a recommendation by the Police Department as a result of California Senate Bill 7, which took effect June 9, 2016. Under the law, the age to purchase tobacco products increased from 18 to 21 for everyone except active duty military personnel. The Bill also changed Penal Code 308 by excising the prohibition of possession of tobacco by a minor. As a result, law enforcement agencies could no longer make contact with, or cite, a minor in possession of tobacco.

While the Police Department was not interested in citing juveniles for tobacco possession, they did want the ability to make contact with young people in possession to discuss the health risks and environmental impacts of such use. In addition, the Police Department wanted to initiate contact with the juvenile's parent(s).

### Policy

Policy 411 Cite and Release Policy (Attachment A) now includes Manual Section 411.6 - Juvenile Citations to address such contacts as a result of tobacco possession. Contacts involving those 17 years of age or younger should at most be documented with an informational Juvenile Contact Report for referral to the Juvenile Probation Officer for education and diversion; NOT a criminal or administrative citation. In most circumstances, a simple phone call from the officer at the scene to a parent or guardian may be enough to deter future tobacco use. Under NO circumstances would a juvenile be taken into custody for a violation of this new code. If persons 18 to 20 years old are contacted in possession of tobacco or tobacco products, at most an Administrative, non-criminal citation may be issued (\$100 penalty) to the individual. Again, the officer could simply use the contact as an opportunity to educate the individual as opposed to issuing an administrative citation. That discretion is left up to the involved officer.

### Chief Research and Response

The Chief of Police facilitated several conversations on the proposed policy, procedure and training, including the Chief's Advisory Committee (Special Meeting 2/27/19), Santa Clara Unified School District (SCUSD) school administrators, County Coalition Steering Committee (4/24/19) and NAACP (4/25/19).

The Chief's Advisory Committee and SCUSD administrators were incredibly supportive of the policy as written. The County Coalition Steering Committee and NAACP were comfortable with the way the Santa Clara Police Department is handling this matter, but expressed concern that other law enforcement organizations may not take as thoughtful of an approach, and may criminalize children who are victims of tobacco marketing.

### Grant

The Police Department is a current recipient of a Tobacco Grant, funded under the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 approved by the voters as Proposition 56. This partnership spans over three fiscal years, 2017/18, 2018/19 and 2019/20, to include education, enforcement and supplies (e.g. buy money for tobacco operations, signage, D.A.R.E., etc.) totaling \$440,510. To date, the Police Department has spent \$76,562 to:

- Attend trainings/workshops sponsored by the California Department of Public Health on tobacco regulations;
- Utilize patrol briefings to conduct training on tobacco-related issues for sworn personnel;
- Disseminate community messages via the web and social media;
- Conduct tobacco retail license inspections;
- Identify problematic retailers of tobacco products and implement penalty escalation for repeat offenders;
- Conduct tobacco-related enforcement near the City's two traditional high schools and two alternative high schools;
- Conduct tobacco-related enforcement at the City's 37 parks, pools, playgrounds, community centers and athletic fields, including within 25-feet of bleachers, backstops, play structures, etc.;
- Conduct tobacco-related enforcement around Santa Clara University;
- Utilize pre-event briefings at Levi's Stadium to conduct training on tobacco-related issues among Traffic Control, Per Diem Special Event Officers and Stadium personnel;

- Conduct Minor Decoy and Shoulder Tap operations involving purchasing and/or furnishing tobacco products to minors; and,
- Utilize funding to purchase supplies to augment the Drug Awareness Resistance Education (D.A.R.E.) program

The Police Department plans to submit a subsequent tobacco grant application in Fall 2019, for the grant period November 2019 through June 2022.

#### Training

The School Resource Officers (SRO) have been trained on the policy. In turn, the SROs will train the balance of the Department in briefings. In addition, a Training Bulletin (Attachment B) has been created and will be distributed to all Department employees.

#### Review

In November 2019, the Police Department will conduct a six-month review of Section 8.35.130, summarize the number of contacts made and determine whether additional training is required.

Approving this addition to the Municipal Code compliments other strategies the City of Santa Clara has implemented to reduce tobacco use, including strong smoke-free laws in workplaces and public places, augmenting D.A.R.E. and pursuing grants for tobacco prevention and enforcement programs.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

#### **FISCAL IMPACT**

Contact with teens by an SRO or patrol officers will be an expansion of their current duties during their current shifts. The cost to meet with a Juvenile Probation Officer is not absorbed by the City of Santa Clara.

Meanwhile, up to \$440,510 is available to the Police Department via the Tobacco Grant to conduct education and enforcement operations between June 1, 2018 through June 30, 2020 as defined in the grant application.

#### **COORDINATION**

This report was coordinated with the City Attorney's Office and Finance Department.

#### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

Note and file the Informational Report regarding the Smoking Ordinance.

Reviewed by: Michael J. Sellers, Chief of Police

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. SCPD Policy 411 City and Release Policy
2. SCPD Training Flash