



Agenda Report

21-99

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Action on the Introduction of an Ordinance Repealing Section 8.35.130 ("Possession of Tobacco by Persons Under 21 Years of Age")

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

On February 5, 2019, Council adopted Smoking and Tobacco Regulations Ordinance No. 1996 (Ordinance) (Attachment 1) to expand smoking restrictions in open air dining areas; public parks; service areas; public places when being used for public events; multi-unit residences; within 30 feet of any operable doorway, window opening, or vent into an enclosed area; and within 30 feet from any unenclosed areas. These regulations aim to protect Santa Clara residents, employees and visitors from the harmful effects of secondhand smoke.

Staff conducted extensive community outreach, to solicit input from the community and stakeholders through Open City Hall on-line surveys; community outreach meetings; and Parks & Recreation Commission meetings. The vast majority of survey respondents and community meeting participants supported the proposed changes to the Ordinance; however, several organizations expressed concern regarding Section 8.35.130 "Possession of Tobacco by Persons Under 21 years of Age".

Section 8.35.130, "Possession of Tobacco by Persons Under 21 Years of Age":

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 due to California Senate Bill 7 (Bill), 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. The intent of the provision was to provide the Police Department the ability to make contact with youth in possession, and their parents, to educate them on the health risks and environmental impacts of such use.

Subsequently, in 2019, the Police Department added Section 411.6 - Juvenile Citations to the 411

Cite and Release Policy (Attachment 2) to address contacts due to tobacco possession. Per the policy, violations of tobacco or tobacco product possession involving youth 17 years of age or younger, should be documented with an informational Juvenile Contact Report for referral to the Juvenile Probation Officer for education and diversion. No criminal or administrative citations shall be issued to juveniles for tobacco related violations.

Retired Chief of Police Michael J. Sellers facilitated several conversations on the proposed policy, procedure and training, with the Chief's Advisory Committee, Santa Clara Unified School District (SCUSD) school administrators, County Coalition Steering Committee and National Association for the Advancement of Colored People (NAACP). Although the Chief's Advisory Committee and SCUSD administrators were supportive of the policy, the County Coalition Steering Committee and NAACP expressed particular concerns related to the tobacco industry's history of targeting the African American community and youth through tailored branding, messaging and publications. While these groups were comfortable with the way the Santa Clara Police Department was addressing the implementation of Section 8.35.130 of the Ordinance, they expressed concern that other law enforcement organizations may not take the same thoughtful approach; therefore, resulting in the criminalization of youth in possession of tobacco products.

DISCUSSION

Tobacco use remains the number one preventable cause of death and disease in California, causing nearly 40,000 deaths in California every year. In Santa Clara County, one in eight deaths annually is attributed to smoking-related illness or disease, such as cancer, heart disease, and respiratory diseases. More than one in ten youth in the County currently use tobacco products, including electronic smoking devices, and nearly one in three Santa Clara County teens report that they have used an e-cigarette at least once.

The Police Department (Department) conducted a review of citation data related to Section 8.35.130 in the first year of implementation; which revealed only one instance in which Section 8.35.130 of the Ordinance was applied. The Department revisited the County Coalition Steering Committee and NAACP's concerns regarding the provision; and the need for more equitable policies. As such, staff recommends repealing Section 8.35.130 "Possession of Tobacco by Persons Under 21 years of Age."

The Department continues to invest in implementing strategies proven to reduce youth tobacco use. While the program is temporarily suspended due to the COVID-19 Pandemic, the Department values the curricula from Drug Abuse Resistance Education (D.A.R.E.); which develops basic core skills for making safe and responsible choices, particularly related to subjects such as bullying, internet safety, communication, conflict, membership in gangs, violent behavior and substance abuse.

The City is also pursuing tobacco prevention policies that have been shown to reduce youth access and exposure to tobacco products. In July 2020, the City executed a grant agreement with the Santa Clara County Public Health Department (PHD) to explore an ordinance to prohibit the sale of flavored tobacco products in the City. Such a prohibition would apply to flavored e-cigarettes, e-liquids, flavored cigars, little cigars, flavored hookah, and menthol cigarettes. Flavored tobacco products are considered "starter" products for youth who begin to use tobacco, establishing tobacco habits that can lead to long-term addiction.

The grant implementation includes a community outreach process prior to bringing an ordinance

forward for Council's consideration. The process is targeted to begin in late February 2021.

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(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

There is no fiscal impact associated with this action.

COORDINATION

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

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>>.

RECOMMENDATION

Approve the Introduction of an Ordinance Repealing Section 8.35.130 ("Possession of Tobacco by Persons Under 21 Years of Age").

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager and Derek Rush, Assistant Chief of Police

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Ordinance - Repealing Section 8.35.130
2. SCPD Policy 411 Cite and Release Policy