



Agenda Report

19-322

Agenda Date: 1/15/2019

REPORT TO COUNCIL

SUBJECT

Action on Introduction of an Ordinance Modifying Smoking and Tobacco Regulations, Grant from the County of Santa Clara's Healthy Cities Program - Tobacco-Free Communities Fund, and Related Budget Amendment

EXECUTIVE SUMMARY

Santa Clara has very limited local regulations restricting smoking beyond what is already prohibited by State law. Exposure to secondhand smoke has been found to have negative health impacts. The proposed Ordinance would modify the City's existing smoking regulations and prohibit smoking in certain areas including public parks, outdoor dining, service areas and multi-unit residences.

BACKGROUND

Santa Clara has very limited local regulations restricting smoking beyond what is already prohibited by State law. As a follow-up from an April 2017 presentation by Breathe California to the Economic Development Committee on smoke-free outdoor dining, a study session on the topic coupled with the discussion of Proposition 64 was presented to the Council on August 22, 2017. The Council directed staff to seek community input and return with an amendment to the City's smoking ordinance for the Council's consideration.

The dangers of smoking and exposure to secondhand smoke have been well documented. According to the U.S. Surgeon General, smoking remains the single largest cause of preventable disease and death in the United States. Smokers are at a greater risk of developing cancer, respiratory and cardiovascular diseases, type 2 diabetes, eye disease, and adverse reproductive effects.

Nonsmokers who are exposed to frequent and recurring secondhand smoke are also at greater risk for health problems such as lung cancer, stroke, heart disease, asthma, and Sudden Infant Death Syndrome. In 2006, the California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a Toxic Air Contaminant. There is no risk-free level of exposure to secondhand smoke.

The State of California currently prohibits smoking in all state, county, and city government buildings as well as within 20 feet of their main entrances, exits, or operable windows, in all public transportation systems, within 25 feet of playgrounds, sandbox areas, and recreational areas specifically designed for use by children, within 250 feet of a youth sports event, inside enclosed spaces at places of employment or owner-operated businesses (except for a few exceptions), indoor common areas of apartment and condominium complexes, and daycare facilities, among other places.

State laws explicitly allow local jurisdictions to adopt stricter regulations than those imposed by the State.

As stated earlier, Santa Clara has very limited laws that address secondhand smoke whereas many other cities in Santa Clara County have adopted ordinances to limit smoking and to promote smoke free environments. Neighboring cities, such as Sunnyvale, Palo Alto, and Los Gatos have updated their smoking ordinances in the last few years to restrict secondhand smoke in public parks, outdoor dining areas, public places when being used for a public event, multi-family housing, service areas, and buffer areas of 25 feet or more away from any doorway, window, opening, or vent into any enclosed area in which smoking is prohibited.

Community Outreach

To gather feedback on proposed changes to the Smoking Ordinance, community input was solicited through Open City Hall on-line surveys (January through February 2018); community outreach meetings (February 1, 2018 - day and evening, February 7, 2018, and September 20, 2018); and the Parks & Recreation Commission (February 20, 2018).

Open City Hall - An on-line survey was launched in January 2018 to gauge the community's perspective on increasing limitations on smoking in certain public places and in multi-unit residential buildings. The on-line survey closed on February 14, 2018 with 867 responses. 98.3% of survey respondents lived, worked, managed and/or owned a restaurant, café, or bar, or managed and/or owned a building with two or more residential units in Santa Clara. A vast majority of survey respondents supported all the proposed changes as detailed in the sections below.

Community Meetings - Community members who attended the meeting were also very supportive of increasing the limitations on smoking. Many survey respondents and meeting attendees requested the City to adopt even stricter regulations than the proposed changes.

Parks & Recreation Commission - In addition to the community survey and community outreach meetings, staff attended the February 20, 2018 Parks & Recreation Commission meeting to engage the Commission on the proposed ban of smoking in public parks. The Parks & Recreation Commission was supportive of the proposal and suggested a ban on smoking within 100 feet of a public park.

Outreach on the survey and meeting dates were coordinated with the County of Santa Clara Department of Public Health, Breathe California of the Bay Area, Santa Clara Chamber of Commerce and distributed via the City's social media channels, the City Manager's Blog and on Nextdoor to neighborhood groups.

DISCUSSION

Chapter 8.35 ("Smoking and Tobacco Regulations") of Title 8 ("Health and Safety") of "The Code of the City of Santa Clara, California" defines smoking as the carrying or holding of a lighted pipe, cigar, or cigarette of any kind, including any type of electronic and/or battery operated cigarette or vaporizer device (regardless of product name or descriptor), the use of which may resemble smoking, which can be used to deliver an inhaled dose of tobacco, nicotine or other substances. The proposed ordinance would amend Chapter 8.35 ("Smoking and Tobacco Regulations") 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. (Attachment 1 for redline version of the draft ordinance and Attachment 2 for the draft ordinance).

The proposed Ordinance bans smoking in Santa Clara in the following places and discussed in more detail below:

- Outdoor patios and seating areas where food or drink are consumed;
- Within 30 feet of any operable doorway, window opening or vent of a building where smoking is prohibited;
- Within 30 feet from any unenclosed areas where smoking is prohibited;
- Within 30 feet of “service areas”, such as transit spots or ATMs;
- Public parks;
- Outdoor public events, such as farmers’ markets and parades; and
- Inside any multi-unit housing, including private and shared balconies and patios (this would apply to apartments, condominiums and townhomes, or any other building with two or more attached residences).

Public parks, open air dining areas, service areas and outdoor public events

During a study of outdoor secondhand smoke exposure, Stanford University researchers found that secondhand smoke exposure levels can be significant near an active smoker. Average outdoor secondhand smoke levels can be comparable to those measured indoors, depending on proximity and wind conditions. The more active smokers present, the further someone would have to be to avoid exposure. It becomes more difficult to avoid exposure in concentrated areas where there might be multiple smokers, such as open air dining areas, public parks, service areas, and outdoor public events. People who spend extended periods of time near secondhand smoke in an outdoor setting, such as restaurant workers in open air dining areas, are likely to get a lot of exposure.

In the online survey, 87.5% of respondents supported banning smoking in outdoor patios and seating areas where food or drink are consumed; 74.3% supported banning smoking at public parks; 81.9% supported banning smoking within 25 feet of “service areas”, such as transit stops and ATMs; and 77.9% supported banning smoking at outdoor public events.

Currently, eleven out of fifteen cities in Santa Clara County prohibit smoking in one or more of the public areas listed in the proposed Ordinance.

30 feet buffer zones

In addition to the findings cited above, research has also shown that secondhand smoke doesn’t approach background levels (i.e., dissipate to levels similar to the surrounding area without smoke) until 23 feet away from the source. In the online survey, 86.9% of respondents supporting banning smoking within 25 feet of any operable doorway, window opening or vent of a building.

Sunnyvale and Palo Alto both have 25 feet buffer zones, while Los Gatos has a 30 feet buffer zone. Many survey respondents and attendees at the community meetings have requested the City to consider expanding the buffer zone beyond the proposed 25 feet buffer zone. Based on this feedback, the proposed ordinance amends the City’s smoking regulations to prohibit smoking within 30 feet of any operable doorway, window opening, or vent into an enclosed area in which smoking is prohibited and within 30 feet from any unenclosed areas in which smoking is prohibited.

Multi-unit residences

According to the Santa Clara County Department of Public Health, the home is one of two places

where people are most exposed to secondhand smoke. Children are especially vulnerable because their bodies are still developing and they tend to have higher breathing rates. While 90% of Santa Clara County residents do not smoke, smoke travels through doorways, cracks in walls, electrical outlets, ventilation systems, and plumbing, exposing nonsmoking households to secondhand smoke when they share attached units with smoking households.

Based on the U.S. Census Bureau's 2007-2011 American Community Survey 5-Year Estimates, 48% of Santa Clara households live in multi-unit housing.³ This percentage has likely increased since and will continue to increase as Santa Clara and the rest of the Bay Area move towards higher-density housing developments to address the region's affordable housing and homelessness crisis.

While State law allows landlords and condominium associations to adopt policies to prohibit smoking in indoor and outdoor common areas as well as inside individual units, there are many multi-unit residences that have not. This is reflected by the 19% of Santa Clara residents who reported smelling tobacco smoke drifting into their home from nearby apartments or from outside as part of the Santa Clara County Public Health Department 2013-2014 Behavioral Risk Factor Survey. Without regulations prohibiting smoking in multi-unit residences, an increasing number of Santa Clara residents will become exposed to secondhand smoke and its associated adverse health effects, in addition to those who are already exposed to secondhand smoke in complexes that have not banned smoking.

In the online survey, 66.1% of respondents supported banning smoking inside any multi-family housing unit, including private and shared balconies and patios. Attendees at the community meetings were also very supportive of banning smoking inside multi-unit residences and shared personal testimonies about how they were personally affected by secondhand smoke in their residential complexes.

According to a recent American Lung Association report, 51 jurisdictions in California have adopted ordinances that prohibit smoking in multi-unit housing, including Sunnyvale, Palo Alto, Saratoga, and Los Gatos. Based on the research and community feedback, the proposed ordinance bans smoking inside multi-unit residences, which is defined as two or more attached units and includes private and shared balconies and patios, or in any enclosed or unenclosed common area of a multi-unit residence. Under the proposed smoking ordinance, someone with legal control over a common area, or an authorized representative, may designate a portion of the common area as a designated smoking area as long as the designated smoking area is located in an unenclosed area that totals no more than ten percent of the total unenclosed area of the multi-unit residences for which it is designated; is located at least 30 feet away from any operable doorway, window opening, or vent into an enclosed area whether on the same property or otherwise.

Cannabis smoke

While the City's regulations on smoking apply specifically to tobacco, it is against State law to smoke cannabis wherever smoking tobacco is prohibited. In addition, smoking cannabis is prohibited in all public places, at or within 1,000 feet of a school, day care center, or youth center (unless the smoking happens at a private residence or where it is not detectable and children are not present), in a vehicle, and on federal lands within California.

Implementation

If these amendments to Chapter 8.35 ("Smoking and Tobacco Regulations") are adopted by the City

Council, staff will work with the Santa Clara County Public Health Department and other partner organizations to educate residents, landlords, property managers, and employers about the new regulations. The proposed Ordinance requires multi-unit residences to ban smoking beginning August 1, 2019. Owners, operators, property managers, and officers of homeowners' associations for residential properties will be required to post signage, provide notice to residents or tenants or their guests of the requirements of the law prohibiting smoking and give written notice to violators. Every lease or other rental agreement for the occupancy of a new or existing unit in a multi-unit residence entered into, renewed, or continued month-to-month will include a copy of the ordinance, a description of and/or image depicting the locations of any designated smoking areas on the property, if any, and a clause expressly conveying third-party beneficiary status to all occupants of residences or residence units within a 30 feet radius, as to the smoking provisions of the lease or other rental agreement, such that an aggrieved third party beneficiary may institute a private civil action against violators.

As part of the implementation process, staff will maintain a dedicated City webpage, engage in outreach efforts through mailers and social media, notify impacted employers, multi-unit residents, landlords, and property managers of the new regulations, host informational meetings, and have "No-Smoking" signage available for distribution.

County Grant

The City applied for a grant from the County of Santa Clara's Healthy Cities Program - Tobacco-Free Communities Fund in the amount of \$30,751 to support our efforts to reduce secondhand smoke in multi-unit residences. The County acknowledged that the City will receive the grant (Attachment 3) to cover most of the implementation costs; however, the City has not received a grant agreement as of the writing of this report. The grant will help subsidize the costs related to efforts to reduce secondhand smoke exposure in multi-unit residences, including reimbursement of staffing costs. The City anticipates assuming most of the staffing and implementation costs immediately after the adoption of the Ordinance, but will not be reimbursed by the County for work done prior to the execution of the grant agreement. In order to expedite the grant process and to capture as much grant funding as possible, staff requests that Council authorize the City Manager to execute the grant agreement and accept the anticipated grant amount in an amount not to exceed \$30,751, and appropriate the entire requested grant amount of \$30,751.

COORDINATION

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

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

On November 5, 2018, the City was notified by the Santa Clara County Public Health Department that Santa Clara was selected to receive funding to support our efforts to reduce secondhand smoke exposure in multi-unit residences (Attachment 3). The County and City began negotiations on the scope of work activities and budget in December. The City anticipates receiving the full requested amount of \$30,751, which can only be used for staffing costs and efforts related to implementing the

smoke-free multi-unit residences portion of the proposed changes per the grant guidelines. The anticipated cost of operating expenses associated with implementing the smoke-free multi-unit residences efforts is \$10,730 while staffing costs are estimated at \$20,021. Acceptance of the anticipated grant of \$30,751 and approval of its appropriation to the General Fund will help cover operating expenses for implementing the smoke-free multi-unit residences portion of the proposed changes with no fiscal impact to the City. There are no matching fund requirements.

BUDGET AMENDMENT

	2018-19 Current	Increase/ (Decrease)	2018-19 Revised
<u>Fund 001 - General Fund</u>			
<u>Revenues</u>			
Grant Funding	\$0	\$30,751	\$30,751
<u>Expenditures</u>			
Program 1042 (General Admin-Advertising Community Promotion)	\$0	\$30,751	\$30,751

Implementation of the proposed Ordinance will require outreach materials such as mailers, factsheets, and “No-smoking” signage. The total anticipated cost of implementation is \$11,884, aside from administrative staff time and expenses, which is mostly covered by the County’s grant in the amount of \$10,730. There are sufficient funds in the City Manager’s budget to cover the remaining implementation costs of \$1,154.

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>> or at the public information desk at any City of Santa Clara public library.

ALTERNATIVES

1. Approve the introduction of an Ordinance amending Chapter 8.35 (“Smoking and Tobacco Regulations”) of Title 8 (“Health and Safety”) of “The Code of the City of Santa Clara, California” to expand smoking restrictions in open air dining areas, public parks, service areas, public places when being used for a public event, multi-unit residences, and 30 feet away from any operable doorway, window opening, and vent into any enclosed area and any unenclosed area in which smoking is prohibited;
2. Do not approve the introduction of an Ordinance amending Chapter 8.35 (“Smoking and Tobacco Regulations”) of Title 8 (“Health and Safety”) of “The Code of the City of Santa Clara, California” to expand smoking restrictions in open air dining areas, public parks, service areas, public places when being used for a public event, multi-unit residences, and 30 feet away from any operable doorway, window opening, and vent into any enclosed area and any unenclosed area in which smoking is prohibited;
3. Authorize the City Manager to negotiate and execute a grant agreement with the Santa Clara

County Public Health Department to reduce secondhand smoke exposure in multi-unit residences;

4. Do not authorize the City Manager to negotiate and execute a grant agreement with the Santa Clara County Public Health Department to reduce secondhand smoke exposure in multi-unit residences;
5. Approve the appropriation of the anticipated grant amount of \$30,751 to the City Manager's Office to help cover operating expenses for implementing the ordinance related to multi-unit residences;
6. Do not approve the appropriation of the anticipated grant amount of \$30,751 to the City Manager's Office to help cover operating expenses for implementing the ordinance related to multi-unit residences; or
7. Any other Council direction.

RECOMMENDATION

Alternatives 1, 3, and 5:

1. Approve the introduction of an Ordinance amending Chapter 8.35 ("Smoking and Tobacco Regulations") of Title 8 ("Health and Safety") of "The Code of the City of Santa Clara, California" to expand smoking restrictions in open air dining areas, public parks, service areas, public places when being used for a public event, multi-unit residences, and 30 feet away from any operable doorway, window opening, and vent into any enclosed area and any unenclosed area in which smoking is prohibited;
3. Authorize the City Manager to negotiate and execute a grant agreement with the Santa Clara County Public Health Department to reduce secondhand smoke exposure in multi-unit residences; and
5. Approve the appropriation of the anticipated grant amount of \$30,751 to the City Manager's Office to help cover operating expenses for implementing the ordinance related to multi-unit residences.

Prepared by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Smoking and Tobacco Regulations Ordinance - Redline Version
2. Smoking and Tobacco Regulations Ordinance - Clean Version
3. Funding Announcement from Santa Clara County Public Health Department