

Smoke-Free Housing Ordinance

City Council Policy Priority# 18

Neighborhood Services and Education Committee
Item d.3

December 9, 2021

Presenter: Rachel Roberts, Deputy Director, PBCE



Background



Smoke-Free Housing Ranked as Council Policy Priority #18 in 2020



Received Santa Clara County Public Health Department (SCCPHD) Grant Funding to implement a smoke-free housing policy



Began policy work in August 2020

Council and Committees



- Reported to NSE December 10, 2020 and April 8, 2021 on completed work plan items and proposed ordinance
- September 28, 2021 Council Meeting- Item deferred
- October 26, 2021 Council Meeting- Item dropped and cross-referenced back to NSE to evaluate components of the proposed ordinance including the inclusion of cannabis, material breach lease violation, and enforcement.

Background



In Santa Clara County, 1 in 8 deaths each year due to smoking-related disease such as cancer, heart disease, and respiratory diseases

There is no safe level of exposure to secondhand smoke. Exposure to secondhand smoke is a leading cause of preventable death in the United States (CDC)



Federal EPA has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen

The California Air Resources Board has determined that secondhand smoke is a toxic air contaminant with serious health effects



Comprehensive smoke-free policies are the only way to fully protect nonsmokers (US Surgeon General)

CPP #18 Smoke-free Housing Goals

Explore policy to prohibit smoking in Multifamily housing

Reduce exposure to second-hand smoke and associated health risks

Align with County/local initiatives for smoke-free housing

Provide support to property owners, managers, tenants, and key stakeholders

Smoke-free Housing Work Plan Recap



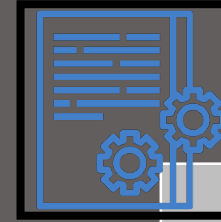
Research and Benchmarking

- City of Sunnyvale
- City of Berkeley
- Other Local Jurisdictions/County
- State Law
- First Community Housing



Community Engagement

- Online Survey in English, Spanish, and Vietnamese
- 3 Stakeholder Zoom Webinars
- Interest Group Meetings
- Racial and Health Equity Discussions
- Code Enforcement Website/Information



Policy Development

- City Council Priority Goals and NSE direction
- Stakeholder and Community Feedback
- Collaboration with Santa Clara County Public Health Department (SCCPHD)
- Align with local jurisdictions policies
- Coordinate with CAO

Stakeholder and Community Feedback

Inclusion of Cannabis Feedback

Cannabis should be exempt

Vaping of cannabis should be allowed

Smoke lounges and designated cannabis smoking areas should be explored

Policy may have disproportionate impact to people of color, vulnerable populations

Other Policy Feedback

69% Surveyed supported the proposed policy

Importance of gradual enforcement and ongoing education

Smoking related fines and eviction concerns

Condos and duplexes should be included

Proposed Smoke-Free Housing Ordinance

Key Components

- Prohibits smoking inside multifamily properties of 3 units or more (excluding condos)
- Includes cigarettes, cigars, cigarillos, hookahs and pipes; electronic smoking devices (such as e-cigarettes and vape pens); and cannabis
- Exemption for hotels/motels
- Requires smoking prohibitions as part of the rental lease agreement
- Provides variety of enforcement tools that allow flexibility



Inclusion of Cannabis: Proposed

Prohibits Cannabis Smoking in Multifamily Housing units

Pros

- In alignment with State law
- In alignment with smoke-free housing policies throughout California and Santa Clara County including 8 cities within Santa Clara County
- Meets overall objective of CPP #18 to reduce health risks/exposure to secondhand smoke
- Minimizes enforcement challenges

Cons

- May disproportionately impact some low income and people of color
- Limits private use of cannabis

Inclusion of Cannabis: State Laws

- Prop 215- Compassionate Use Act, 1996 (Health and Safety (H&S) Code 11352.5)
 - Exempted certain patients and primary caregivers from *criminal liability* under state law for possession and cultivation of cannabis for medical purposes
- Prop 64-Adult Use of Marijuana Act, 2016
 - *Established regulatory and licensing scheme* for commercial recreational cannabis operations, and also legalized limited personal recreational cannabis use, possession, and cultivation.
 - Prohibited smoking and vaping of cannabis in all public places and wherever tobacco smoking is not allowed
- Does Prop 215 and 64 Prohibit Localities from Prohibiting Patients from Inhaling/smoking at home? **No**
 - The California Constitution recognizes the authority of cities and counties to make and enforce, within their borders, “all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”
 - Per case law, the authorization of medical cannabis use did not preempt or limit local land use regulation **related to cannabis activities**. [City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc., 56 Cal.4th 729 (2013) (unanimously upholding local ban on medical cannabis dispensaries); County of Los Angeles v. Hill, 192 Cal.App.4th 861 (2011); City of Claremont v. Kruse, 177 Cal.App.4th 1153 (2009).]

Inclusion of Cannabis: Policy Alternatives # 1 and 2

Policy Alternative #1:

*Exempt Cannabis
Smoking*

Policy Alternative #2:

*Exempt Vaping of
Cannabis only*

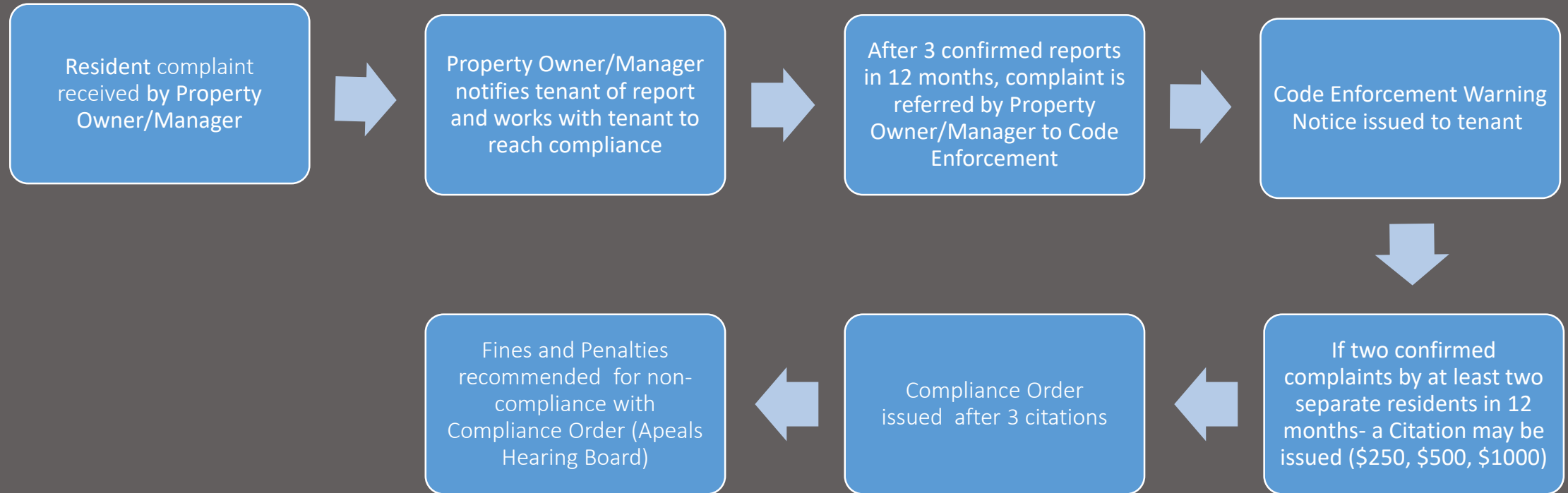
- Would allow occupants to continue to smoke and/or vape cannabis in multifamily units
- Not in alignment with State Law
- Would allow for potential exposure to cannabis secondhand smoke
- Creates challenges in enforcement
- May disproportionately impact low income and people of color
- Does not meet goals of CPP #18
- Secondhand cannabis smoke contains carcinogens like cadmium, chromium, benzene and other ingredients in Prop 65 list of toxins.

Enforcement: Proposed

- Foster compliance through education and outreach
- Self- and Complaint- Driven Enforcement
- Phased enforcement process- Property owner/manager and City partnership
- Lease Requirements Prohibiting Smoking
- Administrative Citation* for non-compliance
- Enforcement would begin 9-months after ordinance adoption

** Proposed ordinance language amended from an infraction to an administrative citation as a result of stakeholder feedback and staff review*

Enforcement: Proposed Administrative Remedy Process



Enforcement: Policy Alternative #1

Policy Alternative #1:

Remove requirement to include smoking as a material lease violation

- Limits property owner/manager's ability to bring about compliance with smoking regulations
- Creates challenges in enforcement:
 - Places more onerous on City to enforce despite limited resources
 - Highly transient/difficult to gather evidence
- Property owners may have difficulty evicting serious violators due to lease
- Would require additional outreach to property owners/managers

Enforcement: Policy Alternative #2

Policy Alternative #2:

Adopt reduced fine amounts for smoking in Multifamily units (currently \$250, \$500, \$1000)

- Reduces financial burden of violation
- May not be sufficient to deter behavior/bring about compliance
- Would require Council Resolution

Proposed Implementation Plan: Ongoing



- Continued outreach and education to foster compliance
- Smoke-free Housing Brochure in English, Spanish, and Vietnamese
- Code Enforcement Webpage Information and Various Collateral
- Proactive outreach during MH Routine Inspections
- Increased awareness of SCCPHD Cessation and Voluntary Mediation Services

Staff Recommendation

- 1) Accept amended proposed ordinance language replacing an infraction with and administrative citation;
- 2) Provide feedback on the inclusion of cannabis and smoking as a material lease violation and related policy alternatives; and
- 3) Direct staff to return to Council with a final proposed ordinance amendment of Chapter 9.44, Regulation of Smoking of Title 9 Health and Safety of the SJMC to prohibit smoking inside multifamily housing of three units or more, reducing the exposure to secondhand smoke, in alignment with and in completion of City Council Policy Priority #18, Smoke-free Housing.