



Memorandum

TO: NEIGHBORHOOD SERVICES
AND EDUCATION COMMITTEE

FROM: Rosalynn Hughey

**SUBJECT: CITY COUNCIL POLICY
PRIORITY #18: SMOKE-FREE
HOUSING STATUS REPORT**

DATE: November 23, 2020

Approved

Date

12/03/20

RECOMMENDATION

Accept the status report on City Council Policy Priority #18: Smoke-Free Housing.

OUTCOME

The Neighborhood Services and Education Committee will be informed about the status of City Council Policy Priority #18: Smoke-free Housing including work plan scope, actions completed, and next steps. Staff will receive feedback from the Committee on the work plan, progress, and report.

BACKGROUND

Rules and Open Government Committee

On September 20, 2017, former Councilmember Rocha brought forward a memorandum to the Rules and Open Government Committee, dated September 14, 2017, recommending that the Rules Committee direct that the following item be considered as part of the priority setting session held on October 17, 2017:

- Smoke-Free Housing: Direct staff to explore a prohibition on smoking in multi-family housing units.

The Rules and Open Government Committee voted to place the proposed item on priority setting.

Council Policy Priority Setting Session

On October 17, 2017, the City Council held a Council Policy Priority Setting session to approve new items and rank items for the Council Policy Priority list. The Smoke-Free Housing Council Policy Priority proposal received one vote and was added to the 2017-2018 Council Policy Priority List with a ranking of #22.

On March 5, 2019, City Council held a Council Policy Priority Setting session to remove completed priorities, approve new items, and rank items on the Council Policy Priority list. The Smoke-Free Housing Policy Priority item received one vote and was ranked as priority #23.

On February 25, 2020, City Council conducted the 2020-2021 Council Policy Priority Setting Session adding and ranking seven new priority items. The Smoke-Free Housing Council Policy Priority received three votes and moved up from #23 to #18 on the 2020-2021 Council Policy Priority List.

Santa Clara County Public Health Department Funding

To advance work on City Council Policy Priority Item #18: Smoke-Free Housing, Code Enforcement staff explored the County of Santa Clara Public Health Department's (PHD) Healthy Cities Program. This program promotes policies and practices that increase residents' access to:

- Recreation, physical activity, and safe walking and biking opportunities
- Healthy food and beverage environments
- Tobacco-free and smoke-free communities

In October 2018, staff submitted an application to the PHD Healthy Cities Program for a proposal to reduce exposure to second-hand smoke in multi-family housing. On November 5, 2018, staff was notified of an award of funding to support the implementation of proposed strategies that promote tobacco-free communities in alignment with the PHD's Healthy Cities Program. Specifically, staff proposed exploring options and policy recommendations regarding a city-level strategy to reduce exposure to second-hand smoke in multi-family housing complexes in the City.

Code Enforcement was awarded \$64,266 in grant funding and in-kind County policy consultant support for a term beginning on February 2, 2020 through June 30, 2021 to reimburse staff costs and resources expended to carry out the Council Priority #18 Smoke-Free Housing work plan through the end of the 2020-2021 fiscal year.

Current Municipal Code Regulations

The City of San José Municipal Code, Title 9, Chapter 9.44 Regulation of Smoking, currently prohibits smoking in publicly accessible and common areas of multi-family housing, including enclosed and unenclosed areas of apartments, condominiums, and mobile home parks which are

open to public access or to unrestricted common access by residents. However, the Municipal Code does not prohibit smoking inside multi-family housing units, such as apartments and condominiums.

ANALYSIS

Between November 2018 and March 2020, staff coordinated with the PHD to develop the Council Policy Priority #18 Smoke-free Housing work plan, finalize the contract terms and award of grant funding, begin the Racial and Health Equity Assessment, and conduct other preliminary research. Due to the combination of a key staff member's retirement in March 2020 and the COVID-19 pandemic and related impacts to Code Enforcement operations, progress on the work plan stalled between March and June 2020.

In June 2020, staff resumed work on the Smoke-Free Housing work plan and coordinated with PHD to update the work plan's staffing, timelines, and scope. The updated work plan (Attachment A) includes stakeholder and community outreach, research and benchmarking, draft policy recommendations, and a proposed implementation plan.

Stakeholder and Community Outreach

Between August 6, 2020 and October 31, 2020, staff conducted outreach to inform stakeholders and the public about the proposed smoke-free housing policies and receive input. Due to limitations under County Health Orders and COVID-19 guidelines, outreach efforts primarily consisted of mailings, online communication tools such as virtual community meetings, and social media platforms rather than in-person meetings to solicit feedback. Outreach regarding the survey included:

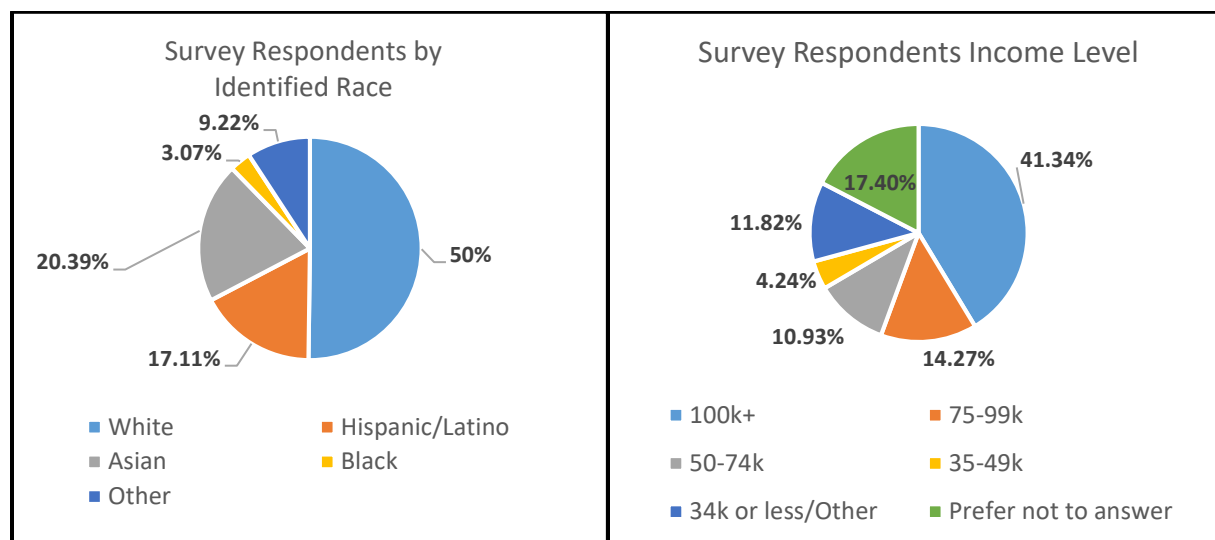
- An online joint community survey, which was available in English, Chinese, Spanish, and Vietnamese on the County and City of San José Code Enforcement Webpages;
- A mailing to approximately 6,700 City of San José multi-family property owners/managers as part of the Residential Occupancy Permit annual renewal process;
- Posting on PBCE Facebook page and Nextdoor App; and
- Presentations at Project Hope Hoffman/Via Monte and Roundtable community meetings via Zoom.

Joint Community Survey on Smoke-free Housing

On August 6, 2020, the County and City of San José Code Enforcement launched a community survey to receive feedback on the proposed smoke-free housing policies. Table 1 includes a summary of the survey. A total of 1,442 people responded to the online survey between August 6, 2020 and October 31, 2020. Of the survey respondents, 76% live in multi-family housing, such as apartments, condominiums, townhomes, duplexes, or triplexes, and 12% of respondents own or manage property in the City of San José. The following is a summary of the overall survey results (see Attachment B for full survey results).

- 69% of respondents agree that smoking (tobacco and marijuana) should be prohibited inside apartments, duplexes, condominiums, and townhouses
- 71% of respondents agree that smoking should be prohibited in outdoor spaces of individual units, such as private balconies and patios
- 54% of respondents agree that if smoking is prohibited in multi-family housing then an option should be provided for an outdoor designated smoking area
- 69% of respondents were exposed to secondhand smoke in their home in the past 30 days (tobacco smoke, marijuana smoke, or both)
- Of those who were exposed to secondhand smoke:
 - 36% of respondents noticed secondhand smoke drifting into their home almost always or often
 - 37% noticed the smoke drifting sometimes
 - 65% of those exposed to secondhand smoke think the smoke drifted in from outside (through windows, balconies, and doors)
 - 26% think the smoke drifted from another unit (e.g., through the walls or ventilation system)
- 34% of respondents reported that their housing complex already has a policy to prohibit smoking (either tobacco and/or marijuana); 39% of respondents said their housing complex does not have a policy, and 25% were not aware of a policy
- Of the total respondents, 63.62% identified as female, 50.21% identified as white, and 41.31% reported earnings of \$100,000 or more annually

Table 1: Smoking in Multi-Unit Housing Survey Respondents by Identified Race and Income Level



Data from City of San José Multi-Unit Housing (MUH) Survey – Dashboard

Research and Benchmarking

Staff conducted benchmarking of several cities within Santa Clara County to gather information on existing regulations and enforcement of smoking in multi-family housing. In Santa Clara County, five cities and Santa Clara County have adopted laws requiring multi-family housing to be 100% smoke-free: Los Gatos, Monte Sereno, Palo Alto, Santa Clara, Sunnyvale, and Santa Clara County.

Based on data from the PHD, 33% of Santa Clara County households live in multi-family housing (defined as housing that includes two or more residences, including apartments, triplexes, and fourplexes). The Code Enforcement Multiple Housing Program has a roster of approximately 6,600 buildings of three units or more and a total of approximately 101,000 units. The Multiple Housing Program, however, does not include condominiums.

Pursuant to the PHD, landlords are increasingly choosing to adopt smoking restrictions in properties they own or manage for a number of reasons, including: (1) to reduce cleaning costs from a unit with a smoker; (2) to lower the fire risk and related insurance costs; and (3) in response to tenant demand.

Racial and Health Equity Analysis

In partnership with PHD, staff began a Racial and Health Equity Assessment of the proposed policy to require smoke-free multi-family housing. The Racial Equity Assessment Tool is designed to lay out a process and set of questions to assess how proposals will benefit and/or burden communities, specifically communities of color. As part of the initial steps, PHD gathered and reviewed local data on topics such as smoking rates, cessation resources, where multi-unit housing is located, and implications of the proposed policy related to housing rights. As the Racial and Health Equity Assessment is still ongoing, staff will continue to coordinate with the PHD in completing the assessment and evaluating the outcomes prior to formulation final policy recommendations.

In Q1 2021, staff will coordinate with the Office of Racial Equity to evaluate smoke-free housing policy proposals and recommendations to ensure all potential impacts to communities of color and other vulnerable populations are considered. Provisions for reasonable accommodations for individuals that are prescribed cannabis for medicinal purposes will also be evaluated.

Proposed Implementation Plan and Enforcement

Based on the PHD's research, communities generally have experienced high rates of compliance with smoke-free multi-family housing laws when several key elements are incorporated into the approach for implementation. These elements include: A phase-in approach, education and resources, lease requirements, and enforcement.

Phase-in Approach

Utilizing a phase-in approach of smoke-free housing laws and requirements would allow the City time to notify and educate residents and property owners/managers of the new requirements before the laws become effective. During this period the City can conduct additional outreach through mailings, informational brochures, online meetings, and answer questions from the stakeholders and community.

Staff's preliminary phase-in approach would include a first phase which would focus on prohibiting smoking inside individual units, including private balconies, decks, patios, and porches, in all new construction of multi-family residences that receive a Residential Occupancy Permit after the date of the smoke-free ordinance adoption. The first phase would also include prohibiting smoking in individual units that undergo a change in occupancy (new tenant). The second phase would expand smoking prohibitions to all existing multi-family residences with the exception of hotels or motels that meet the state and local law requirements. Staff anticipates the ordinance will be fully implemented by July 2022.

Lease Requirements

Research has shown that ordinances requiring landlords to incorporate the smoke-free requirements into a tenant's lease have been effective. This means that a violation involving a person smoking inside their unit could be enforced by the landlord as a lease violation and/or by the City. New tenants who move in after the ordinance's effective date would sign the updated lease agreement including the smoking restrictions. Existing tenants would have their leases updated on a rolling basis as the leases are renewed. Condominium complexes could enforce the smoking restrictions as a violation of their Covenants, Conditions, and Restrictions.

Education and Resources

Providing community education and resources on an on-going basis is essential to the success of a smoke-free housing ordinance. Best practices include:

- Providing mitigation services for individuals that are evicted due to smoking violations
- Joint City/County educational webinars and workshops to promote awareness of the effects of second-hand smoking
- Offering affordable classes, seminars, or treatments at cessation centers for individuals who want to quit smoking
- Providing collateral such as "no smoking" signs to multi-family housing properties and local businesses which will aid in implementation of the ordinance

Self- and Complaint-Driven Enforcement

Smoke-free housing enforcement would primarily be complaint-driven. However, due to the transient nature of smoking, the City of San José Code Enforcement Division would have limited ability to effectively respond and address smoke-free multi-family housing complaints.

Research has shown, however, that adoption of smoke-free housing ordinances typically generates a high volume of complaints in the initial implementation phase but tapers off in the months and years that follow. In general, communities that have adopted smoke-free multi-family housing laws have not been overwhelmed by complaints following the initial phases. Staff also anticipates, smoke-free housing laws would become self-enforcing as seen with prior smoking laws such as outdoor smoking and prohibition of smoking in restaurants. Code Enforcement would focus its enforcement efforts on leveraging opportunities for education and outreach while conducting proactive Multiple Housing Program annual routine inspections and multi-family complaint inspections.

CONCLUSION

Staff will complete work plan items for Council Policy Priority #18: Smoke-free Housing, including further stakeholder and community outreach, racial equity analysis, and an implementation and enforcement plan. Staff will continue to coordinate with the City Attorney's Office and the Santa Clara County Public Health Department and Policy Consultant. Staff will also initiate coordination with the Housing Department and the new Office of Racial Equity to develop policy recommendations for City Council consideration by the end of fiscal year 2020-2021. Staff will also assess and develop budget and fee proposals as appropriate for additional resources needed to support policy recommendations as part of the annual budget process for fiscal year 2021-2022.

EVALUATION AND FOLLOW-UP

This status report provides an overview of the progress to date of the Council Policy Priority #18: Smoke-free Housing work plan scope, completed actions, and next steps. Staff will continue to complete the steps outlined in the work plan and anticipates returning to the Neighborhood Services and Education Committee in spring 2021 with smoke-free housing policy recommendations and a fully developed implementation and enforcement plan.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

Staff conducted a stakeholder and community survey in partnership with the County of Santa Clara from August 6, 2020 through October 31, 2020 and received 1,442 responses. Staff will conduct additional outreach, applying a racial equity lens to ensure all potential impacts to communities of color or other vulnerable populations are adequately considered and feedback and input from these populations are incorporated into the development of the policy recommendations and implementation plan. This memorandum will be posted on the City's website for the December 10, 2020 Neighborhood Services and Education Committee Meeting.

COORDINATION

Staff has consulted PHD and the County policy consultant (Public Health Policy and Law) in developing the content of this report. In-kind County policy consultant support included coordination on the content and preparation of this memorandum including but not limited to public health research findings about the benefits of smoke-free housing policies, the racial equity toolkit process and analysis, results of the public opinion survey, and best management practices for implementation. This memorandum has been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Information Memos that involve no approvals of any City action.

/s/

ROSALYNN HUGHEY, Director
Planning, Building, and Code Enforcement

For questions, please contact Rachel Roberts, Deputy Director, at rachel.roberts@sanjoseca.gov.

Attachment A: City Council Policy Priority #18 Smoke-free Housing Work Plan
Attachment B: City of San José Multi-Unit Housing (MUH) Survey – Dashboard