



Memorandum

TO: NEIGHBORHOOD SERVICES
AND EDUCATION COMMITTEE

FROM: Rosalynn Hughey

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

DATE: March 22, 2021

Approved

Date

3/30/21

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 further stakeholder and community outreach, racial equity analysis, proposed policy recommendations, and the proposed implementation and enforcement plan. The Committee feedback will inform policy recommendations.

EXECUTIVE SUMMARY

On October 17, 2017, the City Council voted to add the Smoke-free Housing City Council Policy Priority to the 2017-2018 Council Policy Priority List with a ranking of #22. The Smoke-free Housing Policy Priority was again ranked by City Council as policy priority #23 in 2019 and #18 in 2020. The Council Policy Priority directed staff to explore a prohibition on smoking in multifamily housing units.

In 2020, Code Enforcement received \$64,266 in Tobacco-free Communities funding and in-kind County Policy Consultant support from Santa Clara County Public Health Department (PHD) Healthy Cities Program- 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. In August 2020, Staff began work on the Smoke-free Housing Workplan including research and benchmarking, outreach, and policy development.

Staff presented a status report of the City Council Policy Priority #18: Smoke-free Housing to the Neighborhood Services and Education (NSE) Committee on December 10, 2020. Following

the NSE Committee status report, staff continued to conduct further community and stakeholder outreach, racial equity analysis, and development of proposed policy recommendations and implementation and enforcement plan.

Staff is recommending the NSE Committee accept the status report, including the scope of the proposed draft ordinance amendment to prohibit smoking in multiple family properties of three units or more, and the draft implementation and enforcement plan. The acceptance of this recommendation will result in a final proposed ordinance amendment to be considered by City Council for adoption in June 2021.

BACKGROUND

Rules and Open Government Committee

On September 20, 2017, Council Member Rocha brought forward a memo 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 multifamily 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 was added to the 2017-2018 Council Policy Priority List. It received 1 vote during the ranking process and was listed as priority #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 received 1 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 Council Policy Priority received 3 votes and moved up from #23 to #18 on the 2020-2021 Council Policy Priority List.

Santa Clara County Public Health Department Funding

The Code Enforcement Division applied for the Healthy Cities Program- Tobacco-free Communities funding on October 26, 2018 to explore options and policy recommendations

regarding a citywide strategy to reduce exposure to secondhand smoke in multi-family housing complexes. On November 5, 2018, the City of San José Code Enforcement Division was notified of an award of funding by the PHD's Healthy Cities Program. Code Enforcement was awarded \$64,266 in 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 Smoke-free Housing work plan through the end of Fiscal Year 2020-2021. The funding provided by the PHD was the result of California Proposition 56, the California Healthcare, Research and Prevention Tobacco Act of 2016, which increased the tax on cigarettes and other tobacco products by two dollars. The PHD notified staff on September 30, 2020 of the option to extend the grant funding term from June 30, 2021 to mid-September 2021 to offset delays due to the COVID-19 pandemic. Staff is coordinating with the PHD to implement the extension.

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.

Stakeholder and Community Outreach

Between August 6, 2020 and October 31, 2020, staff conducted outreach to key stakeholders and the public to inform them about the proposed smoke-free multi-family housing policies and receive input. Due to limitations under County Health Orders and COVID-19 guidelines, outreach efforts primarily consisted of mailings, virtual community meetings, and a community survey in partnership with the County of Santa Clara. Staff also conducted racial equity analysis in coordination with the PHD.

Community Survey on Smoke-free Housing

Between August 6, 2020 and October 31, 2020, the County and Code Enforcement division staff conducted a community survey to receive feedback on the proposed smoke-free multi-family housing policies. A total of 1,442 people responded to the online survey. The results of the survey indicated that 69% of the respondents agreed that smoking should be prohibited inside apartments, duplexes, condominiums, and townhouses; these respondents indicated that they had been exposed to secondhand smoke within the last 30 days. The survey results also showed that 65% had been exposed to secondhand smoke from smoke that drifted inside their units from the outside through windows, balconies and doors; 26% reported that smoke drifted from another unit (through the walls or ventilation system). Survey results also indicated that 34% of respondents' housing complexes already had a policy in effect to prohibit smoking.

Racial and Health Equity Analysis

In partnership with the PHD, staff engaged in a Racial and Health Equity Assessment of the proposed policy to require smoke-free multi-family housing. This 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 analysis the PHD gathered and reviewed local data on topics such as smoking rates, cessation resources, where multi-unit housing is located, and implications of the policy related to housing rights.

Research and Benchmarking

Staff conducted research of existing ordinances, policies, and best practices for reducing exposure to secondhand smoke or prohibiting smoking in multi-family housing. Research included benchmarking of several cities within Santa Clara County to gather information on existing regulations and enforcement of smoking in multi-family housing. Santa Clara County and five cities within the 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.

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.

Neighborhood Services and Education Committee

On December 10, 2020, staff presented the City Council Policy Priority #18: Smoke-free Housing status report to the NSE Committee including work plan scope, actions completed, and next steps.¹ The NSE Committee accepted staff's status report and recommended that staff continue to complete the steps outlined in the work plan and return to the NSE Committee in spring 2021 with policy recommendations.

ANALYSIS

Further Stakeholder and Community Outreach

Staff conducted additional outreach, between January and March 2021, with First Community Housing, the City of Berkeley, and the City of Sunnyvale to gain insights about their implementation strategy and impacts/outcomes of their smoke free policies on residents.

First Community Housing, which owns and manages 1400 affordable housing units, shared that their smoke-free housing policies have been in place with all their properties for over ten years

¹ [Neighborhood Services and Education Committee Meeting, December 10, 2020, Item CC 20 216](#)

with much success. Their representative expressed that feedback from residents on the implementation of the smoke free housing policy has been positive. The representative also emphasized the importance of applying smoke-free policies to a building or complex universally and not piecemeal as it creates challenges and becomes difficult to monitor and manage each smoking versus nonsmoking unit of the building. First Community Housing, however, did not have any data on smoking related evictions due to noncompliance as it is considered a lease violation.

Staff also initiated contact with the City of Berkeley which implemented a smoke free policy in 2014. The City of Berkeley provided staff with a sample letter that was issued to the property owners and sample language that could be incorporated into the leases executed with the residents. Berkeley staff advised to use clear and direct policy language and the importance of conducting ongoing education efforts. Berkeley staff also provided an overview of their enforcement process including a provision that the complaining party filing the smoking complaint must be a resident of the same complex. Staff is exploring a similar process and criteria for Code Enforcement's smoke-free ordinance enforcement procedure.

Additional follow up was made with the City of Sunnyvale in which staff received copies of their outreach letter issued to the property owners/managers and a timeline of their outreach efforts.

The feedback gathered from these cities provided insights and guidance which staff considered in the development of the proposed ordinance and implementation and enforcement plan. Specific recommendations, such as the requirement that the complaining party must reside in the same complex to initiate a complaint and suggestions, such as the outreach letter language used by the City of Sunnyvale will be incorporated.

Further Racial and Health Equity Analysis

In January 2021, staff met with the Office of Racial Equity and, upon their recommendations, conducted outreach with the following local agencies.

- Path (People Assisting the Homeless)
- Abode Services
- The Law Foundation
- Indian Health Center
- Oakland Roots Clinic

Staff engaged with each agency to inform them of the proposed smoke free policies and solicit feedback. In general, the primary concern from some of the agencies is the potential negative impacts on the hard-to-house population. Agencies also expressed concerns on possible evictions and did not support the issuance of fines or citations. The Law Foundation recommended a gradual approach for enforcement. Staff emphasized that the intent of the ordinance is to reduce secondhand smoke exposure to all residents and not to require individuals to stop smoking.

Draft Ordinance Amendment

Staff began developing the draft amendment to Title 9.44, of the San José Municipal Code to prohibit smoking in multiple family properties and implement City Council Policy Priority #18 direction. The draft proposed ordinance amendments include but are not limited to:

- 1) Prohibiting the following in multiple-housing properties of three units or more, including private and shared balconies, patios and courtyards:
 - Smoking including cigarettes, cigars, cigarillos, hookahs and pipes
 - Electronic smoking devices, such as e-cigarettes and vape pens
 - Cannabis;
- 2) Requiring smoking prohibitions as part of the rental lease agreement;
- 3) Creating a designated smoking area as an option if certain criteria is met as defined by Title 9.44;
- 4) Exempting hotels and motels that meet state and local law requirements; and
- 5) Establishing guidelines for enforcement.

The proposed ordinance would apply to all multiple housing properties that are required to maintain a Residential Occupancy Permit and are enrolled in the Multiple Housing Program. The proposed ordinance would not apply to condominiums. Pursuant to the Municipal Code, properties required to be part of the Multiple Housing Program include properties with three units or more such as SROs, triplexes, apartments, hotels/motels, and sororities/fraternities. Hotels and motels, however, would be exempt from the smoke-free ordinance regulations. There are currently 6,747 buildings and 101,039 units (including hotels and motels) enrolled in the Multiple Housing Program.

Proposed Implementation Plan and Enforcement

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

Phased Approach

Using a phased approach to implement the smoke-free housing ordinance would allow the City ample time to notify and educate residents and property owners/managers of the new requirements before the laws become effective. The City would conduct additional outreach through mailings, informational brochures and online meetings, and would respond to questions and concerns. The phased approach would include:

- Phase 1: New construction (approximately July 2021 to September 2021): The first phase would focus on prohibiting smoking inside individual units, including private balconies, decks, patios, and porches, in all new construction of multiple family residences that receive a Residential Occupancy Permit by a codified date,

January 1, 2022. Lease smoking requirements would be required to be in place prior to tenant occupancy.

- Phase 2: Existing Multiple Family Housing (approximately September 2021 to December 2021): The second phase would expand smoking prohibitions inside units, including private balconies, decks, patios, and porches, to all existing multiple family residences, except for hotels or motels that meet the state and local law requirements. Property owners would be required to provide notice to all existing tenants of the new ordinance requirements by January 1, 2022, and execute leases or lease amendments prohibiting smoking, as applicable, in place for all occupied units by July 1, 2022.

Staff will conduct outreach and education to tenants and property owners and managers, providing awareness of the effects of second-hand smoke, as well as providing information on classes, seminars, or treatments at cessation centers for individuals who want to quit smoking. Referrals to the Law Foundation will be made for individuals who may be impacted due to non-compliance with the smoking restrictions. Materials such as a sample lease amendment, “no smoking” signs, and informational brochures in English, Spanish, and Vietnamese will be made available to multiple family housing properties. In coordination with PBCE’s Communications Team, a Smoke-free Housing webpage will be developed as part of Code Enforcement’s website to provide online resources and information for stakeholders and the public.

Enforcement of Smoke-free Housing Ordinance

Smoke-free housing enforcement would primarily be complaint-driven and self-enforcing or in partnership with multiple family property owners and managers. When a complaint is received, the initial outreach would take place between the property owner or manager and tenant as a violation of the lease. In alignment with the proposed draft ordinance amendment, the complaining party must reside within the property. After three complaints within a 12-month period, the complaint would be escalated and referred to Code Enforcement by the property manager or owner for follow up. The Code Enforcement Division would then proceed with the following enforcement process:

- 1) Warning Notice: Once the City receives a referral from the property owner or manager that a multiple family tenant has repeated violations of the smoking ordinance, staff will issue a notice to the tenant in violation. The tenant of the unit would be responsible for occupants including visitors who smoke in the unit. The notice would include information about the ordinance and compliance requirements and the health impacts of exposure to secondhand smoke. The notice would also include smoking cessation resources available to residents.
- 2) Citation: If within six months of the issuance of the notice, at least two residents in two separate units of the multiple family property file a complaint with the City, the tenant would be issued an administrative citation.

Staff has found in its research that adoption of smoke-free housing ordinances typically generated a high volume of complaints in the initial implementation phase but decline gradually in the months and years that follow. In general, communities that have adopted smoke-free multiple family housing ordinances have not been overwhelmed by complaints following the initial phases. Staff also anticipates the smoke-free ordinance 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 complaint inspections.

CONCLUSION

Staff will continue implementing the City Council Policy Priority #18: Smoke-free Housing work plan including coordination with stakeholders and the County on the implementation and enforcement plan. Staff will continue to coordinate with the City Attorney's Office and PHD and the policy consultant to develop the final draft ordinance for City Council consideration in June 2021.

EVALUATION AND FOLLOW-UP

This status report provides an overview of the progress to date of the City Council Policy Priority #18: Smoke-free Housing including additional stakeholder outreach, racial equity analysis, draft ordinance amendments, and the strategy for implementation and enforcement. Staff will continue to develop the draft ordinance and bring final policy recommendations for City Council consideration in June 2021. Staff will conduct additional outreach with stakeholders and non-profit organizations via the PBCE "Code Connection" quarterly newsletter and zoom webinars to provide an overview of the draft ordinance and obtain feedback. Additionally, staff will present the proposed ordinance at the upcoming April and May Project Hope community meetings. Lastly, informational brochures in English, Spanish and Vietnamese will be made available to customers.

CLIMATE SMART SAN JOSE

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

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the April 8, 2021 Neighborhood Services and Education Committee Meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office. Staff also consulted the Office of Racial Equity, the PHD and County policy consultant.

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/

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Planning, Building, and Code Enforcement

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

Attachment A: Updated City Council Policy Priority #18 Smoke-free Housing Work Plan