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CITY COUNCIL STAFF REPORT

Meeting: September 15, 2020

Subject

Study session regarding policy options to reduce secondhand smoke exposure in Cupertino

Recommended Action

Provide direction on policy options to reduce exposure to secondhand smoke, including in multi-unit housing

Background

The Santa Clara County Public Health Department (PHD) has provided funding to cities to support tobacco prevention strategies known to have the highest impact on reducing tobacco-related disparities and inequities. As part of this funding, the City of Cupertino received a \$54,979 grant from the PHD to implement tobacco prevention policies that have been shown to reduce exposure to secondhand smoke. Exploring these policies is also part of the current City Work Program.

In November 2019, the City Council approved and enacted Ordinance No. 19-2190 that prohibits the sale of flavored tobacco products and requires that retailers in the City obtain a local tobacco retailer permit. In February 2020, the City Council approved and enacted Ordinance No. 20-2197 to prohibit the sale of electronic cigarette/vaping products and make additional conforming amendments consistent with Santa Clara County's tobacco control ordinance.

Discussion

The dangers of tobacco use and exposure to secondhand smoke are well documented. More than 40,000 Californians die each year from smoking-related disease, making tobacco use the number one cause of preventable death. In Santa Clara County, one in eight deaths annually is attributed to smoking-related illness or diseases, such as cancer, heart disease, and respiratory diseases. The COVID-19 pandemic has highlighted the risks of smoking. Smoking doubles the risk of developing respiratory infections and doubles the risk of getting sicker from COVID-19. Research shows that smokers with COVID-19 are twice as likely to be admitted to the intensive care unit, need medical ventilation, or die. In addition, COVID-19 is causing more individuals

to stay at home and to wait in lines for longer periods of time, making secondhand smoke policies more important to protect these individuals.

The U.S. Surgeon General has concluded that there is no safe level of exposure to secondhand smoke and the California Air Resources Board has classified secondhand smoke as a toxic air contaminant. Secondhand smoke is responsible for more than 4,000 heart disease-related and lung cancer deaths each year in California. According to the Centers for Disease Control, the only way to fully protect nonsmokers is to eliminate smoking in all homes, worksites, and public places. Studies have shown that exposure to secondhand smoke outdoors can reach levels attained indoors depending on the amount of wind and number and proximity of smokers. Additionally, residents of multi-unit housing can be exposed to neighbors' secondhand smoke, which seeps under doorways, through wall cracks, and vents.

State law prohibits smoking in most public indoor areas, as well as within 20 feet of entrances and exits to government buildings. The City of Cupertino has expanded these protections by prohibiting smoking in recreation areas and outdoor dining areas (Cupertino Municipal Code Chapter 10.90 "Regulation of Smoking"). The Santa Clara County Public Health Department is receiving an increasing number of complaints from residents about exposure to secondhand smoke in outdoor areas and where they live. Not only does prohibiting smoking in such locations decrease exposure to harmful secondhand smoke, it also decreases fire risk and reduces the amount of cigarette butt litter. The following best practices can reduce exposure to secondhand smoke:

1. **Require smoke-free multi-unit housing** (defined as two or more attached residences that share a wall or floor/ceiling, which could include apartments, condominiums, townhomes, duplexes, triplexes, fourplexes, etc.), including:
 - a. Outdoor common areas
 - b. A buffer zone around doors and windows of multi-unit housing and
 - c. Inside units in multi-unit housing
2. **Require smoke-free entryways** around the entrances of all locations where smoking is prohibited, including businesses, offices, grocery stores, restaurants, bars, places of worship, etc.
3. **Require public events** to be smoke-free, such as farmers' markets and street fairs
4. **Require service areas** to be smoke-free, such as ATMs, ticket lines, bus stops or shelters
5. **Require outdoor worksites** to be smoke-free, such as construction sites

These options are discussed in more detail below. "Smoking" includes the use of cigarettes, cigars, cigarillos, hookah, pipes, electronic smoking devices, and marijuana.

1. Smoke-free multi-unit housing

In order to protect residents of multi-unit housing from the negative effects of drifting secondhand smoke, the City Council could consider prohibiting smoking (a) in multi-unit common areas, such as walkways, courtyards, and pool areas; (b) in outdoor areas within 25 feet from the doors and windows of multi-unit housing units; and (c) in individual units, including patios and balconies, of multi-unit housing.

For purposes of this report and policy, multi-unit housing is defined as housing that includes two or more attached residences (i.e., a shared wall or ceiling/floor), including apartments, condominiums, townhomes, duplexes, triplexes, and fourplexes.

Based on data from the Santa Clara County Public Health Department (PHD), 33% of Santa Clara County households live in multi-unit housing. In Cupertino, it is estimated that 43% of addresses are for multi-unit housing. According to a DPH fact sheet on Smoke-free Multi-unit Housing (Attachment B), close to one-third (29%) of adults who live in multi-unit housing in Santa Clara County reported smelling tobacco smoke drifting into their home in the previous week. The rate of secondhand smoke exposure was even higher among those with less than a high school diploma (38%) and adults with household incomes less than \$15,000 (36%). Several studies on drifting secondhand smoke in multi-unit housing have confirmed that secondhand smoke can and does transfer between units, creeping under doorways and through wall cracks. Because people spend a considerable amount of time at home, smoke-free policies in residential settings can significantly protect residents from second-hand smoke.

Multiple surveys show an increased demand for smoke-free housing. According to Santa Clara County, 96% of Santa Clara County apartment residents believe that smokers should not be allowed to smoke wherever they want; and 84% of Santa Clara County apartment residents surveyed said that they would support a no-smoking policy at their multi-unit housing complex (Attachment B). According to a poll conducted by the American Lung Association, nearly half of California apartment owners and managers have had tenants complain about secondhand smoke drifting into their apartments.

Increasingly, landlords are 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. The California Apartment Association's sample lease form contains a provision indicating that smoking is prohibited everywhere on the property, unless the owner has adopted a different policy.

a. Smoke-free Common Areas

Under California law, indoor common areas of multi-family housing are required to be smoke-free if any employees enter the premises. However, there is no law prohibiting smoking in outdoor common areas in Cupertino, such as walkways, courtyards, playgrounds, and pool areas. In Santa Clara County, seven communities have adopted laws to require smoke-free outdoor common areas in multi-family housing: Los Gatos, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale, and Santa Clara County (Attachment A.)

b. Smoke-free Buffer Zones

As with commercial buildings, many people are exposed to secondhand smoke from neighbors who smoke outside their unit near the doorway or on a patio or balcony. This policy option would prohibit smoking in outdoor areas within 25 feet from any area of multi-family housing that is required to be smoke-free. If desired, the ordinance can offer an option for landlords to create a designated outdoor smoking area so long as it meets certain requirements.

c. Smoke-free Individual Units

As described above, secondhand smoke can seep between units. A policy prohibiting smoking inside individual units, including private balconies and common areas, is the only way to fully protect residents. In Santa Clara County, four cities and Santa Clara County have adopted laws requiring multi-unit housing to be 100% smoke-free: Los Gatos, Palo Alto, Santa Clara, Sunnyvale, and Santa Clara County (Attachment A).

2. Smoke-free Entryways

California law prohibits smoking within 20 feet of entrances, exits, or operable windows of government buildings. Many communities have adopted local laws creating smoke-free buffer zones around non-government buildings, such as offices, restaurants, retail shops, places of worship, supermarkets, etc. These laws are designed to protect business operators from smoke drifting into their businesses, as well as members of the public who are entering or exiting buildings or passing by on the sidewalk.

Cupertino currently prohibits smoking within 25 feet of entrances and exits of restaurants but does not include all businesses open to the public. Cupertino Municipal Code sections 10.90.020(A)(3), 10.90.020(B)(1), 10.90.010(B). In Santa Clara County, 9 cities and Santa Clara County have adopted laws prohibiting smoking within a radius of all buildings in which smoking is prohibited indoors: Campbell (20 feet), Los Altos (25 feet), Los Gatos (30 feet), Morgan Hill (25 feet), Mountain View (25 feet), Palo Alto (25 feet), Saratoga (20 feet), the

City of Santa Clara (30 feet), Santa Clara County (30 feet), and Sunnyvale (25 feet) (Attachment A).

3. Smoke-free Public Events

Many local governments in California have taken steps to protect their residents from secondhand smoke in outdoor areas where people congregate, such as events open to the public. Currently, smoking is not prohibited at outdoor public events in Cupertino, such as farmer's markets, parades, or music events. In Santa Clara County, nine communities have restrictions on smoking at public events: Campbell, Los Altos, Los Gatos, Morgan Hill, Mountain View, Palo Alto, Santa Clara, Saratoga, and Sunnyvale (Attachment A).

4. Smoke-free Service Areas

A restriction on smoking in service areas seeks to protect individuals from the dangers of secondhand smoke in areas where people wait to receive a service or make a transaction, such as ATMs, information kiosks, public transit stops, mobile vendor lines, cab lines, entrance lines, and ticket lines. In Santa Clara County, five communities currently prohibit smoking in service areas: Campbell, Morgan Hill, Palo Alto, San Jose, and Santa Clara County (Attachment A).

5. Smoke-free Outdoor Worksites

California law prohibits smoking in all enclosed workplaces in order to protect employees and patrons. State law does not prohibit smoking in outdoor worksites, such as construction sites. In Santa Clara County, three communities currently prohibit smoking in outdoor worksites: Los Gatos, Palo Alto, and Saratoga.

In addition to the best practices noted above, and in response to complaints from residents, Council has asked staff to explore the feasibility and legality of a prohibition on smoking in backyards of single-family homes.

Cupertino would be the first jurisdiction in California to adopt a restriction on smoking in outdoor areas of single-family homes that are not attached. From the research, there are not any definitive legal barriers to such restrictions, but notes that they remain untested. The primary challenges are with enforcement and the potential for unintended public health consequences. Enforcement would be challenging or impossible given that backyards are often fenced/private and it would be difficult to cite individuals for violating any backyard smoking ban. One other community considered banning smoking in backyards (City of Rocklin) but according to news coverage quoting Rocklin's City Manager, the backyard proposal was not enacted due to logistical concerns with both regulation and enforcement. There is also a public health concern that this prohibition could push smokers indoors or onto streets and sidewalks, possibly putting

them into closer contact with children and other vulnerable populations. For these reasons, staff does not recommend moving forward with backyard regulations at this time.

Implementation and Enforcement

As smoke-free outdoor area laws have become more prevalent, communities generally have experienced high rates of compliance with such laws. These measures are largely self-enforcing once stakeholders—such as restaurant owners and businesses—are notified about the law and provided with educational materials. The presence of no-smoking signs is critical both in educating the public about prohibited behavior and in providing support to members of the public who wish to notify or remind people who are smoking about the law.

Enforcement of laws prohibiting smoking in outdoor common areas and within a certain distance from multi-family housing units are analogous to other smoke-free area laws. The violations are publicly visible, residents will be notified of the new laws, and no-smoking signs can be posted. As a last resort, the City can cite an individual for smoking in violation of the law; however staff will first conduct education to encourage compliance or will issue warnings. The following elements aid in implementation of such laws:

1. **A phase-in period** – the smoke-free housing requirements would become effective at a later date to allow time to notify residents and residents and property owners/managers of the new requirements. During this period the City can conduct additional outreach through mailings and online meetings. The City also can provide information about cessation services to residents who wish to quit smoking.
2. **Lease requirements** - the ordinance should require landlords to incorporate the smoke-free requirements into a tenant's lease. 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 restrictions. These requirements would address many of the situations since the ordinance would apply only to multi-unit housing properties with two or more units that share a wall or ceiling/floor.
3. **Signage** – Santa Clara County will provide “no smoking” signs to multi-unit housing properties and to local businesses, which will aid in implementation of the ordinance.

Following the education period about the new ordinance, enforcement is complaint-driven. In general, communities that have adopted smoke-free multi-family housing laws have not been overwhelmed by complaints and most have found education and warnings about the new law to be sufficient.

Proposed Outreach

The City will solicit input from residents, businesses, and property owners/managers on the proposed policy options to reduce exposure to secondhand smoke. All of the outreach will be funded by the grant from the PHD. The following methods of outreach are recommended to inform the public and to solicit feedback on the proposed policy options:

1. Online Survey

- a. A survey about potential policy options will be created and posted using Open City Hall. The survey will ask about support for the proposed secondhand smoke control policy options as well as whether tenants have been exposed to secondhand smoke in their home.
- b. The survey will be open for 30-60 days.
- c. The survey will be advertised through the City's website, Next Door, the City's social media accounts, and a mailer to all City residents and businesses, including property owners and managers.

2. Community Forums

- a. Two or more online community forums will be held to solicit input from residents, visitors, employees, business owners, including property owners and managers, on the proposed tobacco policy options.

3. Mailers

- a. The City will send two City-wide mailers to all residents and businesses:
 - i. The first mailer will notify residents and businesses of the potential policies under consideration and will provide information on the online survey, the dates of the community outreach meetings (as available), and information on how to sign up to receive updates on the topic.
 - ii. If the Council adopts new tobacco control policies, a second mailer will be sent informing residents and businesses of the new law.

Conclusion and Next Steps

With the adoption of additional second-hand smoke policies, the City has the opportunity to help further protect residents, employees, and visitors from exposure to secondhand smoke in public places and where people live. These policies would demonstrate the City's commitment to protecting the health of its residents and would improve the City's performance on the County's Healthy Cities Initiative. Additionally, adopting these smoke-free policies would raise the City's "grade" on the American Lung Association's State of Tobacco Control report from a "C" to an "A".

Sustainability Impact

Cigarettes are the most littered item and pose a significant stormwater pollution problem. Reducing smoking in outdoor public spaces will help to reduce the resulting litter from

cigarette butts. In addition, these policies will improve air quality for those who may otherwise be exposed to secondhand smoke.

Fiscal Impact

The City has been awarded \$54,979 to cover the costs of developing the proposed regulations and conducting the associated outreach. This grant will also fund the costs of outreach and education of the policy options chosen by Council. No additional funding is requested at this time.

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Attachments:

A – Tobacco Free Communities Policies in Santa Clara County

B – Smoke-free Multi-Unit Housing, Santa Clara County Public Health Department

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