



CITY MANAGER'S OFFICE

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CITY COUNCIL STAFF REPORT

Meeting: May 4, 2021

Subject

Consideration of Municipal Code Amendments to the Cupertino Municipal Code, Chapter 10.90, expanding existing policies to reduce exposure to secondhand smoke, including in multi-unit housing, entryways, public events, service areas, and outdoor worksites.

Recommended Action

1. Reintroduce with amendments and conduct the first reading of Ordinance No. 21-2227: "An Ordinance of the City Council of the City of Cupertino amending City Code Chapter 10.90 of Title 10 (Public Peace, Safety, and Morals) to prohibit smoking in multi-unit housing and certain outdoor areas," which adds additional setback requirements for designated smoking areas and includes detached single-family homes with attached and detached accessory dwelling units in the regulations, and which includes a finding that the Ordinance is exempt from CEQA; or
2. Conduct the second reading and enact Ordinance No. 21-2224 "An Ordinance of the City Council of the City of Cupertino amending City Code Chapter 10.90 of Title 10 (Public Peace, Safety, and Morals) to prohibit smoking in multi-unit housing and certain outdoor areas," which includes a finding that the Ordinance is exempt from CEQA.

Background

On March 2, 2021 the City Council conducted the first reading of Ordinance No. 21-2224 to prohibit smoking in multi-unit housing, entryways, public events, service areas, and outdoor worksites. Council voted to approve the ordinance with an amendment to include single-family homes with attached accessory dwelling units (ADUs) within the definition of multi-unit housing (Attachment A).

At the same March 2, 2021 City Council meeting, Council requested that staff perform additional research on:

1. How other cities protect residents of neighboring properties from smoke coming from a designated smoking area on the property of a multi-unit housing residence; and

2. How to expand the ordinance to include both attached and detached ADUs and junior accessory dwelling units (JADUs).

The revised draft ordinance contains amendments to address these two requests (Attachment C).

Discussion

Ordinance No. 21-2224, which had its first reading at the March 2, 2021 City Council meeting (Attachment A), includes the following components:

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, attached single-family homes, single-family homes with attached ADUs, duplexes, triplexes, etc.), including:
 - a. Outdoor common areas;
 - b. A 30-foot buffer zone around doors and windows of multi-unit housing;
 - c. Inside units in multi-unit housing; and
 - d. Allows owners the option to create designated smoking areas that meet certain criteria.
2. **Require smoke-free entryways** around buildings 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 farmer's 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.

Other jurisdictions in Santa Clara County have adopted similar provisions and a comparison table can be found in Attachment F.

For the purposes of the ordinance, "smoking" includes the use of cigarettes, cigars, cigarillos, hookah, pipes, electronic smoking devices, and marijuana. The ordinance defines multi-unit housing as two or more attached residences that share a wall or floor/ceiling, which could include apartments, condominiums, townhomes, attached single-family homes, attached accessory dwelling units, duplexes, triplexes, etc.

More information on the health risks of exposure to secondhand smoke, the ordinance components, and the outreach conducted regarding the ordinance, can be found in the staff report from the March 2 meeting (Attachment E).

Designated Smoking Area

Among the smoke-free multi-unit housing ordinances in Santa Clara and San Mateo Counties, only the City of Santa Clara restricts the location of designated smoking areas in proximity to a neighboring property. Santa Clara's law requires designated smoking areas to be 30 feet away from any doors, windows, openings, or other vents to a neighboring property.

The revised draft ordinance (Attachment C) includes an amendment to create an additional set-back requirement for designated smoking areas as indicated below in subsection (4):

- A. Designated Smoking Areas in Multi-unit Residences. A designated smoking area shall:
1. Be an Unenclosed Area;
 2. Be a Reasonable Distance from Unenclosed Areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses;
 3. Be a Reasonable Distance in any direction from any operable doorway, window, opening or other vent into an enclosed area that is located at the Multi-unit Residence and is a Nonsmoking Area;
 4. Be a Reasonable Distance in any direction from a Nonsmoking Area and/or any operable doorway, window, opening or other vent into an enclosed area of adjacent private property;
 5. Have a clearly marked perimeter;
 6. Have a receptacle for cigarette butts that is emptied and maintained; and
 7. Be identified by conspicuous signs.

This amendment would prohibit a designated smoking area within a reasonable distance (defined as 30 feet) from a residence on neighboring property. The amendment also would prohibit a designated smoking area within 30 feet of a neighboring outdoor area that is required to be nonsmoking, such as a public park.

Detached Accessory Dwelling Units

All other jurisdictions in Santa Clara County exempt ADUs in their smoke-free multi-unit housing ordinances, likely due to increased enforcement challenges. Currently, San Bruno, San Mateo, and South San Francisco include ADUs but exempt detached ADUs in their ordinance. Albany and Pasadena are examples of cities that include attached and detached ADUs in their smoke-free multi-unit ordinances.

Ordinance No. 21-2224 currently includes attached ADUs but not detached ADUs. The revised draft ordinance (Attachment C) includes an amendment to the definition of “multi-unit residence” to specifically include “single-family homes with an attached or detached accessory dwelling unit, junior accessory dwelling unit, or second unit.” With this amendment, the ordinance would prohibit smoking in both the single-family home and the accessory dwelling unit.

Conclusion and Next Steps

Council can conduct the second reading and enact Ordinance No. 21-2224, which was presented to Council on March 2, 2021, or conduct the first reading of the revised draft ordinance, which

includes the additional amendments stated above. Either option will further protect residents, employees, and visitors from exposure to secondhand smoke in public places and where people live.

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. No additional funding is requested at this time.

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Reviewed by: Katy Nomura, Assistant to the City Manager

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Draft Ordinance 21-2224 to Regulate Smoking (First Reading Approved on 3/2/21) Clean

B – Draft Ordinance 21-2224 to Regulate Smoking (First Reading Approved on 3/2/21) Redline

C – Revised Draft Ordinance to Regulate Smoking Clean

D – Revised Draft Ordinance to Regulate Smoking Redline

E – March 2, 2021 Staff Report

F – Tobacco Free Communities Policies in Santa Clara County