

**CITY MANAGER'S OFFICE**

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: March 2, 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

Conduct the first reading of Ordinance No. ____: "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 adoption of the ordinance is exempt from the California Environmental Quality Act.

Background

The health risks 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. 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.

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 homes, worksites, and public places. 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 Santa Clara County's Healthy Cities Program seeks to address tobacco-related health concerns by promoting policies and practices to provide tobacco-free and smoke-free

communities. As part of this funding, the City of Cupertino received a \$54,979 grant from Santa Clara County's Public Health Department (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.

On September 15, 2020, the City Council held a study session to consider policy options to reduce exposure to secondhand smoke. Councilmembers expressed general support for the proposed policy options and directed staff to conduct outreach on these policy options to residents and local businesses. Over the past few months, staff has conducted extensive outreach and additional research on the policy options. Results of the outreach, which includes a community survey, show that a large majority of the public supports these proposals.

Discussion

After accounting for research on best practices to reduce exposure to secondhand smoke and public input, the draft ordinance (Attachment A) amends the Cupertino Municipal Code to include the following components for Council's consideration:

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, 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. Exempts designated smoking areas (must be 30 feet away)

A map of the approximately 9,297 multi-unit housing addresses in Cupertino, about 39%, can be found at cupertino.org/smoking.

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 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

These measures are likely to have the greatest impact on reducing exposure to secondhand smoke and were the focus of the City's outreach. For a detailed analysis of these major policy components, see the staff report from the September 15, 2020 study session in Attachment D. Other jurisdictions in Santa Clara County have adopted similar provisions and a comparison table can be found in Attachment B.

For the purposes of the draft 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, duplexes, triplexes, etc. The ordinance would not prohibit smoking in single-family homes that are freestanding at this time. At the September 15, 2020 study session, Council expressed interest in possibly revisiting this topic at a future date.

Buffer Zone

The City of Cupertino currently prohibits smoking within 25 feet of entrances and exits of restaurants. The proposed ordinance increases this distance to 30 feet due to over 55% of the community survey respondents indicating that 25 feet was inadequate. This 30-foot buffer zone, also known as reasonable distance, is used throughout the ordinance to indicate the area in which smoking is prohibited when adjacent to a nonsmoking area, such as entrances to retail, offices, and multi-unit housing. Other jurisdictions such as Los Gatos, Santa Clara, and Santa Clara County also use 30 feet as their buffer zone. Los Altos, Morgan Hill, Mountain View, Palo Alto, and Sunnyvale use 25 feet as their buffer zone, while only Campbell and Saratoga use 20 feet.

Option to Include Attached ADUs

The proposed ordinance exempts Accessory Dwelling Units (ADUs). All other jurisdictions in Santa Clara County exempt ADUs in their smoke-free multi-unit housing ordinances, likely due to increased enforcement challenges. There was some interest from residents at a community meeting to include ADUs in this ordinance (see Outreach section). At the direction of Council, the ordinance could be updated to include attached ADUs. If ADUs are included, it is recommended that detached ADUs continue to be exempt under the definition of multi-unit housing because they do not have a shared wall. Currently, San Bruno, San Mateo, and South San Francisco include attached ADUs but exempt detached ADUs in their ordinance. Albany and Pasadena are examples of cities that include all ADUs in their smoke-free multi-unit ordinances.

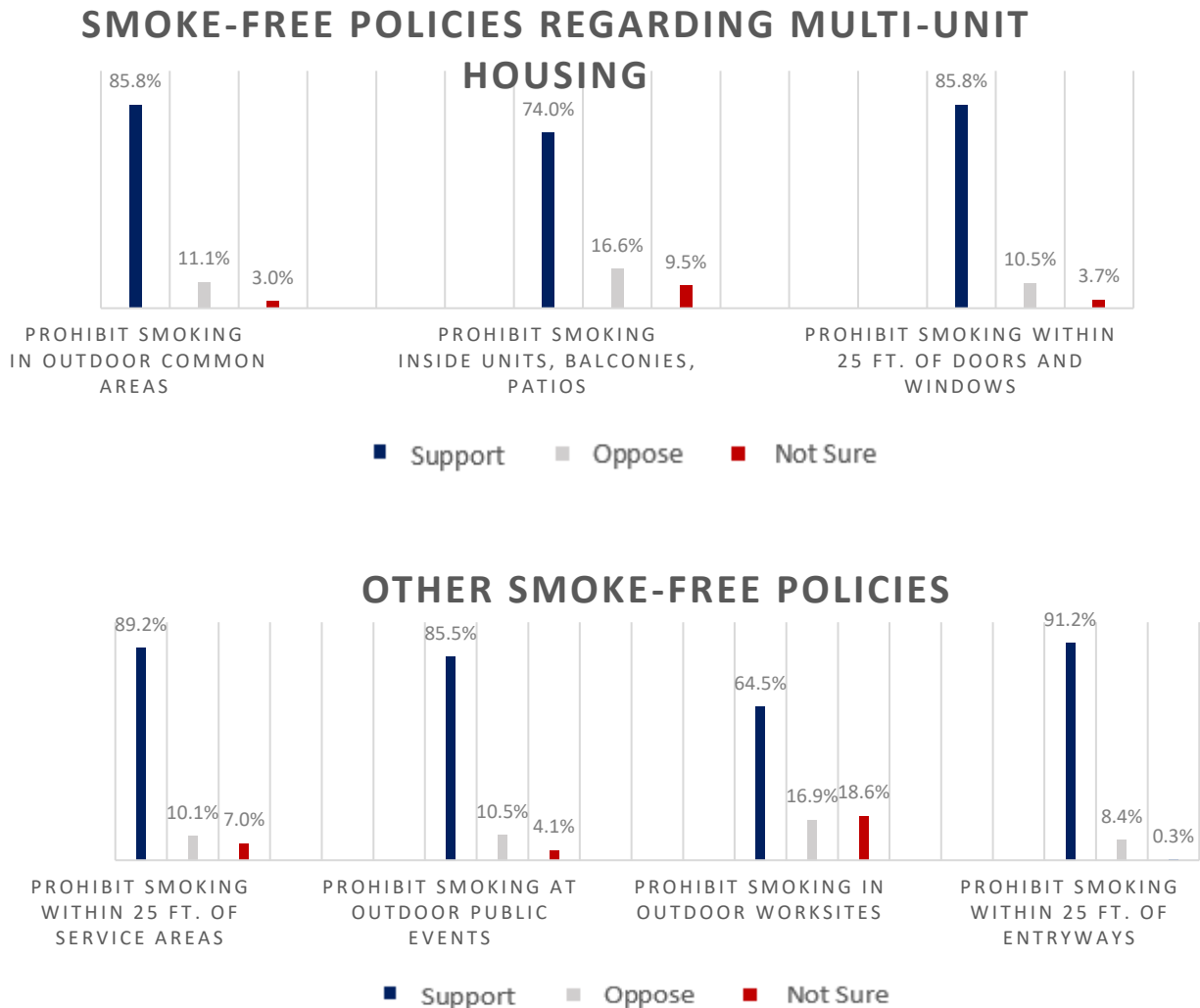
Outreach

From October 2020 through February 2021, the City conducted outreach to solicit input from residents, businesses, and property owners/managers on the proposed policy options to reduce exposure to secondhand smoke. Though COVID-19 restrictions presented some challenges, the outreach effort was diverse and involved an online survey, two online community meetings, an article in the Scene, social media postings, a City webpage, a citywide mailer, a presentation to the Chamber of Commerce, and other outreach to the business community.

1. Online Community Survey

An online community survey was open from October 2 - November 16, 2020 in order to gather feedback from the community about the proposed policies. The survey was advertised through the City website, social media, the community meetings, and a City

mailer. The survey received 296 responses, with 289 respondents indicating that they live in Cupertino. There were 79 respondents who indicated that they live in multi-unit housing in Cupertino. For a full summary of responses please see Attachment C. Below are the responses to questions related to the proposed policies:



As seen in the charts above, the large majority of respondents were in favor of the proposed policies. The number of respondents who opposed or who were unsure about the policies was minor, with more uncertainty surrounding the smoke-free outdoor worksites among the various policy options. Survey results of the respondents who live in Cupertino and live in multi-unit housing are almost identical to the outcomes above.

The survey allowed respondents to provide additional comments. The majority of those comments were in support of the proposed policies. Most respondents shared that they were glad that the City is helping to reduce secondhand smoke in Cupertino. Some comments indicated that they wanted to see these regulations also imposed on single-family homes, parking lots, and all sidewalks. Many respondents indicated that they would prefer if the entire City was smoke-free. Other respondents specified that they would like stronger

finest and penalties for those violating the smoking regulations. There were only a handful of comments in opposition to the proposed policies. Of the comments in opposition, some felt that there is no need for additional City regulations if the current laws are properly enforced. One respondent was concerned about enforcement, specifically on balconies. Another respondent said the landlords should be able to enforce their own rules.

In addition to the comments received in the survey, there were three residents who provided comments via email and phone. One resident believes the proposed policies are too restrictive and another believes smoking is not an issue. Another respondent supports the policies but is concerned about cigarette littering. The proposed ordinance references Cupertino's existing code that requires property owners or occupants to keep the property, including the perimeter, free of litter. These responses can be found in Attachment C.

2. Online Community Meetings

The City hosted two online community meetings to inform and gather feedback from the public on October 29 and November 10, 2020. A total of seven community members attended, and all who participated in public comment were supportive of the proposed secondhand smoke policies. A couple residents commented that they would like to see these policies include detached single-family homes and ADUs. Another resident wanted to applaud the City for implementing these policies and regulating secondhand smoke and wanted to highlight the dangers of smoking around children inside single-family homes. Another resident wanted to recommend creating a buffer zone around schools and college campuses.

3. Business outreach

The City presented the proposed policies to the Cupertino Chamber of Commerce's Legislative Action Committee (LAC) meeting on November 6, 2020. The LAC was generally in support of these policies.

Individual phone calls and emails were provided to 51 property owners, managers, and Home Owner Associations (HOA) in Cupertino. Of the four that provided feedback, they indicated that their units are already smoke-free and that they do not have many issues or complaints. One HOA community manager commented that he wished this had come up sooner as they had recently made significant financial investment to hire a lawyer to create their own smoking regulations. He added that they have not received any negative comments in opposition from their community and that it would be beneficial to have their regulations backed by the City through the proposed ordinance.

Staff also spoke with Cupertino's Farmer's Market representative who posted flyers of the proposed policies and feedback opportunities at the Farmer's Market's operated by the Pacific Coast Farmer's Market Association. Information on the proposed policies and input opportunities were also published in the Business Buzz Newsletter and the Cupertino

Scene. The Scene was mailed to all residential and business addresses in the City, which includes individual units in multi-unit housing.

In addition to the outreach highlighted above, if the ordinance is adopted, the City will send a mailer to provide information about the new requirements.

Implementation and Enforcement

To aid in implementation of smoke-free multi-unit housing requirements, the following elements are incorporated into the draft ordinance:

1. **A phase-in period** – the smoke-free housing requirements would become operative approximately six months after ordinance adoption to allow time to notify residents and property owners/managers of the new requirements.
2. **Lease requirements** - the ordinance requires 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.
3. **Signage** – The ordinance requires "No Smoking" signs to be posted where smoking is prohibited. 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 will be 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. As a last resort, the City can cite an individual for smoking in violation of the law. The ordinance also provides for private rights of enforcement by civil action. However, as a practice, education will be the first step to encourage compliance.

Conclusion and Next Steps

With the adoption of additional smoke-free policies, the City has the opportunity to 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 likely raise the City's "grade" on the American Lung Association's State of Tobacco Control report from a "C" to an "A" (Attachment E).

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.

Prepared by: Leslie Zellers, JD, Consultant, Santa Clara County Department of Public Health
Astrid Robles, Management Analyst

Reviewed by: Katy Nomura, Assistant to the City Manager

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Draft Ordinance to Regulate Smoking

B – Tobacco Free Communities Policies in Santa Clara County

C – Community Feedback

D – 9-15-20 Study Session Staff Report

E – American Lung Association Report Card

1340043.1