



### Agenda Item

15-0383

Agenda Date: 2/9/2016

## REPORT TO COUNCIL

### SUBJECT

Introduce an Ordinance Amending Chapter 9.28 (Regulation of Smoking) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code to Prohibit Smoking in All Outdoor Dining Areas, Near Doorways and Other Openings to Retail and Commercial Businesses, and in All Units and Common Areas of Multi-Family Residences; Finding of CEQA Exemption Pursuant to Guideline Section 15061(b)(3) (Study Issue)

### BACKGROUND

In January 2015, City Council directed staff to study options to prohibit smoking in multi-family housing common areas and in units (Study Issue DPS 15-01). This study issue was combined with a previous study issue to expand smoking regulations near entrances to businesses and in outdoor dining areas (Study Issue OCA 14-03(b)). Portion (a) of OCA 14-03 was completed on March 18, 2014, with the adoption of an ordinance amendment banning electronic cigarettes anywhere smoking is prohibited.

In Spring 2015, the City was awarded a \$95,000 grant from the Santa Clara County Department of Public Health to support this study by examining ways to reduce or eliminate exposure to the harmful effects of secondhand smoke in three areas:

1. Outdoor dining;
2. Within a specified distance of business entryways; and
3. In all units and common areas of multi-family residences.

Staff selected Leslie Zellers, JD (consultant) to conduct the study based on her extensive experience with local ordinances regulating the sale, use, and marketing of tobacco products. The primary objectives of the study were to 1) review options to regulate smoking in the identified areas; 2) gather public input on proposals to increase smokefree areas through community meetings and surveys; and 3) review and compare how other California cities have regulated these issues.

To gather public input on the proposals to create smokefree areas, staff conducted two online surveys through Sunnyvale Open City Hall. More than 500 people who live, work, or visit the City responded to the surveys. The consultant and staff also hosted a total of six public outreach meetings to receive public input on the proposals.

The purpose of this report is to summarize the key findings and policy options in the Smokefree Areas Consultant Report (Attachment 1) and, if the Council agrees with the staff recommendations, introduce amendments to the City's existing smoking ordinance (Sunnyvale Municipal Code Chapter 9.28) to address the three study areas.

### EXISTING POLICY

**General Plan**

**Goal EM-11** Improved Air Quality (Chapter 7: Environmental Management): Improve Sunnyvale's air quality and reduce the exposure of its citizens to air pollutants.

**Policy cc-4.2** (Chapter 4: Community Character - Heritage Preservation): Maintain beautiful and comfortable outdoor public places which provide a shared sense of ownership and belonging for Sunnyvale residents, business owners, and visitors.

**Goal HE-2** Enhanced Housing Conditions and Affordability (Chapter 5: Housing): Maintain and enhance the conditions and affordability of existing housing in Sunnyvale.

**Goal SN-1** Acceptable Levels of Risk for Natural and Human-Caused Hazards (Chapter 6: Safety and Noise): Ensure that natural and human-caused hazards are recognized and considered in decisions affecting the community and that land uses reflect acceptable levels of risk based on identified hazards and occupancy.

**Council Policy 3.2.4 Zero Waste:** It is the policy of the City of Sunnyvale that the City will work to: 1. Reduce that amount of Sunnyvale waste being disposed.

**Council Policy 5.1 Long-term Advocacy Positions - Socio-Economic:** Support legislation and community-based efforts that improve the quality of life for children and families through increased access to educational support, health care, housing, emancipation transition services for foster youth, and vocational training programs.

**ENVIRONMENTAL REVIEW**

This activity does not require environmental review because it can be seen with certainty that there is no possibility that it may have a significant effect on the environment (CEQA Guideline 15061 (b)(3)).

**DISCUSSION**

As presented in the Smokefree Areas Consultant Report (Attachment 1), some of the key findings of the study are:

- Smoking remains the leading cause of preventable death in the United States. Additionally, secondhand smoke is dangerous for both children and adults. 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.
- Although Sunnyvale has expanded protections against exposure to secondhand smoke, such as in parks, the City has fallen behind other areas in laws to require smokefree air. In 2015, the City received a "D" grade from the American Lung Association's State of Tobacco Control report.
- Nearly 90% of the people who responded to the Sunnyvale Open City Hall survey favor smokefree outdoor dining and around business entryways. More than 100 California municipalities have adopted laws to restrict smoking in these areas.
- An overwhelming majority of survey respondents favor requiring outdoor common areas (82%) and outdoor areas (84%) around multi-family housing (e.g., balconies) to be smokefree. Such laws are increasingly common in other areas in order to protect residents from unwanted exposure to secondhand smoke.
- A majority of survey respondents (59%) favor prohibiting smoking within units of multi-family

housing, e.g., apartments, duplexes, condominiums, townhomes. A number of other California communities have prohibited smoking in multi-family housing and these communities have reported very few complaints.

The consultant report also identifies three primary areas for policy consideration to reduce or eliminate exposure to the harmful effects of secondhand smoke.

1. **Require 100% smokefree outdoor dining, including bars, restaurants, and cafes.** Based on the Open City Hall survey, nearly 90% of respondents favor smokefree outdoor dining, with many reporting that they currently avoid outdoor dining because of the smoking. Social norms have changed dramatically since 1986 when the City adopted a requirement that at least 60% of outdoor dining areas be reserved for non-smokers. Additionally, more information is now known on the dangers of secondhand smoke exposure.
2. **Require a 25 foot smokefree buffer zone around the entryways, exits, and windows of all locations where smoking is prohibited, including businesses, offices, grocery stores, restaurants, bars, places of worship, etc.** There are currently no requirements for smokefree entryways for non-government buildings. Survey respondents overwhelmingly (89%) prefer a smokefree buffer zone around businesses and other public locations in order to avoid having to pass through a cloud of smoke to enter or exit a building. The survey asked respondents if they would support a 20 foot buffer zone around buildings (the same distance required by state law around government buildings); however, a significant number of respondents suggested a larger buffer zone. Based on survey responses and on data showing how far secondhand smoke can travel outdoors, the consultant recommends a 25 foot buffer zone in order to better protect patrons and employees.
3. **Require smokefree multi-family housing (apartments, condominiums, townhomes, and duplexes), including:**
  - a. Smokefree common areas;
  - b. A 25 foot smokefree buffer zone around doors and windows; and
  - c. In individual units.

Prohibiting smoking in outdoor common areas and within 20 feet of multi-family housing units was supported by more than 80% of survey respondents, many of whom vividly described the discomfort and nuisance of living adjacent to a person who smokes. The consultant recommends a 25-foot buffer zone around multi-family housing units in order to be consistent with the proposed smokefree buffer zone around businesses. Prohibiting smoking inside multi-family housing units would protect residents, including low-income and other vulnerable residents, from harmful drifting secondhand smoke. This option was supported by a majority of survey respondents (59%) and is increasingly being adopted by other cities and by landlords who are responding to tenant complaints and concerns about fire risk and cleaning costs. To accommodate existing residents who smoke, housing complexes may be given the option of creating designated smoking areas if they meet specific criteria, e.g., are located a certain distance away from windows and doors.

An ordinance incorporating options 1-3 (Attachment 5) would create extensive protections against unwanted secondhand smoke. If such an ordinance is adopted, staff will conduct outreach to notify the general public and affected stakeholders (such as businesses, residents, and property owners/managers) of the approved changes. Additionally, the Department of Public Safety (DPS) will

partner with the Environmental Services Department (ESD) on strategies to reduce cigarette butt litter, which is an ongoing problem. In 2015, the Downtown Streets Team collected more than 83,000 cigarette butts in the downtown area.

Based on the survey results and on laws adopted by other California communities, the consultant also recommends creating additional smokefree public areas, which could include prominent shopping and commercial areas like Murphy Avenue, public events such as festivals and farmers markets, and service areas such as ATMs, transit stops, and similar places where people wait or congregate. Although there was general support from survey respondents for creating smoking restrictions for these types of outdoor areas and uses, the survey did not explicitly ask about banning smoking for these types of activities, so there is not comprehensive information on the level of public support for such proposals. The proposed ordinance does not regulate these areas/uses; however Council could direct staff to study these further.

### **FISCAL IMPACT**

In general, new ordinances that impose additional restrictions have a corresponding impact on staff time related to outreach and enforcement efforts; however, staff anticipates minimal fiscal impact related to enforcement of the proposed amendments because other municipalities with similar restrictions have reported that these rules are largely self-enforcing and have generated minimal complaints. The proposed ordinance amendments also provide numerous options for enforcement. However, if the level of enforcement required exceeds the need anticipated at this time, staff may return to Council to seek additional funding to support enforcement.

As part of a public education strategy, if Council adopts the ordinance amendments, staff will conduct outreach to notify the general public and affected stakeholders of the approved changes. Outreach will be funded primarily by the existing \$95,000 grant. Additionally, DPS will partner with ESD on strategies to reduce cigarette butt litter (such as providing receptacles in dense commercial areas around Murphy Avenue).

Education and outreach on a prohibition on smoking in multi-family housing units would require the most extensive efforts and also would be paid for with grant funds. In addition to providing information on the ordinance requirements, resources would be provided to help residents and property owners comply with the ordinance, such as sample lease language, signage, and information about cessation services. If the smokefree multi-family housing restrictions are adopted, enforcement is expected to be complaint-driven. The County of Santa Clara and cities in San Mateo County that adopted similar laws have received very few complaints.

### **PUBLIC CONTACT**

Staff created two online surveys through Sunnyvale Open City Hall asking for feedback on proposed smoking restrictions. The first survey, which was available from 8/19/15 - 9/14/15, was viewed by 910 people and completed by 349 people. The second survey was conducted to receive additional input on smokefree multi-family housing; it was sent specifically to owners of rental property in Sunnyvale and through a wide variety of other channels. The second survey was available from 12/18/15 - 1/6/16; it was viewed by 476 people and completed by 182 new respondents.

The consultant and staff also hosted six public outreach meetings at the Sunnyvale Community Center to receive public input on the proposals. A total of ten people attend the meetings; the low turnout could be attributed to a preference to complete the online survey. The first four meetings

(8/31/15 from 3-4 pm and 6-7 pm and 9/3/15 from 3-4 pm and 6-7 pm) focused on the proposals to create smokefree outdoor dining, smokefree entryways, and smokefree multi-family housing. The final two meetings (1/4/16 from 4-5 pm and 6-7 pm) focused solely on the proposals to create smokefree multi-family housing.

The consultant also conducted a telephone survey of 40 apartment complexes in the City with 100 units or more. Of the 25 complexes reached, 22 prohibit smoking in common areas and 16 prohibit smoking in units (covering approximately 3,725 units). Complexes that already prohibit smoking on the entire property would require few changes to comply with the ordinance, if adopted. Those without smoking policies would be required to prohibit smoking in all areas covered by the ordinance. The consultant's report further summarizes the extensive public outreach conducted for the study.

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **ALTERNATIVES**

1. Find that the activity is exempt from environmental review pursuant to CEQA Guideline 15061(b)(3), and Introduce an Ordinance to amend the Sunnyvale Municipal Code (Title 9, Chapter 9.28) to prohibit smoking:
  - a. in all outdoor dining areas;
  - b. within 25 feet of doorways and windows of locations where smoking is prohibited;
  - c. in common areas of multi-family housing;
  - d. within 25 feet of doors and windows of multi-family housing; and
  - e. in all multi-family housing units.
2. Introduce a modified ordinance to prohibit smoking in different locations mentioned in Alternative 1.
3. Sponsor a Study Issue to conduct additional research on any of the proposed amendments or new amendments.
4. Do not introduce any of the proposed amendments.

### **STAFF RECOMMENDATION**

Alternative 1: Find that the activity is exempt from environmental review pursuant to CEQA Guideline 15061(b)(3) and Introduce an Ordinance to amend the Sunnyvale Municipal Code (Title 9, Chapter 9.28) to prohibit smoking:

- a. in all outdoor dining areas;
- b. within 25 feet of doorways and windows of locations where smoking is prohibited;
- c. in common areas of multi-family housing;
- d. within 25 feet of doors and windows of multi-family housing; and
- e. in all multi-family housing units.

Staff recommends prohibiting smoking in each of the areas in the proposed ordinance. As demonstrated by the survey results, an overwhelming majority of residents and visitors support creating smokefree outdoor dining areas, entryways, multi-family housing common areas, and areas around multi-family housing. These measures would protect residents, employees, and visitors from harmful exposure to secondhand smoke and would demonstrate the City's commitment to protecting the health of its community. These amendments would keep pace with neighboring cities in Santa

Clara and San Mateo Counties and raise the City's "grade" on smokefree air protections. Staff also recommends an exception to the smokefree outdoor dining restriction for up to two years for two restaurants (same owner) with existing use permits for hookah.

Staff recommends prohibiting smoking within 100% of multi-family housing units, including apartments, condominiums, townhomes, and duplexes. In order to accommodate people who smoke and to help address cigarette butt litter, staff recommends allowing property owners the option to create a designated smoking area that meets certain conditions, e.g., at least 25 feet from areas where smoking is prohibited and providing receptacles for cigarette butt litter. Prohibiting smoking in multi-family units will provide an opportunity for everyone in Sunnyvale to live smokefree, including the City's most vulnerable populations.

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Reviewed by: Kent Steffens, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

1. Smokefree Areas Consultant Report
2. Study Issue DPS 15-01
3. Study Issue OCA 14-03(b)
4. Study Issue OCA 14-03C(b) Status Report
5. Draft Ordinance Chapter 9.28. REGULATION OF SMOKING