



City of Sunnyvale

Agenda Item

14-0279

Agenda Date: 3/18/2014

REPORT TO COUNCIL

SUBJECT

Introduction of an Ordinance Amending Title 9, Chapter 9.28 of the Sunnyvale Municipal Code to Prohibit the Use of Electronic Smoking Devices Wherever Smoking is Prohibited and a Finding that the Proposed Ordinance is Exempt from the Requirements of the California Environmental Quality Act (CEQA) Pursuant to CEQA Guideline 15061(b)(3); Consideration of Options to Expand Smoking Prohibition near Retail and Commercial Entrances/Exits (Study Issue)

BACKGROUND

Electronic smoking devices, commonly known as electronic cigarettes or e-cigarettes, have become increasingly popular in the last year or so, especially with younger people. Electronic cigarettes often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products. While state law prohibits the sale of electronic cigarettes to minors, it does not regulate the use of such devices. Sunnyvale Municipal Code (SMC) Chapter 9.28 currently prohibits smoking in various locations but does not specifically address the use of electronic smoking devices. Through the study issue process, the City Council requested that the City Attorney's Office bring forward an amendment to the municipal code to prohibit the use of electronic smoking devices in places where smoking is currently prohibited. In addition, the Council expressed concern about people smoking near entrances or exits of businesses located in close proximity to each other, causing the smoke to drift into adjoining businesses, and asked that the issue of prohibiting smoking near commercial and retail businesses be considered. (Attachment 1: Study Issue OCA 14-03.)

EXISTING POLICY

SMC Chapter 9.28, Regulation of Smoking

ENVIRONMENTAL REVIEW

The project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guideline 15061(b)(3) in that it does not have the potential for causing a significant effect on the environment.

DISCUSSION

A. Electronic Smoking Devices

The City has enacted an ordinance prohibiting smoking in certain locations. (Attachment 2: SMC Chapter 9.28.) The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in specified locations and places of employment. Additionally, the use of electronic smoking devices in locations where the City prohibits smoking creates enforcement difficulties because of their similarity to conventional tobacco products. Pursuant to Council direction, a draft ordinance amending SMC Chapter 9.28 is attached for Council's

consideration. (Attachment 3: Draft ordinance.) The ordinance amends the definition of smoking to include electronic smoking devices, and prohibits their use in the same locations where the City currently regulates smoking.

B. Regulation of Smoking near Retail and Commercial Entrances/Exits

The Council undertook a significant review of the City's smoking regulations in March 2012, and considered whether to extend the ban on smoking to parks and all outdoor dining areas. (Attachment 4: RTC 12-072; Attachment 5: Approved Minutes 3/20/12.) After extensive outreach and public input, the Council took action to amend the regulations by updating them to conform to current state law, and to ban smoking in City parks. At the time, the Council excluded golf courses from the ban, and declined to ban smoking in all outdoor dining areas. Rather, Council continued the existing regulation, which requires "sixty percent of outdoor eating areas for all eating establishments shall be reserved for nonsmokers. Smoking is prohibited and unlawful in such areas." (SMC §9.28.020(c).)

Council has now expressed interest in extending the City's current smoking regulations to include a ban on smoking near doorways of retail and commercial businesses located in close proximity to prevent smoke caused by someone smoking near one business to drift into the neighboring business. The drafting of an ordinance to accomplish such a ban raises a number of policy issues, and consequently staff is requesting Council direction on how to proceed. Many local jurisdictions have addressed this issue in the following ways: banning smoking within 20 or 25 feet of any entrance, exit, operational window, or air intake vent to any building where smoking is prohibited, and/or banning smoking on commercial area sidewalks. This type of regulation could have the effect of banning most smoking in outdoor dining areas, especially those located on sidewalks in front of businesses, something Council chose not to do two years ago. In addition, some jurisdictions ban smoking in public places when being used for a public event, including farmers markets, parades, craft fairs, or festivals that may be attended by the general public. Staff needs direction on the scope of regulation Council is interested in, and whether Council wants to revisit the issues raised two years ago when the City last updated its ordinance.

FISCAL IMPACT

Amendment of the smoking ordinance to include electronic smoking devices is not expected to have a fiscal impact. It is anticipated that existing staff will respond to complaints of non-compliance.

PUBLIC CONTACT

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 project is exempt from CEQA pursuant to CEQA Guideline 15061(b)(3) and introduce an ordinance to amend Chapter 9.28 of the Sunnyvale Municipal to ban electronic smoking devices where conventional smoking is banned as depicted by Attachment 3.
2. Do not introduce the ordinance.

STAFF RECOMMENDATION

Alternative 1: Find that the project is exempt from CEQA pursuant to CEQA Guideline 15061(b)(3)

and introduce an ordinance to amend Chapter 9.28 of the Sunnyvale Municipal to ban electronic smoking devices where conventional smoking is banned, as set forth in Attachment 3.

Additionally, provide staff direction regarding extending the current smoking regulations to prohibit smoking in front of retail and commercial businesses.

Prepared and Reviewed by: Joan Borger, City Attorney

Reviewed by: Frank Grgurina, Public Safety Chief

Reviewed by: Connie Verceles, Economic Development Manager

Reviewed by: Robert A. Walker, Interim City Manager

ATTACHMENTS

1. OCA 14-03 Study Issue Paper
2. SMC Chapter 9.28
3. Draft Ordinance SMC Section 9.28.010
4. RTC 12-072
5. Approved minutes from March 20, 2012