



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Introduce Ordinance No. 227.8 Amending Chapter 215 (Regulation of Smoking in Certain Places), Title V (Public Health, Safety and Welfare), of the Milpitas Municipal Code Relating to Prohibiting Smoking in Multi-Unit Housing and Certain Outdoor Areas and Making Findings of CEQA Exemption
Category:	Public Hearings-Community Development
Meeting Date:	6/1/2021
Staff Contact:	Ned Thomas, Director of Planning, 408-586-3273
Recommendation:	<ol style="list-style-type: none"> 1) Conduct a public hearing and move to close the hearing following comments. 2) City Attorney shall read aloud title of Ordinance No. 227.8. 3) Move to waive the first reading beyond the title and introduce Ordinance No. 227.8 amending Chapter 215, Title V of the Milpitas Municipal Code and making findings of CEQA exemption.

Background:

The Santa Clara County 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 Milpitas received a grant for in-kind consultant services from Santa Clara County's Public Health Department (PHD) to implement tobacco prevention policies that have been shown to reduce exposure to secondhand smoke.

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.

On March 3, 2020, the City Council authorized the City Manager to conduct public outreach, develop policy options to prohibit smoking and exposure to secondhand smoke (including vaping and smoking of tobacco and cannabis products) in multi-unit housing, and prepare an implementation plan for future consideration and adoption. The City already prohibits smoking and vaping in parks, trails, and outdoor dining areas, so staff selected a range of additional policies to address primary sources of secondhand smoke exposure in individual units and common areas of multi-unit housing. The range of policy options includes smoke-free strategies for entryways and service areas of nonresidential developments and at public events to protect Milpitas' most vulnerable populations.

Public Engagement

From July 2020 to March 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. The outreach involved an online public survey, a website and online public forum, and targeted outreach to businesses through an email blast and a presentation to the Milpitas Chamber of Commerce. As detailed below, results of the outreach show that a large majority of the public supports these proposals.

Online Public Survey

An online community survey was open from July 15th to August 31st, 2020 in order to gather feedback from the community about the proposed policies. The survey was advertised through the City website, social media, and postcard notices, which were mailed directly to all multi-unit properties in the City and distributed at the Senior Center and summer camps hosted by the Recreation and Community Services Department.

The survey received 125 responses, with 33 percent of participants indicating that they live in multi-unit housing in Milpitas. For a full summary of responses please see staff's info memo to City Council on November 25, 2020 (Attachment A). Below are the responses to questions related to the proposed policies:

Locations	Support
Within 25 feet of entrances, exits, and windows to buildings where smoking is prohibited	97%
Within 25 feet of service areas (e.g., transit stops or ATMs)	96%
Outdoor public events (e.g., farmers' markets and concerns)	93%
Outdoor common areas of multi-family housing (e.g., walkways, courtyards, pool areas, etc.)	89%
Within 25 feet of doors and windows of multifamily housing	89%
Inside all multifamily units (including private balconies and patios)	83%

As seen in the table above, the vast 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.

Participants were given the opportunity to submit open-ended comments at the end of the survey, and they expressed general support for smoke-free policies in Milpitas and other concerns regarding secondhand smoke. Attachment A provides the specific responses.

Website & Online Public Forum

In addition to the comments received in the survey, staff received seven written comments through the project website and Online Public Forum, which was held open for an entire month to provide ample opportunity to learn about the project and provide written comments. All but one of the comments expressed support for smoke-free policies in Milpitas and cited the following concerns about secondhand smoke exposure:

- General health hazard;
- Reduced access to fresh air and good air quality;
- Harmful impacts to nonsmokers, particularly young children;
- Absence of existing restrictions on smoking in public areas;
- Ongoing complaints within communities about secondhand smoke with no recourse; and
- Potential for widespread exposure in multifamily properties.

Outreach to Businesses

City staff introduced the proposed smoke-free policy options to the Milpitas Chamber of Commerce and solicited feedback regarding implementation at its Board meeting on February 4th, 2021. Citing the benefit of

providing consistency and clarify for businesses regarding smoking requirements through established citywide policy, the Chamber of Commerce Board expressed support for the proposed smoke-free policies.

City staff also distributed a Constant Contact message with a link to the City's website, an informational flyer, and contact information to Milpitas' business community. Staff has not received any comments from businesses in Milpitas.

Analysis:

After accounting for research on best practices to reduce exposure to secondhand smoke and public input, staff prepared a draft ordinance (Attachment B) to amend Title V of the Milpitas Municipal Code (Public Health, Safety and Welfare) to include the following components for Council's consideration:

1. **Require smoke-free multi-unit housing** (defined as two or more attached residences, which could include apartments, condominiums, townhomes, duplexes, triplexes, etc.), including:
 - a. Outdoor common areas;
 - b. A 25-foot 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**, such as farmer's markets and street fairs, to be smoke-free
4. **Require service areas**, such as ATMs, ticket lines, bus stops or shelters, to be smoke-free

These measures are likely to have the greatest impact on reducing exposure to secondhand smoke and were the focus of the City's outreach. Each option is discussed in more detail below.

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. Other jurisdictions in Santa Clara County have adopted similar provisions and a comparison table can be found in Attachment C. For the purposes of the draft ordinance, "smoking" includes the use of cigarettes, cigars, cigarillos, hookah, pipes, electronic smoking devices, and marijuana.

Smoke-free Multi-Unit Housing

In order to protect residents of multi-unit housing from the negative effects of drifting secondhand smoke, the draft ordinance would prohibit 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.

The draft ordinance defines multi-unit housing as 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 Milpitas, approximately 20% of households live in multi-unit housing. In a survey conducted by the City of Milpitas, 45.16% of respondents reported that they had been exposed to either tobacco smoke, marijuana smoke, or both in the past 30 days. Of those respondents, 21.78% of respondents reported that they noticed secondhand smoke drifting into their home often or always and 41.13% reported that they sometimes noticed secondhand smoke drifting into their home. 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.

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.

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, such as walkways, courtyards, playgrounds, and pool areas. In Santa Clara County, seven cities and Santa Clara County have adopted laws to require smoke-free outdoor common areas in multi-family housing. More information about where other jurisdictions in Santa Clara County prohibit smoking can be found in Attachment C and is summarized below.

Smoke-free Buffer Zones

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. The draft ordinance offers an option for landlords to create a designated outdoor smoking area so long as it meets certain requirements.

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, five cities and the County prohibit smoking in multi-unit housing units.

Smoke-free Entryways

State law prohibits smoking within 20 feet of entrances, exits, or operable windows of government buildings. The draft ordinance requires a 25-foot smoke-free buffer zone around any buildings in which smoking is prohibited, such as offices, restaurants, retail shops, places of worship, supermarkets, etc. The buffer zone is designed to protect employees from smoke drifting into the business, as well as members of the public who are entering or exiting buildings or passing by on the sidewalk. In Santa Clara County, 10 cities and the County have adopted laws prohibiting smoking within a radius of all buildings in which smoking is prohibited indoors.

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. The draft ordinance would prohibit smoking at outdoor public events in Milpitas, such as farmer's markets, parades, or music events. In Santa Clara County, nine cities have restrictions on smoking at public events.

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, nine cities and the County prohibit smoking in service areas.

Milpitas already prohibits smoking in outdoor dining areas and recreational areas (Municipal Code section V-215-1.20).

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.

Next Steps

Following adoption of the non-smoking policy for multi-family residential buildings, City staff will work with the County consultant to develop an implementation plan and informational materials to help residents and the owners/managers of multi-family properties understand and implement the new policy. Outreach materials will include new content on the City's website, smoke-free signage, fact sheets, and a landlord toolkit designed to build support and increase public awareness of the new requirements. City staff from Planning and Recreation and Community Services will also initiate Phase 2 of the City's efforts by developing a licensing program for tobacco retailers and conducting additional community outreach to educate youth, teens, and parents about the health hazards of smoking and vaping. Staff will also coordinate with the County consultant to develop regulations aimed at restricting the sale of flavored tobacco products to teens and discouraging the overall use of all tobacco products whether by smoking, vaping, or other devices.

Policy Alternatives:

Alternative: Do not adopt Ordinance No. 227.8.

Pros: None.

Cons: Without the Ordinance, the City will not have regulations to assist residents who continue to be exposed to secondhand smoke in their homes as well as in public locations throughout the City. This exposure will lead to additional, preventable tobacco-related disease.

Reason not recommended: The Ordinance would help protect the health of residents of multi-unit housing who are exposed to secondhand smoke drifting into their units. The Ordinance would also protect residents, employees, and visitors from exposure to secondhand smoke in public areas of the City such as outside building entryways, in service areas, and at public events. In addition, the Ordinance would improve the City of Milpitas' performance on the Santa Clara County Healthy Cities Dashboard and the American Lung Association's (ALA) State of Tobacco Control report card (Attachment D). Currently, Milpitas has an overall grade of "D" on the ALA report card and a grade of grade of "F" in the category of smoke-free housing.

Fiscal Impact:

The cost and resources to develop locally-specific community engagement strategies and policies and the draft Ordinance are covered by the County's Healthy Cities Program grant, including the provision of a County consultant who is working with City staff to prepare documents, research, and materials. Additional staff time may be required to enforce provisions of the Ordinance.

Environmental Review:

The Ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA) and the CEQA Guidelines because it has no potential for resulting in either a direct or reasonably foreseeable indirect change in the environment. If the Ordinance is found to be a project under CEQA, the action being considered is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Ordinance, which would prohibit smoking in multi-unit housing and certain outdoor areas, would have no or only a de minimis impact on the environment.

Recommendations:

- 1) Conduct a public hearing and move to close the hearing following comments.
- 2) City Attorney shall read aloud title of Ordinance No. 227.8.
- 3) Move to waive the first reading beyond the title and introduce Ordinance No. 227.8 amending Chapter 215, Title V of the Milpitas Municipal Code and making findings of CEQA exemption.

Attachments:

- A. Draft Ordinance Relating to Prohibiting Smoking in Multi-Unit Housing and Certain Outdoor Areas
- B. City Council Info Memo dated November 25, 2020
- C. Tobacco Free Communities Policies in Santa Clara County
- D. American Lung Association Report Card