



Memorandum

TO: NEIGHBORHOOD SERVICES &
EDUCATION COMMITTEE

FROM: Ed Shikada
Joe Horwedel

**SUBJECT: OUTDOOR SMOKING POLICY
STATUS REPORT**

DATE: May 16, 2011

Approved

Date

5-18-11

RECOMMENDATION

Accept status report on staff efforts related to an outdoor smoking policy and provide feedback to staff on policy options that could be advanced for Council consideration at the next Priority Setting Session in August 2011.

OUTCOME

Discussion of and refinement of policy options related to smoking in certain outdoor areas will allow Council consideration of the appropriate policy and implementation options as part of a Priority Setting Session in August 2011.

BACKGROUND

In response to a June 9, 2010, memo from Council members Kalra and Campos regarding an ordinance prohibiting smoking in certain outdoor areas, a workload assessment was brought forward to the Rules and Open Government (Rules) Committee on September 1, 2010.

http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/20100901/rules20100901_h1b.pdf

The Committee directed that this item be considered as part of the Council Committee's Spring Workplan. Subsequently, another memo related to this topic from Vice Mayor Chirco and Council members Kalra and Liccardo was brought to the December 8 Rules Committee.

http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/20101208/rules20101208_h2.pdf

The Committee, upon reconsideration of the issue and in light of the potential funding and resources available through a grant, directed staff to include this item for consideration in the Priority setting Session in February 2011 and to report back to the April Neighborhood Services and Education (NSE) Committee agenda. In order to continue discussion with the County, staff requested that this item be deferred to the May NSE agenda.

During the Priority Setting Study Session on February 14, the Mayor, Council and senior staff completed a prioritization exercise and identified top priorities from a list of 46 pending ordinance changes and major referrals. The outdoor smoking ordinance was included in the list of pending work items, but was not prioritized among the Top 10 referrals.

ANALYSIS

Although this item was not identified as a top 10 priority in the February Priority Session, there have been additional developments related to this policy that merit further consideration.

Available Resources

The County has received a \$6.9 million American Recovery and Reinvestment Act (Recovery Act) to advance tobacco prevention policies. Of this, the City has already been awarded (but not yet received) a grant for \$129,000 for developing tobacco retail licensing ordinance, which was adopted by Council in December 2010.

The County's Public Health Department (PHD) has informed the City that the grant funds can only be used to advance policy work and cannot be used for voluntary measures. In a March 30, 2011 letter, the County informed all Santa Clara County cities of additional available funding for other tobacco policy work and invited non-binding letters of intent by April 22. In the interest of keeping San José's options open, staff submitted a letter of intent (Attachment A) and will follow up once Council provides further direction. Based on the March 30, 2011 letter from PHD, meetings with PHD staff, and follow up discussions, the following additional resources are available to the City to advance outdoor smoking policy work.

1. Additional funding in the amount of \$196,731, bringing the total available to the City through this grant to \$325,731.
2. Up to 100 hours of staff time from PHD and its partners to help with research on best practices, technical legal assistance, stakeholder outreach, trainings, and materials development and dissemination.
3. A supporting countywide media campaign on second hand smoke, youth prevention and cessation.

Potential Partnerships

As the City continues to grapple with diminishing resources to deliver services to the community, staff is looking for ways to advance policies and issues that are important to the Council through the use of partnerships and compliance models that are not completely dependent on City resources. The June 2010 memo suggested that staff look into outdoor smoking policies for three discrete areas: restaurants, multi-family residential, and public service lines such as lines for ATMs and movie theaters. Recent discussions with County staff have indicated a willingness to explore the following potential partnerships to support implementation.

- County Environmental Health Department (EHD) - For a policy limiting outdoor smoking in restaurants, the Environmental Health Department could provide the following compliance assistance as part of their routine restaurant inspection program:
 1. Add education on smoking restrictions to their training program for certification in food safety.
 2. Provide short term one-time outreach at the time of policy roll-out, with hand-delivered signage and educational materials to facility operators and managers.
 3. Provide training to EHD inspection staff to recognize and refer or report situations beyond their regulatory purview.

- California Apartments Association (Tri-County Division) - For a policy limiting outdoor smoking in multi-family housing complexes, the Tri-County Division of the California Apartments Association (Tri-County) could be a strategic partner. Staff has already reached out to Tri-County and they are very interested in partnering with us on policy development in this area.

- Non-Profits such as Breathe California - The County is partnering with Breathe California to provide a second hand smoke help line to take complaints about second hand smoke and also help with outreach and education. The City could enter into a similar partnership, with an even heavier reliance on non-profits such as Breathe California for intake of and follow through on complaints in all three policy areas.

Proposed Strategy

If directed to proceed with policy work, staff recommends that the City pursue a strategy of maximizing non-City funding and implementation partnerships to support this effort. Our goal in pursuing this strategy would be to develop replicable approaches to address quality of life issues, that do not depend on traditional City regulatory enforcement mechanisms.

As mentioned above, per the June 2010 memo, three specific areas were identified to advance a policy on outdoor smoking: restaurants, multi-family housing, and service lines. Each of these areas has its own unique challenges, stakeholders, and partnership opportunities.

Policy Development

Although there are several partnership opportunities with the County as well as other non-profits on research and benchmarking, staff from PBCE and the City Attorney's Office will still need to validate the information, coordinate and conduct outreach, evaluate stakeholder input, write a proposed ordinance, prepare environmental clearance for the ordinance, set hearings, prepare staff reports, and participate in the public hearings. Based on prior experience partnering with non-profits on outreach and draft language for proposed policies/ordinances, staff time will be needed to coordinate roles and responsibilities. Staff would seek County grant funding of additional City staff capacity to complete these activities.

The final scope of the non-smoking ordinance would affect the complexity and time needed to complete the work. A simple, non-controversial ordinance takes approximately 3 months to complete; more complex ordinances can take 4 to 6 months or longer. For example, if the Council decided that the outdoor smoking ordinance should focus only on restaurants, then the ordinance may be able to be completed in a shorter timeframe.

The City Council should take into consideration its ordinance priorities for FY11-12 because some of the work expected to be complete in FY10-11 has not been completed due to staff retirements (e.g., sign code update). Based on inquiries from customers, there continues to be interest in completing the sign code, streamlining the permit process, and other pending ordinances/policies.

Outreach and Education

After an ordinance is adopted, outreach will be needed to inform the affected landlords and businesses about the new regulations. This work effort has the potential for major partnership opportunities. With support from City staff, a considerable amount of the focused outreach to stakeholders, trainings for staff and businesses, and outreach material development and dissemination, could potentially be done by County staff as part of their countywide effort in this area.

Policy Implementation

Policy Implementation provides some unique partnership opportunities with the County and other non-profits such as Breathe California. In FY 11-12, the City's Code Enforcement resources are projected to be at a level that can only support direct enforcement for conditions that pose imminent harm or loss of life or property. Any violations that do not present immediately hazardous situations are anticipated to be handled through written communication.

Given that it will be hard to locate responsible parties in the case of outdoor smoking violations, staff will need to explore other alternate means of ensuring compliance. Based on conversations with County staff and preliminary research of other jurisdictions that have adopted outdoor smoking ordinances, staff sees the partnership model as a unique opportunity for advancing a quality of life issue with a new non-regulatory partnership approach, such as a non-profit taking complaints and then doing targeted education and outreach to business/property owners. The County has further indicated a willingness to consider supporting an ordinance with a sunset provision, so that if the level of effort required to implement a new ordinance is greater than can be sustained within available resources, the regulation can be repealed without further legislative action.

POLICY ALTERNATIVES

As stated above, in discussions with County staff, staff raised the possibility of options other than an ordinance to reduce outdoor smoking. However, County staff have confirmed that

May 16, 2011

Subject: Outdoor Smoking Policy Status Report

Page # 5

voluntary measures supported by public education campaigns would not qualify for funding through the Recovery Act grant.

EVALUATION AND FOLLOW-UP

As directed through the Mayor's Budget Message, staff will bring this item for Council consideration during a Priority Setting Session in August.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

CEQA

Not a project, City Organizational & Administrative Activities, PP10-069.

/s/
EDWARD K. SHIKADA
Assistant City Manager

/s/
JOSEPH HORWEDEL
Director, Planning, Building and Code Enforcement

For questions please contact Ashwini Kantik, Assistant to the City Manager, at 535-8147.

April 21, 2011

Kathy Yu
County of Santa Clara, Public Health Department
1400 Parkmoor, Suite 120B
San Jose, CA 95126

SUBJECT: LETTER OF INTENT FOR GRANT RELATED TO TOBACCO PREVENTION

Dear Kathy,

I am writing to you regarding a March 30th letter from the County of Santa Clara's Public Health Department regarding a \$6.9 million grant funded through the American Recovery and Reinvestment Act. The letter stated that in addition to the previously available \$450,000, there is now an additional \$550,000 available for distribution to all Santa Clara County cities for efforts related to tobacco prevention policy development and implementation. Based on the funding breakdown attachment, it is our understanding that an additional \$196,731 will be available to the City of San José.

Per your request for a letter of intent by April 22, this letter is intended to inform you that the City of San José is interested in pursuing these additional grants funds for potential policy development to support smoke free outdoor environments in restaurants, mutli-family housing, and service lines. Since the pursuit and scope of this policy needs to be approved by the City Council, we would like to confirm our understanding that, based on conversations with County staff, this letter of intent is non-binding and that the City may choose to change its position on intent and scope, pursuant to City Council direction.

Please feel free to contact me at (408) 535-8190 if you any questions.

Sincerely,



Ed Shikada
Assistant City Manager

Cc:
Debra Figone, City Manager
Joe Horwedel, Director, PBCE
Rick Doyle, City Attorney