



**DATE:** May 25, 2021

**CATEGORY:** New Business

**DEPT.:** Fire

**TITLE:** **Prohibition of Smoking in Multi-Unit Residences**

### **RECOMMENDATION**

Introduce an Ordinance of the City of Mountain View Amending Chapter 21, Article II, of the Mountain View City Code, Related to Prohibition and Regulation of Smoking in Certain Places, to be read in title only, further reading waived, and set second reading for June 8, 2021.

### **BACKGROUND**

Secondhand smoke exposure is a serious health hazard and has been an issue of concern expressed by the public, particularly during the current COVID-19 pandemic. 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. According to the Centers for Disease Control and Prevention (CDC), secondhand smoke is responsible for an estimated 41,000 heart disease-related and lung cancer deaths each year. The CDC has concluded the only way to fully protect nonsmokers is to eliminate smoking in all homes, worksites, and public places.

The Santa Clara County Public Health Department has found that the home is the number-one source of secondhand smoke exposure. Smoke travels through doorways, cracks in walls, electrical outlets, ventilation systems, and plumbing. Opening windows and using fans does not remove secondhand smoke, and heating, air conditioning, and ventilation systems cannot eliminate exposure. Twenty-nine percent (29%) of Santa Clara County residents report smelling tobacco smoke drifting into their home from nearby residences or from the outside. According to the Santa Clara County Public Health Department, the most effective way to address secondhand smoke exposure is to implement policies that restrict smoking within all multi-unit residences, including common areas, balconies, and patios.

According to the U.S. Department of Health and Human Services, children, low-income tenants of public housing, and members of racial and ethnic minority groups are disproportionately exposed to secondhand smoke. Smoke-free housing policies have shown the potential to reduce exposure in these populations. Such policies can also protect residents from harmful “thirdhand smoke,” which is the residue from tobacco smoke that is absorbed by indoor surfaces and then emitted back into the air. Thirdhand smoke potentially poses the greatest danger to infants and toddlers, who crawl on rugs and furnishings and place household items in their mouths.

In 2012, the City Council passed the City’s current Smoking Ordinance, which prohibits smoking in any enclosed public space within Mountain View. The 2012 Smoking Ordinance did not prohibit smoking in multi-unit residential buildings. In the following years, Council received requests from residents to amend the Smoking Ordinance to prohibit smoking in multi-unit residences and, during a Study Session on December 1, 2020, Council directed staff to draft an amendment to the current Smoking Ordinance to prohibit smoking in multi-unit residences. The Study Session memorandum is included as Attachment 2.

## **ANALYSIS**

### **Community Engagement**

In order to gather feedback and raise awareness about a potential amendment to the Smoking Ordinance to prohibit smoking in multi-unit residences, staff conducted outreach both with residents living in multi-unit buildings and also with the owners, operators, and homeowners associations (HOAs) of such buildings.

#### *Multi-Unit Resident Engagement*

Staff mailed over 20,000 postcards to Mountain View residents who live in multi-unit residences. The postcard was in English and Spanish and provided a link to a 12-question survey to get feedback about a possible ordinance amendment. The surveys were also promoted on the City’s website and through social media. The postcards were mailed on April 5, 2021, and the survey closed on May 10, 2021. The survey received a total of 1,021 responses. The following is a summary of the overall survey results (see Attachments 3 and 4 for the complete survey results):

- 75% agreed that smoking tobacco/vaping should be prohibited inside multi-unit residences;
- 69% agreed that recreational marijuana smoking/vaping should be prohibited;

- 49% agreed that medicinal marijuana smoking/vaping should be prohibited;\*
- 70% agreed that smoking/vaping should be prohibited in outdoor spaces, including private patios and balconies;
- 52% agreed that outdoor designated smoking areas should be an option for smokers;
- 47% were exposed to either tobacco and/or marijuana smoke/vapor drifting into their home; and
- 32% said that their housing complex does not currently prohibit smoking/vaping inside apartments.

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\* More information about current regulations and survey results related to medicinal marijuana is included in Attachment 5.

#### *Meeting with Building Owners, Operators, and HOAs*

Staff held a virtual public forum for owners, operators, and HOAs of multi-unit residences on May 13, 2021. Over 800 invitations were mailed out, and six people attended the public forum. The attendees were supportive of the proposed amendments and indicated that smoking was one of the most common complaints they received. Attendees also had questions regarding the prohibition on vaping. Staff explained vapor is included in the definition of smoke and, therefore, is prohibited under the proposed amendment.

#### *Meeting with California Apartment Association*

Staff met with two representatives from the California Apartment Association (CAA), a Statewide organization representing the rental housing industry, to discuss the proposed ordinance amendment and learn from CAA's experience working in other jurisdictions that have adopted similar regulations. From this meeting, staff learned there is generally broad support from owners and operators of rental housing for smoking prohibitions. Notably, there are incentives for owners to prohibit smoking because many insurance providers provide discounted rates for multi-unit buildings that prohibit smoking. CAA's representatives also explained that successful smoking ordinances generally contain three elements: (1) a long phase-in period; (2) public outreach; and (3) protection for landlords from liability arising from tenant's conduct. Notably, the City's proposed ordinance amendment contained all three elements. Specifically, the ordinance would be effective in six months; the City has engaged in significant public outreach and plans to

continue doing so following adoption; and owners and operators are not liable for the conduct of residents.

#### *Future Outreach*

If the proposed amendments are approved by Council, they will become effective January 1, 2022. In the intervening months, staff will conduct further outreach to inform residents and owners, operators, and HOAs of multi-unit residences of the new requirements. This will be accomplished through flyers and/or postcards; multiple virtual public forums; the City's biweekly e-newsletter, "City Hall Connection"; and through various online social networks. The CAA offered to assist the City with outreach to members of the CAA.

#### **Ordinance Provisions**

The purpose of the proposed ordinance (Attachment 1) is to protect Mountain View residents from exposure to secondhand smoke. The ordinance would prohibit smoking in all new and existing multi-unit residences, including enclosed and unenclosed common areas, beginning January 1, 2022. All forms of smoking/vaping would be prohibited, including tobacco and medicinal and recreational marijuana. Key terms and provisions in the proposed ordinance are defined below.

#### *Definition of Smoke*

The term "smoke" is defined in the proposed ordinance as the gases, particles, or vapors released into the air as a result of combustion, electronic ignition, or vaporization when the apparent or usual purpose of the combustion, electronic ignition, or vaporization is human inhalation of the byproducts. Staff recommends a broad definition for smoke that would capture many different types of combustion, electronic ignition, or vaporizations of all inhalation products, including, but not limited to, tobacco and medicinal and recreational marijuana. The definition does exempt smoke that is not intended to be inhaled, such as incense and diffusers.

#### *Definition of Unit*

The term "unit" is defined in the proposed ordinance as a personal dwelling, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area. The definition would include outdoor private balconies, porches, decks, and patios associated with the unit.

### *Definition of Multi-Unit Residence*

The term “multi-unit residence” is defined in the proposed ordinance as property containing three or more attached units. This definition would include apartments, condominiums, townhomes, triplexes, long-term health-care facilities, assisted living facilities or hospitals, single-room occupancy facilities, and homeless shelters. Single-family homes, single-family homes with detached or attached in-law or second units, hotels and motels that satisfy the State and local requirements, and duplexes are specifically exempted from the proposed ordinance amendment.

The following definitions are also added to Chapter 21, Article II, and included in Attachment 1: common areas, electronic smoking device paraphernalia, hotel, person, smoking, and tobacco product.

### *Designated Smoking Areas*

The proposed amendment would allow a person with legal control over common areas, such as a building owner or HOA, to create a designated smoking area within a portion of the multi-unit residence’s common area. Designated smoking areas give multi-unit residence owners/operators an option to allow smoking on the premises in a manner that reduces the chances for secondhand smoke exposure to other residents. If created, designated smoking areas must meet the following requirements:

- Comprise of less than 10% of the total unenclosed area of the property;
- Be located at least 25’ from any operable doorway, window, opening, or vents leading to enclosed areas. The distance separation requirement also applies to neighboring properties;
- Have waste receptacles for smoking wastes;
- Be clearly identified by “Designated Smoking Area” signage; and
- Be located at least 25’ away from unenclosed areas primarily used by children or that facilitate physical exercise. This would include parks, playgrounds, swimming pools, and schools.

### *Multi-Unit Resident Owner/Operator Requirements*

Owners, operators, or HOAs of multi-unit residences will have new requirements under the proposed amendment. “No smoking” signs must be installed and maintained

throughout the property. “No smoking” signs are not required within units. Smoking waste receptacles must be removed from enclosed and unenclosed common areas except when installed in designated smoking areas. Common areas will need to be maintained so that smoking waste products, such as cigarette butts, are removed.

Updates to leases or other rental agreements will be required to include the following:

- The full text of Chapter 21, Article II, of the Mountain View ordinance;
- A map or written description of designated smoking areas, if any; and
- A clause conveying third-party beneficiary status to all occupants of residences or residence units within reasonable distance as to the smoking provisions of the lease or other rental agreement, such that an aggrieved third-party beneficiary may institute a private civil action against violator(s) to enforce the provisions of this chapter.

The updated lease will offer protection to owners, managers, or HOAs by allowing residents to seek civil action against violators of the proposed ordinance instead of against the owners, operators, or HOAs. The lease terms listed above are implied and enforceable even if they are left out of the lease.

The lease provisions of the ordinance are consistent with the Community Stabilization and Fair Rent Act (CSFRA). The CSFRA exclusively governs rent increases and evictions for those units subject to the CSFRA. The ordinance does not require eviction for tenants who violate the nonsmoking requirements, nor does it change the terms of existing rental agreements subject to the CSFRA without tenants’ consent. Only once the ordinance’s lease provisions have been incorporated into the rental agreements in accordance with the CSFRA’s requirements can a violation of the ordinance be considered a material breach or provide a just cause for eviction based on violation of rental agreement terms. However, violations of the Smoking Ordinance may constitute a nuisance that could be cause for eviction pursuant to the CSFRA regardless of the provisions of any individual lease.

### *Enforcement*

The proposed ordinance amendment does not add to the existing enforcement provision in the City’s Smoking Ordinance, which has two sections that pertain to enforcement: Section 21.54 (Enforcement and Interpretations) and Section 21.55 (Penalties). If adopted, the City response to a complaint of violation of the proposed ordinance amendment will include coordination with the residence owner or operator to achieve voluntary

compliance, outreach and education to the alleged violator, and issuance of an administrative penalty if the violation is not cured.

The City expects a high degree of compliance with the law once individuals are aware of the smoking limits. Landlords, property managers, and HOAs are expected to be the first point of contact for smoking violations reported by residents. Based on the feedback received during outreach events, owners and operators of multi-unit residences are supportive of the ordinance and will be motivated to ensure compliance with smoking limits. For renters, smoking in violation of the ordinance will violate the terms of the renter's lease and is subject to enforcement by the landlord and other tenants. Condominium and townhome associations would also have enforcement authority through their Covenants, Conditions, and Restrictions (CC&Rs). If the City receives a complaint of violation of the ordinance, then staff will contact the owner or operator of the residence to address and prevent violations. This expectation of voluntary compliance and cooperation with owners and operators is consistent with the approach of the Bay Area jurisdictions with existing ordinances prohibiting smoking in multi-unit residences that were surveyed in preparation of the proposed ordinance amendment.

Enforcement action by the City will only be necessary in cases where violations continue despite efforts by owners and operators. If the Smoking Ordinance violation cannot be resolved by a landlord, property manager, or HOA, then the issue will be referred to either the Fire Department (Fire and Environmental Enforcement Division) or City Attorney's Office (Code Enforcement) staff. The majority of cases will be referred to the Fire Department, which is responsible for enforcement on all multi-unit residences, except for townhomes. Code Enforcement personnel will be responsible for enforcing the Smoking Ordinance on townhomes. Fire Department and Code Enforcement personnel may investigate complaints of violations and take enforcement action when necessary.

Violations of the ordinance can be enforced during the routine inspection process or on a complaint basis. When the City receives a complaint of violation, it will be referred to Fire Department or Code Enforcement. If staff, working with landlords, property managers, or HOAs, is unable to resolve Smoking Ordinance violations, then enforcement actions will be taken. The resident, owner, or operator that is in violation of the Smoking Ordinance will be issued an administrative citation as prescribed in Mountain View City Code Section 21.55 and included in Attachment 1. Administrative citations allow the individual cited to appeal the citation through an administrative hearing if the individual chooses to do so.

Additionally, the Fire Department administers the City's Multi-Family Housing Inspection Program, which is a program unique to the City of Mountain View. The Multi-

Family Housing Inspection Program ensures proper maintenance of multi-family residences. In administration of the program, Fire Department personnel are required to inspect the enclosed and unenclosed common areas of all apartment complexes and condominiums for fire code compliance annually. In addition, personnel inspect the interior of all apartment units once every four to eight years. Fire Department inspectors routinely work with landlords, property managers, and HOAs to correct violations discovered during routine inspections. This is primarily achieved by issuing inspection reports that list all violations discovered during the inspection and follow-up inspections to verify the violations have been corrected. These routine inspections rarely result in enforcement action and administrative penalties. During the Fire Department's routine administration of the City's Multi-Family Housing Inspection Program, it will also enforce the Smoking Ordinance.

### **FISCAL IMPACT**

Nominal costs for communication and outreach will be funded through existing departmental budgets. Any additional fiscal impact is limited to staff time associated with communication outreach, enforcement, and administration.

### **ALTERNATIVES**

1. Modify the proposed ordinance to allow smoking of medical marijuana.
2. Direct modifications to the terms of the proposed ordinance.
3. Do not direct staff to return with a draft ordinance.



**PUBLIC NOTICING** – Agenda posting.

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- Attachments:
1. Draft Ordinance
  2. December 1, 2020 Council Study Session Memorandum
  3. Survey Results from SurveyMonkey (English)
  4. Survey Results from SurveyMonkey (Spanish)
  5. Current Regulations and Survey Results Related to Medicinal Marijuana