

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
SUBJECT: SMOKING REGULATIONS UPDATE: BACKGROUND AND
OVERVIEW OF PROPOSED CHANGES
STAFF PRESENTER: ERIN MORRIS, SENIOR PLANNER
COMMUNITY DEVELOPMENT

AGENDA ACTION: NONE

ISSUE

Should the City Council accept the report regarding the City's Smoking Regulations Update and direct staff to schedule the proposed revisions to Chapter 9-20 of the City Code and Chapter 20-70 of the Zoning Code for a public hearing and decision?

COUNCIL GOALS/STRATEGIES

City Council Goal 6 is to "Commit to Making Santa Rosa a Healthy Community Where People Feel Safe to Live, Work, and Play." Strategic Objective #2 is to expand the City's smoking ordinance for public/private places.

EXECUTIVE SUMMARY

1. Revised smoking regulations have been developed in response to Council direction provided on August 26, 2014.
2. The following changes are proposed to City Code Chapter 9-20, which would be retitled "Prohibiting Smoking in and Around Workplaces, Public Places, and Private Places:"
 - A. Prohibit smoking in attached multifamily housing, including duplexes, apartments, and condominiums and any building that contains two or more attached residential units.
 - B. Eliminate any allowance for smoking on City-owned recreational properties including parks.
 - C. Prohibit smoking at all City-owned properties including (but not limited to) office buildings, recreation centers, public safety facilities, parking garages, and parking lots.

- D. Prohibit smoking in outdoor service areas, including ATM lines, outdoor food vending, movie theater lines, bus stops and bus shelters.
 - E. Revise the definition of “smoking” in City Code Chapter 9-20 and the definition of “tobacco or smoke shop” in the Zoning Code to explicitly include use and sale of electronic smoking devices.
 - F. Increase the percentage of guest rooms within hotels and motels that must be smoke free from 50% to 75%.
 - G. Increase the reasonable distance, defined as “a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area,” from 20 feet to 25 feet.
- 3. The revised regulations are intended to reduce the impacts of second hand smoke on nonsmokers, consistent with goal of the current smoking regulations.
 - 4. Electronic smoking devices (e-cigarettes) would be regulated the same as other kinds of smoking because studies show the emissions contain harmful chemicals and may cause negative health effects to surrounding people.
 - 5. The proposed revised definition of smoking is "igniting, inhaling, exhaling, burning, vaping, operating, or carrying any lighted cigar, cigarette, pipe, hookah, electronic smoking device, tobacco product, or any other combustible substance including marijuana."
 - 6. Public input and review was facilitated at two Community Meetings held in September and October of 2014, review by the Board of Community Services and the Planning Commission, and a project web page. A complete draft of the revised regulations has been available for public review since October 15, 2014.
 - 7. The following report will provide greater detail on all of these topics.

BACKGROUND

- 1. In 2013, the Council established goals and strategic objectives for 2013 to 2015. Council Goal 6 states that the Council will “commit to making Santa Rosa a healthy community where people feel safe to live, work, and play.” Strategic Objective #2 is to expand the City’s smoking ordinance for public/private places. The Community Development Department was tasked with bringing forward revised regulations for smoking in public and private places.
- 2. In July 2014, Community Development facilitated a meeting of City departments including Recreation and Parks, Transportation and Public Works (Transit Division), Economic Development and Housing, City Attorney, Fire, and Police. Departments

identified various topic areas that could be addressed through a comprehensive update to the City's smoking regulations. The ideas generated by staff focused on reducing the impacts of second hand smoke.

3. Various cities in Sonoma County have recently updated local smoking-related regulations to address smoking within multifamily residences, including Petaluma, Rohnert Park, Sebastopol, and County of Sonoma. Other topic areas, including use and impacts of electronic cigarettes, have also been addressed in several local ordinances.
4. On August 26, 2014, the City Council directed Community Development staff to update the City's smoking regulations in eight main areas:
 - a. Prohibit smoking in attached multifamily housing.
 - b. Prohibit smoking on City-owned recreational properties including parks.
 - c. Prohibit smoking at all City-owned properties.
 - d. Prohibit smoking in outdoor service areas.
 - e. Include the use and sale of electronic smoking devices in the definitions of "smoking" in City Code Chapter 9-20 and "tobacco or smoke shop" in the Zoning Code.
 - f. Evaluate increasing the percentage of guest rooms within hotels and motels that must be smoke free from 50% to 75%.
 - g. Evaluate increasing the minimum "reasonable distance" in the current code from 20 feet to 25 feet.
 - h. Research issues related to the declaration of second-hand smoke as a public nuisance.

5. History of Smoking Regulations

Since 1988, Santa Rosa's City Code has included Chapter 9-20 which addresses the impacts of second hand smoke. Initially, Chapter 9-20 prohibited smoking in enclosed public places and all businesses patronized by the public, while allowing designated, separated smoking areas within restaurants, waiting areas, and areas within work places not open to the public. Bars, hotel rooms rented to guests, bowling alleys and pool halls, private enclosed smoking rooms, and retail stores that dealt exclusively in the sale of tobacco and associated smoking paraphernalia were not restricted from indoor smoking.

In 1993, Chapter 9-20 was updated to fully prohibit smoking in enclosed public places including malls, elevators, retail stores, hotels and motels, banks, theaters, grocery stores, restaurants, and all places of employment, and to regulate tobacco

sales. Bars and retail tobacco stores remained exempt from the prohibition. In 1994 and 1995, Chapter 9-20 was amended to allow self-serve sales of pipe tobacco and cigars kept in a humidor.

In 2006, Chapter 9-20 was updated and retitled “Prohibiting Smoking in or Around Workplaces and Public Places.” To further address the impacts of second hand smoke on nonsmokers, smoking was prohibited in outdoor dining areas, City-owned recreational land such as parks (with some exceptions, as noted below), the Transit Mall, and in other unenclosed places, and within a reasonable distance (minimum of 20 feet) from any main entrance into an enclosed area where smoking is prohibited except while actively passing on the way to another destination.

Smoking is currently allowed on private residential property, unless the property is used as a child care or health care facility, in up to 50% of guest rooms in any hotel or motel, and in any outdoor area in which no non-smoker is present and is not expected to arrive. The outdoor area exception was added in response to public concerns expressed to the City Council about the desire to allow smoking at the Bennett Valley Golf Course and in other City parks when nonsmokers are not present. The definition of “smoking” was updated to include “inhaling, exhaling, burning or carrying any lighted pipe, cigar or cigarette of any kind, or any other combustible substance.”

6. Proposed Smoking Regulations

The proposed smoking regulations address smoking in four main areas: 1) City owned property; 2) Unenclosed nonresidential places; 3) Enclosed nonresidential places; and 4) Multifamily Residences.

City Owned Property

Proposed Section 9-20.050 addresses unenclosed nonresidential areas where smoking is prohibited. Smoking would be prohibited on all City owned properties, such as City Hall, Laguna Treatment Plant, public safety buildings, and community centers.

Unenclosed Nonresidential Places

Smoking would be prohibited entirely in parks and recreational areas, including parks, gardens, playgrounds, picnic and barbeque areas, ball fields, sport courts, golf courses, swimming pools, and nature trails. As proposed, smoking would be prohibited on the entire property of City parks and recreation facilities, and within a reasonable distance of these areas.

“Reasonable distance” means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. As discussed in further detail below, these restrictions would not prevent people from smoking along a public sidewalk abutting a park

while actively passing on the way to another destination and without entering the area where smoking is prohibited.

Smoking would also be prohibited in outdoor service areas, which are any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to wait for or receive a service or make a transaction, such as ATM lines, outdoor food vending, movie theater lines, and taxi cab stands. The term "service area" includes all bus stops and other transit facilities.

For City owned properties and parks, the draft ordinance allows the City Manager to authorize designated smoking areas that are at least 25 feet from operable doors, windows, vents, or other openings into an enclosed area, from unenclosed recreational areas primarily used by children, and from areas that have improvements that facilitate physical activity including tennis courts, swimming pools, walking paths, and sports fields.

Enclosed Nonresidential Places

The revised smoking regulations would increase the percentage of hotel and motel rooms that must be smoke free from 50 percent to 75 percent. This would potentially affect 26 hotels and motels located in Santa Rosa. Staff contacted each hotel and motel and determined that most hotels and motels are already 75 to 100 percent smoke free. The change will affect some existing establishments. Information about the update was mailed to each hotel and motel and no comments have been received.

Attached Multifamily Housing

Smoking would be prohibited on residential properties containing two or more units with one or more shared walls, floors or ceilings. These prohibitions would include electronic smoking devices. The definition of "multifamily residence" includes apartments, residential condominiums, duplexes, and other attached housing. "Multifamily residence" does not include a single family home with an attached or detached second dwelling unit, or residential care facilities for seniors licensed by the State of California.

As proposed, smoking would be prohibited in any new unit of a multifamily residence, and in all common areas, once the ordinance is in effect. It is expected that new leases would include smoking prohibitions, and that signs would be installed by property owners in common areas identifying that smoking is prohibited. Beginning one year from the effective date of the ordinance, estimated as February 1, 2016, smoking would be prohibited in any existing unit of an attached multifamily residence. It is expected that property owners and managers would transition units from smoking to nonsmoking units over the course of the

year. This would be accomplished by adding language to leases regarding the smoking prohibition. Enforcement is discussed in greater detail below.

The proposed ordinance allows a landlord or homeowners' association to designate a portion of the common area as a designated smoking area if the designated smoking area is located at least 25 feet in any direction from any operable doorway, window, vent or other opening into an enclosed area, from unenclosed recreational areas that are primarily used by children, from unenclosed areas that have improvements that facilitate physical activity including playgrounds, tennis courts, swimming pools, walking paths and sports fields, and from all perimeter property lines abutting residential uses.

7. Electronic Smoking Devices ("E-cigarettes")

Electronic smoking devices, also known as "electronic cigarettes," "e-cigarettes," "hookah pens," or "electronic nicotine delivery systems" are battery operated devices that convert liquid nicotine into a mist, or vapor, that the user inhales. They are designed to be used in a manner similar to conventional tobacco products. The use of electronic smoking devices is referred to as "vaping" because they produce vapor that is inhaled and exhaled by the user.

The proposed changes to the smoking regulations include updating the definition of smoking to clarify that use of electronic smoking devices is regulated the same as other kinds of smoking. The revised definition of "smoking" is as follows:

"Smoking" means igniting, inhaling, exhaling, burning, vaping, operating, or carrying any lighted cigar, cigarette, pipe, hookah, electronic smoking device, tobacco product, or any other combustible substance including marijuana.

Electronic smoking devices are a relatively new technology that are gaining in popularity with consumers around the world. Some companies that manufacture and retail the devices advertise the devices as a way to help people quit smoking tobacco because electronic smoking devices provide an alternative nicotine-delivery system. Claims of efficacy for quitting smoking are unsupported by the scientific evidence to date. Recent research indicates that electronic smoking devices contain hazardous substances and may expose bystanders to secondhand vapor. The long term health effects of vapor inhalation on the user or on surrounding people are unknown.

Santa Rosa's smoking regulations have historically focused on reducing the impacts of second hand smoke on nonsmokers and do not specifically address electronic smoking devices. The inclusion of use of electronic smoking devices in the definition of smoking would protect the public from secondhand vapor until more is known about health effects.

8. Reasonable Distance

The revised ordinance increases the minimum distance from 20 feet to 25 feet based on the study that documented that a person may have to move nearly 23 feet away from the source of the smoke to be completely free from exposure to secondhand smoke in outdoor places. These restrictions would not prevent people from smoking along a public sidewalk abutting a park while actively passing on the way to another destination and without entering the area where smoking is prohibited.

9. Education and Enforcement

Public education about the new law will be important to ensure that the public is aware of the new regulations. Implementation of the revised regulations would involve a public education campaign and installation of signage at City-owned properties and residential properties where smoking would be prohibited.

Tenants, property managers, and landlords must also be informed about the new regulations pertaining to attached multifamily residences. The County of Sonoma launched a public education campaign regarding the County's ban of smoking in multifamily housing in the unincorporated County. The campaign included direct mailings to all owners of multifamily property and print advertisements in various publications. The County's work provides a starting point for the City's efforts including a method and materials that could be utilized.

Sonoma County Department of Health Services (DHS) has expressed an interest to assist with education about the revised smoking regulations in Santa Rosa, and Community Development staff is pursuing this potential partnership, which has proven effective in Petaluma and in Marin County.

As proposed, all complaints about smoking would be directed to County DHS. County staff would field the calls, provide information about the regulations, gather information from complaining parties, assist the parties in taking steps to resolve the issue, and then send a letter to the property owner informing them of the City's smoking regulations.

If efforts from County DHS staff are unsuccessful in resolving the issue in multifamily residential areas, the matter would be referred to the City's Code Enforcement staff for further action. The Police Department would continue to enforce smoking regulations in nonresidential public places. Currently, enforcement of the smoking ordinance is not a priority but police officers do issue warnings and citations, particularly downtown.

The draft ordinance requires that landlords of attached multifamily residences include provisions in leases to prohibit smoking consistent with the City's ordinance, to take appropriate steps to ensure tenant compliance, and to be prepared to

respond to and address complaints from other tenants on the property of violations of the smoking prohibitions. Staff has met with and received comments from members of the North Coast Rental Housing Association, and the current draft reflects input from the organization.

10. Chapter 20 (Zoning Code) Regulations

Smoke shops were considered a general retail use until March 2009 when the Zoning Code was amended to create a land use called “tobacco or smoke shop,” which is defined as “any store, stand, booth, or concession that devotes 30% or more of its display floor area to tobacco products, or to the display and sale of tobacco or drug paraphernalia to purchasers for consumption or use.” Medical cannabis dispensaries are not included because they are defined separately and regulated by Chapter 10-40 of the City Code.

New tobacco/smoke shops require a Minor Conditional Use Permit (CUP) in commercial zoning districts; the Minor CUP requirement allows public input regarding the proposed new tobacco/smoke shop and consideration of how the tobacco/smoke shop use will fit into the surrounding area. In 2013, in response to a proposal for an electronic cigarette store in downtown Santa Rosa, it was determined by the Community Development Department that the sale of electronic cigarettes and associated products (where the store devotes 30% or more of the floor area to the sale of such products) fits into the definition of tobacco/smoke shop.

There are approximately 15 existing retail stores in Santa Rosa that meet the definition of tobacco/smoke shop. Since 2009, Community Development has received six Minor Conditional Use Permit applications for tobacco/smoke shops. Of the six, three of the applications were approved and the uses commenced, and three of the applications were withdrawn. Four of the six were applications for retail stores that primarily sell electronic smoking devices and associated accessories.

The Zoning Code text amendment includes three specific changes to Section 20-70.020 (Definitions). Minor changes are proposed to the definitions of “Tobacco or Smoke Shop” and “Tobacco or Drug Paraphernalia.” The proposed changes are underlined below:

Tobacco or Smoke Shop. Any store, stand, booth, or concession that devotes 30% or more of its display floor area to tobacco products, or to the display and sale of tobacco, electronic smoking devices, or drug paraphernalia to purchasers for consumption or use. This classification of use does not include medical cannabis dispensaries which are defined separately and regulated by Chapter 10-40 (Medical Cannabis Dispensaries) in the Santa Rosa City Code.

Tobacco, Electronic Smoking Device, or Drug Paraphernalia. (1) Any device intended or designed primarily for use by individuals for the smoking or ingestion of tobacco, notwithstanding that the device may also be used for the smoking or ingestion of marijuana, hashish, hashish oil, cocaine or any other “controlled substance,” as that term is defined in the Health and Safety Code; examples of such devices include but are not limited to: “pipes,”

“bongs,” “hookahs,” “vaporizers,” “roach clips,” “electric pipes,” “buzz bombs,” “blunts” or similar devices; (2) or any equipment, product, or material that is modified for making, using, or concealing illegal drugs such as cocaine, heroin, marijuana, and methamphetamine; (3) cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device chargers, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices; (4) an Electronic Smoking Device.

A new definition of “Electronic Smoking Device” would be added to Chapter 20-70 (Definitions) as follows:

Electronic Smoking Device. An electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. “Electronic Smoking Device” includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. “Electronic Smoking Device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

ANALYSIS

1. Development of the Smoking Regulations

In order to gain greater understanding of the complex issues associated with smoking, including use of electronic smoking devices, Community Development and City Attorney’s Office staff researched how other California jurisdictions are regulating these issues. Because both County of Sonoma and City of Petaluma have recently updated their laws in these matters, and the new laws are similar to laws in other cities, Santa Rosa’s existing ordinance and these two local ordinances were considered a starting point. A model ordinance from ChangeLab Solutions, a nonprofit organization that specializes in researching and drafting model laws and policies pertaining to public health issues, was also consulted because it is based on the latest research pertaining to the effects of smoking and includes best practices from smoking ordinances across the country.

Staff received research studies and articles from Sonoma County DHS staff and from the public, and reviewed all materials to identify which were most relevant to Santa Rosa. In developing the new regulations, staff considered public comments including written and verbal comments provided at two Community Meetings, and polled other cities regarding specific issues including regulation of marijuana, public nuisance issues associated with smoke, and enforcement of smoking restrictions in multi-family housing. The final draft of the regulations is similar to County of Sonoma, Petaluma, and the ChangeLab Solutions model ordinance but has been uniquely tailored to Santa Rosa.

2. Purpose of Smoking Regulations

The current and proposed smoking regulations are based on the goal of protecting people who do not choose to smoke or use electronic smoking devices from the health effects of these activities. The draft regulations identify a series of facts and findings related to this goal and to the purpose of regulating these activities.

There is ample scientific research and data documenting the negative impacts of secondhand smoke on human health, and there are recent studies documenting potential negative health effects of secondhand vapor. The proposed updated smoking regulations includes additional facts and findings, supported by recent studies that are included as an appendix to this report.

3. Public Nuisance

As directed by Council, staff researched the proposal to declare smoke a public nuisance. Proponents of the idea state that it would make it easier for residents affected by second hand smoke to pursue private action against people who generate smoke that intrudes onto other people's property. Staff found that very few jurisdictions have declared smoke a public nuisance, and for jurisdictions that have taken this approach, the provisions have not been implemented. City staff does not recommend including the public nuisance component in this update because it is an untested approach and the potential impacts to the City and the public are unclear.

4. Public Outreach

Community Development staff facilitated two public meetings to share the proposed smoking regulations update with the public and to obtain public comment and input. Approximately 15 people attended the meeting held on September 25, 2014 at Finley Community Center. Approximately 25 people attended the second meeting held on October 1, 2014.

Meeting attendees expressed a variety of views regarding the proposed changes to the regulations. Comments included:

- General support for prohibiting smoking in public places such as parks due to impacts on nonsmokers, and opposition to such prohibitions because potential issues can be addressed through common courtesy by people who smoke;
- Support for the proposed multifamily residential smoking prohibitions related to tobacco and marijuana smoke, and opposition to the regulation of smoking in residences due to concern about impacts to people who smoke;
- Interest in expanding the multifamily residential smoking prohibitions to include single family detached homes, based on impacts of second hand smoke emanating from adjacent and nearby homes;

- Concern about the regulation of the use of electronic smoking devices because they have different impacts than conventional smoking devices and are used by some as a smoking cessation device.
- Enforcement will be a challenge.

All correspondence received from members of the public is attached to this report.

5. Review by Boards and Commissions

On October 22, 2014, the Board of Community Services considered the proposal to fully prohibit smoking in City parks. In general, the Board was supportive of the proposed changes, and expressed concern about enforcement.

On October 23, 2014, the Planning Commission considered the proposal to explicitly include retail stores selling electronic smoking devices in the definition of “smoke shop,” which means a Minor Conditional Use Permit is required. The Commission unanimously recommended approval of the Zoning Code text amendment.

RECOMMENDATION

It is recommended by the Department of Community Development that the Council accept the report regarding the Smoking Regulations Update and direct staff to schedule the proposed revisions to Chapter 9-20 of the City Code and the Zoning Code for a public hearing and decision.

Author: Erin Morris

Attachments:

- Attachment 1 - Draft Smoking Regulations: Chapter 9-20 Prohibiting Smoking in or Around Workplaces, Public Places, and Private Places
- Attachment 2 - Technical Studies
- Attachment 3 - Public Correspondence