

## Legislation Text

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File #: #20-067, Version: 1

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**PREPARED BY:** SANDRA MARQUEZ

**DATE OF MEETING:** 02/18/20

**SUBJECT:**

ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN PABLO AMENDING CHAPTER 8.36 OF THE SAN PABLO MUNICIPAL CODE RELATING TO THE CITYWIDE PROHIBITION OF SMOKING IN RENTAL MULTI-UNIT RESIDENCES

**CITY MANAGER RECOMMENDATION**

Waive second reading; adopt Ordinance

**COMPLIANCE STATEMENTS**

**FY 2019-21 Council Priority Workplan Compliance Statement**

Major Policy Goal: Build a Healthy Community is an adopted policy item under the FY 2019-21 City Council Priority Workplan, adopted March 1, 2019.

**CEQA Compliance Statement**

Pursuant to the California Environmental Quality Act, the proposed ordinance is categorically exempt pursuant to Section 15308, Actions by Regulatory Agencies for Protection of the Environment. Exemptions in this class consist of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

**BACKGROUND**

On June 17, 2019, following a motion made by Councilmember Xavier, and duly seconded, the City Council by majority vote directed City staff to develop and present policy options for a potential smoking ban ordinance in multi-family dwellings to address public health and safety concerns. On December 5, 2019, the Public Safety Standing Committee reviewed and recommended the proposed policy option to the City Council for formal draft ordinance consideration. On February 3, 2020, the ordinance was formally introduced to the City Council and a public hearing held. The City Council, by majority vote, moved to waive the first reading and introduce the ordinance as recommended by staff. As directed by the City Council, the second reading was placed on the consent calendar and the redline marks removed from the final ordinance for adoption.

The purpose of this ordinance is to establish smoke-free rental multi-unit housing (SFMU) to protect the public health, safety and welfare against the health hazards and harmful effects of the use of addictive tobacco and other smoking products within the constraints of staffing as to education and enforcement. In addition, given the housing challenges of many San Pablo residents and the documented addictive nature of tobacco and smoking, staff recommends a balanced approach with any smoke-free ordinance so that smokers can either find other housing options or quit smoking. City staff has requested that the County Health Services Tobacco Prevention Project provide information on programs to help residents quit smoking as part of any effort to limit smoking in multi-family housing. The County has indicated that they will not participate in any enforcement activities

for a smoke-free ordinance.

The City of San Pablo and City of Hercules are the only cities in West Contra Costa that have yet to pass a form of smoke-free multi-unit housing ordinance. Additionally, the City of San Pablo received a grade of “F” for smoke-free outdoor air and for smoke-free housing from the 2018 State of Tobacco Control Report. San Pablo’s grade for overall tobacco control improved from a letter grade “F” to a “D” after the City adopted a flavored tobacco ban on December 17, 2018.

### **Option for San Pablo**

Through research and discussion with the San Pablo Police Department and Code Enforcement Unit, staff believes that the best approach for San Pablo at this time is to recommend a citywide smoke-free multi-unit ordinance for rental multi-unit housing only, including all new and existing rental multi-unit residences. Implementation and enforcement of a 100% smoke-free ordinance, including owner-occupied or mixed tenancy units (e.g. condominium complexes with both owners and renters), would be difficult to enforce in the absence of a lease agreement. Other challenges with enforcement of owner-occupied units include the difficulty of being able to determine where a violation is occurring and the lack of staffing resources for implementing and enforcing smoking bans for both owner and non-owner-occupied housing at this time.

The proposed ordinance is presented as part of a phased approach, which will allow City staff to increase awareness and education within the community on the dangers of secondhand and third-hand smoke while working on the implementation of the new ordinance. The approach presented through this draft ordinance includes rental multi-unit residences only. Thus, for the purpose of this proposed ordinance, the definition of Rental Multi-Unit Residence is as follows:

*Rental Multi-Unit Residence means, except as specifically excluded below, any residential property containing two or more units with one or more shared or abutting walls, floors, ceilings or shared ventilation systems, each with its own kitchen and bathroom facilities. Multi-unit housing does not include the following:*

- *A detached single-family residence;*
- *A single-family home with detached or attached in-law accessory dwelling unit permitted pursuant to section 17.60.070 Accessory Dwelling Units of the San Pablo Municipal Code;*
- *Condominiums and townhomes that are separately owned;*
- *A hotel or motel that meets the requirements of the California Civil Code section 1940(b)(2); or*
- *A mobile home park.*

This ordinance does not apply to multi-family units if the owner is also an occupant. Thus, condominium and townhome projects that are separately owned are exempt from the definition specified above.

Moreover, this proposed ordinance includes all types of smoke, not only that from tobacco products. The term “smoke” includes, but is not limited to, tobacco smoke (nicotine products including cigarettes, cigars, little cigars, etc.), electronic smoking device vapors, cannabis smoke, and smoke from any illegal substance. The ordinance would prohibit smoking in both indoor and undesignated outdoor common areas. A landlord may designate a portion of an outdoor common area as a

smoking area. Outdoor smoking areas must be located at least 25 feet away from doors, windows, air ducts, and ventilation systems of multi-unit housing.

### **Implementation**

The recommended approach for codifying a new SFMU ordinance is to amend Title 8, Health and Safety, of the San Pablo Municipal Code, Chapter 8.36 No-Smoking Regulations as presented. The timeframe for implementation is recommended to be as follows:

- Require that existing units' owners and managers have an implementation plan in place by July 1, 2020, and that all units be smoke-free by July 1, 2021, to allow for noticing, education, smoking cessation efforts and preparation.
- All new units obtaining a certificate of occupancy would be subject to the ordinance once effective (30 days after its adoption).

### **Enforcement and Penalties**

In addition to the existing Municipal Code Section 8.36.090, Penalties, the proposed ordinance would include the following enforcement approaches:

- Enforcement would be through smoking prohibitions in lease agreements, which landlords would be responsible for enforcing per proposed language in Section 8.36.045(E) in the attached draft ordinance;
- Landlords would be responsible for placing signage for all smoking and non-smoking areas per proposed language in Section 8.36.045(F) in the attached draft ordinance;
- The Police Tobacco Prevention Unit of the San Pablo Police Department would be assigned to provide assistance to educate landlords and property managers about the ordinance and to verify language in lease agreements and signs in rental multi-unit complexes;
- Any person, including a legal entity or organization acting for the interests of itself, its members, or the general public, may bring a civil action to enforce this section by way of a conditional judgment or an injunction to prevent future such violations and may sue to recover such actual or statutory damages as he or she may prove.

### **General Plan Conformity**

The proposed Ordinance is consistent with the City of San Pablo General Plan, and meets the intent of the following policies in that reducing secondhand and third-hand smoke, as defined by this chapter, in rental multi-unit housing helps to protect the public health of the residents of San Pablo:

***Policy HEA - G-4: Promote health equity in San Pablo, including equal access to health facilities, goods, services, and economic and educational opportunities, helping to ensure wellbeing for resident of all ages, abilities, and incomes.***

***Policy HEA - I-23: Collaborate with Contra Costa Health Services to monitor and maintain data related to San Pablo health outcomes and risk factors, and to use these data to inform***

*new County and City programs to serve the San Pablo community.*

**Policy HEA -I-37:** *Continue community policing and relationship building programs, including educational and mentoring initiatives with schools.*

### **FISCAL IMPACT**

The California Department of Justice awarded the City of San Pablo \$612,056 in grant funding to participate in the Tobacco Enforcement Grant Program to combat use of tobacco products. The City Council accepted the grant funding on July 2, 2018, pursuant to Resolution 2018-098. The grant monies fund the salary and benefits of one full-time Police Officer and one full-time Police Services Technician (PST) for FY 2018/19 and FY 2019/20. Another grant of \$1,358,074 was awarded on September 2019, which will provide funding for the next three years, starting on July 2020.

These positions will be primarily committed to the flavored tobacco ban passed on December 17, 2018 by Ordinance 2018-006 and to developing and delivering on the goals of the program which include: widespread community outreach, education classes for our youth and families through the elementary and middle schools, collaboration and training with business owners, and enforcement operations. The Police Tobacco Prevention Unit was created with these funds and would also be assigned to provide assistance to educate landlords and property managers about any smoke-free rental housing ordinance, including the verification of language in lease agreements and placement of signs in rental multi-unit complexes. It is the intent of the Police Department to seek funding sources for these additional FTEs in subsequent years through additional grant opportunities.

**ATTACHMENT:** Proof of Publication of Summary of Proposed Ordinance