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City Manager's Office

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Ashwini Katak

SUBJECT: SEE BELOW

DATE: 12-07-10

Approved

Date

12/7/10

INFORMATION

SUBJECT: UPDATE ON DISCUSSIONS WITH COUNTY ON OUTDOOR SMOKING BANS

In recognition of interest expressed by Council members to pursue an ordinance prohibiting smoking in certain outdoors areas, this information memorandum provides an update of staff discussions with the County's Public Health Department staff.

In response to a memo by Council members Kalra, Campos and Herrera, dated June 3, 2010, a workload assessment for an ordinance to ban smoking in certain outdoor areas was brought forward to the Rules and Open Government Committee on September 1, 2010. In addition to the workload assessment, staff had put forward four alternate options for the Committee's consideration. The Committee picked one of the alternate options and directed staff to hold the proposal and reconsider prioritization as a part of the Spring 2011 Council committee workplans or 2011-2012 Proposed Budget. This would allow the initiative to be considered within the context of other priorities, and for resources to be allocated accordingly.

Subsequently, the County developed a workload and impact analysis which outlined the resources that the County could make available if the City were able to advance this ordinance. Based on this analysis, it appears that the County, through its \$6.9 million ARRA grant, would be able to offer the City up to 340 hours of staff time, funding for paid media, and \$19,000 in additional grant funds. These resources would not, however, be able to address the costs of ongoing enforcement.

Staff is cognizant of the fact that the grant funds are only available through March 2012, and has thus proactively engaged County staff and proposed options that would address our resource constraints in enforcement while achieving the objective of reducing secondhand smoke exposure. Unfortunately, to date, the County has been unwilling to consider the options presented. Our recent correspondence summarizing these discussions with the County as well as the County's workload and impact analysis are attached.

HONORABLE MAYOR AND CITY COUNCIL

12-07-10

Subject: Update on discussions with County on outdoor smoking bans

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Please contact me at (408) 535-8147 if you have any questions.

A handwritten signature in black ink that reads "Ashwini Kantak". The signature is written in a cursive style with a prominent loop at the end of the last name.

Ashwini Kantak
Assistant to the City Manager

Attachment

December 3, 2010

Janie Burkhart
Public Health Department
County of Santa Clara
1400 Parkmoor Avenue, Suite 120B
San Jose, CA 95126

RE: Secondhand Smoke Ordinance

Dear Janie,

In order to ensure a clear understanding of our discussions and conclusions, I am writing to follow up on our conversations regarding smoking bans in certain outdoor areas and the options that we have discussed thus far.

As you are aware, a workload assessment for an ordinance to ban smoking in certain outdoor areas was brought forward to the Rules and Open Government Committee on September 1. In addition to the workload assessment, staff had put forward four alternate options for the Committee's consideration. The Committee voted to go with one of the alternate options and directed staff to hold the proposal and reconsider prioritization as a part of the Spring 2011 Council committee workplans or 2011-2012 Proposed Budget. This would allow the initiative to be considered within the context of other priorities, and for resources to be allocated accordingly.

Subsequently, the County developed a workload and cost impact analysis which outlined the resources that the County could make available if we were able to advance this ordinance. Based on this analysis, it appears that the County, through its \$6.9 million ARRA grant, would be able to offer up to 340 hours of staff time as well as funding for paid media and outreach materials. Based on our subsequent correspondence, we understand that an additional \$19,000 could be also available to San José for this effort.

Understanding that the County's grant funded resources are only available through March 2012, City staff wanted to explore some options that would achieve the objective of reducing secondhand smoke exposure while addressing the City's resource constraints for ongoing enforcement efforts and develop a plan for consideration by a Council committee in Spring. Since you and I have discussed several approaches, I just wanted to run these by you to make sure we are on the same page and to also keep Council apprised of our discussions.

Below I have tried to capture our November 17 discussion of the various options that I suggested to you, and would appreciate any clarification of items I may have misunderstood or missed.

1. **Santa Clara County Public Health Department to be the lead agency and develop a County-wide or multi-jurisdictional approach to regulations along with related outreach**

We would prefer this regional approach since it would advance the issue from a broader area of impact and would not create additional requirements for restaurants and other businesses in San José when compared to other neighboring cities.

County's response: You reported that the County does not have the authority to require cities to adopt an ordinance and thus this approach is not feasible from your perspective. Also, based on your research, you believe that cities take differing approaches to smoking bans in outdoor areas and thus, the County would not be able to develop a model ordinance that cities could adopt on a voluntary basis.

2. A voluntary restaurant smoking ban with a focus on outreach and education

We proposed a voluntary opt-in program for restaurants, accompanied by a substantive awareness campaign. The City could then partner with others to promote these restaurants as smoke free destinations.

County's response: The ARRA grant money is only available for mandatory, not voluntary programs. We discussed that although the County's ARRA grant agreement does not specifically state this, this is your understanding based on the conversations you have had with the Federal grant manager.

3. A limited term pilot ordinance with targeted outreach through a non-profit such as Breathe California

Although the County is able to provide significant resources for outreach and education, the long term enforcement of this ordinance is of special concern to our Code Enforcement staff. You have stated that similar ordinances adopted in other jurisdictions are considered to be largely self-enforcing and to test this out, we proposed going forward with a limited term pilot. This would allow us to use the grant funding for ordinance development and outreach and education while leveraging Breathe California's Secondhand Smoke Helpline to record complaints and share the information with the City's Code Enforcement staff.

The premise for such a pilot is that if raising awareness through outreach and education would truly make this a largely self-enforcing ordinance, thus requiring very minimal resources, we should be able to track this over the pilot period and advance the ordinance for adoption. However, on the other hand, a significant volume of complaint calls indicate the need for additional staff resources, which can be taken into consideration for ordinance adoption.

County's response: The County is not very supportive of a pilot program and would need to check on grant eligibility for a limited term pilot program.

As you are aware, we do have significant concerns about the long term resource implications of an outdoor smoking ban ordinance and are looking to partner with you on flexible and creative alternate approaches that would still achieve the overall goal of reducing secondhand smoke exposure.

We would hope that the County's strong interest in smoking cessation and the significant resources available through the grant would allow you to reconsider and engage more constructively on exploring other alternative regulatory structures. We would also like to renew our request for a response to our question regarding whether an outdoor smoking ban in restaurants can be built upon the County's existing health permit system for eating establishments. Since this existing system includes inspection and enforcement provisions, it would seem to be an efficient means upon which to layer smoking regulations.

Please feel free to contact me at (408) 535 8147 with any further questions or clarifications and I look forward to working with you and your staff to come up with a solution that works for both of us.

Sincerely,



Ashwini Kantak
Assistant to the City Manager

c:
Nicole Coxe (County)
Edward Shikada (CMO)
Laurel Prevetti (PBCE)
Mike Hannon (PBCE)

Attachment

Workload & Cost Impact - San Jose Secondhand Smoke Ordinance

Workload / Cost Impact Activity	Cost Estimate (Based on SJ Workload Assessment)	What Public Health Department Staff can do or provide
<p>RESEARCH: Conducting research for drafting ordinance & implementation plan (number of jurisdictions who have adopted similar policies, including their methods for implementation; number of impacted sites, signage needs and costs, coordinating across departments)</p> <p>ORDINANCE DEVELOPMENT: Drafting and developing the ordinance, conducting legal research, researching best-practice model policies</p>	<p>3 - 4 weeks (coordinating between City Departments, Staff Attorney time, drafting ordinance)</p> <p>8 - 40 hours (to prep memoranda & required environmental clearance reports)</p>	<p>5 - 40 hours of research, including (but not limited to) providing data to San Jose staff on what other jurisdictions have adopted similar policies, implementation strategies from other jurisdictions.</p>
<p>ORDINANCE DEVELOPMENT: Drafting and developing the ordinance, conducting legal research, researching best-practice model policies</p>	<p>16 - 24 hours (including outreach and public hearings, spread over a two month period)</p> <p>8 hours (Single meeting of stakeholders)</p> <p>8 - 16 hours (individual meetings/follow-up with stakeholder groups)</p> <p>40 hours & \$6,500 (cost of materials for outreach & proactive enforcement activities)</p>	<p>At least 15 hours of technical assistance from Public Health Law & Policy Attorneys to work with City Attorneys in drafting ordinances, adapting their model policies, conducting legal research, etc.</p> <p>20 - 100 hours of outreach - Public Health can convene community meetings of stakeholders to obtain ideas and feedback on proposed ordinances. Staff can also conduct education with business owners and deliver signs, materials and other necessary information.</p> <p>5 - 20 hours of training - Public Health Department staff can host trainings for business owners and staff on new policy.</p>
<p>PUBLIC OUTREACH: Conduct education with the general public and affected businesses/ sites (owners, employees, patrons, landlords, tenants) on the impact of the ordinance, expectations, etc.</p> <p>Train any necessary SJ City staff, departments, business/ building owners and other key stakeholders on the new policy</p>	<p>10 - 40 hours of materials development & dissemination (printing, mailings, deliver materials, etc). PHD can help to absorb some costs for printing and mailing.</p> <p>5 - 25 hours of media development \$ for paid media</p>	<p>10 - 40 hours of materials development & dissemination (printing, mailings, deliver materials, etc). PHD can help to absorb some costs for printing and mailing.</p> <p>5 - 25 hours of media development \$ for paid media</p>
<p>PUBLIC OUTREACH: Create brochures, newsletters, web-site postings/content, signs and other documents needed to inform the public of new policy (including translation of materials into appropriate languages)</p> <p>PUBLIC OUTREACH: Generate earned media & paid media content to inform the public of new policy</p> <p>PUBLIC OUTREACH/ ENFORCEMENT: Purchase signs to educate and enforce policy</p> <p>ENFORCEMENT/ COMPLIANCE: Investigate complaints of violations of policy</p>	<p>No \$ or staff time listed in SJ Workload Assessment</p> <p>Workload Assessment did not note this, but would be significant amount of costs associated with this.</p> <p>\$222,828 (PARTIALLY IMPLEMENTED); 1 FTE Code Enforcement Inspector</p> <p>\$381,307 (FULLY IMPLEMENTED); 2 FTE Code Enforcement Inspectors, 0.10 CE Supervisor, 0.10 CE Division Manager, 0.05 CE Deputy Director, 0.10 Senior Office Specialist</p>	<p>\$ for signage costs (including window clings for outdoor dining establishments)</p> <p>25 - 100 hours for enforcement. Leverage connections with the Secondhand Smoke Helpline (run through Breathe California) to investigate complaints. PHD & Breathe California staff can investigate complaints & educate the owners and employees about the law, check for signage needs, etc. Coordinate efforts with Code Enforcement to cite repeat violators. Breathe CA can keep a running list of complaints and share information with Code Enforcement. Secondhand Smoke Helpline Number could also be listed on any signage related to ordinance to CE does not have to field complaint calls.</p>