

March 29, 2011

Mayor Bill Bogaard
Pasadena City Council
100 N. Garfield Avenue
Pasadena, CA 91101
VIA EMAIL



Re: Indoor dwelling unit non-smoking ordinance

Dear Mayor Bogaard and Pasadena City Council,

The Pasadena Chamber of Commerce has been aware of efforts to revise the City of Pasadena smoking ordinance to incorporate protections for apartment and condominium dwellers against the impacts of secondhand smoke.

While we are in no way promoting smoking among any of our citizens, the Pasadena Chamber Board has significant concerns about the current proposal from the Pasadena Public Health Department.

Essentially, those concerns are in five areas. First, that an ordinance that would ban smoking, a legal activity, in the privacy of one's home is an unwarranted intrusion into the privacy of your citizens. Second, that the extension of nuisance status to second hand smoke would create an unnecessary opportunity for lawsuits among neighbors where much simpler and less expensive (and burdensome solutions) may exist and that your staff will have to enforce and act upon complaints generated by the new nuisance designation. Third, that the ordinance would be unenforceable. Fourth, enacting an ordinance like this may lead to expensive lawsuits against the City of Pasadena. Fifth, the expense of enforcement is a burden the city should not be considering at this time of significant budget challenges.

Last fall, the Chamber, at the request of your Public Health Department, surveyed our members regarding some of the proposals suggested at the time. The results of that survey were provided to your public health officials. At that time, a complete ban on smoking in apartments and condominiums was not part of the proposal, but creating sections of apartment and condo buildings as set-asides for smokers was.

In general, our members who responded favored having large areas of newly constructed apartment buildings be designated as strictly non-smoking. They also favored the city working to establish non-smoking multi-family housing units going forward, with the cooperation of developers and landlords. The members polled also supported notification of proximity to smokers by landlords to prospective tenants, though there were some concerns raised that landlords may not be aware of which tenants may smoke and which do not, so notification could be problematic at times.

However, our members, and our Board of Directors, were very strongly opposed to defining a legal activity, smoking, as a local nuisance and thus creating an atmosphere where neighbors freely take neighbors to court over smoking. There is a very strong feeling among our members that facilitating lawsuits related to a legal activity being undertaken within the private confines of one's home should not be included in any city ordinance. Since this would extend to single family residences, as well as multi-unit dwellings, this could further intrude into the private lives and onto the private property of

your constituents. Our members who responded also expressed concerns about retroactively imposing regulations on persons who already live in apartments and condominiums in Pasadena. There were some concerns that such a regulation could lead to lawsuits against the city and your enforcement personnel, as well as the city's further infringement on a basic right one has to enjoy a legal activity within the privacy of one's home. There is also concern that this new designation may be used by some neighbors to escalate disputes with their neighbors that may have nothing to do with smoking. The new designation will give some people a tool to harass their neighbors further. Similar to the barking dog ordinance, you may want to consider some protection against harassment, such as requiring complaints from more than one individual or household before your staff can act on this ordinance.

There is significant concern over the enforceability of this ordinance. Your own staff stated at the most recent Public Safety Committee that there have been no reports of enforcement by any of the handful of municipalities with similar ordinances. I would expect that is because these ordinances are unenforceable. Absent the right to enter a private home (which cannot be done without a warrant issued by a court or absent any of a small number of exceptions) there is no way for health staff to prove where traces of cigarette smoke could have originated. The presence of trace indications of cigarette smoke in one private dwelling do nothing to indicate where that trace originated or when it was created. Even if the next door neighbor smokes, there is no way to prove conclusively which smoker is responsible for tobacco residue in another private home.

It could also be anticipated that an ordinance like this, which intrudes so forcefully into the privacy of your constituents' homes and gives enforcement and citation (and thus fining) ability to health department staff will likely lead to at least one, if not more, very costly lawsuits against the city. While it is never good to invite lawsuits, now is particularly not the time to encourage litigation against the city.

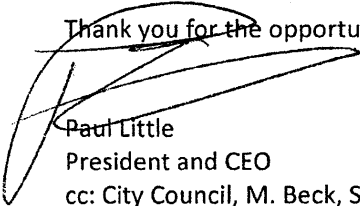
Finally, with all the financial burdens currently faced by the City of Pasadena, how could you justify spending any amount of money to enforce an ordinance like this? Regardless of where the funds may come from to enforce this ordinance, following significant layoffs of city employees and possible service cutbacks, this is simply not the time for the City Council to dedicate any resources to this effort.

While we appreciate that similarities are drawn to the city noise ordinance, there is one very significant difference, over-loud noise is illegal while smoking is a legal activity.

Perhaps it would make more sense to have the Pasadena Public Health Department work with your local Board of Realtors, the Los Angeles Apartment Owners Association, property managers and the anti-smoking advocates to work out a proposal that has support from homeowners, landlords, property managers, advocates and tenants that is workable without being an infringement on the right of your citizens to partake of a legal activity in the privacy of their homes.

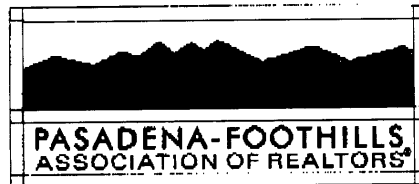
At its meeting of March 22, 2011, the Board of Directors of the Pasadena Chamber of Commerce acted to endorse these positions.

Thank you for the opportunity to comment on the agenda item.



Paul Little
President and CEO

cc: City Council, M. Beck, S. Whitmore, F. Girardo, K. Urich



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March 31, 2011

Mayor and City Council Members
City of Pasadena
100 N. Garfield Ave.
Pasadena, California 91109

Dear Mayor and City Council Members:

The Pasadena-Foothills Association of REALTORS® has grave concerns about the practicalities of the draft second hand smoke ordinance. While most of us decry smoking, we are concerned that the city may pass an ordinance that it can't enforce, one that increases city spending during a time of budget cutbacks, and one that presents it with a potentially huge liability exposure. Many of our members own or manage income property and are fully cognizant of the inherent difficulties of what is proposed. ***Nonetheless, if reasonable and adequate answers to our questions below are provided, we would be willing to lend our support.***

Unenforceable and impractical. While staff is sincere in its belief that they will be able to police this complaint-driven ordinance, it is our experience that dealing with tenants is not quite as cut and dried as they would hope. *In face of a tenant denial of smoking, and without first hand observation of such, just how will the enforcement officer determine that tenant was smoking at the time of complaint? Without first hand proof, how can a citation be issued?*

Costly. It seems to us that the city, in this time of budget cutbacks, should not be undertaking a new and staff-intensive program. The staff report says initial program costs can be absorbed in the current budget. What will happen in future years? Staff cites about 70 complaints over the past few years. With approximately 27,000 multi-family units in the city, this ratio of complaints is almost miniscule. *Shouldn't the city better spend its money on many other things such as public safety, affordable housing, parks and open space?*

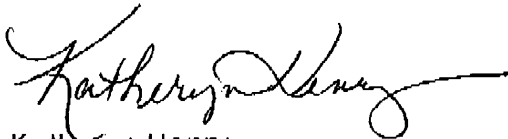
Liability. We believe that big government reaching into the privacy of its residents' homes to mandate social behavior will expose the city to significant liability. *How much money will the city spend in legal fees defending itself against lawsuits claiming private property trespass or claims that the city did not stop smoke from invading an adjacent residence, thereby causing that neighbor's illness?*

Enforcement. While we have been assured that neither the property owner, the property manager, nor the homeowners' association will be responsible for enforcement, should the city council move forward with developing this ordinance, we would like to see specific language delineating such in very plain language and that holds those persons / entities harmless for any liability the city may incur for enforcement and its consequences.

Alternative. While the movement towards making Pasadena a smoke-free city may be a noble objective, we would suggest that this would be best accomplished in the marketplace. Let those landlords and/or home owner associations who find it in their best interests to operate smoke-free properties do just that. And let those landlords and/or home owner associations who want to attract smokers do that as well.

While other cities may have recently enacted similar ordinances, there as yet is no history of their success or failure. We believe the city is approaching the very slippery slope of increased government intrusion into people's homes and we urge the greatest caution.

Sincerely,



Katheryn Henry
2011 President