

Agenda Report

TO: CITY COUNCIL **DATE:** April 6, 1998
FROM: CYNTHIA J. KURTZ, ACTING CITY MANAGER
SUBJECT: AMENDMENT OF PASADENA CLEAN INDOOR AIR
ORDINANCE (No. 6548): SMOKING REGULATION

RECOMMENDATION: It is recommended that the City Council direct the City Attorney to amend the City's Clean Indoor Air Ordinance as follows:

1. Require customer identification checks for tobacco sales to young people who reasonably appear to be under 27 years of age;
2. Require the sale of all tobacco products to be vendor-assisted, except for the sale of cigars in tobacco stores and cigar lounges;
3. Prohibit cigarette vending machines citywide;
4. Prohibit smoking in all areas of hotel lobbies and common areas;
5. Prohibit smoking within 20-feet of any doorway to a building, except doorways adjacent to bars and to outside dining areas in restaurants;
6. Change the name of Pasadena Ordinance No. 6548 to the "Tobacco Use Prevention Ordinance;" and
7. Delete section 8.78.060 from Pasadena Ordinance No. 6548 which allowed smoking in separately ventilated restaurant smoking rooms and separately ventilated bars (preempted by Labor Code Section 6404.5).

EXECUTIVE SUMMARY: In 1984, the City adopted Ordinance No. 6065 regulating or prohibiting smoking in public areas or workplaces. In April 1992, the City amended Ordinance No. 6065 to prohibit smoking in all enclosed workplaces except restaurants, and designated the chapter as the "Clean Indoor Air Ordinance" (CIAO). In July 1993, the City repealed Ordinance No. 6065 and incorporated its provisions into a new Ordinance, No. 6548, which strengthened existing provisions by requiring that smoking be prohibited in all restaurants and restaurant bars, except within separately ventilated restaurant smoking rooms and separately ventilated bars. Free-standing bars were exempted from this ordinance. Ordinance No. 6548 followed on the heels of the Environmental Protection Agency's designation of secondhand smoke as a "Class A" carcinogen known to cause cancer in healthy nonsmokers. The intent of the local ordinance and its subsequent amendments was to protect public health, safety and welfare in public places and in places of employment in Pasadena.

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On January 1, 1995, State legislators also sought to protect workers in California from exposure to secondhand smoke by enacting Labor Code Section 6404.5, which sets a statewide standard by prohibiting smoking in most enclosed workplaces. On January 1, 1998, bars, taverns, and gaming clubs became smokefree. According to the law, less restrictive local ordinances are preempted by Labor Code Section 6404.5. Attachment A to this report delineates locations where smoking is currently regulated by both Pasadena's Clean Indoor Air Ordinance and Labor Code Section 6404.5.

Local communities, however, have the option of adopting more restrictive local controls. The recommendations set forth in this report address important tobacco control issues that were missing from Labor Code Section 6404.5. These recommendations further the protection and promotion of public health by restricting public exposure to secondhand smoke and restricting youth access to tobacco products.

BACKGROUND

The Public Health Department is recommending seven new amendments at this time. These amendments are intended to: (1) Reduce youth access to tobacco (Recommendations 1-3), and (2) Reduce the general public's exposure to secondhand smoke (Recommendation 4-5). In addition, it is recommended that the name of the ordinance be changed to reflect the broader scope of the ordinance (recommendation 6), and that section 8.78.060 (G) of Ordinance No. 6548, which permits restaurants to provide separately ventilated smoking rooms, be deleted, as this section has been superseded by Labor Code Section 6404.5 (recommendation 7). These recommendations and enforcement strategies are detailed below, and in addition are summarized in Attachment B to this report.

Although the first three policy recommendations are part of existing or soon-to-be-implemented state or federal laws, they are being recommended for inclusion into Pasadena's local ordinance to (1) increase their visibility; (2) demonstrate and reinforce local commitment to these tobacco control policies; and (3) protect their status as law, regardless of what may happen at the state or federal level. This is important because tobacco industry supporters are particularly effective in repealing tobacco control laws at the state level. Furthermore, the implementation of FDA regulations that would ban vending machines and self-service displays from all locations except where youth are not allowed has been delayed indefinitely. Thus, it is in the interest of Pasadena's youth to take local responsibility for these provisions.

The growing body of evidence regarding the harmful effects of smoking and secondhand smoke supports the importance of even stronger policies on smoking and cigarette access, particularly for youth. This belief is clearly shared by the United States Congress, which recently committed an additional \$35 million dollars to help curb youth access to tobacco and youth smoking.

In 1986, the Surgeon General's report on the Health Consequences of Involuntary Smoking concluded that exposure to tobacco smoke places healthy nonsmokers at risk for developing lung cancer and heart disease. According to the California Department of Health Services, illness caused by secondhand smoke is the third leading cause of preventable death in the United States, following alcohol use and smoking itself. Further, researchers at UC San Francisco determined that nationwide, 53,000 nonsmokers die annually from the effects of secondhand smoke. The National Institute for Occupational Safety and Health (NIOSH), along with the EPA, has stated that the only way to protect nonsmokers is to create smoke free environments. Additionally, in accordance with the American's with Disability Act (ADA), prohibiting smoking within a defined distance from any doorway to a building further reduces the health risks of secondhand smoke and increases the accessibility of persons with respiratory illnesses entry into these buildings.

The Pasadena Tobacco Control Program

In June 1990, the Pasadena Public Health Department received a grant from the California Department of Health Services Tobacco Control Section (TCS) to serve as a Local Lead Agency for tobacco control. The Tobacco Control Program is within the Health Promotion and Policy Development Division of the Public Health Department. Funded by Proposition 99, the Tobacco Control Program is engaged in ongoing education and policy development related to tobacco use.

The Pasadena Tobacco Control Program strives to achieve three major goals as determined by the California Department of Health Services, Tobacco Control Section:

- (1) Reduce youth access to tobacco;
- (2) Reduce public exposure to secondhand smoke; and
- (3) Reduce the impact of pro-tobacco influences (e.g., tobacco advertising and promotions).

The Proposition 99 grant mandated that a Tobacco Coalition be established as an advisory board to the Tobacco Control Program. The Pasadena Tobacco Prevention Coalition (PTPC) is staffed by the Tobacco Control Program and includes approximately 20 active members, as well as a mailing list of over 75 supporters. The Tobacco Control Program staff, in collaboration with the Tobacco Prevention Coalition and other local and regional advocacy groups in the public and private sectors, are committed to policy interventions which will promote a smoke-free environment and curtail smoking among children and teenagers. Active PTPC members have reviewed the proposed recommendations and fully support these measures.

In addition to the main Tobacco Coalition, the Pasadena Tobacco Control Program staffs an anti-tobacco youth coalition, the *Pasadena Cigarette Stompers*. The Pasadena Cigarette Stompers, comprised of approximately 20 youths aged 8-20, are particularly concerned with preventing

other youths from starting to smoke. They also approve of the changes to the ordinance proposed herein, and are prepared to publicly support these changes.

Reducing Youth Access to Tobacco

As noted above, reducing youth access to tobacco is a primary goal of the Tobacco Control Program. While adult smoking prevalence decreased by 2% in Los Angeles County between 1993 and 1996 (from 20% to 18%), smoking prevalence among youth increased by more than 20% during the same time period (from 9.1% to 11.2 %). Although it is illegal to sell tobacco to minors, tobacco is still easily accessible to youth, as evidenced by the following:

- According to the California's Statewide Youth Purchase Survey, in 1997, California tobacco retailers were willing to sell tobacco products to minors 21.7% of the time.
- A 1996 study conducted by the Pasadena Tobacco Control Program found that more than one in six Pasadena merchants studied (23%) sold tobacco to minors.
- It is estimated that 90% of adult smokers began smoking before the age of 18 (California Department of Health Services).

There is nearly universal agreement that children should not be encouraged to smoke. Over 96% of adult smokers state they would not offer a cigarette to anyone under the age of 18. Yet, a recent California study indicated that at least half of youth get their tobacco from friends, family members, or through "shoulder tapping," an adult purchasing a tobacco product for a minor (California Youth Tobacco Survey, [CYTS], 1996). According to the Tobacco Control Section, the preliminary results of the CYTS 1996 study indicate that most smokers report that they obtain cigarettes from others, who either gave them (88.9%) or purchased cigarettes for them (73.9%).

A comprehensive policy to reduce youth access to tobacco is being proposed at this time. Following is a list of the three recommended policy options and a discussion of each.

Recommendation 1: Require identification checks for tobacco sales to young people who reasonably appear to be under the age of 27.

This recommendation mirrors part of the California Stop Tobacco Access to Kids Enforcement (STAKE) Act signed into law in September 1994. This recommendation requires tobacco retailers to check the identification of any purchasers of tobacco products *who reasonably appear to be under age 27*, in accordance with the age guideline adopted in the Food & Drug Administration (FDA) regulation. The 1997 Statewide Youth Purchase Survey found that store clerks requested identification or

asked the youth's age 76.5% of the time, compared with 70.3% percent in 1996. Those stores in which clerks asked for identification had a dramatically lower illegal sales rate (1.2%) than those where clerks did not (88.6%).

Enforcement: The California Food and Drug Branch will enforce this provision as part of the STAKE Act. The Pasadena Police Department has additionally agreed to support this provision by following up with establishments that receive multiple complaints about illegal sales of tobacco to youth, and through conducting a quarterly tobacco decoy program to identify establishments which sell tobacco products illegally to youth.

Recommendation 2: Require the sale of all tobacco products to be vendor-assisted, except for the sale of cigars in tobacco stores and cigar lounges.

This recommendation eliminates self-service racks and requires that tobacco products be a vendor-assisted sale in which tobacco products would be located behind the counter or placed in locked cases. As a consequence, a young person would need to interact directly with a store employee in order to obtain cigarettes, resulting in a higher frequency of identification checks and a reduction in theft of tobacco products. This recommendation would apply not only to individual packs and cartons of cigarettes, but also to cigars, except for cigars sold at tobacco stores and cigar lounges. Cigars have recently become increasingly fashionable among youth and women. The 1997 Statewide Youth Purchase Survey indicated that the illegal sales rate for clerk-assisted sales was 17.9 percent, compared to 36.2 percent for self-service sales. As of March 1996, there were 97 local ordinances nationwide that ban self-service tobacco displays (see Attachment C).

Enforcement: The Pasadena Public Health Department's Environmental Health Division will enforce this provision as part of routine inspections conducted on all establishments that sell food and on a complaint basis.

Recommendation 3: Prohibit cigarette vending machines citywide.

Cigarette vending machines in all establishments other than those with on-site liquor licenses were prohibited by the STAKE Act as of January 1, 1996. As noted above, vending machines constitute one of the primary means by which youth access cigarettes. Further, studies have shown that youth frequently can obtain cigarettes from vending machines in bars, especially bars attached to restaurants. Not only will the elimination of cigarette vending machines citywide reduce youth access to tobacco, it will also dissuade smokers from violating the provision of Labor Code Section 6404.5 that prohibits smoking in bars, which went into effect in January, 1998.

As of March 1996, there were 157 local ordinances nationwide that completely banned cigarette vending machines, and an additional 164 localities (and four states) with ordinances that severely restricted cigarette vending machines (see Attachment D).

Enforcement: The Pasadena Public Health Department will enforce this provision on a complaint basis using the same protocol currently in place for Labor Code Section 6404.5 worksite violations; that is, the Tobacco Control Program provides initial investigation and follow-up, followed by the Environmental Health Division in cases that require additional enforcement.

Public Exposure to Secondhand Smoke

As identified above, a second goal of the Pasadena Tobacco Control Program is to reduce public exposure to secondhand smoke. This goal is in response to the EPA report classifying secondhand smoke as a Class A carcinogen and the fact that secondhand smoke is the third leading cause of preventable death in the United States. To protect Pasadena residents and visitors from the harmful effects of secondhand smoke, the following policy option is being recommended:

Recommendation 4: Prohibit smoking in all areas of hotel lobbies and common areas.

Labor Code Section 6404.5, which went into effect in January 1995, permits hotels to allow smoking in up to 50% of a lobby space that is 2,000 square feet or less (larger lobbies can permit smoking in up to 25% of the lobby). In lobbies and other common areas of hotels where smoking is permitted, the air is circulated between the smoking and nonsmoking areas, exposing hotel guests and employees to secondhand smoke. Hotel lobbies and common areas such as hallways do not have filtration or ventilation systems for smoking areas, and even if they did, most studies have agreed that filtration and ventilation systems are ineffective methods of protecting nonsmokers from the toxins in secondhand smoke. Ventilation standards established by the American Society for Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) are designed to remove the odor rather than carcinogens and other toxins.

At the present time, at least 14 California cities have prohibited smoking in all areas of hotel lobbies and common areas.

Enforcement: As with Recommendation #3 above, the Pasadena Public Health Department will enforce this provision on a complaint basis using the same protocol currently in place for Labor Code Section 6404.5 worksite violations.

Recommendation 5: Prohibit smoking within 20-feet of any doorway to a building, except doorways adjacent to bars and to outside dining areas in restaurants.

Prohibiting smoking within a defined distance from building doorways further reduces the public's exposure to secondhand smoke and simultaneously allows persons with respiratory illnesses easier access to these buildings. The distance requirement from a building doorway helps to prevent smoke from entering the building when people enter or exit the building, and also helps to prevent people walking into a cloud of smoke as they enter and exit a building. Doorways adjacent to bars and to outside dining areas in restaurants are exempted from this amendment.

Enforcement: The Pasadena Public Health Department is currently responsible for enforcing Ordinance No.6548, and will retain responsibility for enforcing this amendment.

Recommendation 7: Delete section 8.78.060 from Pasadena Ordinance No. 6548.

With the passage of Labor Code Section 6404.5, section 8.78.060 (G) of Pasadena's Clean Indoor Air Ordinance No. 6548 stating that the "[smoking] prohibition shall not apply to a room within a restaurant with permanent wall separations, having a separate HVAC [Heating, Ventilation, and Air Conditioning] system, and reserved by the owner for smoking patrons" should be deleted. The state law is stronger and does not permit smoking within restaurants.

Enforcement: The Pasadena Public Health Department is currently responsible for enforcing Ordinance No.6548, and will retain responsibility for enforcing this amendment.

Economic Impact of Proposed Recommendations

The economic impact of the proposed recommendations on local business is expected to be minimal, and would not be greater than that already or soon to be required by state or federal laws. To implement the provision regulating vendor-assisted sales for all tobacco products, local merchants would be required to relocate tobacco products behind a counter or in a locked case. Reductions in lost revenue due to shoplifting would likely offset costs associated with this relocation. The removal of tobacco vending machines citywide may result in a reduction of revenue to bar and nightclub owners; however, tobacco products can still be sold at these locations. Recent meetings with local hotel and motel owners and managers revealed that many currently have no-smoking policies in their lobbies. Of the 21 hotels and motels surveyed, only two expressed opposition to this recommendation.

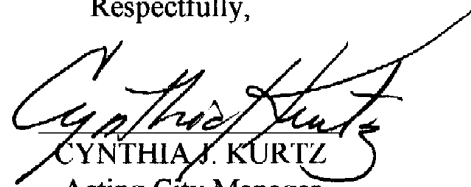
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The cost of educating and notifying business establishments that sell tobacco, business establishments which have cigarette vending machines, and hotels regarding the new laws will be absorbed by the Public Health Department. These education activities are funded through Proposition 99 funds. Enforcement will be absorbed by existing agencies and enforcement practices, as identified above.

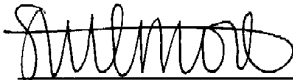
FISCAL IMPACT

This action by City Council will have no fiscal impact. All costs associated with the implementation and enforcement of these amendments are covered by grants to the Public Health Department, and have already been budgeted for in the FY 1998-99 budget. There will be no impact on the Health Fund or the General Fund.

Respectfully,

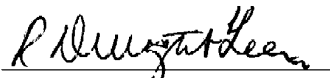

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