

# Agenda Report

**TO: CITY COUNCIL**  
**Through: Public Safety Committee**

**DATE: November 3, 2003**

**FROM: CYNTHIA J. KURTZ, CITY MANAGER**

**SUBJECT: AMENDMENT OF TOBACCO USE PREVENTION ORDINANCE  
(No. 6757): SMOKING REGULATIONS**

## **RECOMMENDATION:**

It is recommended that the City Council direct the City Attorney to amend the City's Tobacco Use Prevention Ordinance No. 6757 as follows:

1. Require all stationary tobacco retailers to be licensed;
2. Require Conditional Use Permits for tobacco-only stores;
3. Prohibit smoking in all City-owned parks; and,
4. Prohibit smoking within 20-feet of worksite building entrances or exits, excluding outdoor dining areas.

## **ADVISORY BODY RECOMMENDATIONS:**

Staff presented the above recommendations to the Planning Commission and the Recreation and Parks Commission on September 10, 2003 and September 2, 2003 respectively. The Planning Commission recommended approval of the staff recommendations and the Recreation and Parks Commission took no action.

## **BACKGROUND:**

The Public Health Department is recommending four new amendments to Tobacco Use Prevention Ordinance (No. 6757) that are intended to reduce youth access to tobacco and reduce the general public's exposure, especially that of youth, to harmful secondhand smoke.

## **Recommendations to Reduce Youth Access to Tobacco**

### ***Recommendation 1-- Require all stationary local tobacco retailers to be licensed.***

Staff recommends the implementation of a local retailer license law that would: 1) formally give permission to local retailers to sell tobacco products from stationary businesses and prohibit mobile vendor sales; 2) require that all merchants intending to sell tobacco in Pasadena pay an annual fee of \$135 covering expenses for the administration, implementation, monitoring, and enforcement of the tobacco retail licensure program; 3) establish conditions for selling tobacco to encourage compliance with federal, state and local tobacco control laws; and 4) require that merchants who repeatedly violate tobacco control laws be subject to escalating penalties (citation, tobacco license suspension and revocation) for each subsequent violation.

**Rationale.** Currently there are federal, state, and local laws intended to regulate tobacco sales to and use of tobacco products by minors. Despite these restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates. Over 30 California communities have adopted licensing and found it to be an effective way to sanction and monitor tobacco retail owners who repeatedly sell tobacco to minors. A survey administered to local tobacco retailers in March 2003 indicates that 50% of business owners and an even larger majority of managers and sales clerks support licensing.

**Enforcement.** The Pasadena Police Department will continue to partner with the Pasadena Public Health Department to conduct quarterly compliance checks. The Pasadena Tobacco Control Program will have responsibility for merchant education and assisting with implementation of the ongoing Tobacco Decoy Program. Staff will also track and monitor violations, using its existing Tobacco Control Geographical Information System.

### ***Recommendation 2-- Require Conditional Use Permits for tobacco-only stores.***

This proposed regulation would impose restrictions on tobacco-only stores. A Conditional Use Permit would be required for new incoming or relocated tobacco-only stores prohibiting these establishments from locating within 1,000 feet of public or private schools (excluding colleges or universities), licensed child day care facility (excluding family day care use), park and recreation facility, game arcade, internet access studio, or library. Existing tobacco-only retailers will automatically be granted a use permit if they comply with the four requirements below. These CUP regulations will limit tobacco-only stores to the general commercial, industrial, and central zoning districts and prohibit this use in the commercial office and neighborhood commercial zoning districts. The proposed ordinance will also establish four regulations for tobacco-only stores as follows: (1) only store employees will have immediate access to the tobacco products; (2) tobacco-only retailers shall comply with all federal, state, and local laws regarding the sale, advertising, and display of tobacco products; (3) no person under age 18 may sell, distribute, or exchange tobacco products; (4) no individuals under age 18 may sample tobacco products.

**Rationale.** A proliferation of tobacco only stores has contributed to youth having greater access to tobacco products. Currently, there are 12 tobacco-only stores in Pasadena (a 71% increase since 2000) with more than half located within 500 feet of a private or public school. Three of the stores located near schools have sold tobacco to minors within the last 18 months.

**Enforcement.** The Planning and Development Department, Code Enforcement Division will use existing enforcement and regulation practices to process and approve Conditional Use Permits for tobacco-only stores.

### **Recommendations to Reduce Public Exposure to Secondhand Smoke**

#### ***Recommendation 3-- Prohibit smoking in all City-owned parks.***

To protect the public and youth from the effects of secondhand smoke and respond to local interests, staff recommends that smoking be prohibited in all 21 City-owned parks.

**Rationale.** Smoking in outdoor venues exposes others to levels of harmful secondhand smoke as high as levels existing in indoor spaces where smoking is unrestricted. Evidence regarding the harmful effects of smoking and exposure to secondhand smoke are well documented in medical and scientific literature and substantiate the need for stronger policies to regulate outdoor secondhand smoke exposure. A recent local Community Opinion Survey indicates strong public support for a smokefree parks policy (74%) and a ban on smoking in public places in the city of Pasadena (63%).

**Enforcement.** The proposed smokefree park policy would be enforced by park signage with a posted telephone number that residents could call for information and/or make a complaint. Enforcement would begin after Tobacco Control Program staff initiated a comprehensive public education campaign and targeted outreach to park patrons about the newly adopted regulations.

#### ***Recommendation 4-- Prohibit smoking within 20 feet of worksite building entrances or exits, excluding outdoor dining areas.***

Staff recommends that smoking be prohibited within 20 feet of worksite building entrances or exits, excluding outdoor dining areas, to limit public exposure to concentrated secondhand smoke at these access points.

**Rationale.** Prohibiting smoking within a defined distance from building doorways reduces the public's exposure to concentrated, unwanted secondhand smoke as they enter or exit a public building and simultaneously allows persons with respiratory allergies, illnesses, and disabilities easier access to these buildings. The distance requirement from a building doorway also helps to prevent smoke from entering the building as people enter or exit. Twenty feet is a minimum smoke-free health based standard across the nation.

**Enforcement.** The Pasadena Public Health Department will be responsible for enforcing this amendment using complaint driven methods already in place for enforcing Ordinance

No. 6757. Initial complaints will filter to the Tobacco Control Program Office and staff will conduct an initial investigation and issue an educational warning. An education and information notice will be sent to the business where the smoking violation occurred. Historically, clear and prominent signage coupled with a strong education campaign has reduced the number of violations or need for stronger enforcement measures.

For information on state and national polices and other supporting evidence, see Attachments A and B.

### **Economic Impact and Cost of Proposed Recommendations**

Operational costs to implement the proposed amendments will primarily be absorbed by the City under existing Department work plans and budgets. The incremental cost of implementing the tobacco retailer licensing program will be covered by license fees charged to affected businesses. The projected annual cost for administration, implementation and enforcement of the licensing program is as follows:

Pasadena Police Department Tobacco Decoy Program Operations	\$17,035
Public Health Department Administration and Enforcement Costs	\$ 8,465
Business License Department Administration	<u>\$ 1,500</u>
<b>Total</b>	<b>\$27,000</b>

Comparable revenues will be generated from the issuance of 200 licenses at \$135 per license.

### **FISCAL IMPACT:**

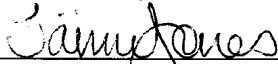
Costs associated with the proposed amendments to the Tobacco Control Ordinance are primarily covered by existing resources already in the FY 2003-04 budget. The Public Health Department will be asking the City Council to approve an annual fee of \$135 as part of the update of the General Fee Schedule. If approved by City Council, the projected costs in the amount of \$27,000 for the retailer licensing program will be recovered through the licensing fees.

Respectfully submitted,



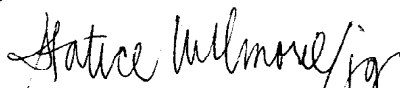
CYNTHIA J. KURTZ  
City Manager

Prepared by:


  
\_\_\_\_\_  
Tamu Jones, Program Coordinator  
Administration

Reviewed by:

  
\_\_\_\_\_  
Joy Guihama, Division Manager  
Health Promotion & Policy Development Division

  
\_\_\_\_\_  
Statrice Wilmore, Program Coordinator II  
Tobacco Control Program

Approved by:

  
\_\_\_\_\_  
Wilma J. Allen  
Director of Public Health Department