

Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: October 13, 2008

FROM: CITY ATTORNEY

SUBJECT: AMENDMENT OF TOBACCO USE PREVENTION ORDINANCE

TITLE OF PROPOSED ORDINANCE:

AN ORDINANCE OF THE CITY OF PASADENA AMENDING TITLE 8 OF THE PASADENA MUNICIPAL CODE TO ADD NEW SECTIONS TO CHAPTER 8.78 TO PROHIBIT SMOKING IN OUTDOOR PUBLIC PLACES AND ADDITIONAL DEFINITIONS TO SECTION 8.78.040

PURPOSE OF ORDINANCE:

The purpose of this ordinance is to modify the City's Tobacco Use Prevention Ordinance to reduce further the public's exposure to secondhand smoke.

REASON WHY LEGISLATION IS NEEDED:

The City Council directed preparation of this ordinance at its meeting of May 5, 2008. Due to additional communication by staff, the return of this proposed ordinance was delayed. Section 410 of the Pasadena City Charter requires that the municipal code be amended by ordinance. With this amendment, the City wishes to increase the protection it provides to its residents from harmful secondhand smoke exposure in outdoor public places not currently covered by the Tobacco Use Prevention Ordinance. These areas include shopping malls; unenclosed areas of bars and restaurants; service waiting lines or within 20 feet of such lines; outdoor public gathering events, special events, parades and fairs; and a reasonable distance from doorways, windows, openings, or vents into an enclosed area in which smoking is prohibited. A "reasonable distance" is defined as at least 20 feet, which is probably sufficient to make it unlikely that secondhand smoke will enter nonsmoking areas. There was no need to include parks in this amendment, as smoking is already prohibited in those sites.

MEETING OF 10/13/2008

AGENDA ITEM NO. 9.A.1.

Currently, violations of the provisions of the Tobacco Use Prevention Ordinance are punished as infractions, and Council's direction did not request modification. Subsequent to the City Council's direction, staff has raised questions about whether the penalty for violations should be punished as misdemeanors or by civil action. If desired, a change in the penalty for violations could be incorporated into the amendment at the direction of the City Council, which would mean adding language to change the penalty to allow punishment as a misdemeanor and/or civil penalty.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED:

The Pasadena Public Health Department, business owners, residents, visitors and the general public will be impacted by this ordinance.

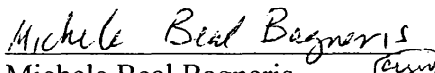
FISCAL IMPLICATIONS:

There will be a nominal cost for staff time related to enforcement, preparation of signage and the public education campaign to inform the public about the new restrictions on smoking in public places.

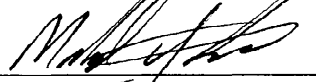
POLICY CHANGES:

This amendment is not a policy change for the City which has followed a program of preventing the public's exposure to secondhand smoke in public places. This ordinance merely adds additional locations where residents and visitors will be protected from inhaling secondhand smoke, a Class A carcinogen.

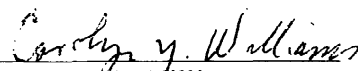
Respectfully submitted,


Michele Beal Bagneris
City Attorney

Concurrence


Michael J. Beck
City Manager

Prepared by:


Carolyn Y. Williams
Asst. City Attorney

Introduced by Councilmember _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING
TITLE 8 OF THE PASADENA MUNICIPAL CODE TO ADD
NEW SECTIONS TO CHAPTER 8.78 TO PROHIBIT SMOKING IN
OUTDOOR PUBLIC PLACES AND ADDITIONAL DEFINITIONS
TO SECTION 8.78.040

The People of the City of Pasadena do ordain as follows:

SECTION 1. Title 8, Chapter 8.78. Section 8.78.040 (A) of the Pasadena
Municipal Code (“Definitions”) is amended to repeal paragraphs 1, 2 and 3.

“A. ‘Bar’ means an area which is devoted to serving alcoholic beverages and in which
the service of food is only incidental to the consumption of such beverages.

~~1. ‘Attached bar’ means one that is located in the same enclosed building as the
restaurant and shares a heating, ventilation and air conditioning (HVAC) system
but is physically separated from the dining area.~~

~~2. ‘Dining area bar’ means one that shares an HVAC system and is an integral part
of the dining area.~~

~~3. ‘Freestanding bar’ means one which does not share an HVAC system with a
restaurant.”~~

SECTION 2. Title 8, Chapter 8.78 of the Pasadena Municipal Code is amended by
adding new Subsections N, O, and P to Section 8.78.040 (“Definitions”) to read:

**“N. ‘Service waiting line’ means a place, public or private, where people use or wait
for services, enter a public place, or make a transaction, whether or not such service
or transaction includes the exchange of money, including but not limited to, bus**

stops, ATMs, bank teller windows, telephones, ticket lines, cab stands, information kiosks, and theater lines.

O. 'Shopping mall' means any parcel of land zoned and used for retail sales by more than one retailer that is jointly operated or which includes shared parking facilities.

P. 'Reasonable distance' means a distance of at least 20 feet in any direction from an area in which smoking is prohibited. ”

SECTION 3. Title 8, Chapter 8.78 of the Pasadena Municipal Code is amended by adding new Sections 8.78.071 and 8.78.072 to read:

“8.78.071. Prohibition of smoking in certain outdoor public places.

A. It shall be unlawful to smoke in the following outdoor public places:

- 1. Outdoor areas of shopping malls;**
- 2. Unenclosed areas of bars and restaurants;**
- 3. In service waiting lines or within 20 feet of such lines;**
- 4. Outdoor public gathering events/special events/parades/fairs.**

B. Notwithstanding exemptions enumerated under California Labor Code Section 6404.5, the prohibitions in Section A above shall apply to the outdoor areas of a 'private smokers' lounge' and 'retail or wholesale tobacco shops' as defined under state law, and to 'significant tobacco retailers' as defined under the City's Zoning Code.

8.78.072 Reasonable smoking distance required - 20 feet.

Smoking in unenclosed areas shall be prohibited within a reasonable distance (20 feet) from any doorway, window, opening, or vent into an enclosed area in which smoking is prohibited, except while actively passing on the way to another destination.”

SECTION 4. This ordinance shall take effect thirty (30) days after its publication.

Signed and approved this _____ day of _____ 2008

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting of _____, 2008, by the following vote:

AYES:

NOES:

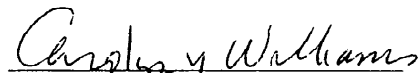
ABSTAIN:

ABSENT:

Published:

Mark Jomsky
City Clerk

APPROVED AS TO FORM:


Carolyn Y. Williams
Asst. City Attorney