

# Agenda Report

April 4, 2011

**TO:** Honorable Mayor and City Council

**THROUGH:** Public Safety Committee (March 21, 2011)

**FROM:** Public Health Department

**SUBJECT: PROPOSED MUNICIPAL CODE AMENDMENTS TO REDUCE  
DRIFTING TOBACCO SMOKE IN MULTI-UNIT HOUSING**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Find the proposed action is exempt from the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines Section 15308;
2. Direct the City Attorney to prepare and return within 60 days with amendments to the Pasadena Municipal Code to restrict smoking in multi-unit housing by amending the City's municipal code as follows:
  - a. Specifically define secondhand smoke as a public nuisance and as an infraction under Pasadena Municipal Code Section (PMC) 8.04.020 "P" and PMC 1.24.040;
  - b. Prohibit tobacco smoking on patios and balconies, and in outdoor common areas, of multi-unit housing;
  - c. Require disclosure of the ordinance requirements to all prospective and existing tenants and buyers in rental, lease and purchase agreements by January 2012; and,
  - d. Establish phase-in period for 100% smokefree multi-unit housing by 2014.

## **EXECUTIVE SUMMARY:**

The Public Health Department is recommending amendments to the Tobacco Use Prevention Ordinance, as well as PMC sections 8.04.020 "P" and 1.24.040, that are intended to reduce involuntary secondhand smoke (i.e., drifting tobacco smoke) exposure to residents in multi-unit housing complexes. Multi-unit housing (MUH) is broadly defined as residential complexes containing two or more units. The City receives complaints and requests for assistance related to drifting tobacco smoke in

multi-unit housing. Tobacco smoke drifts into homes from balconies, patios and common areas and from other units via vents. Complainants report health problems, such as breathing difficulties, lung irritation, sleeping disturbance and headaches.

In March 2010, staff presented an informational report regarding this issue to the Public Safety Committee, which also heard public comment on the matter. The Public Safety Committee directed staff to return with a program to address drifting tobacco smoke in multi-unit housing (MUH) that is both reasonable and enforceable.

### **BACKGROUND:**

The City of Pasadena has been a leader in developing and enacting tobacco control policies to improve the health of the community. The health dangers of smoking and secondhand smoke have long been established through extensive research and medical documentation. Pasadena's Tobacco Use Prevention Ordinance initially addressed prevention of both illegal tobacco sales to minors and tobacco retail establishments locating within 1,000 feet of schools, parks, and other sensitive-use locations where minors congregate. The Ordinance was significantly amended in October 2008 to restrict smoking in certain outdoor areas, including parks, outdoor dining and service waiting lines. The amendment also restricts smoking at public events such as Tournament of Roses parade. Most recently, the Ordinance was amended on March 30, 2010, to eliminate the exemption of certain outdoor areas surrounding the Brookside Clubhouse, restaurant patio, and starter shop.

Although Californians have extensive protections from exposure to secondhand tobacco smoke where they work, eat and play, many are still exposed to secondhand smoke where they live. Studies have shown that smoke can travel through a building, via air conditioning units, vents, balconies and patios, affecting other residents. In the last 24 months, Public Health Department staff have received more than 70 complaints from unique individuals living in multi-unit housing stating that they are suffering from drifting tobacco smoke (i.e., secondhand smoke) exposure in their homes and have experienced health problems, poorer quality of life, and reduced overall habitability of their residences. One half of the complaints are related to smoke drifting into units; one-third are from outdoor common areas such as balconies, patios, and windows; and seventeen percent are from other sources such as hallways, smoke from other nearby worksites, etc.

Smoking restrictions in places where people live have other benefits, including decreasing the risk of accidental fires, reducing fire insurance premiums and reducing costs related to building maintenance and tenant turnover. According to the Pasadena Fire Department, approximately 14 fires were attributed to tobacco use between August 2007 and August 2010 (6-vegetation, 3-structure, 1-trash, 4-other). In addition to these

safety concerns and reduced ownership costs, there is an industry trend in multi-unit housing toward smoke free properties to meet increased tenant demand.

### **City Housing Profile**

The Planning Department reports there are 58,590 housing units in the City of Pasadena. Of these, 24,873 are single family houses. There are approximately 33,717 multi-family units, including both apartments and condominiums. There are estimated 1,897 units designated senior housing dwellings. According to the City's Housing Department, there are 3,955 housing units that are government subsidized and meet low-income requirements.

### **Local Multi-Unit Housing Opinion Surveys with Pasadena Community**

Local opinion surveys conducted in 2008 and 2009 indicate support for restrictions on smoking in multi-unit housing in various MUH areas. Survey respondents indicated that 79% wanted to be protected from tobacco smoke entering into their homes, and 72% wanted to live in a completely non-smoking building. These opinions align with a 2004 statewide opinion survey about secondhand-smoke in multi-unit housing.

### **Local Multi-Unit Housing Outreach with Relevant Agencies**

Staff conducted outreach sessions with more than 14 relevant MUH groups during late spring and early summer of last year to obtain input on proposed MUH smoking restrictions. These meetings included four major apartment associations/groups, including the Pasadena Housing Practitioners Advisory Meeting, the Foothill Apartment Association (FAA), the Apartment Association of Greater LA (AAGLA), the California Apartment Association (CAA), as well as local housing developers, the Pasadena Chamber of Commerce and the Pasadena Neighborhood Coalition. Attachment A is a matrix of the various groups and the primary issues each identified.

Participants in these discussions have been monitoring the issue of drifting tobacco smoke in MUH in Pasadena and/or have been involved in other communities already addressing this issue. In general, there was support for addressing drifting tobacco smoke in MUH. The concern most often voiced was that landlords not be the designated enforcement agent or be made liable for any aspect of enforcement or lack thereof. In addition, property managers and owners expressed concern about the burden of any related process if it was overly complicated in its design. They indicated support for providing non-smoking common areas or buffer zones; and, they supported the concept of disclosure of known smoking units to prospective tenants within lease/purchase agreement language and/or posted signage. Participants advised that implementation and compliance would be enhanced by city-provided signage or recommended signage language, technical assistance, a reasonable phase-in period of at least 90 days, and multiple reminders/coordinated communication to tenants, landlords, and owners during the phase-in period.

### **Multi-Unit Housing Policies in Other Cities**

To date, over 30 California communities have adopted ordinances to restrict smoking in multi-unit housing. Last year, the Center for Tobacco Policy and Organizing, a project of the American Lung Association, published a report of the 30 communities with smoke free housing policies (Attachment B to this report). Staff studied the most comprehensive ordinances to identify best practices for implementation options and enforcement. Staff also contacted the nearby cities of Burbank, Glendale, Santa Monica, and South Pasadena to understand the issues related to their respective MUH ordinances which were either adopted or amended in 2010.

The stated intent of all ordinances addressing drifting tobacco smoke in multi-unit housing is to ensure long-term public health protections for the majority of individuals impacted, while providing clarity and guidance related to implementation and enforcement for staff, landlords/property owners, tenants and city residents.

Smoking restrictions in multi-unit housing are relatively new, with the oldest ordinance adopted in 2007. Due to phase-in periods for implementation, long-term evidence on issues with implementation and enforcement in other communities is limited. In cities which have adopted expanded smoking prohibitions for multi-unit housing, the provisions were implemented after extensive outreach and education campaigns were completed, which ranged from 30 to 90 days.

A review of the Matrix of 30 Communities with MUH Smoking Ordinances (Attachment B) reveals that many communities rely on no-smoking signage and landlords/property owners of impacted residents for enforcement. Not surprisingly, differing approaches to enforcement have yielded varying results of compliance. In jurisdictions where resources such as Code Enforcement and/or Police have been responsible for, or participate in, enforcement implementation has been more effective. Pasadena is unique in that it has its own Public Health Department which includes an existing Tobacco Control Program. Staff within this Department are well positioned to handle education/enforcement of the proposed code revisions.

It is important to note that voluntary 100% smokefree MUH exists. In May 2010, the Saris Regis (now Equity Residential) development group announced its newly developed 100% smokefree property for occupancy in Pasadena. The 480-unit Westgate development is now 90% occupied, and the Westgate property management staff stated that tenants have been receptive to the smoke free policy and that compliance is working well. In addition to signage, tenants sign a lease to ensure notification and compliance with the Westgate's smoke free policy.

### **Proposed Policy Recommendations**

Many communities in California are addressing the issue of drifting tobacco smoke in MUH by adopting several strategies to mitigate the problem. Staff analyzed several options based on a set of criteria that includes reasonableness, feasibility, enforceability, cost effectiveness.

The following section details four staff recommendations to effectively reduce drifting tobacco smoke in MUH, with the goal of eliminating unwanted exposure for the majority of individuals impacted by drifting tobacco smoke. These proposed policy strategies can be successfully accomplished through a multi-year approach that phases in non-smoking units, over a period of three years, to allow for social norm change behaviors to occur and to follow market trends. Model public health practice for tobacco control in MUH indicates a policy of 100% non-smoking units with a phase-in provision and a initial robust enforcement program.

Staff proposes the following recommendations to address community health protections and reasonable enforcement processes.

**Recommendation 1:** Specifically define secondhand smoke as a public nuisance and an infraction under Pasadena Municipal Code Section (PMC) 8.04.020 "P" and PMC 1.24.040.

The California Civil Code defines a nuisance as anything harmful to health, or indecent or offensive to the senses, so as to interfere with the comfortable enjoyment of life or property. Courts require that anything considered a nuisance must be both "substantial" and "unreasonable", which aligns with Pasadena's Tobacco Use Ordinance (PMC 8.78.020) which cites that "smoking of tobacco, or any other weed or plant, is a positive danger to health and a material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined spaces..."

Additionally, in the Pasadena Municipal Code, section 8.04.020 "P" under the general nuisance provisions defines nuisance as "any accumulation of rubbish, filth, garbage, liquid waste, dust, smoke, fumes...to be offensive to the senses of the public or detrimental to public health." PMC 8.04.030 already defines that violations of the nuisance provision are guilty of a misdemeanor fine of \$500 or city jail, not to exceed six months. Staff is recommending the existing codes be amended to specifically define, and add secondhand smoke as a public nuisance and an infraction under Pasadena Municipal Code (PMC) sections 8.04.020 "P" and 1.24.040. Amending the codes to include secondhand smoke as a public nuisance will allow staff to enforce existing law and provide a mechanism to address ongoing drifting tobacco smoke, regardless of dwelling type, location or origin. The Public Health Department Environmental Health Division will be the primary enforcement agent.

**Recommendation 2:** Establish non-smoking buffer zones that prohibit tobacco smoking on patios and balconies, and in outdoor common areas, of multi-unit housing.

Establishing non-smoking buffer zones would minimize and help control unwanted Tobacco Use Ordinance reduce public exposure to secondhand smoke by prohibiting smoking in certain areas, such as: section 8.78.060 – "Prohibition of smoking indoor

public places” section 8.78.071 – “Prohibition of smoking in certain outdoor public places” and section 8.78.072 – “Reasonable smoking distance required — 20 feet.” Establishment of non-smoking buffer zones is consistent with prior ordinances and can be easily implemented. The actions that the Public Health Department implemented after adoption of the outdoor tobacco smoke restrictions are transferable and represent a best practice that includes notification, outreach, technical assistance and follow-up with a reasonable timeline of six months from adoption.

**Recommendation 3:** Require disclosure of the ordinance requirements to all prospective and existing tenants and buyers in rental, lease and purchase agreements by January 2012.

Unwanted exposure to drifting tobacco smoke will be further minimized by requiring landlords, property managers and owners to disclose to prospective tenants and buyers the ordinance requirements, starting 90 days from the effective date of the ordinance, so that no-smoking provisions are clearly disclosed to existing and prospective tenants. In addition, by January 2012, all landlords, property managers and owners will have incorporated a notice of the new ordinance by creating lease addendums, rental agreements and purchase agreements that will incorporate this provisional language. Prospective tenants and buyers would acknowledge adherence to all existing and future no-smoking policies. Implementation of the recommendation will be incorporated into the notification, outreach and technical assistance program.

**Recommendation 4:** Establish phase-in period for 100% smoke free multi-unit housing, in dwellings of 2 or more units, by 2014.

Local survey data indicates the majority, 63% of survey respondents wanted policies that required no-smoking in units; 72% wanted to be protected from drifting tobacco smoke; and 79% wanted to live in a completely non-smoking building. This recommendation would also apply to condominium units and 1) allow for sufficient staff time to educate and provide technical assistance to landlords/owners; 2) allow owners and landlords ample time to implement recommendations as part of multi-year phase-in plan; and, 3) allow for industry trends to reflect current non-smoking status and patterns.

With this provision, landlords/property owners can still opt to go entirely smoke free, prior to 2014, similar to what was seen in the City of Calabasas. For early adopters, the City of Pasadena could implement a smokefree certification program, whereby staff could check and monitor smokefree MUH complexes and place this information via a link on the City’s website. This information would be updated quarterly for the community and for interested potential tenants, serving as an incentive for properties that move to 100%, smokefree prior to 2014.

### **Enforcement**

Cities have adopted expanded smoking prohibitions in and around multi-unit housing. To date, the majority of these cities have not completed implementation of these provisions beyond the educational outreach phase, toward the enforcement and monitoring phase. Although many ordinances have recently become effective, insufficient time has passed to allow full assessment of the potential issues related to ordinance enforcement and monitoring. Therefore, design of effective enforcement for Pasadena must rely on local experiences to-date.

Until all multi-unit housing have 100% non-smoking units in 2014, staff will utilize the existing mechanism for all other local tobacco control laws to respond to complaints and conduct enforcement. Currently, complainants can call the Tobacco Violations Complaint Line, (626) 744-6014, or submit an online violations reporting form. Reporting individuals who provide contact information receive a response within one business day. Tobacco Control Program staff investigate complaints, and upon confirmation of a violation, will provide an initial warning letter to the violator with a copy to owners of MUH and HOAs/management companies about non-compliance. Second and additional site visits, as warranted, will be investigated by Environmental Health inspectors. If the parties are not compliant after two warnings and/or site visits, further enforcement procedures and escalating penalties will occur, including issuance of a minimum \$100 administrative citation to the violator in accordance with the proposed amendments to the Pasadena Municipal Code.

### **Summary**

The proposed recommendations reflect a comprehensive approach to address and to reduce drifting tobacco smoke in multi-unit housing and were based on input from impacted relevant MUH entities. Amending the Tobacco Use Prevention Ordinance to incorporate these proposed recommendations would bring Pasadena in line with over 30 other California communities that have already implemented smokefree housing policies. It would also bring about more consistent practices with the nearby communities of Burbank, Glendale and South Pasadena, which have already addressed this growing issue through city legislation.

### **COUNCIL POLICY CONSIDERATION:**

The proposed amendments to the PMC sections 8.04.020 "P" and 1.24.040 further the City Council's strategic plan goal of ensuring public safety by reducing exposure to the harmful effects of secondhand smoke. Reducing drifting tobacco smoke in multi-unit housing also builds a healthier community and supports the goal of supporting and promoting the quality of life for all Pasadena residents. As proposed, smoking would still be allowed in the public right-of-way provided it is not within 20 feet of a business entrance/exit or a service line, as well as in single family homes provided nuisance condition did not exist.

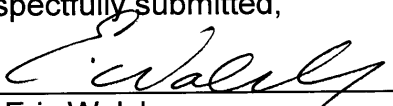
**ENVIRONMENTAL IMPACT:**

The proposed action is recommended amendments to the Tobacco Use Prevention Ordinance (as well as PMC sections 8.04.020 "P" and 1.24.040) that are intended to reduce involuntary secondhand smoke (i.e., drifting tobacco smoke) exposure to residents in multi-unit housing complexes. This action is exempt from CEQA pursuant to the State CEQA Guidelines Section 15308, Actions by Regulatory Agencies for the Protection of the Environment. This exemption applies to actions taken by regulatory agencies as authorized by state or local ordinance to assure the maintenance, restoration enhancement or protection of the environment.

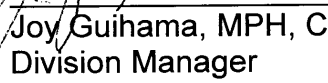
**FISCAL IMPACT:**

Amendments to the PMC will be enforced by the Public Health Department's Environmental Health Division. Staff estimates the enforcement cost of program implementation and monitoring is \$58,000, which includes \$8,000 for administrative costs for this fiscal year, materials and supplies, and costs related to signage and mailing notification. It is anticipated that these costs can be absorbed with the Department's current operating budget. However, based on actual implementation, adjustments may be necessary to ensure successful implementation.

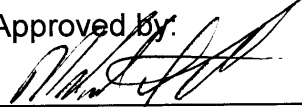
Respectfully submitted,

  
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Attachment A      Local Multi-Unit Housing Outreach with Relevant Agencies  
Attachment B      Multi-Unit Housing Policies in Other Cities