

**CITY OF OAKLAND**  
**AGENDA REPORT**

OFFICE OF THE CITY ADMINISTRATOR  
2006 DEC 12 5:33

TO: Office of the City Administrator  
ATTN: Ms. Deborah Edgerly  
FROM: Office of the City Administrator, Special Activity Unit  
DATE: December 12, 2006

**RE: A Report and Proposal for Amendments to Oakland Municipal Code Chapter 8.30, Oakland's Smoking Ordinance, as Requested by the Public Safety Committee, and Request for Direction From the City Council Whether to Proceed with the Proposed Ordinances for City Council Consideration**

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**SUMMARY**

On March 14, 2006, the City Administrator's Annual Report on the Smoking and Tobacco ordinances was presented to the Public Safety Committee. The Key Issues and Impacts section of the report listed five potential amendments to the City's smoking ordinance:

1. Smoke-free bus stops and service lines
2. Secondhand smoke defined as a nuisance
3. Prohibition of smoking in outdoor dining areas
4. Definition of tobacco shops as smoke-free workplaces
5. Prohibition of smoking in family daycare homes.

AC-PACT, Alameda County Policy Approach to Confronting Tobacco, a collaborative of health agencies and cities, selected smoke free bus stops and service lines (such as ATM and movie lines) as its major goal for Oakland. The other amendments were also proposed by AC-PACT.

At the March 14, 2006 meeting of the Public Safety Committee, a large number of school-age children were present and several spoke in support of the smoke-free bus stop amendment. Serena Chen of the American Lung Association also spoke in favor of the amendments listed in the report and explained that there are several other measures that the American Lung Association is urging Alameda County cities to adopt regarding secondhand smoke. The Committee indicated that they would be amenable to amendments to strengthen the ordinance and requested additional information.

Since then, the U.S. Surgeon General has released a study declaring that there is no safe level of exposure to secondhand smoke. Also, representatives of the American Lung Association (ALA) and the Alameda County Health Department have met with the City Administrator's Office to discuss the protections against secondhand smoke these agencies are working with cities to adopt. This report compiles the proposals, reviews their status in other California

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cities and their potential impact on Oakland, and requests advice from the City Council regarding which measures the Council would like City staff to submit for their consideration.

## **FISCAL IMPACT**

This is an informational report. Fiscal impacts of ordinance amendments and additions would depend upon the degree of City involvement in the implementation, administration, and enforcement of the laws. The report lists some known economic impact factors.

## **BACKGROUND**

Oakland's Smoking Pollution Control Ordinance, Oakland Municipal Code (OMC) Chapter 8.30, was adopted on July 29, 1986. It prohibits smoking inside enclosed places in the City of Oakland that are accessible to the general public, including places of employment, restaurants, and businesses. Further, the ordinance mandates that smoking outside regulated buildings occur at a minimum distance of 25 feet from doors and windows.

OMC Chapter 8.30 made Oakland the largest city in California with a comprehensive secondhand smoke ordinance. Oakland's ordinance propelled it into a leadership position in this arena, and the ordinance has been used as a model for other cities by organizations such as the ALA. *State law prohibiting smoking in the workplace did not take effect until 1995.*

State law does not presently address the issue of outdoor smoking but authorizes local jurisdictions to do so. Recently California cities have begun adopting more proactive laws regarding outdoor smoking and secondhand smoke issues. This legislative activity has been accelerated by the California Air Resources Board designation early this year of secondhand smoke as a toxic air contaminant.

The declaration of secondhand smoke as a toxic air contaminant requires the state to analyze whether regulatory action is warranted. This analysis, which is currently being conducted, is a lengthy process, involving review of the scientific research, existing regulation, and potential changes. In the meantime, the protection of non-smokers from the dangers of secondhand smoke falls to the cities.

## **KEY ISSUES AND IMPACTS**

Broad areas in which AC-PACT and the American Lung Association have recommended strengthening Oakland's smoking laws and the proposed changes within those areas include:

- Outdoor smoking
  - No smoking in service areas (bus stops, ATMs, ticket lines, cab stands)
  - No smoking in outdoor dining areas
  - No smoking on public trails and in public parks
  - No smoking in public event venues (stadiums, fairs, pavilions) or smoking designated to specified areas of public event venues
  - No smoking in outdoor worksites or smoking only in designated areas

- Workplace smoking
  - No smoking in any workplace, including tobacco shops and owner run/no employee businesses
  - No smoking in 75% of hotel/motel rooms, and employees may opt out of cleaning rooms in which smoking is permitted
  - No smoking in meeting and banquet rooms
- Multi-Unit Housing
  - No smoking in common outdoor areas
  - No smoking in a percentage of multi-unit rental housing units
  - No smoking within 25 feet of smoke-free units
- Miscellaneous
  - No smoking in licensed Family Childcare centers during non-business hours
  - Classify secondhand smoke as a nuisance

The current status of state law regarding the potential ordinance amendments, the rationale provided by the American Lung Association for enacting the potential amendments, the current Oakland status and known impacts, the California communities that have enacted similar ordinances, and the known implementation and enforcement cost factors are listed below.

➤ **Outdoor smoking**

Current Status

State law does not currently address outdoor smoking generally, except in regard to proximity to government buildings (Government Code sections 7596 – 7598), tot lots, and playgrounds (Health and Safety Code section 104495).

- No smoking in service areas (bus stops, ATMs, ticket lines, cab stands, venue entry lines, etc.)
  - Rationale for change  
Any exposure poses health risk to the public, particularly children and those with respiratory problems. Low-income residents and in-school youth disproportionately use busses. Minors are exposed to problematic behavior. It creates litter.
  - Oakland status/known impacts  
Oakland has no legislation in this area. School-age youth spoke eloquently at the Public Safety Committee, describing the volume of smoking that occurs when they are waiting for public buses on their way to and from school and the effects this smoking has on them.
  - Similar California legislation  
Dublin bans smoking in all service areas, including bus stops, and a similar ordinance has passed the first vote in Emeryville. Berkley, Davis, the City of San Mateo, and San Francisco ban smoking at bus stops. Dublin, Fremont, Hayward, Livermore, Newark and Pleasanton ban smoking in service lines. Contra Costa County's ban on smoking at bus stops and in ATM lines took effect November 17, 2006. Berkeley also bans smoking in parking garages.

○ Cost of Implementation and Enforcement – dependent upon extent of City involvement

Signage at bus stops would fall to the City. Oakland currently has 1,960 bus stops. The existing poles at bus stops are the property of AC Transit. Adding a sign to their pole would be the ideal approach. Public Works estimates the cost of 9 by 12 signs at approximately ten dollars each. Berkeley's approach was to paint the signs on the sidewalk, but Public Works history indicates that these types of signs last only about two years. For service lines involving private businesses, the signage responsibility would fall to the business owner.

The cost of enforcement would depend upon who is authorized to enforce the ordinance and whether that enforcement effort was proactive or complaint driven. Contra Costa County's ordinance has assigned enforcement responsibility, including issuance of citations and arrest, to their Director of Health Services.

- No smoking in outdoor dining areas, including private dining areas such as employee courtyards
  - Rationale for change

Any exposure poses health risk to employees and to the public, particularly those with respiratory problems. Secondhand smoke drifts indoors through doors and windows to otherwise protected areas. Secondhand smoke negatively impacts the utilization or enjoyment of outdoor dining areas by non-smokers.
  - Oakland status/known impacts

Oakland law currently prohibits smoking within 25 feet of any workplace. This includes restaurants. However, the City Administrator's Office continues to receive complaints about restaurant patrons smoking closer than 25 feet to building openings. Additionally, under Oakland's current ordinance, smoking is permitted in outdoor dining areas further than 25 feet from building openings. There is also confusion among restaurants and their patrons regarding the interaction between Oakland's 25 foot rule and the permission to smoke in outdoor dining areas.
  - Similar California legislation

San Ramon, Berkeley, Davis, Alameda County, Dublin, Newark, and Pleasanton ban smoking in outdoor dining areas. A ban in Contra Costa County took effect November 17, 2006. Emeryville's smoke free outdoor dining ordinance has passed a first vote. Fremont, Hayward, and Union City require fifty percent of outdoor dining to be smoke-free.
  - Cost of Implementation – minimal  
Cost of Enforcement – dependent upon extent of reported non-compliance

Restaurants could be notified of the change by letter. As with the current smoking ordinance, the business would have the responsibility for signage. Enforcement would be handled by the City

Administrator's current designee on a complaint-driven basis, with follow-up on non-compliant businesses by the OPD ABAT unit<sup>1</sup> and the City Administrator's Nuisance Enforcement Unit. The majority of enforcement would likely be by peer pressure.

- No smoking on public trails and public parks
  - Rationale for change  
People, including children, and animals should not be exposed to any level of secondhand smoke or to the behavior of smoking. It is a fire hazard and creates litter.
  - Oakland status/known impacts  
Current Oakland law does not address these issues
  - Similar California legislation  
San Ramon (public trails), Livermore Area Recreation and Park District (public trails), Capitola (parks), Fresno (parks), San Francisco (parks and all areas open to the public except the golf course), Contra Costa County (parks and public trails). Emeryville's ban on smoking in parks, playgrounds, and greenways passed a first vote, and Hayward is considering legislation in this area for 2007.
  - Cost of Implementation and Enforcement  
According to Public Works there are slightly more than 200 City parks. Approximately 120 of these are considered major parks that may have fences, which could be used for posting signs. In the remainder, poles costing approximately \$150 each would be required to post signs. Because fewer signs are involved the cost per sign may be more than the \$10 estimate provided for signs at bus stops. Enforcement would be primarily, if not completely, through peer pressure, as the likelihood of 'catching' someone in the act would be small.
- No smoking in public event venues (stadiums, fairs, pavilions) or designated smoking areas that are not in the areas normally accessed by the public
  - Rationale for change  
Any exposure poses health risk to the public, particularly those with respiratory problems. Minors are exposed to problematic behavior. It creates litter.
  - Oakland status/known impacts  
Oakland has no legislation in this area. However the Coliseum and Arena have adopted policies that prohibit smoking in the seating bowl areas and have set up designated smoking locations. However, the designated smoking locations are in the partially covered walkways that are regularly used by the other patrons, including children. Also, residents report that the seating bowl ban is not enforced at Raider games and at some concert venues.

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<sup>1</sup> When non-compliant businesses are unresponsive to a warning letter from the City Administrator, the ABAT Unit of OPD is responsible for enforcement of the smoking ordinance. However, ABAT is currently staffed with only one officer instead of the three authorized. With monitoring and inspection of alcohol outlets as their primary responsibility, the lack of staffing at ABAT has made it extremely difficult to follow-up on ongoing violators of the smoking ordinance, leaving complainants disgruntled with the lack of City action.

- Similar California legislation  
Arcata (plaza), Davis, Redlands (“Market Night”), City of San Mateo (performance venues), and the stadiums of Livermore, Newark, and Pleasanton are subject to such regulations.
- Cost of Implementation and Enforcement – signage and enforcement at City events  
Signage and enforcement at public event venues that are City sponsored would be the responsibility of the City. Owners or managers of other venues would be responsible for signage and enforcement at their events. Complaints regarding non-compliant businesses would be handled by existing process involving the City Administrator’s designee, ABAT, and the Nuisance Enforcement Unit.
- No smoking in outdoor worksites or smoking restricted to designated areas
  - Rationale  
There is no safe level of exposure to secondhand smoke. Any exposure poses health risks to workers, particularly those with respiratory problems.
  - Oakland status/known impacts  
The American Lung Association was under the impression that Oakland had instituted a ban on smoking at construction sites in the Oakland hills after the 1991 fire, but the City Administrator’s Office has been unable to find any confirmation of this.
  - Similar California legislation  
Berkeley prohibits smoking in outdoor workplaces.
  - Cost of Implementation – dependent upon extent of notice  
Cost of Enforcement- dependent upon extent of reported non-compliance  
Implementation would lie with employers and enforcement would be complaint driven. Notice could be provided to employers via a special mailing or in conjunction with annual business tax mailing. Additional notice could be provided through the building permit process. Enforcement would be complaint driven. Other than construction sites, the City, County, and State governments may be the largest employers of outdoor workers.
- No smoking within 25 feet of bars
  - Rationale  
There is no safe level of exposure to secondhand smoke. Any exposure poses health risks to workers, particularly those with respiratory problems. Secondhand smoke drifts indoors through doors and windows to otherwise protected areas.
  - Oakland status/known impacts  
Oakland’s smoking ordinance currently exempts bars from the ban on smoking within 25 feet of work places. Therefore, unlike employees of other City businesses, bar employees are not protected from secondhand smoke. Additionally, the City Administrator’s Office receives numerous complaints from businesses and residents that are adjacent to bars or within such a distance that they experience the

secondhand smoke. Bar owners argue that pushing their patrons twenty-five feet from their doors only moves them closer to other businesses, residences, or into dangerous areas, less protected by the bars' security staff. This office has received several complaints from businesses and residences that experience the secondhand smoke from bar patrons.

○ Similar California legislation

Other cities with distance requirements have not exempted bars. In addition to Oakland (25 feet), these cities include San Ramon (50 feet), Berkeley, Davis, Stockton, and Santa Barbara (20 feet), and Dublin and Alameda County (15 feet).

○ Cost of Implementation – minimal

Cost of Enforcement – dependent upon extent of reported non-compliance

Bar owners should be notified of the change, and the requirement to post the existing signs that are required of all other businesses. According to ABAT, there are 70 ABC bar licenses in Oakland. Enforcement would occur through the existing process of a warning letter from the City Administrator's Office followed by action by ABAT against non-compliant businesses and possibly by the Nuisance Enforcement Unit against the property owner.

A non-compliant business is one that refuses to post the required signs, actively encourages smoking in prohibited areas by placing ashtrays in those areas, permits their employees to smoke in prohibited areas, or refuses to contact the police regarding egregious offenders. Business owners are expected to discourage patrons from smoking but are not required to take aggressive or confrontational action against patrons.

➤ **Workplace smoking**

- No smoking in any workplace, including tobacco shops, owner run/no employee businesses,

○ Current status

Exemptions from the State laws controlling workplace smoking (Labor Code sections 6404 and 6404.5) include retail and wholesale tobacco shops. Businesses with no employees, generally owner-run and operated, have not been considered workplaces. Oakland has adopted these state exemptions.

○ Rationale for change

Smoke drifting into adjacent businesses causes health risks to employees who are otherwise protected.

○ Oakland known impacts

The City Administrator's Office has received numerous complaints regarding smoking at the La Salle Cigar shop and its impact on the businesses above it, most of which are professional offices. Though the majority of the smoking is done in the evenings and weekends, the shared ventilation systems result in weekday environments that the complainants say is intolerable.

- Similar California legislation  
The cities of Dublin and Pleasant Hill have defined tobacco shops and smoking lounges as workplaces. Emeryville's ban on smoking in tobacco shops has passed a first vote.
- Cost of implementation – minimal  
Cost of enforcement – dependent upon extent of reported non-compliance  
Existing signs, which have been provided to City businesses by Community Health Education Institute, would provide notice. Enforcement would be handled by the City Administrator's current designee on a complaint-driven basis, with follow-up on non-compliant businesses by the OPD ABAT unit and the City Administrator's Nuisance Enforcement Unit.
- No smoking in 75% of hotel/motel rooms and employees may opt out of cleaning smoking rooms
  - Current status  
State law requires, and Oakland has adopted the requirement that only thirty-five percent of hotel rooms be smoke-free
  - Rationale for change  
Any exposure poses health risk to workers and to the public. Airborne matter takes hours to clear, and particulate matter remains on carpets, furniture, bedding and walls indefinitely
  - Oakland status/known impacts  
Although Oakland has not adopted a stronger standard than the state, some of Oakland's hotels have. For example, as of October 15, 2006, all Marriott hotels in the U.S. are totally non-smoking.
  - Similar California legislation  
Alameda County, Berkeley, Livermore, and Pleasanton have adopted 75 percent smoke-free standards. Fremont, Newark, and Union City have established 60 percent standards, and Emeryville's 60 percent standard has passed a first vote.
  - Cost of Implementation – minimal  
Cost of Enforcement – dependent upon extent of reported non-compliance  
Hotel/motel owners could be notified by letter. According to the Business Tax Section of Financial Services, there are 100 hotels and motels in Oakland. Enforcement would be handled by the City Administrator's current designee on a complaint-driven basis, with follow-up on non-compliant businesses by the OPD ABAT unit and the City Administrator's Nuisance Enforcement Unit.
- No smoking in meeting and banquet rooms
  - Current Status  
State law prohibits smoking in meeting and banquet rooms only while food and beverage functions are taking place, including set-up and clean-up.



- Rationale for change  
Any exposure poses health risk to workers and to the public. Airborne matter takes hours to clear, and particulate matter remains on carpets, furniture, bedding and walls indefinitely.
  - Oakland status/known impacts  
As with the hotel room standard, Oakland has adopted the state standard, but only in regard to hotels and motels. Other private banquet rooms in restaurants and convention centers are considered workplaces subject to Oakland's protection for employees. The Marriott's smoke-free environment extends to its private meeting and banquet rooms.
  - Similar California legislation  
Berkeley, Dublin, Livermore, Newark, and Pleasanton have adopted smoke-free standards in this area, and Emeryville's prohibition has passed a first vote.
  - Cost of Implementation and Enforcement – minimal  
Existing signs, which have been provided to City businesses by Community Health Education Institute, would provide notice. Enforcement would be handled by the City Administrator's current designee on a complaint-driven basis, with follow-up on non-compliant businesses by the OPD ABAT unit and the City Administrator's Nuisance Enforcement Unit.
- Multi-Unit Housing
- No smoking in common use outdoor areas or provision of a designated area at least 25 feet from all windows, doors, and children's play areas.
    - Current status  
No state legislation
    - Rationale  
Smoke affects nearby non-smokers and drifts into non-smokers' units, exposing them to secondhand smoke. Minors are exposed to problematic behavior. It creates a fire hazard and litter.
    - Oakland status/known impacts  
Oakland currently bans smoking in the enclosed common areas of multi-unit housing. The City Administrator's office receives numerous complaints from residents who are hopeful that the City's 25-foot distance for smoking outside of workplaces also applies to residences. It does not. Landlords also call. Although they can, and some do, establish smoke-free buildings, they find it difficult to enforce and would like help from the City.
    - Similar California legislation  
Arcata, Chico, Davis, Contra Costa County (designated smoking area), San Mateo County (no designated area) and Healdsburg have enacted prohibitions.

- Cost of Implementation – dependent upon timing  
Cost of Enforcement – dependent upon extent of reported non-compliance

Landlords could be notified by letter. The Business Tax Section of Financial Services reports that there are 20,225 residential rental property accounts in the Business Tax System. If landlords were notified of changes through the annual Business Tax mailing, the cost would be minimal. For example, it cost \$805.00 to include in the 2005 Business Tax mailing a notice of the amendment to OMC section 8.30.060 specifying the minimum 25 foot distance for smoking outside places of employment. Enforcement would be handled by the City Administrator's current designee on a complaint-driven basis, with follow-up on non-compliant businesses by the OPD ABAT unit and the City Administrator's Nuisance Enforcement Unit.

- No smoking in a percentage of multi-unit housing units

- Current status  
No state legislation
- Rationale  
Drifting smoke is a health hazard for children and nonsmokers.
- Oakland status/known impacts  
Oakland has no legislation in this area. One problem with a percentage approach is that shared ventilation systems, and openings, such as closets, that are constructed jointly between or among units allow secondhand smoke to reach non-smoking areas. This may be resolved by establishing non-smoking buildings in multi-building complexes or non-smoking wings that are have separate ducting.

Another option would be to apply the requirements to new construction only. According to American Lung Association statistics, 14 percent of total California adults smoke, 30 percent of low income California adults smoke, and 6.7 percent of California senior smoke.

- Similar California legislation  
Thousand Oaks requires a percentage of new multi-unit construction to be non-smoking. Oakland would be a leader in the Bay Area.
- Cost of Implementation – dependent upon approach  
Cost of Enforcement – minimal  
If the new-construction-only approach were taken, documents provided to builders by planning and zoning would notify them of the requirement. Enforcement responsibility would fall on landlords through the eviction process.

➤ Miscellaneous

- No smoking in licensed residential Family Childcare centers during non-business hours
  - Current status  
Current state law prohibits smoking at these facilities “during the hours of operation . . . and in those areas where children are present.”

- Rationale  
Airborne matter takes hours to clear, and particulate matter remains on carpets, furniture, and walls indefinitely. Children should not be exposed to carcinogens when they come to school or daycare.
- Oakland status/known impacts  
Unknown
- Similar California legislation  
Pleasanton has established this prohibition and it is proposed in Emeryville.
- Cost of Implementation and Enforcement – minimal  
Alameda County licenses Family Childcare and could provide the City with a list for notification purposes. The City, however, does not have primary enforcement responsibility for such a provision, as the licensing authority has inspection and enforcement responsibility. On a complaint-driven basis, enforcement through the Nuisance Abatement process would be an option available to the City.
- Classify secondhand smoke as a nuisance
  - Current status  
The State Air Resources Board has declared secondhand smoke as a Toxic Air Contaminant, but specific legislation has yet to emerge.
  - Rationale  
As a toxic air contaminant, secondhand smoke meets Civil Code section 3479 definition of nuisance as “anything which is injurious to health . . . or an obstruction to the free use of property. . .” A public nuisance affects “an entire community or neighborhood, or any considerable number of persons . . . (Civil Code section 3480) “A private nuisance is any nuisance that is not a public nuisance. (Civil Code section 3481) Designating secondhand smoke specifically as a nuisance is supportive of residents who wish to file private nuisance actions.
  - Oakland status/known impacts  
Oakland’s Nuisance Abatement Division currently prosecutes chronic violators of Oakland laws, including the smoking ordinance. These are handled as public nuisances.
  - Similar California legislation  
Dublin recently enacted an ordinance that declared secondhand smoke a nuisance, providing for abatement by a private party, based upon a private nuisance action. It did not provide for enforcement by the City, but rather provided legal authority to private individuals for filing nuisance claims in either small claims or superior court. Emeryville has passed a first vote on a substantially similar ordinance. A Contra Costa County resident of a senior apartment building recently won a judgment in small claims court against his neighbor and landlord for breach of the covenant of quiet enjoyment, based upon the neighbor smoking on a shared balcony and smoke entering the plaintiff’s unit.

- Cost of Implementation and Enforcement – Dependent upon level of City involvement

If enacted without City enforcement the costs would be minimal, primarily responding to citizen calls regarding their right to private action. If enforced by the City, the potential volume of cases could significantly impact the Nuisance Abatement Division workload.

## **SUSTAINABLE OPPORTUNITIES**

### **Economic**

Fewer smokers and a reduction in secondhand smoke will result in a reduction in expenses for smoking related illnesses.

The success of new anti-smoking initiatives will reduce the amount of sales taxes collected from tobacco products and business taxes collected from tobacco retailers.

### **Environmental**

The enforcement of tobacco laws will help provide a healthier environment for Oakland residents and visitors.

### **Social Equity<sup>2</sup>**

Oakland has one of the highest lung cancer mortality rates in the county. Smoking is responsible for 87 percent of lung cancers. African American men are at least 50 percent more likely to develop lung cancer than white men. African American men have a higher mortality rate of cancer of the lung and bronchus (100.8 per 100,000) than do white men (70.1 per 100,000). The passage and enforcement of tobacco control laws has been shown effective in reducing smoking consumption and prevalence and lowering the incidence of lung cancer.

Stroke is associated with cerebrovascular disease and is a major cause of death in the United States. Smoking significantly elevates the risk of stroke. Cerebrovascular disease is twice as high among African American men (53.1 per 100,000) as among white men (26.3 per 100,000) and almost twice as high among African American women (40.6 per 100,000) as among white women (22.6 per 100,000). All of the risks of smoking are enhanced in non-smokers through secondhand smoke.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

The American Lung Association believes that lack of smoke-free bus stops and other service lines could be a violation of the ADA if it prevents access by persons with respiratory disabilities.

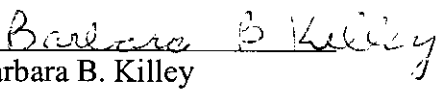
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<sup>2</sup> Statistics in this section provided by the American Lung Association.

**ACTION REQUESTED OF THE CITY COUNCIL**


Staff requests that the City Council provide direction as to whether to proceed with the proposed ordinances for the Council's consideration.

Respectfully submitted,

  
Barbara B. Killey

Prepared by: Barbara Killey  
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Special Activity Unit, OCA

APPROVED AND FORWARDED TO THE  
PUBLIC SAFETY COMMITTEE.

  
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City Administrator