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OAKLAND

CITY OF OAKLAND
AGENDA REPORT · 2007 AUG 30 PH 8:02

TO: Office of the City Administrator
ATTN: Ms. Deborah Edgerly
FROM: Office of the City Administrator, Special Activity Unit
DATE: September 11, 2007

RE: Second Supplemental Report on the Report to Adopt An Ordinance Amending Oakland Municipal Code Chapter 8.30, "Smoking" To Prohibit Smoking At Bus Stops And Other Areas Where The Public Waits For Service, At Outdoor Dining Areas, Public Trails, Parks And Golf Courses, Family Childcare Centers, Common Areas In Multi-Unit Housing, Hotels And Motels, And The Oakland International Airport; Restrict Smoking Outside Bars; And Prohibit Smoking In Individual Units In New Multi-Unit Residential Buildings; Require New Rental Agreements To Disclose Nonsmoking Prohibitions; Deem Unconsented Exposure To Second Hand Smoke In All Multi-Unit Housing A Nuisance And Trespass

SUMMARY

On June 12, 2007 the above described amendments to Oakland's smoking ordinance were scheduled to be presented to the Public Safety Committee. Due to extensive discussion on prior items, this item could only be heard at a very late hour. The Committee proposed re-scheduling this item to June 26, 2007. Staff and the majority of speakers present agreed with this, and the item was rescheduled. Subsequently, an Oakland resident appeared before the Rules and Legislation Committee and requested that the item be postponed until fall, as the projected first reading date before the City Council would occur during the summer, and many interested residents may be unable to attend due to vacation schedules. Councilmember Reid, Chairperson of the Public Safety Committee, also serves on the Rules and Legislation Committee and agreed that the request was reasonable, adding that the extent of the proposed changes deserved measured consideration. The Rules and Legislation Committee then scheduled the item for the September 11, 2007 meeting of the Public Safety Committee.

During the summer recess, staff visited Neighborhood Crime Prevention Council (NCPC) and other neighborhood meetings to explain the proposed amendments and obtain resident feedback. As of August 29, 2007, 304 residents from 20 different neighborhood meetings filled out surveys expressing their agreement or disagreement with the major proposals. Their feedback is summarized in Attachment A. Additionally, staff created an on-line survey for resident feedback. This survey is posted on the homepage of the City's

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website, and staff notified all City Council offices when it became available to the public on August 14, 2007. As of August 29, 2007, 242 participants had answered the survey; their responses are also summarized in Attachment A.

KEY ISSUES AND IMPACTS

▪ *Feedback from Neighborhood Meetings*

Neighborhood Services Coordinators (NSCs) who were interested in giving residents an opportunity to learn of the proposed amendments placed it on the agenda of their summer NCPC meetings. Staff distributed a Fact Sheet and briefly discussed with the groups the major proposed changes and the rationale. Attendees then filled out surveys indicating whether they agreed with the change, disagreed, or needed more information. A copy of the Fact Sheet is Attachment B, and a copy of the survey is Attachment C.

The Equal Access Office (EAO) translated the Fact Sheet and survey into Spanish and Chinese. The EAO also participated in the education effort by delivering the materials and conducting the survey at a meeting of Chinese-speaking graduates of the Citizens Academy. In some cases, where an NCPC group was conducting no summer meeting, NSCs included the Fact Sheets in scheduled mailings.

* Enforcement

“How will the ordinance be enforced?” was the most asked question at the meetings. Residents expressed concern that Oakland’s police force was not only too understaffed to handle enforcement of these provisions, but should remain focused on different issues. Staff explained that, as with Oakland’s existing ordinance and nationwide ordinances and anti-smoking initiatives, a high level of compliance has been achieved voluntarily through education and peer pressure, with extremely little police enforcement required.

As explained in staff’s initial report, it is expected that the current process used to administer the Smoking Ordinance will be the primary vehicle utilized to obtain compliance with the new measures. This process involves education and warnings, utilizing the City’s police and nuisance abatement powers only as a last resort. A letter explaining the law and the potential consequences for violating it will be sent upon the first report of a violation. If subsequent violations are reported, the City Administrator’s Office may request the Alcoholic Beverage Action Team (ABAT) of OPD verify the report. ABAT receives funding for this purpose. If the activity is verified by a police report or issuance of a citation, the matter may be referred to the City’s Nuisance Abatement Unit.

Although the proposed disclosure provisions were the most popular proposals with residents (see attached survey results), the Rental Housing Association objects on the basis that landlords won’t do it, it is unenforceable, and, if enforced, would be unfairly punitive. Staff explained that, as is the current process, reported offenders would receive

a letter explaining the law and including, when appropriate, signs to post. Only if subsequent instances of violation are reported would the matter be referred to ABAT for verification. However, as noted in previous staff reports, notification is almost always successful in achieving compliance.

* Where will smokers smoke?

The next most frequently raised concern, particularly regarding the multi-unit housing proposals, was, "Where can smokers smoke?" Although the primary purpose of the amendments is to protect the health of Oakland's children and the 70 to 80 percent of Oakland's adults who do not smoke when they are in situations where they have no control over the smoking of others, there would still be many locations where smokers may light up, including 25 feet from the doors and windows of their workplaces, which is current law, in their automobiles and other private vehicles, in detached homes and in Oakland's more than 80,000 existing multi-unit residences. Additionally, the proposals permit designated smoking areas in multi-unit housing and parks and trails proposals. A smoker could smoke at a bus stop or other service line as long as he or she moved 25 feet from where the non-smokers were standing. These are not prohibitions, but rather common sense compromises, with the emphasis on protecting the health of the majority against well-documented consequences of exposure to secondhand smoke.

* Additional comments

At the NCPC meetings, residents were encouraged to add comments to their surveys. The comments and suggestions submitted are worth noting:

- Two residents suggested no smoking areas in outdoor dining areas rather than a complete ban.
- Three residents commented that the City should provide education and treatment programs to help non-smokers quit.
- One resident suggested that mediation be required prior to lawsuits based upon the nuisance provision.
- One resident expressed concern that the proposals would provide police officers with more tools for searching and harassing individuals.
- One resident commented that the Service Lines provision was "an important health issue." A second resident agreed with all but the ATM lines section of the Service Lines provision.
- A Bed and Breakfast owner agreed with the proposals because his/her "personal health and health of the guests is important."
- One resident suggested that both existing and new multi-unit housing be "certified" for smoking by installing special insulation, electrical sockets, etc.
- One resident commented that the nuisance provision was unworkable. Another indicated that going against the smoker was OK, but that owners have little control, evictions are costly and time-consuming, and that landlords should not be liable. (Note: as proposed, landlords would not be liable.)
- One resident proposed that new buildings be required to provide a safe [legal] area for smokers.

- One resident commented that the parks and trails provision was “very important” and another noted the fire danger. A third said that designated smoking areas were needed.
- One resident proposed the ban at child and health care facilities apply only during business hours. (current law)
- One resident commented regarding landlord disclosure, “Don’t make it too punitive.”
- One resident commented, “This is a great proposal!”

* **Medical Cannabis**

Although it was not included as a survey question, the proposal to exempt medical cannabis users from the multi-unit housing prohibitions has generated a few negative comments from residents who have read the proposed amendment. Their thinking, as expressed to staff, is that particulate matter from any smoke (cigarette, automobile, etc.) is harmful when ingested, and the health of medical cannabis users should not take precedence over the health of non-smokers.

▪ ***Survey Results***

City Administrator’s Office (CAO) staff conferred with Office of Information Technology (OIT) staff regarding possible ways to obtain additional resident feedback. OIT suggested the use of an on-line survey tool. With the assistance of OIT staff, CAO staff then re-created the survey used at the NCPC meetings utilizing the Key Survey software program. On August 14, 2007, OIT staff provided access to the survey in the “NEWS” column of the City web site homepage (www.oaklandnet.com), and CAO staff notified City Council offices of its availability. Two weeks later 242 completed surveys had been received.

The results from the neighborhood meetings are detailed by meeting in Attachment D. The results of the on-line survey are currently provided only in summary form due to the difficulty of tallying them by Council District. Although one on-line survey question is, “What is your City Council district number and/or last name of your City Council member?” the survey did not mandate a response to this item, and it did not require a standard entry format. Therefore, forty surveys were submitted without specifying a City Council District, and in the others, Council Member names and district numbers were entered in several different formats. This has made the job of tallying the responses by Council district time-consuming, and the results were not available at the time of the submission of this report.

▪ ***Recent Legislative Development***

On July 12, 2007 the Newark (California) City Council amended their smoking ordinance to ban smoking in the following: tobacco wholesalers and retailers, private smokers’ lounges, including hookah bars, outdoor service lines, outdoor stadiums and

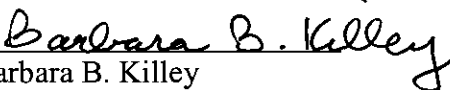
amphitheatres, 76 percent of hotel and motel rooms, all common areas of multi-unit housing, and within 20 feet of any area where smoking is prohibited. These amendments took effect July 27, 2007.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council:

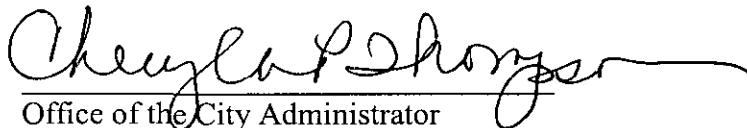
1. Accept this Informational Supplemental Staff Report

Respectfully submitted,


Barbara B. Killey

Prepared by: Barbara Killey
Assistant to the City Administrator
Special Activity Unit, CAO

APPROVED AND FORWARDED THE
THE PUBLIC SAFETY COMMITTEE.


Office of the City Administrator

- Attachments
- A: Summary of Survey Responses
 - B: Fact Sheet Distributed to Neighborhood Meetings
 - C: Survey
 - D: Survey Results by Neighborhood Meeting Group

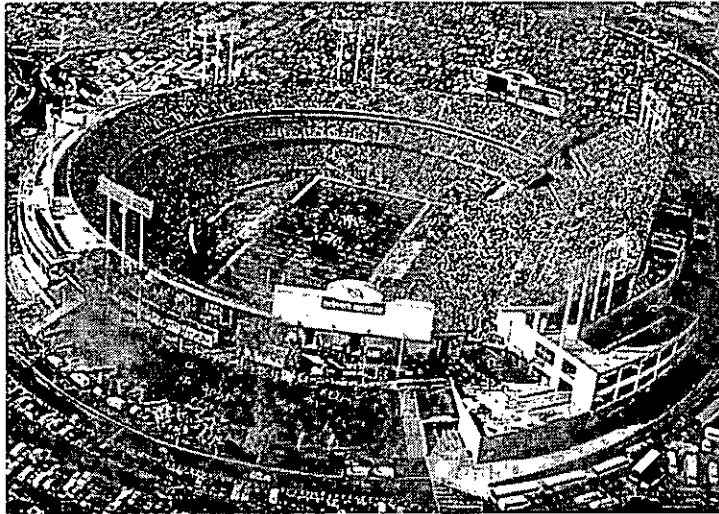
SUMMARY OF SURVEY RESPONSES

SURVEY QUESTIONS ON SMOING PROPOSALS ¹	NEIGHBORHOODS			ON-LINE			TOTAL		
	Agree	Disagree	MoreInfo	Agree	Disagree	MoreInfo	Agree	Disagree	MoreInfo

1. Service Lines	240	38	12		136	94	9		376	132	21
2. Dining Areas	235	34	15		142	96	2		377	130	17
3. Parks and Trails	231	51	13		115	109	13		346	160	26
4. Smokefree New Multi-unit Housing	185	62	29		114	109	15		299	171	44
4a. 75%	65	39	1		37	103	21		102	142	22
4b. 50%	63	31	1		34	94	16		97	125	17
5. Landlord Disclosure--	252	27	11		179	42	16		431	69	27
6. Seller Disclosure	249	28	14		184	36	17		433	64	31
7. Nuisance	192	44	32		97	114	28		289	158	60
8. Common Outdoor Areas	241	34	20		142	88	8		383	122	28
9. Child & Healthcare Care Homes	277	9	3		164	55	21		441	64	24
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¹ Survey questions four through eight apply only to multi-unit residences.

Secondhand Smoke (Tobacco): Latest Findings And Proposed Changes to Oakland's Smoking Pollution Control Act



The number of people who are killed by secondhand smoke exposure would more than fill Oakland's McAfee Coliseum – every year in the US – that is 53,000 non-smokers.ⁱ

Secondhand smoke contains over 50 chemicals known to cause cancer in humans – there is NO safe level of exposure.ⁱⁱ

According to the US Surgeon General's Report on Secondhand Smokeⁱⁱⁱ:

- Secondhand smoke has been proven to cause lung cancer, fatal heart attacks, other cancers and lung diseases.
- Secondhand smoke causes asthma attacks and other illnesses in children including bronchitis and ear infections.

Just How Dangerous is Secondhand Smoke Outdoors?

- Toxins near an outdoor smoker can be 10 times worse than the exhaust from nearby truck and car traffic.^{iv}
- Being outdoors within six feet of a smoker can be just as toxic as being indoors with a smoker.^v

PROPOSED NEW PROTECTIONS

- No smoking in **outdoor services** areas such as bus stops, ATMs, cab stands, ticket lines
- No smoking in **outdoor dining areas** such as sidewalk cafes
- No smoking in **recreational areas** such as parks and public trails.

Californians spend 2/3rds of their time at home

Thanks to California's Smoke-Free Workplace Act, Californians can breathe easier for 18% of their day while at work or in public places. But the place where Californians spend over 2/3rds of their day -- is not protected at all. A growing number of apartment and condominium dwellers have been asking that local governments do something about the unwanted secondhand smoke that drifts into their homes from their neighbors smoking. Even though the majority of Alameda County residents -- 85% -- never allow smoking in their homes^{vi}, nearly half of apartment dwellers report being exposed to secondhand smoke in their homes from drifting smoke^{vii}.

Just How Dangerous is Secondhand Smoke in Attached Housing Like Apartments and Condos?



- Secondhand smoke quickly spreads within buildings and cannot be completely eliminated by any ventilation systems, air filters, or other air cleaning devices. Smoke can travel through shared ventilation, air ducts, opened doors and windows, plumbing, and electrical outlets^{viii}.
- Children, the elderly, and people with asthma and other chronic illnesses are especially vulnerable to being harmed by exposure to secondhand smoke^{ix}.



PROPOSED NEW PROTECTIONS for Apartment/Condo Dwellers

- Requires** all units including balconies in new multi-unit housing complexes be designated non-smoking
- Disclosure** of smoking policy in multi-unit housing
 - Requires landlords/condo sellers to disclose to prospective tenants/buyers, whether unit is smoking or non-smoking, which units allow smoking, and the smoking policy for the complex.
- Declare** second hand smoke a nuisance allowing for private party action against the offending renter/owner
- No smoking in **common indoor and outdoor areas** of apartment and condo complexes.

Other Residential Care Facilities

- No smoking in homes that are licensed **Family Childcare center, adult care or health care facilities at any time 24/7.**

ⁱ California Air Resources Board. *Quarterly report to the California legislature on the air resources board's fine particulate matter program*. 2001. California Environmental Protection Agency.

ⁱⁱ U.S. Department of Health and Human Services. *The Health consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

ⁱⁱⁱ *ibid*

^{iv} California Air Resources Board. *Quarterly report to the California legislature on the air resources board's fine particulate matter program*. 2001. California Environmental Protection Agency.

^v Klepeis, N., Ott, W. & Switzer, P. (2007). *Real-time Measurement of Outdoor Tobacco Smoke Particles*. *Journal of Air and Waste Management* (57).

^{vi} Alameda County Public Health Department. *Health of Alameda County Adults, Selected Findings from the 2003 California Health Interview Survey*.

^{vii} Goodwin-Simon Strategic Research. *Statewide Survey of California Renters 2004*.

^{viii} U.S. Department of Health and Human Services, *ibid*

^{ix} California Air Resources Board. *ibid*

SECONDHAND SMOKE OPINION POLL

Please check box that you most agree with	Agree	Disagree	Need more info
1 No smoking in outdoor services areas such as bus stops, ATMs, cab stands, ticket lines			
2 No smoking in outdoor dining areas such as sidewalk cafes			
3 No smoking in recreational areas such as parks and public trails.			
4 Require 100% all units in new multi-unit housing complexes be designated non-smoking			
5 Require landlords to disclose to prospective tenants, whether unit is smoking or non-smoking, which units allow smoking, and the smoking policy for the complex.			
6 Require condo sellers to disclose to prospective tenants, whether unit is smoking or non-smoking, which units allow smoking, and the smoking policy for the complex.			
7 Declare second hand smoke a nuisance allowing for private party action against the offending renter/owner in multi-unit housing			
8 No smoking in common indoor and outdoor areas of apartment and condo complexes.			
9 No smoking in homes that are licensed family childcare center, adult care or health care facilities at any time 24/7.			

Optional:	Yes	No
Require 75 % all units in new multi-unit housing complexes be designated non-smoking		
Require 50% all units in new multi-unit housing complexes be designated non-smoking		

#	CD	PB	Question																																	
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			A	D	MI	A	D	MI	A	D	MI	A	D	MI	A	D	MI	A	D	MI	A	D	MI	A	D	MI	A	D	MI	A	D	MI	A	D	MI	A
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TOTALS			240	38	12	235	34	15	231	51	13	185	62	29	252	27	11	249	28	14	192	44	32	241	34	20	277	9	3	65	39	1	63	31	1	

is number of surveys, CD is City Council District, PB is police beat (CH is is cross-city Chinese-speaking group)