

**STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**  
**FROM: ROBERT PERRAULT, CITY MANAGER**  
**SUBJECT: DISCUSSION REGARDING SMOKING RESTRICTIONS**

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**BACKGROUND**

During a recent City Council meeting, the Council directed staff to return with a report on smoking restrictions. The report is to include a review of the status of laws prohibiting smoking and their application to the City of Grover Beach. The Council also wanted to review options for extending the law to cover parks and public places. Staff has completed its review and is forwarding the report to the Council with the recommendation that the Council review the information and provide direction to staff.

**DISCUSSION**

Current state law prohibiting smoking preempts local legislation in a number of areas. These areas include: places of employment, lodging facilities, schools, health facilities, restaurants, and certain public places. State law prohibits smoking inside a public building or in an outdoor area within 20 feet of a main entrance, exit or operable window of a public building. *(Please see Attachment 1.)* All of the City's public buildings have been appropriately signed. Additionally, Assembly Bill 188 was enacted in 2002 as Health and Safety Code Section 104495 which prohibits smoking and disposing of tobacco-related waste within a playground or tot lot sand box area. *(Please see Attachment 2.)* All of the City's main playgrounds have been appropriately signed. Local agencies can extend smoking prohibitions to areas not currently covered by state law.

The Police Department is responsible for enforcement. According to Chief Copsey, during the last two years the Department has received 16 calls for service at parks related to incidents of smoking. Most of the calls were in the vicinity of public restrooms and some involved youth and others involved adults. A few of the calls could not be verified by the responding officer upon arrival. It should be noted that the Department does cite juveniles who are found to be in possession of tobacco products, as that is a violation of the law for any minor under the age of 18. Parks and Recreation staff will occasionally receive calls regarding the City's smoking policy, as well as complaints regarding smoking during special events in City parks.

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**APPROVED FOR FORWARDING**



**ROBERT PERRAULT  
CITY MANAGER**

**Please Review for the Possibility of a Potential Conflict of Interest:**

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|--|-----------------------------------|
| <input checked="" type="checkbox"/> None Identified by Staff | <input type="checkbox"/> Bright   |
| <input type="checkbox"/> Shoals                              | <input type="checkbox"/> Molnar   |
| <input type="checkbox"/> Nicolls                             | <input type="checkbox"/> Peterson |

**Meeting Date: May 2, 2011**

**Agenda Item No. 8**

Staff has completed a review of the status of smoking prohibitions among cities in San Luis Obispo County. *(Please see Attachment 3.)* According to the summary, Pismo Beach has extended smoking prohibitions to cover various public locations in the City, including the beach, pier, promenade, ball fields and parks. In 2008, Arroyo Grande extended its regulations to City parks, paths, trails, sports facilities, and open spaces. Morro Bay extended smoking prohibitions in 2006 to its piers and the beach. The City of San Luis Obispo has gone even further and eliminated smoking in all areas except residential property and a few other very defined locations.

Should the Council wish to extend smoking prohibitions at this time, a logical extension could be to all City parks and City recreational facilities. It should be noted this extension as contemplated would not include the Exploration Station or the Grover Beach Library since these buildings are operated by nonprofit organizations. Staff would also suggest that the Council involve the Parks, Recreation and Beautification Commission in its review of draft ordinances. The Commission's analysis regarding implementation of similar regulations in other communities could be helpful to the Council. Staff has also included a fact sheet entitled "Playing Tobacco Free: Tobacco Free Policies for Parks and Recreation Facilities". *(Please see Attachment 4.)* This flyer was provided courtesy of the San Luis Obispo County Health Services Agency.

### **ALTERNATIVES**

The Council has the following alternatives to consider:

1. Review the information and provide direction as appropriate; or
2. Determine to take no action at this time.

### **RECOMMENDED ACTION**

It is recommended that the Council review the information and provide direction as appropriate.

### **FISCAL IMPACT**

Should the Council wish to extend the State's existing regulations regarding smoking to other areas within the City, costs for additional signage and enforcement will be incurred. The actual costs will be dependent on the program developed and implemented.

### **PUBLIC NOTIFICATION**

The agenda was posted in accordance with the Brown Act. A courtesy copy of this staff report and tonight's agenda were sent to Christine Lefevre, Health Education Specialist, Tobacco Control Program, San Luis Obispo County Department of Public Health.

### **Attachments**

1. California Government Code Sections 7596-7598
2. Assembly Bill 188 enacted as Health and Safety Code 10
3. Status of Smoking Restrictions in San Luis Obispo County, as of April 2011
4. Playing Tobacco Free: Tobacco-free Policies for Park and Recreation Facilities

## GOVERNMENT CODE

### SECTION 7596-7598

7596. As used in this chapter, the following terms have the following meanings:

(a) "Public building" means a building owned and occupied, or leased and occupied, by the state, a county, a city, a city and county, or a California community college district.

(1) "Inside a public building" includes all indoor areas of the building, except for covered parking lots and residential space. "Inside a public building" also includes any indoor space leased to the state, county, or city, except for covered parking lots and residential space.

(2) "Residential space" means a private living area, but it does not include common areas such as lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of a multicompound building such as a dormitory.

(3) (A) "Covered parking lot" means an area designated for the parking of vehicles that is enclosed or contains a roof or ceiling. "Covered parking lot" does not include lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the parking lot or a building to which it is attached.

(B) The application of this subparagraph shall not supersede or render inapplicable permitted smoking of tobacco products under this chapter within any other part of a covered parking lot not specifically listed in subparagraph (1).

(b) "State" or "state agency" means a state agency, as defined pursuant to Section 11000, the Legislature, the Supreme Court and the courts of appeal, and each campus of the California State University and the University of California.

(c) "Public employee" means an employee of a state agency or an employee of a county or city.

7597. (a) No public employee or member of the public shall smoke any tobacco product inside a public building, or in an outdoor area within 20 feet of a main exit, entrance, or operable window of a public building, or in a passenger vehicle, as defined by Section 465 of the Vehicle Code, owned by the state.

(b) This section shall not preempt the authority of any county, city, city and county, California Community College campus, campus of the California State University, or campus of the University of California to adopt and enforce additional smoking and tobacco control ordinances, regulations, or policies that are more restrictive than the applicable standards required by this chapter.

7598. Except as provided in Section 7597, a public employee or other person may smoke in any outdoor area of a public building unless otherwise prohibited by state law or local ordinance and a sign describing the prohibition is posted by the state, county, or city agency or other appropriate entity.

**Assembly Bill No. 188**

**CHAPTER 150**

An act to add Section 104495 to the Health and Safety Code, relating to tobacco products.

[Approved by Governor August 6, 2001. Filed with Secretary of State August 6, 2001.]

**LEGISLATIVE COUNSEL'S DIGEST**

**AB 188, Vargas. Playgrounds: smoking.**

Existing law provides for the establishment of programs relating to tobacco use prevention.

This bill would prohibit the smoking of any cigarette, cigar, or other tobacco-related product within a playground or tot lot sandbox area.

This bill would prohibit any person from disposing of any cigarette, cigarette butts, cigar butts, or any other tobacco-related waste within a playground or tot lot sandbox area.

This bill would define playground and tot lot sandbox area.

This bill would also prohibit any person from intimidating, threatening any reprisal, or effecting any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with the provisions of this section.

This bill would specify that it does not apply to private property.

This bill would make a violation of these provisions an infraction. This bill, by creating a new infraction, would result in a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

**SECTION 1.** The Legislature finds and declares all of the following:

(a) Secondhand smoke also known as environmental tobacco smoke is responsible for approximately 3,000 lung cancer deaths each year in nonsmoking adults and impairs the respiratory health of hundreds of thousands of children.

(b) Secondhand smoke exposure increases the risk of lower respiratory tract infections, including bronchitis and pneumonia, which occur in infants and young children up to 18 months of age.

(c) Secondhand smoke increases the prevalence of fluid in the middle ear, a sign of middle ear disease.

(d) Secondhand smoke increases the frequency of episodes and severity of symptoms of asthmatic children.

SEC. 2. Section 104495 is added to the Health and Safety Code, to read:

104495. (a) For the purposes of this section the following definitions shall govern:

(1) "Playground" means any park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds, or on city, county, or state park grounds.

(2) "Tot lot sandbox area" means a designated play area within a public park for the use by children under five years of age. Where the area is not contained by a fence, the boundary of a tot lot sandbox area shall be defined by the edge of the resilient surface of safety material, such as concrete or wood, or any other material surrounding the tot lot sandbox area.

(3) "Public park" includes a park operated by a public agency.

(4) "Smoke or smoking" means the carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind, including, but not limited to, tobacco, or any other weed or plant.

(5) "Cigarette" means the same as defined in Section 104556.

(6) "Cigar" means the same as defined in Section 104550.

(b) No person shall smoke a cigarette, cigar, or other tobacco-related product within the boundaries of any playground, or tot lot sandbox area.

(c) No person shall dispose of cigarette butts, cigar butts, or any other tobacco-related waste within a playground, or a tot lot sandbox area.

(d) No person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this section.

(e) Any person who violates this section is guilty of an infraction and shall be punished by a fine of one hundred dollars (\$100) for each violation of this section.

(f) The prohibitions contained in subdivisions (b), (c), and (d) shall not apply to private property.

(g) This section shall not preempt the authority of any county, city, or city and county to regulate smoking around playgrounds or tot lot sandbox areas. Any county, city, or city and county may enforce any

ordinance adopted prior to January 1, 2002, or may adopt and enforce new regulations that are more restrictive than this section, on and after January 1, 2002.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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Response to Inquiry Regarding Smoking Regulations in Other Cities April 2011		
City	Recent Council Discussions	Information provided by City / or obtained from search of City website
Arroyo Grande	December 9, 2008 - Introduced Ordinance to ban smoking in City parks, paths, trails, sports facilities, and open spaces.	Staff Report - 12/09/2008 Ordinance No. 607
Pismo Beach	March 6, 2007 - Introduced Ordinance prohibiting smoking within various locations in the City, including the beach, pier, promenade, ball fields, and parks.	Staff Report - 03/06/2007 Ordinance No. 2007-002
San Luis Obispo	Originally established regulations in 1985; Regulations were amended in 2010	Staff Reports - 4/6/2010 and 4/20/2010 amending no-smoking regulations  City website: <ul style="list-style-type: none"> <li>• SLO Municipal Code - Chapter 8.16: 8.16.030 Prohibition of smoking in public places, places of employment, and certain other areas.</li> <li>8.16.040 Prohibition of smoking and tobacco products in outdoor recreational areas.</li> <li>• Ordinance No. 1545 (2010 series)</li> <li>• Informational brochure</li> <li>• Press Release May 17, 2010 regarding New Smoking Law</li> <li>• Excerpt of P&amp;R Commission minutes 11/4/2009 regarding proposed smoking prohibitions</li> </ul>
Morro Bay	no recent discussions  Ordinance No. 517 adopted in June 2006 regarding smoking and fires prohibited on beaches and T Piers	City website: Morro Bay Municipal Code 9.24.020 (A): Smoking is prohibited and is unlawful within the boundaries of any city beach and on the city T piers. 9.24.030: No person shall dispose of any cigarette, cigar or tobacco, or any part of a cigarette or cigar, in any place where smoking is prohibited under this chapter, except in a designated waste disposal container.
Atascadero	June 10, 2008 - Introduced Ordinance to modify existing smoking regulations that prohibit smoking in certain public places and business establishments doing business with the general public to include Atascadero State Hospital property	Staff Report - 06/10/2008 Atascadero Municipal Code Chapter 6 - No Smoking Areas Established in Certain Public Places

**Response to Inquiry Regarding Smoking Regulations in Other Cities  
April 2011**

City	Recent Council Discussions	Information provided by City / or obtained from search of City website
Paso Robles	Smoking was last addressed in the 1980s - adopted regulations to prohibit smoking in certain public areas	City website: Paso Robles Municipal Code: Smoking Prohibited in Certain Areas: 9.41.020 (A) Prohibited in city-owned, leased or operated public meeting facilities, including the city council chambers. 9.41.020 (B) The city council, at its discretion, may designate a smoking area in such meeting facilities.

# Playing Tobacco Free:

## Tobacco-Free Policies For Park & Recreation Facilities

### Tobacco-Free Park and Recreation Areas Promote Health

- **Parks are established to promote healthy activities.** The purpose of park areas is to promote community wellness, and tobacco-free policies fit with this idea.
- **Secondhand smoke harms everyone.** The 2006 Surgeon General's report concludes that secondhand smoke is a human carcinogen for which there is no safe level of exposure. Exposure to secondhand smoke has immediate health consequences on the cardiovascular and respiratory systems.
- **Secondhand smoke is harmful in outdoor settings.** According to Repace Associates, secondhand smoke levels in outdoor public places can reach levels as high as those found in indoor facilities where smoking is permitted.
- **Cigarette litter is dangerous.** Discarded cigarettes pollute the land and water and may be ingested by toddlers, pets, birds, or fish.
- **Tobacco-free policies help change community norms.** Tobacco-free policies establish the community norm that tobacco use is not an acceptable behavior for young people or adults within the entire community.
- **Tobacco-free environments promote positive community role modeling** and protect the health, safety, and welfare of community members.
- **Policies provide consistency among community athletic facilities and groups.** The majority of community sporting events are held at either city or school athletic facilities, and nearly all school districts prohibit tobacco use on their entire grounds. Also, many community athletic associations have tobacco-free policies but use city recreation facilities and would benefit from a city-wide policy.

#### The Tobacco-Free Youth Recreation Initiative

Tobacco-Free Youth Recreation (TFYR) is Minnesota's statewide recreation-based tobacco prevention program that assists recreational groups in promoting healthy tobacco-free lifestyles. TFYR offers assistance in tobacco-free policy development and implementation and also distributes materials that promote the tobacco-free sports message throughout Minnesota. Contact TFYR for policy assistance or more information!

Association for Nonsmokers—Minnesota  
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St. Paul, MN 55114-1512  
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### Tobacco-Free Park and Recreation Policies Work

Nearly 100 Minnesota cities and counties have adopted tobacco-free policies for their outdoor recreation facilities and park areas. In 2004, the University of Minnesota surveyed Minnesota residents to learn about the level of support for tobacco-free park and recreation policies. Minnesota park directors were also interviewed to ask how they felt about tobacco-free policies. Here are the study's key findings:

#### What Minnesota residents say:

- **Most Minnesotans support tobacco-free park and recreation policies.** 70% of Minnesota residents support tobacco-free park and recreation areas. In addition, 66% of golfers and 73% of families with children support these policies.
- **Policies should prohibit all forms of tobacco.** 79% of residents supported tobacco-free policies that prohibit all forms of tobacco use, including spit tobacco.
- **Parks should be tobacco free at all times.** Just over half (53%) of respondents supported the prohibition of tobacco use in parks at all times.
- **Community members support policy enforcement.** 79% of Minnesotans felt that policies should be enforced by asking violators to leave park areas. 64% felt that violators should be fined.

#### What Minnesota park directors say:

- **Park directors overwhelmingly recommend adopting tobacco-free policies.** 90% of park directors in cities with policies reported that they would recommend tobacco-free policies to other communities.
- **Nearly all park directors personally supported tobacco-free policies.** Out of the 257 park directors interviewed,
  - 96% wanted to establish positive role models for youth.
  - 92% wanted to reduce youth opportunity to smoke.
  - 92% wanted to avoid litter from cigarette butts.
  - 89% wanted to promote community well-being.
- **Policies reduce litter and maintenance costs.** 58% of Minnesota park directors in cities with policies reported cleaner park areas.
- **Policy enforcement and violations are not issues.** In Minnesota communities with a policy, few park directors (26%) reported compliance issues and 74% reported no problems with park users violating the policy.