

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 06/12/06		Item Number: _____	
AGENDA ITEM: Introduction of Ordinance Prohibiting Smoking in Culver City Parks.			
Contact Person/Dept.: Heather Iker/City Attorney		Phone Number: (310) 253-5660	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☒ No ☐	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Public Notification: Published in Culver City News on June 1, 2006 (Attachment 1); Via e-mail on June 5, 2006: County of Los Angeles Department of Health Services; Individuals who spoke at prior Council Meetings; Via e-mail on June 7, 2006: Master Notification List; Parks and Recreation Commission.			
Department Approval: Carol Schwab, City Attorney (by H. Iker 06/05/06)		CAO Approval: Jerry B. Fulwood (06/07/06)	
City Controller Approval: Marlee Chang (06/07/06)			

RECOMMENDATION:

That the City Council consider the introduction of an Ordinance prohibiting smoking in Culver City parks or provide further direction to staff regarding this issue.

BACKGROUND:

Over the past few years, the City has been reviewing its park regulations to determine whether any revisions or additions to the Culver City Municipal Code ("CCMC") are appropriate to further ensure the public's enjoyment of the City's parks. During this process, there has been discussion on the issue of smoking in the City's parks in light of current State law, which prohibits smoking within 25 feet of a playground or tot lot sandbox area (Health and Safety Code § 104495 – Attachment 2).

At the City Council's direction, this issue was presented to the Parks and Recreation Commission for discussion at its meeting of May 4, 2004. The options that were presented to the Commission for consideration and recommendation to the Council included: 1) enforcement of the State law only; 2) adoption of stricter regulations (i.e. increasing the distance within which smoking is prohibited, imposing stricter penalties, etc.); and 3) adoption of a total ban on smoking in the City's parks. After discussion of the issue, there was a motion to recommend a total ban on smoking in

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the parks, which failed by a 3-2 vote (Commissioners Cooper, Deen and Alexander dissenting). Subsequently, the Commission voted in favor of recommending that the City only enforce the current State law and not impose additional restrictions (3-2, Commissioners James and Shapiro dissenting).

The issue was then brought before the City Council at its March 13, 2006 meeting for discussion and to provide direction to staff. After discussing various options, the City Council, by unanimous vote (5-0), directed staff to bring back an Ordinance imposing a total ban on smoking in City parks. The proposed Ordinance is attached for Council's consideration (Attachment 3).

DISCUSSION:

Current Law:

Currently, CCMC provisions do not include any prohibitions or restrictions relating to smoking in public parks. However, State law (Health and Safety Code § 104495) does prohibit smoking within 25 feet of a playground or tot lot sandbox area. In considering whether to amend the CCMC to add smoking regulations enforceable within the City's parks, the City has the following options: 1) solely enforce current State law; 2) adopt stricter regulations (i.e. increase the distance from tot lots within which smoking is prohibited, impose stricter penalties, etc.); and 3) ban smoking in parks altogether. At its March 13, 2006 meeting, after discussing these various options, the City Council directed staff to bring back a proposed Ordinance establishing a total ban on smoking in Culver City parks for the Council's review and consideration.

City's Authority to Regulate:

Although there are limited prohibitions contained in State law against smoking in certain areas of parks, the City is not preempted from establishing stricter regulations, including a total ban. There is no fundamental right to smoke, nor are laws that prohibit smoking considered discriminatory against smokers as a particular group. Therefore, in adopting such laws, the City need only have a rational basis that is related to a legitimate government purpose. In this case, as stated in the proposed Ordinance, providing for the "public's health, safety, and welfare by discouraging the inherently dangerous activity of tobacco use around non-consenting individuals" and declaring that these regulations are "necessary to protect the public from the hazards of smoking and secondhand smoke, particularly in City parks, which are intended as a safe environment for the use and enjoyment of Culver City residents and the general public," is a sufficient basis for establishing a prohibition against smoking in City parks. (For further information regarding this

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issue, see Attachment 4 – “There is No Constitutional Right to Smoke,” a publication by the Public Health Institute Technical Assistance Legal Center.)

This basis for establishing a total ban on smoking in City parks was further emphasized by members of the public during Council's consideration of its options at its March 13th meeting. Several members of the public, including individuals from the American Lung Association, Healthier Solutions, Coalition for Smoke Free Los Angeles Parks, Asian Youth Center Tobacco Program, South Bay Smoke Free Beaches, Smoke Free Air for Everyone (S.A.F.E.), and others, were present and spoke about the health effects of secondhand smoke. In addition, the Los Angeles County Tobacco Control and Prevention Program provided the City Council with a packet of materials regarding this issue, including a January 2006 news release by the California Environmental Protection Agency identifying secondhand smoke as a Toxic Air Contaminant. (Copies of these materials, including the news release, are provided as Attachment 5.)

Other Cities' Regulations:

In preparing the proposed Ordinance, staff has looked at various other cities' regulations regarding smoking bans. Several cities, including Carson, El Monte, Fresno, Gardena, Manhattan Beach, Monterey Park, Pasadena, San Francisco and Santa Monica, have established a complete prohibition against smoking in public parks. (Attachment 6 provides a summary of these cities' regulations.) In addition, staff has worked with the Technical Assistance Legal Center (“TALC”), a project of the Public Health Institute. TALC is in the process of developing the “Model California Ordinance Prohibiting Smoking in Recreation Areas,” and was able to provide staff with information that has been incorporated into the proposed Ordinance.

Enforcement:

In considering whether to adopt a total ban on smoking in City parks, City Council has previously discussed the issue of enforcement of such a law. The enforcement and penalty provisions of the proposed Ordinance are written to provide several options for enforcement and encourage and promote self-regulation and compliance (i.e. clear, conspicuously posted “no smoking” signs; providing the public with a right of private civil action). It is staff's understanding that similar no-smoking laws in other cities have been self-regulating for the most part. In the event the City would need to take enforcement action, it would be handled as resources permit, taking into consideration Police Department and City Attorney staff time.

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Recommendation:

Staff recommends that the City Council consider introducing the proposed Ordinance or provide further direction to staff.

FISCAL ANALYSIS:

If the ordinance were adopted, the additional regulations prohibiting smoking in public parks may require increased enforcement activity by City staff, particularly the Police Department and City Attorney's Office. These costs cannot be easily quantified. In addition, there would be a cost for the installation of adequate signage.

ATTACHMENTS:

1. Public notification
2. Health and Safety Code § 104495
3. Proposed Ordinance
4. "There is No Constitutional Right to Smoke," a publication by the Public Health Institute Technical Assistance Legal Center
5. Materials provided by the Los Angeles County Tobacco Control and Prevention Program
6. Regulations of survey cities

MOTIONS:

That the City Council:

1. Introduce the Ordinance prohibiting smoking in Culver City parks; or
2. Provide further direction to staff.