

## STAFF REPORT

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** JAMES COPSEY, CHIEF OF POLICE   
MARTIN D. KOCZANOWICZ, CITY ATTORNEY

**SUBJECT:** DISCUSSION AND DIRECTION TO STAFF REGARDING POTENTIAL SMOKING REGULATIONS IN PUBLIC FACILITIES IN THE CITY

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### BACKGROUND

The issue of smoking in public places was raised during recent Council discussion. That item was taken up by the Council at the May 2, 2011 meeting where after some discussion and several speakers from the public being heard by the Council, staff was directed to return with further details regarding: 1) smoking restrictions for "public facilities"; 2) whether "residential care facilities" were considered health facilities and to clarify the term "health facility"; 3) a description of what enforcement actions would be taken to restrict smoking, if local regulations were enacted; 4) cost estimates for enforcing a no-smoking or smoking restriction policy; and 5) private property rights in relation to smoking restrictions.

Staff returned at the July 5<sup>th</sup> meeting with responses to these questions and was directed to send the item to the Parks, Recreation and Beautification Commission (PRBC) for their input regarding smoking in or near City parks and other public facilities. At this meeting, the San Luis Obispo County Health Department distributed additional materials to the Council which is also available in the City Manager's Office.

### DISCUSSION

The PRBC considered this item at their recent meeting and has returned with recommendations, including smoking prohibitions in City parks to the edge of the sidewalk and smoking prohibitions at City-sponsored events like the Summer Concerts or the Holiday Parade. Attached are the staff report and minutes from the PRBC meeting (please see Attachment 3).

Staff is ready to move forward with drafting amendments to the Grover Beach Municipal Code based on the direction that Council wishes to provide. As explained before, current law provides for smoking (tobacco product use) prohibition within 20 feet of an

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#### APPROVED FOR FORWARDING



ROBERT PERRAULT  
CITY MANAGER

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

- |  |                                   |
|--|-----------------------------------|
| <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: October 17, 2011

Agenda Item No. 5

October 17, 2011

opening to a public building. Further regulations can be adopted by the Council. A chart showing how other governmental entities deal with this issue and some results of enforcement is also included with the attachments to this staff report (please see Attachment 2).

### **ALTERNATIVES**

The City Council has the following alternatives to consider:

1. Provide staff with further direction with regard to potential code amendments.
2. Take no action on the item and allow state law to govern use of tobacco products in the City.

### **RECOMMENDED ACTION**

It is recommended that if the City Council wishes to adopt smoking restrictions that are more stringent than state law, direction on scope and enforcement possibilities be given to staff.

### **FISCAL IMPACT**

Other than staff time, no fiscal impact is anticipated from the recommended action.

### **PUBLIC NOTIFICATION**

The agenda was posted in accordance with the Brown Act.

### **Attachments**

1. July 5, 2011 staff report to Council
2. Chart showing other Cities in the County on this issue
3. September 22, 2011 PBRC staff report and minutes

## STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: JAMES COPSEY, CHIEF OF POLICE  
MARTIN D. KOCZANOWICZ, CITY ATTORNEY**

**SUBJECT: DISCUSSION AND DIRECTION TO STAFF REGARDING POTENTIAL  
SMOKING REGULATIONS IN PUBLIC FACILITIES IN THE CITY**

**BACKGROUND**

At a recent Council meeting, the issue of smoking in public places was raised during Council discussion. Staff was directed to return with an agenda item that would provide more information with regard to the current laws that control smoking in or around public facilities, as well as potential discussion for additional regulations that can be adopted within City limits.

That item was taken up by the Council at the May 2, 2011 meeting where, after some discussion and several speakers from the public being heard by the Council, staff was directed to return with further details regarding: 1) smoking restrictions for "public facilities"; 2) whether "residential care facilities" were considered health facilities and to clarify the term "health facility"; 3) a description of what enforcement actions would be taken to restrict smoking, if local regulations were enacted; 4) cost estimates for enforcing a no-smoking or smoking restriction policy; and 5) private property rights in relation to smoking restrictions. Additionally, the Council directed that this information be brought for review and consideration by the City Council before it was scheduled as an agenda item before the Parks, Recreation & Beautification Commission.

**DISCUSSION**

Staff has conducted research in these areas and has been able to gather the following information in response to Council's request:

- 1) Current state law (Government Code Sections 7596-98, please see Attachment 1) restricts smoking of tobacco products in or within 20 feet of an opening to a "public building", which is defined as a building owned, leased or occupied by the City. The City can adopt further restrictions dealing with public buildings or facilities. Attachment 2 to this staff report is a chart that shows how other cities in San Luis Obispo County deal with smoking regulations, along with some enforcement results. This chart was compiled based on staff's survey of adjoining agencies.

**APPROVED FOR FORWARDING**

  
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**ROBERT PERRAULT**  
**CITY MANAGER**

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

- None Identified by Staff     Bright  
 Shoals     Molnar  
 Nicolls     Peterson

Meeting Date: July 5, 2011

Agenda Item No. IV

- 2) With regard to definitions of "residential care facilities" and "health facilities", the research revealed that a "long term health care facility" is defined in Health and Safety Code 1418 and it could include a private residential facility. The intent of the question was to identify whether or not smoking can be controlled in these types of facilities. Health and Safety Code Section 118875 et seq. (California Indoor Clean Air Act) specifically states that the intent of the legislation was not to preempt the cities' ability to regulate smoking in these types of facilities. The restrictions could be applicable to employees, but not patients, who need to be provided with places where they can smoke in such facility. State law already controls this subject matter, but if it is the desire of the Council to look into further regulations, the area is not preempted.
- 3) The City has been operating in the area of Code enforcement on a complaint basis. It is likely that any enforcement efforts in this area would be done on the same basis. The process includes notice of violation and citations that carry a monetary fine. Staff will be prepared to answer any additional questions with regard to enforcement at the Council meeting.
- 4) It is difficult to estimate costs of enforcement, as they are dependent on the extent of regulations and type of enforcement used to gain compliance. The City at this time does not have an assigned Code Enforcement Officer and the duties of enforcement would fall on existing staff, as no funds are budgeted or available for creation of a new position. The costs would likely be measured in potential overtime to existing personnel.
- 5) Smoking restrictions are generally applicable to public areas or areas where employees need to be protected from second hand smoke. Consequently, generally speaking, there are no regulations that would prohibit smoking in private residences or in outdoor areas privately owned (patios, balconies, etc.). The City would be precluded from adopting any rules that regulate smoking, which would infringe of individuals' rights in their own homes.

At the May 2, 2011 meeting, Council discussed the potential of having the Parks, Recreation & Beautification Commission consider the item and provide Council with input on these issues after staff returns with answers to the above questions. If the Council desires to consider smoking restrictions in public parks, input from the Commission would be helpful.

### **ALTERNATIVES**

The City Council has the following alternatives to consider:

1. Send this item for further consideration to the Parks, Recreation & Beatification Commission;
2. Provide staff with further direction; or
3. Take no action on the item.

**RECOMMENDED ACTION**

It is recommended that, if the City Council wishes to explore smoking restrictions in City parks, the item should be sent for further consideration to the Parks, Recreation & Beatification Commission.

**FISCAL IMPACT**

Other than staff time, no fiscal impact is anticipated from the recommended action.

**PUBLIC NOTIFICATION**

The agenda was posted in accordance with the Brown Act.

**Attachments**

1. Government Code Sections 7596-98
2. Chart showing other cities in San Luis Obispo County regarding smoking regulations.

CALIFORNIA CODES  
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 multicomplex 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.

Local Smoking Law Enforcement Efforts							
	Arroyo Grande	Pismo Beach	San Luis Obispo	Morro Bay	Atascadero	Paso Robles	Notes
Ordinance	Yes	Yes	Yes	Yes	Yes	No	
Where	Parks	Parks and Beachs	Parks and public areas	Beachs and Piers, not Parks	Parks and sidewalks around parks	0	
Enforced by Police	Yes	Yes	Yes	Yes	Yes	0	Morro Bay; Driven by passive enforcement (citizens holding each other accountable) due to personnel issues, had big public education effort.
Number of Compalints since 1/2010	None	8	17	Unk	Very few	0	San Luis; no citations issued from complaints, 115 total for smoking related contacts.
Number of Criminal Citations	0	0	61	0	0	0	
Number of Admin Citations	0	3	54	0	0	0	
Number of Warnings	0	Unk	Unk	Few		0	
Impact	Unk	Unk	Unk	Unk	Unk	0	Atascadero; early on they had juveniles smoking in parks, once signs went up and they special enforced the areas they have no further complaints, not sure if because of signage or enforcement.
Perception of Public	Unk	Unk	Unk	More Positive than Negative	Unk	0	

**STAFF REPORT**

**TO: PARKS, RECREATION AND BEAUTIFICATION COMMISSION**  
**FROM: KATHY PETKER, PARKS AND RECREATION DIRECTOR**  
**SUBJECT: CONSIDERATION OF SMOKING RESTRICTIONS IN PUBLIC PARKS AND CITY SPONSORED SPECIAL EVENTS**

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**BACKGROUND**

At a recent City Council meeting, the Council considered options regarding smoking restrictions including expanding the law to public parks, public facilities and special events. The Council has requested feedback from the Commission regarding smoking restrictions.

**DISCUSSION**

Attached for the Commission's review are copies of the most recent Staff Report and Draft Minutes that were presented to the City Council regarding smoking restrictions (Attachments 1 & 2). Referenced in the report is the current state law and information from the Police Department regarding enforcement and calls received.

Police Chief Jim Copsey has stated the Police department has received very few complaints regarding smoking at our parks. During the last two years the Police Department has responded to 10 total reported offenses around our parks, all were juveniles. Five reports were of juveniles smoking in or around restrooms, one report was for a juveniles smoking at the Grover Beach Community Center on Trouville Avenue, and four reports were of juveniles smoking in the parks. When officers actually can verify the complaint and catch the potential offender, they have issued citations for smoking. He suspects the Department doesn't get called, or people don't know that is actually illegal for juveniles or adults to smoke near the play areas. As far as the regular park areas, the Department has only responded to juvenile issues. Should the City enact an ordinance, he believes the Police Department would be impacted in that they would be called out to regulate smoking. According to the County Health staff that if the Police Department were to attempt to regulate smoking around our parks or public areas, it is mostly self-enforced and there is minimal response needed by the Police Department. Chief Copsey also provided a survey results related to adjacent cities and their law enforcement efforts (Attachment 3).

Furthermore, Chief Copsey stated that in speaking with the other agency staff, he found that they had not seen a significant increase in police response due to implementation of a smoking ordinance.

Parks and Recreation Department staff often receives complaints and questions from the public regarding smoking at special events and increasingly more at the Sizzlin' Summer Concert Series and Farmers' Market, which occurs every Sunday from June through September. Public announcements are made requesting the attendees refrain from smoking at special events and the concerts.

**ALTERNATIVES**

The Commission has the following alternatives to consider:

1. Staff recommends the Commission consider providing the City Council with a

recommendation regarding smoking restrictions in public parks and City sponsored special events; or

2. Provide alternative direction to staff.

**RECOMMENDED ACTION**

Staff recommends the Commission consider providing the City Council with a recommendation regarding smoking restrictions in public parks and City sponsored special events.

**FISCAL IMPACT**

None at this time.

**PUBLIC NOTIFICATION**

The agenda was posted in accordance with the Brown Act.

**Attachments**

1. City Council Staff Report, May 2, 2011
2. City Council Meeting Minutes, May 2, 2011
3. Local Smoking Law Enforcement Efforts

**MINUTES  
SPECIAL MEETING  
PARKS, RECREATION AND BEAUTIFICATION COMMISSION  
THURSDAY, AUGUST 25, 2011, 6:30 P.M.**

Chair Lee called the Special Parks, Recreation and Beautification Commission meeting to order at 6:30 p.m. on Thursday, August 25, 2011, in the City Hall Council Chambers, 154 S. 8<sup>th</sup> Street, Grover Beach, CA.

**FLAG SALUTE**

Led by Jim Copsey

**ROLE CALL**

Commissioners: Chair Jeff Lee, Vice Chair Dee Santos, Commissioner and Commissioners Arnie Dowdy; Commissioner Leah Greeley was absent.  
Commissioner Ellie Ross arrived at 6:32 p.m.

Ex Officios: City Manager Bob Perrault, Police Chief Jim Copsey and Parks and Recreation Director Kathy Petker

**ANNOUNCEMENTS**

Chair Lee notified the Commission that Commissioner Greeley would not be available for the October Commission meeting but would be present for the Carved Pumpkin Contest and Halloween Activities Event.

**CEREMONIAL CALENDAR**

None

**PRESENTATIONS**

None

**PUBLIC COMMUNICATIONS**

None

**CORRESPONDENCE**

Current Press Releases were highlighted.  
Staff announced the schedule of performers were available in the office for the upcoming Stone Soup Music Faire.

**COMMISSION ASSIGNMENT REPORTS**

City Council Meetings August 1 & 15; Chair Lee was reappointed to a four-year term on the Commission. Commissioner Dowdy stated no information pertaining to the Department was presented at the meeting on the 15<sup>th</sup>.

**CONSENT AGENDA**

Items No. 1,2 and 3 – Motion by Commissioner Santos and second by Commissioner Dowdy, the Commission approved the Consent Agenda with one correction to the Skate Park Monthly

Report.

### **REGULAR BUSINESS**

4. **Smoking in Public Places.** Staff provided the Commission with the Staff Report and introduced City Manager Bob Perrault and Police Chief Jim Copsey. Chief Copsey provided an overview of the existing law. The Commission deliberated on the item. Commissioner Dowdy motioned to restrict smoking in City parks; Commissioner Santos seconded the motion. Discussion was held and the motion was amended to within 20 feet of City parks and City sponsored special events. Item passed on a 3-1 voice vote: Commissioners Dowdy, Santos and Ross, voted yes; Chair Lee voted no.
5. **Beautification Award Nomination.** The following address was approved by 4-0 voice vote for a Beautification Award, 1624 Trouville Avenue.

### **STAFF COMMUNICATIONS**

Staff reported on the following:

- Sizzlin' Summer Concert and Farmers' Market
- Summer Skate Camps

#### **Status Reports:**

- Park Tour Forms – Forms to be completed at future meeting with a pot-luck
- ActiveNet online registration anticipated to go live October 1.

#### **Upcoming Event Reminder Notices:**

- 23<sup>rd</sup> Annual Dune Run Run. Staff reminded the Commission of the event for the weekend, Saturday, August 27<sup>th</sup>, 9:00 a.m. at the Ramona Garden Park Center.
- Stone Soup Music Faire, Saturday, August 27 and Sunday, August 28.

### **PUBLIC COMMUNICATIONS**

None

### **COMMISSIONER'S COMMUNICATION**

Commissioner Greeley stated she would take on the Spring Garden Tour map preparation for future Tours.

Commissioner Santos stated the Commission should start planning for the Holiday of Lights Decorating Contest.

She also nominated the following addresses for Beautification Awards:

339 N. 9<sup>th</sup>  
1709 Mentone Avenue  
869 N. 5<sup>th</sup>

### **ADJOURNMENT**

Chair Lee adjourned the meeting at 7:45 p.m.

*Minutes: Special Meeting Parks, Recreation and Beautification Commission  
August 25, 2011.*

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JEFF LEE, COMMISSION CHAIR

Attest:

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KATHY PETKER, PARKS AND RECREATION DIRECTOR  
(Approved at P,R&BC Special Meeting September 22, 2011)