



# Memorandum

**TO:** RULES AND OPEN GOVERNMENT  
COMMITTEE

**FROM:** Albert Balagso

**SUBJECT:** REPORT ON PUBLIC HEARING  
REGARDING SMOKING BAN IN  
PUBLIC PARKS

**DATE:** August 24, 2007

Approved

*Ray Wines*

Date

*8/31/07*

**COUNCIL DISTRICT:** City-Wide  
**SNI AREA:** Not Applicable

## RECOMMENDATION

It is recommended that the Rules and Open Government Committee accept this report on the Public Hearing conducted by the San Jose Parks and Recreation Commission regarding a proposed smoking ban in public parks. The public hearing was held on August 1, 2007 in response to the referral from the Rules and Open Government Committee.

## BACKGROUND

At the June 6, 2007 Rules and Open Government Committee meeting, Vice Mayor Cortese and Councilmember Nguyen recommended the Committee direct staff to prepare a draft ordinance for City Council consideration to prohibit smoking in City parks. At that meeting, staff recommended to the Committee that the Parks and Recreation Commission convene a public hearing since the Commission had reviewed this issue methodically a few years prior and had approved certain actions at that time.

In 2005, the Tobacco Free Collaborative made a presentation to the Parks and Recreation Commission requesting consideration of smoke free parks in the City of San José. The Commission subsequently conducted a public hearing, as part of its August 3, 2005 meeting, to receive public testimony regarding this subject. As a result of the meeting, the Commission requested additional information regarding other cities that have smoking prohibitions in their parks, a citizen survey, information on the impacts of a smoking ban on event organizers who conduct special events in parks, and options in lieu of a complete ban. Staff presented this information to the Commission at its September 7, 2005 and November 2, 2005 meetings.

After due consideration by the Commission of the public testimony and requested information provided by staff, the Commission voted against a complete ban of smoking in City parks. Two primary issues were of concern: 1) lack of resources to enforce the ban; and, 2) the cost of

signage replacement, which at that time was estimated at \$35,000. As a result, the Commission voted to increase the Department of Parks, Recreation and Neighborhood Services (PRNS) Director's authority to identify additional parks and park elements that would be subject to the smoking prohibition as well as to ban smoking during outdoor special events.

Subsequently, City staff has been working with representatives of Breathe California and the Tobacco Free Collaborative, as well as the City Attorney's Office and Office of Cultural Affairs, to develop a signage program that event organizers would voluntarily place around their venue asking the public to refrain from smoking in and around the event venue. This effort was approximately 75% complete when staff learned of a new request for consideration of a smoking ban in parks earlier this summer.

The Tobacco Free Collaborative elected not to continue with implementation of the signage program for outdoor special events at parks with the advent of the latest effort. This program is now on hold pending the outcome of the current review/process.

## ANALYSIS

Current California state law prohibits smoking a cigarette, cigar or other tobacco-related product within 25 feet of any playground or tot lot sandbox area. This legislation is applicable to all parks in San José. In addition, the City does not allow smoking at Happy Hollow Park & Zoo, along trails and bridle paths, in park restrooms and in high fire risk areas (such as Alum Rock Park). A proposed ban of smoking at all parks, for definition sake, would mean no smoking would be allowed from curb to curb of each park. However, civic and library grounds are not included in the ban.

The Parks and Recreation Commission convened a Public Hearing as part of its August 1, 2007 meeting, to receive public testimony on the subject of a smoking ban in City parks. This meeting was noticed by advertisements published in the San José Mercury News and Metro Silicon Valley, and posted on the City's website in addition to the normal posting requirements.

At the meeting, PRNS staff provided background information about the Commission's prior consideration of a smoking ban. It should be noted that a significant membership change has occurred on the Commission since the 2005 smoking ban was first considered.

Staff reiterated the two concerns in 2005 (lack of enforcement resources and unfunded cost of park signage replacement) remain true today. Additionally, staff conveyed that the San José Police Department does not have the resources to enforce a smoking ban in parks. In addition, if a ban was adopted and the Police Department received calls relating to smoking violations in parks, these calls would be viewed as a low priority. Additionally, it was further reported the cost of the signage replacement has increased from the \$35,000 estimate in 2005 to a current estimate of \$49,000.

At the Public Hearing, all public testimony received was in support of a smoking ban. There were eight (8) members of the public who spoke including two members of Breathe California, two members of Community Advocate Teens of Today, a representative from the City's Senior

Commission, a volunteer from the American Cancer Society, and two other San José residents. There were no event organizers present at the hearing.

After the public testimony, Commission Chair Melanie Richardson invited comments from the seven Commissioners present at the meeting. For information, the total number of Commission members is currently nine.

To summarize the overall discussion, one Commissioner commented that a third concern of the Commission back in 2005 had been that the Commission was uncomfortable in the role of being the guardian of public morals. This Commissioner indicated continuing support for no smoking at public gatherings, but not on banning smoking in parks in general. The remaining six (6) Commissioners all indicated favoring a smoking ban in parks though did not specifically address the smoking issue with regard to public gatherings in parks except for a brief statement from Commissioner Hamilton. Attachment A lists the more specific comments provided by each Parks and Recreation Commissioner.

Councilmember Nancy Pyle, City Council liaison to the Parks and Recreation Commission, was present at the meeting and asked whether anyone knew of grants that could help defray the cost of the signage replacement. Staff responded with information that in discussions with Breathe California and the Tobacco Free Collaborative, they had been very generous with grant funds and staff time in assisting with the development of the outdoor special event signage program. Councilmember Pyle added that if a prohibition goes into effect, she would expect the sign program could be completed and made available to event organizers.

Ms. Margo Sidener, CEO of Breathe California who provided testimony during the Public Hearing, indicated that the agency might be able to access alternative funding, if this were to come about.

At this point the Public Hearing and Commission discussion on a Smoking Ban in City Parks was concluded. Since the Commission was carrying out the direction of the Rules and Open Government Committee to convene a public hearing, no formal action was taken by the Commission at the conclusion of the hearing.

### **EVALUATION AND FOLLOW-UP**

No further follow-up is to be done on this issue, unless requested by the Committee.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
(Required: Website Posting)

- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

### COORDINATION

This memorandum has been coordinated with the Office of the City Attorney and Planning, Building and Code Enforcement. The City Attorney's Office has provided a draft of the proposed no smoking ban ordinance, a copy of which is attached.

### COST SUMMARY/IMPLICATIONS

If a smoking ban were to be adopted, funding in the estimated amount of \$49,000 for park signage replacement would need to be identified.

### CEQA

Not a project.

  
ALBERT BALAGSO  
*for* Director, Department of Parks, Recreation &  
Neighborhood Services

For questions please contact Cindy Rebhan, Acting Deputy Director, at 793-5563.

## Attachment A

The following are more specific comments provided by each Parks and Recreation Commissioner on the issue of a smoking ban in City parks at its August 1, 2007 meeting.

Commissioner Smith supported making San José a cleaner and healthier city and agreed it says something about the City as a whole when the statement that we want our parks to be free of smoke and we care about each other is made.

Commissioner Harding voiced concern about being asked to enforce a moral position, or to make a statement of a political nature or of a right and wrong nature. This Commissioner noted the discussion was about an absolute ban and indicated wariness with proposals that are absolutes and have no exceptions.

Vice Chair Ruiz asked whether smokers would be allowed to smoke on sidewalks around parks. Staff confirmed that since we are defining a park from curb to curb, the ban would include sidewalks around parks as well. The Commissioner posed a follow-up question as to whether smoking would be allowed in parking lots. Staff responded that smoking is not currently allowed in park parking lots. This Commissioner indicated leaning toward favoring a ban on smoking in parks.

Commissioner Matsushima views one of the roles of the Commission as a guardian of the public health and indicated support for a ban on smoking in parks.

Commissioner Kim provided comments from a smoker's perspective yet indicated favoring no smoking in parks.

Commissioner Hamilton indicated support for a ban and suggested that Police could enforce the ban at large gatherings.

Commissioner Richardson indicated belief that a ban is the right message to send and suggested that staff and Council think of ways to fund this if at all possible.

**DRAFT**

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
SECTION 9.44.030 OF CHAPTER 9.44 OF TITLE 9 OF  
THE SAN JOSE MUNICIPAL CODE TO PROHIBIT  
SMOKING IN PARKS**

**WHEREAS**, on \_\_\_\_\_, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970, as amended, under File No. PP \_\_\_\_\_;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 9.44.010 of Chapter 9.44 of Title 9 of the San Jose Municipal Code is amended to read as follows:

9.44.010 Compliance required.

- A. No person shall smoke where smoking is prohibited by this chapter.
- B. It shall be unlawful for any person who owns or controls a building or structure to permit, suffer, or allow smoking in violation of this chapter.
- C. Owners, operators, property managers and officers of homeowners' associations for residential properties will be deemed to not be in violation of the requirements of subsection B. by posting notices in accordance with the provisions of this chapter and by notifying violators that their actions are in violation of the law.
- D. The provisions of subsection B of this Section shall not be applicable to the City of San Jose or its officers, employees, permittees or licensees with respect to violations of subsection F of Section 9.44.030.

Section 9.44.030 of Chapter 9.44 of Title 9 of the San José Municipal Code is amended to read as follows:

#### **9.44.030 General Prohibition**

Smoking is prohibited in the following places located within the City of San José except as provided in Section 9.44.040:

- A. Buildings: All enclosed areas of buildings which are open to the public or which are places of employment.
  
- B. Public and common areas of multifamily residential areas: All enclosed areas of apartments, condominiums and mobilehome parks which are open to public access or to unrestricted common access by the residents of such places.
  
- C. Motor vehicles used in work: In motor vehicles which meet one of the following conditions:
  - 1. Common carriers for public transit;
  - 2. Vehicles for hire, such as taxicabs;
  - 3. Vehicles which are operated in the course of employment for the use of more than one person at a time during the time of employment.
  
- D. Hotel and motel guest rooms: The enclosed areas of at least fifty percent (50%) of the guest rooms located in a hotel or motel. To the greatest extent feasible the smoke free rooms shall be grouped together to each other and separated from rooms where smoking is permitted.
  
- E. Stadium and sports arenas: The seating and eating areas of any outdoor stadium or sports arena. Smoking may be permitted only in specifically designated areas which are not located in close proximity to seating or eating

areas.

- F. City Parks: Park is defined in Chapter 13.44 of Title 13 of the San José Municipal Code, as it may be amended.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

CHUCK REED  
Mayor

ATTEST:

---

LEE PRICE, MMC  
City Clerk