

CITY OF COSTA MESA
CITY ATTORNEY'S OFFICE
INTEROFFICE MEMORANDUM

Confidential Attorney -Client Privilege

To: Allan Roeder, City Manager
From: Tom Wood, Acting City Attorney
Date: August 25, 2004

Subject: City Authority to Ban Outdoor Smoking at Fairview Park

As you requested I have taken a look at Council Member Cowan's inquiry about possibly banning smoking at Fairview Park. Here are my initial conclusions.

CONCLUSION

I believe the City does have authority to impose such a ban.

DISCUSSION

1. Authority to Ban Smoking

Some cities (e.g., San Fernando, San Ramon, Santa Monica) have already enacted bans on outdoor smoking in city parks. And, as you noted in your email, there have been recent news articles that some cities are planning (or have) banned smoking on public beaches.

The State has clearly stated it has not preempted this field. Last year the Legislature adopted a ban on smoking (1) in public buildings (including those owned by cities), (2) within 20 feet of the main entrances of such buildings, and (3) in passenger vehicles owned by the State. (Gov. Code sec. 7597) This new law says:

"This section shall not preempt the authority of any . . . city . . . 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." (Gov. Code sec. 7597(b))

The Legislature also stated in the California Indoor Clean Air Act of 1976 that:

"The Legislature declares its intent not to preempt the field of regulation of smoking of tobacco. A local governing body may ban completely the smoking of tobacco, or may regulate smoking in any manner not inconsistent with this article . . . or any other provision of state law."
(Health & Safety Code, sec. 118910)

The Indoor Clean Air Act imposed certain bans against smoking in restaurants, public transit vehicles, health facilities, and public buildings where meetings are held. The

Legislature imposed another ban on smoking in 2001 when it adopted a law that banned smoking within 25 feet of all playgrounds and sandlots. (H&S Code sec. 104495)

2. Procedure City Can Use

The question then is what is the best way to enact such a ban. There are two places in our Code that we could put such a ban. In Title 8, Chap. V there are provisions that ban smoking in public facilities. This chapter could be modified to include a smoking ban in Fairview Park. Or, in Title 12 there are sections that prohibit certain acts in city parks. We could add a ban there. In either of these places, the actual new section could state that the Council may designate certain public parks or areas within parks as non-smoking places and that the Council would designate these by Council resolution. Alternatively, the new section could simply state the actual smoking ban in the Code itself.

One other possibility would be pursuant to CMMC sec. 12-17 that gives authority to the Directors of Administrative Services and Public Services to enact rules and regulations governing the use of any city park. One of them could promulgate such a rule for Fairview Park. I do not think this method would be a good idea due to the lack of public input.

I should also mention that the Parks Commission has authority in Sec. 12-56(b) to hold public hearings to consider the wisdom and efficacy of policies and procedures for city parks.

Please let me know if you think this information satisfies Council Member Cowan's questions about this subject.

cc: Steve Hayman
Bill Morris
Jana Ransom