

ORDINANCE NO. 11-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING CHAPTER V OF TITLE 8 AND SECTION 12-20 OF TITLE 12 OF THE COSTA MESA MUNICIPAL CODE RELATING TO SMOKING IN CITY PARKS, SPORTS FACILITIES AND COMMUNITY GARDENS

WHEREAS, parks provide one of the few affordable entertainment options for individuals and families; and

WHEREAS, the City of Costa Mesa's current smoking ordinance recognizes the danger to health and prohibits smoking tobacco products within public buildings; and

WHEREAS, subdivision (a) of Section 7597 of the California Government Code prohibits smoking in public buildings and extends the smoking ban to an outdoor area within twenty feet of a main exit, entrance, or operable window of public buildings; and

WHEREAS, subdivision (b) of Section 7597 of the California Government Code authorizes cities to enact bans on smoking that are more restrictive than those provided for in subdivision (a); and

WHEREAS, it is well documented that smoking tobacco products is not only injurious to the health of the smokers themselves, but is also harmful to otherwise healthy adult nonsmokers and child bystanders by exposing them to second-hand smoke, which can cause heart disease, strokes and lung cancer, as well as allergic or irritative reactions; and

WHEREAS, tobacco litter and matches dropped in parks are particularly dangerous to young children who step on them or ingest them, sometimes while they are still hot, and creates additional work for maintenance staff; and

WHEREAS, tobacco products are, in addition, poisonous to wildlife which inhabit or visit the parks and are generally detrimental to the environment; and

WHEREAS, prohibiting smoking in the City's parks and adjacent public areas will ensure that nonsmokers may breathe air free from the hazardous effects of secondhand smoke, will protect the public's health, comfort and welfare and promote a healthier environment; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter V of Title 8 of the Costa Mesa Municipal Code is hereby amended as follows:

CHAPTER V. SMOKING IN PUBLIC FACILITIES

Sec. 8-131. Purpose and findings.

The city council finds that the smoking of tobacco, or any other weed, plant, or substance is a positive danger to health and a material annoyance to those who are present in confined and unconfined spaces, and in order to serve public health, safety and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco, or any other weed, plant or substance, ~~and the use of tobacco products such as chewing tobacco~~ in public facilities owned or operated by the City of Costa Mesa as stated and required in this chapter.

Sec. 8-132. Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- (a) City-owned sports facilities means any area of cleared enclosed land, as well as any facilities adjacent to it, used primarily for sporting events, which is owned and/or run by the city, and shall include, but is not limited to, the ~~Jack Hammett Farm~~ Sports Complex at 2750 Fairview Road, the TeWinkle Athletic Complex at 970 Arlington Drive, the Luke Davis Field at 570 W. 18th Street, Downtown Aquatic Center at 1860 Anaheim Avenue. "City-owned sports facilities" shall not include sports fields owned by the Newport Mesa Unified School District.
- (b) City-owned community gardens means a plot of cultivated ground, which is owned and/or run by the city and is made available to the citizens in whole or in part to the growing of herbs, fruits, flowers, or vegetables for household use, and includes but is not limited to, the Hamilton Community Garden at 523 Hamilton Street, and the Del Mar Community Garden at 170 Del Mar Avenue.
- (c) Public facility means and includes any ~~building, structure or room within a building or vehicle enclosed by a roof and four (4) walls with appropriate openings for ingress and egress, any and of the following,~~ which is owned, leased or operated by the City of Costa Mesa, a California municipal corporation, but does not include facilities used as multifamily residential buildings:
 - (1) Any building, structure or room within a building enclosed by a roof and four (4) walls with appropriate openings for ingress and egress.
 - (2) Any motor vehicle enclosed by a roof with appropriate openings for ingress and egress.
- (d) Park shall have the same meaning as section 12-1 of the Costa Mesa Municipal Code.
- ~~(e) Council chambers~~ means that portion of the city hall as designated as the council chambers generally occupied by the city council.

(e) *Smoke or smoking* means and includes any of the following:

- (1) The consumption of tobacco products by burning, ~~chewing~~, inhalation, or other forms of ingestion.
- (2) The holding or carrying of a lighted smoking device; or
- (3) Emitting or exhaling the smoke directly from a cigar, cigarette, pipe or any other lighted smoking device or substance.

Sec. 8-133. Smoking prohibited.

Smoking is prohibited and is unlawful within all areas public facilities, except in specifically designated areas by resolution of city council, and the city council chambers which has been designated and posted as a no smoking area by the city by signs of sufficient number and posted in such locations as to be readily seen by persons within such area, including but not limited to:

- (a) Public facilities as defined in section 8-132(c).
- (b) Within any park.
- (c) Within fifty (50) feet of any park perimeter, provided that if any such perimeter encroaches on private property, this Section's prohibition shall not apply to the private property. This prohibition shall also not apply to persons and vehicles in route along the public streets and sidewalks.
- (d) Within the parking lot and enclosed fenced areas of all city-owned sports facilities, grounds or structures.
- (e) Within the parking lot and enclosed fenced areas of city-owned community gardens.

Sec. 8-134. Disposal of waste.

It shall be unlawful to dispose of any part of any tobacco product including, but not limited to, cigars and cigarettes or any other combustible substance, ~~or chewing tobacco~~, in any place where smoking is prohibited.

Sec. 8-1345. Administration.

The no smoking regulations established by this chapter shall be administered by any city employee authorized to enforce violations of this Code or state laws code enforcement officers, as designated by the city manager.

Sec. 8-1356. Violations and penalties.

- (a) Any ~~violation~~ of section 8-133 shall be deemed an infraction and shall be

punishable in accordance with the provisions set out in section 1-33 of this Code.

- (b) Ejection. Any person who violates section 8-133 shall be subject to ejection from the park by any city employee authorized to enforce violations of this Code or state laws
- (c) Three or more violations of section 8-133 by the same individual within any twelve-month period within the same park, sports facility or community garden is declared to be a public nuisance and may be abated by the city through civil proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances, including but not limited to the remedies provided for in section 1-33 of this code. Any such individual may be ordered to stay away from the public facility, sports facility or community garden where the violations occurred for up to twelve (12) months following the most recent violation.

Section 2. Section 12-20 of Chapter II of Title 12 of the Costa Mesa Municipal Code is hereby amended as follows:

Sec. 12-20. Disorderly conduct.

(a) When used in this title, the words “disorderly conduct” shall include any of the following conduct in any park:

[. . .]

(19) Pursuant to Section 8-133 of this Code, smoking ~~or use of any tobacco products~~, as defined in Section 8-132(e).

(b) Ejection. Any person who commits any of the acts set forth in this section shall be guilty of disorderly conduct and shall be subject to ejection from the park by any city employee authorized to enforce violations of this Code or state laws ~~the public services director, by the administrative services director, city park ranger, or by a city police officer.~~

(c) Three or more violations of Section 12-20 by the same individual within any twelve-month period within the same park is declared to be a public nuisance and may be abated by the city through civil proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances, including but not limited to the remedies provided for in section 1-33 of this code. Any such individual may be ordered to stay away from the park where the violations occurred for up to twelve (12) months following the most recent violation.

Section 3. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of

any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 5. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED AND ADOPTED this _____ day of _____, 2011.

Mayor

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 11-__ was introduced and considered section by section at a regular meeting of said City Council held on the _____ day of _____, 2011, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the _____ day of _____, 2011, by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this _____ day of _____, 2011.

City Clerk and ex-officio
Clerk of the City Council of the
City of Costa Mesa