



Board Report

File #: 18-830, Version: 1

- a. Consider a Board referral to establish an ordinance prohibiting tobacco smoking, including tobacco e-cigarettes and vaping, at all County Parks, Buildings, and Parking Lots; and
- b. Consider recommendations by the Parks Commission regarding implementing a smoking ban at all County Park facilities, with certain exceptions; and
- c. Provide direction to staff regarding the establishment of a smoking ordinance at County Parks, Buildings, and Parking Lots.

(Board Referral No: 2018.18)

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Receive a report on the status of establishing ordinances banning smoking at Monterey County Parks, Buildings, and Parking Lots; and
- b. Receive recommendations by the Parks Commission regarding implementing a smoking ban at all County Park facilities, with certain exceptions; and
- c. Provide direction to staff regarding the establishment of a smoking ordinance at County Parks, Buildings, and Parking Lots.

SUMMARY

On July 25, 2018, the Health Department (Health) and Resource Management Agency (RMA) received a referral from Supervisor Alejo's office, requesting Health and RMA to draft ordinance(s) prohibiting tobacco smoking, including tobacco e-cigarettes and vaping, in all county parks, buildings and parking lots (Referral No. 2018.18). Projects are currently underway to amend County Codes: 1) RMA has drafted a comprehensive revision of Chapter 14.12 (County Parks) that includes smoking restrictions within County Parks; and 2) Health Department is working on updates Chapter 10.70 (Smoking Pollution Control) that will address smoking in County facilities and parking lots. This report summarizes the efforts to date to regulate smoking in County Parks.

The Health Department has begun preliminary consideration of revisions to 10.70 (the County's Smoking Pollution Control Ordinance), though that work is not anticipated to proceed in earnest until the language of a revised 14.12 is finalized. At this time, it is anticipated that updates and revisions to 10.70 would focus on the following areas: (i) general modernization of language to address e-cigarettes and cannabis issues; (ii) general revisions to clarify and potentially strengthen current smoking prohibitions and limitations; (iii) revisions in light of state-wide legal changes (such as the prohibition on sales of tobacco products to individuals under age 21); (iv) revisions to conform with the County's tobacco retail license (7.80); and, (v) revision to conform with the updated parks ordinance, including on enforcement and signage. Any smoking restrictions included in Chapter 14.12 will reference Chapter 10.70 for enforcement language and general terms and definitions. Health and RMA will coordinate on this reference language.

Conceptually, the Parks Commission supported a partial ban retaining certain areas where smoking would be allowed. Staff researched smoking bans in parks for various California counties and sought input from stakeholders responsible for the operations at County parks. A summary of this research was presented to the Parks Commission on August 2, 2018 requesting direction for completing the Chapter 14.12 update.

Based on the Board referral, the Commission is seeking direction on park smoking regulations before proceeding with its work on Chapter 14.12. The Commission recommended that the Board consider: 1) a total smoking ban in all parks, with special consideration to allow for smoking by live-on volunteers within their own living quarters; 2) no restriction at Laguna Seca, Lake San Antonio and Lake Nacimiento; and 3) special consideration for use of medicinal cannabis in County Parks. Staff finds that certain smoking restrictions could have more of a fiscal impact than others and impact on County resources depending on the level of enforcement desired.

DISCUSSION

In August 2017 RMA and Health presented a draft ordinance prohibiting smoking in County Parks to the Parks Commission for review. The ordinance included specific exceptions that allowed for smoking in designated areas in certain parks. The list of proposed smoking restrictions was as follows:

Manzanita Park; 100% smoke-free, no designated smoking areas
Royal Oaks Park; designated smoking area includes parking lots
Toro Park; designated smoking area includes parking lots
Jack's Peak Park; 100% smoke-free, no designated smoking areas
Laguna Seca; designated smoking area includes parking lots, campgrounds, and racetrack area
San Lorenzo Park; designated smoking area includes parking lots and campgrounds
Lake San Antonio (North Shore); designated smoking area includes parking lots and campgrounds
Lake San Antonio (South Shore); designated smoking area includes parking lots and campgrounds
Lake Nacimiento; designated smoking area includes parking lots and campgrounds
Travel Camp (Fort Ord); 100% smoke-free, no designated smoking areas
County's open space lands (includes former Fort Ord habitat parcels and other unincorporated areas); 100% smoke-free, no designated smoking areas

This recommended smoking ban was supported by the Parks Commission. Future efforts to update the County Parks code would include this list.

In December 2017 RMA began a process to revise Monterey County Code Chapter 14.12, which establishes regulations for County Parks. The Chapter was created in 1970 and last updated in 2008. Staff recognized that amendments to Chapter 14.12 were needed to reflect Parks merging with RMA, to incorporate new planned smoking regulations, and to address fees. A smoking ban was included in the update and was drafted using the direction of the Parks Commission for each County park, along with consultation from Health.

On June 7, 2018, RMA presented the Parks Commission with an update on Parks fees and proposed revisions to Monterey County Code Chapter 14.12 (County Parks). Based on prior Commission direction, the proposed revisions included a total smoking ban in Jacks Peak and Manzanita Parks, and smoking only in designated parking lots and campgrounds in Toro, Royal Oaks, Laguna Seca, San Lorenzo, Lake San Antonio and Lake Nacimiento. During the meeting, the Commission discussed a total ban on smoking in all County parks. Staff was then directed to return to the Commission with additional information on smoking ban options.

Staff researched smoking bans in parks for various California counties. Each county addresses smoking differently to reflect the design and use of local parks. Staff received input from stakeholders responsible for the operations at County parks: The County Administration Office (CAO), Sport Car Racing Club of the Monterey Peninsula (SCRAMP), Urban Parks Concessionaires (CalParks) and the North County Youth Recreation Association (NCYRA). SCRAMP manages Laguna Seca park under the direction of the CAO.

On August 2, 2018, RMA presented its findings to the Parks Commission. The findings are provided for reference along with this report as Attachment A. The Commission recommended that any further discussion on a park smoking ban be moved to the Board of Supervisors in consideration of the referral, and recommended that the Board consider a total smoking ban in all parks with special consideration for live-on volunteers to smoke within their own living quarters, as well as for the enterprise fund facilities consisting of Laguna Seca, Lake San Antonio and Lake Nacimiento. The Commission also requested special consideration for use of medicinal cannabis in County Parks.

On January 23, 2018, the Board of Supervisors adopted a policy prohibiting smoking and the use of tobacco products by County employees and volunteers in all buildings and facilities, both indoors and outdoors, and inside vehicles owned, leased, and/or operated by the County of Monterey. The policy defines "Buildings and Facilities" as follows: "County of Monterey buildings and facilities' means any buildings and facilities owned, and/or leased, or occupied by the County of Monterey, and all outdoor or non-enclosed areas associated with any County of Monterey buildings and facilities including, but not limited to, courtyards, patios, breezeways, sidewalks, gardens, yards, parking lots, and access roads." RMA interprets this policy to apply to the Buildings and Facilities within County Parks, but not the open spaces, trails, grounds and other areas that are not directly associated with a building or facility. The policy is not clear on how parks and open spaces should be addressed.

Passing a strict smoking ban will require a plan to notify and educate the public, and then enforce the ordinance. Staff identifies three areas of impact to the public and County: Public Education, Citations and

Fines, and Enforcement.

Signage and Public Education

At this time, there may be limited funds within the Health Department available for signage, but additional funding will be needed to develop educational materials and signage.

Citations and Fines

The County will need to develop and establish a schedule of administrative fines for violation of the smoking restrictions. County Code Section 1.22.100 sets maximum fines for an infraction of County Code at not more than one hundred dollars (\$100) for the first violation, not more than two hundred dollars (\$200), for a second violation within a period of one year, and not more than five hundred dollars (\$500) for a third or any subsequent violation within a period of one year. The California Parks and Recreation Bail and Penalty Schedule includes a fine of \$485 for smoking when extreme fire danger is present. This amount is not mandatory and the County may set its own fine. Santa Clara and Santa Cruz Counties sets administrative fines for smoking infractions at \$100 for a first violation within one year, \$200 for a second and \$500 for each additional violation.

Enforcement

The County Health Officer is responsible for the enforcement and implementation of the current smoking restrictions in Chapter 10.70. Health emphasizes no-smoking signage and self-enforcement. The County could use signage and self-enforcement in the County Parks, or consider more proactive enforcement. Under current job classifications, County park employees are separated into Ranger and Buildings & Grounds staff. Only Rangers are authorized to issue citations. RMA is conducting a classification study to incorporate Buildings & Grounds workers into a sworn Ranger classification. At current staffing levels, this would mean an additional twelve (12) employees would be able to issue citations, including smoking citations, in parks operated by RMA.

Laguna Seca is operated by SCRAMPS on behalf of the CAO. Park security is provided by a contractor. There is some concern with using private security contractors to issue citations. Such a practice could raise legal issues with respect to the authority of contractors to enforce County code. Further, although there are currently no County employees patrolling at Laguna Seca, assigning this work to a contractor has the potential to overlap with the duties of County employees.

After consulting with the CAO and CalParks, it is the recommendation of RMA that any effort to implement a major smoking ban at any of the enterprise fund facilities be deployed gradually. This would allow current visitors time to adjust, and any shift in visitor demographics that would result from a smoking ban to take place over the next few years.

OTHER AGENCY INVOLVEMENT:

RMA is working with County Counsel throughout the Chapter 14.12 update process and the document is nearing completion. RMA and Health Department are collaborating to update the proposed smoking prohibition language. Chapter 14.12 would only address smoking as it relates to County Parks. Health is updating Chapter 10.70 of the County Code to address smoking prohibitions for the entire County.

Health has provided the following recommendation for a complete smoking ban: Monterey County Health Department supports a complete ban on smoking within County Parks. A 100 percent ban on smoking is the optimum policy to promote public health, maintain a natural environment and sound infrastructure. This position is based on the Surgeon General and California Air Resource Board who states, "There is no safe level

of exposure to secondhand smoke." Exposure to secondhand smoke is unhealthy even outdoors. Smoke-free parks will promote healthy living in Monterey County by creating inviting open spaces for the community and visitors to enjoy the outdoors and play sports without fear of secondhand smoke causing respiratory irritation or triggering an asthma attack. According to the 2014 California Health Interview Survey, 6.8 percent of Monterey County residents have asthma.

Additionally, due to extreme dry vegetation and an ever-increasing fire danger it is prudent to adopt a complete ban on smoking to protect lives, resources, parks, forests and property. California's climate is ever changing bringing prolonged patterns of drought followed by heavy rain. This provides the opportunity for fresh vegetation to grow that is then dried by summers heat. This pattern played out in 2016, when the Monterey County Soberanes Fire burned 132,127 acres and cost approximately \$236 million dollars to suppress.

Earlier this year Monterey County adopted a smoke-free policy to protect the health, safety and wellbeing of employees, volunteers and the public. According to the Board Policy Manual staff (including volunteers) are not allowed to smoke in any county buildings or facilities. This includes facilities within all County Parks and applies to volunteers living in park housing. Adopting a complete smoking ban is an extension of the County's effort toward a healthier Monterey County and is indicative of the County's value on the health of its community members and tourists.

Furthermore, we understand that a phase-in of this policy may be required and we support a 12 to 18-month transition period to make modifications to reservation systems and allow for posting of appropriate signage and implementation of a multi-level media campaign which could include website announcements, brochures, social media, press releases, media events and/or newsletter articles prior to full implementation of a 100 percent smoke-free park policy.

The Parks Commission requested the Board consider whether the smoking ban should extend to the use of cannabis, specifically medicinal cannabis, within County Parks. As a practical matter enforcing a ban against recreational cannabis, but not medicinal cannabis, may be difficult to enforce. If the Board does not direct staff to include smoking of all cannabis in the proposed ordinance, Counsel requests that the Board allow time for review and legal analysis of the impact of an ordinance which differentiates between cannabis users.

FINANCING:

The financial impact of smoking restrictions will vary depending on the extent of the ban and the type of enforcement provided. Startup expenses may include signage and a public education campaign. Some of this cost may be offset by smoking citations, however the County does not have sufficient data to estimate revenue amounts. There should be a reduction in citations as the public becomes aware of and accustomed to the non-smoking ban. If smoking restrictions in County Parks follow the enforcement model used by Health at County buildings and facilities, the financial impact could be minimal.

The greatest potential for financial impact in County Parks is expected to be at the enterprise fund parks of Laguna Seca Raceway, Lake San Antonio, and Lake Nacimiento. Large numbers of visitors and the size of the facilities at the Lakes could require additional staff time to actively enforce a smoking ban. Self-enforcement, educational signage, violation reporting and other enforcement methods may have less financial impact. Enterprise funds are operations that are financed and operated in a manner like private business enterprises, where services provided are primarily funded through user charges. Demographics and revenue impacts should be considered in any decision affecting these enterprise fund facilities.

The County Parks require General Fund contributions to balance the budget and offset revenue from park fees.

The FY 2017-18 expenditure projection for Park Operations was \$3,764,235. Revenue projection was \$961,977 versus the modified adopted budget of \$1,266,455 leaving the need for County General Fund contributions of \$2,802,258.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Proposed changes provide updates to the County Code that would address current needs including public safety, operations in the County parks, and rules and regulations. Reducing contact with secondhand smoke will promote public health while considering park use and providing access to County Parks for all residents.

☐ Economic Development
☒ Administration
☒ Health & Human Services
☐ Infrastructure
☒ Public Safety

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Attachments:

Attachment A - Summary of County Smoking Bans
(Attachment on file with the Clerk of the Board)