

East Bay Regional Park District

Smoke-free Parks Proposal

White Paper

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This paper will examine the benefits and challenges, and proposal associated with implementing designated smoking areas within the East Bay Regional Park District.

I. Introduction

This paper will examine the desire of the Board of Directors for the East Bay Regional Park District, Operations Committee to examine the plausibility of a Smoke-free Parks amendment to East Bay Regional Park District Ordinance 38.

II. History and Background

In early February of 2015 Allison Chan, the Clean Bay Campaign Manager for Save the Bay contacted Chief of Parks Mark Ragatz to ask if a smoking ban to protect people from harmful secondhand smoke and help to prevent cigarette butt litter from polluting our open space and waterways could be enacted at the Park District. In an email to Chief Ragatz, she asked if the Board Operations Committee would support a system wide policy to make all EBRPD parks 100% smoke free. Chief Ragatz had it added to the agenda of the February 19th Board Operations Committee meeting. At that meeting Allison and supporters from Americans for Non-Smokers Rights and the American Lung Association spoke, requesting that the District adopt a no smoking policy. Directors Sutter, Siden and Burgis were at the meeting and agreed to ask staff to look into this proposal.

On March 20, 2015 Chief Ragatz asked Shoreline Unit Manager Kevin Takei to take the lead on developing a proposal from the Operations Division perspective and asked him to contact Lt. Alan Love for the Police Department perspective as this would be a change or addition to our Ordinance 38. Mr. Takei also asked Parkland Unit Manager Dan Sykes to be on a Working Group to help research and come up with a proposal.

Mr. Takei met with a group comprised of Allison Chan - Save the Bay, Liz Williams – Americans for Non-Smokers Rights, Denise Dennis and Marcia Brown-Mack - Contra Costa County Tobacco Prevention Project, Alex Nelson – American Lung Association and Tanya Bustamante - City of Berkeley on June 26, 2015. That group shared their experiences with getting cities to ban smoking and the various ways the smoking ban exists in their city and other cities. They presented evidence on the littering effects of cigarette and e-cigarettes on the environment and talked about the benefits of smoke-free workplaces and parks. They also provided support and information on how to get the initiative completed.

The District Smoking Ban Working Group was comprised of Unit Managers Takei and Sykes and Lt. Love, who met on June 29, 2015 to talk about the proposal, the timeline and the beginnings of what such an ordinance could look like. It was further discussed at Chief Ragatz' Unit Managers meeting on July 21, 2015. At that meeting it was decided that it should be reviewed at a Joint Police and Park Operations meeting. The Working Group met again on August 3, 2015 and came up with 4 options:

1. Smoking prohibited within the entirety of the East Bay Regional Park District
2. No smoking within the East Bay Regional Park District except in designated areas,

3. No smoking except designated areas for employees *only* and
4. No restrictions

It was also agreed that this should be called a Smoke-Free Parks proposal and not a smoking ban proposal.

On August 5, 2015 the Working Group presented the proposal to the Joint Police and Park Operations meeting and it was agreed this proposal would be a part of the Ordinance 38 review process. At that meeting by narrow consensus it was decided that the proposal should be Option 2 – No smoking except in designated areas. The Smoke-free Parks proposal Working Group was asked to prepare a document that could be presented to the AGM’s meeting.

On February 9, 2016, the language of the smoke free parks was presented as an Executive Brief to the Assistant General Managers Group. There was a lot of discussion in regard to allowing designated areas in the Ordinance language and not being more specific on the areas prohibited in Option 2. At the direction of the AGM Group, the language was further restricted to exclude all areas of the District with the exception of the campgrounds and employee areas out of public view.

Additionally, there was direction from the AGM group to conduct further research as to the policies of the National Park Service, the California State Parks and the Midpeninsula Regional Open Space District.

III. Need

The need to examine the Smoke-Free Parks Proposal was initiated by Director Sutter to have staff investigate and determine the need for the prohibition of smoking within the East Bay Regional Park District. During their presentation to the Board Operations Committee, Save the Bay and the American Lung Association made the recommendation that smoking of any substances be removed from the East Bay Regional Park District.

Save the Bay’s concerns are about the amount of garbage and debris resulting from discarded cigarette butts. “Every year, millions of toxic, plastic cigarette butts are littered in our region and flow into the Bay, polluting our water and endangering wildlife. Cigarette butts are the #1 form of litter collected during Coastal Cleanup Day.”ⁱ

They also raised the issue that cigarette butts harm the wildlife that lives in the East Bay Regional Park District. “Millions of the more than 3 billion cigarette butts littered annually wash into the Bay, polluting our water, harming wildlife, and costing taxpayers millions to clean up” (savethebay.org, n.d.).

In speaking with Operations Staff, cigarette butts are a concern when cleaning up litter within the parks. Currently, California law prohibits smoking in certain situations and locations:

- Smoking with a minor in the vehicle is prohibited.ⁱⁱ
- Smoking is prohibited within 25 feet of “Tot lot sandbox areas” and “playgrounds.”ⁱⁱⁱ
- Smoking is prohibited within the workplace.^{iv}
- A juvenile in possession of tobacco products is illegal.^v

- Smoking in designated areas of publicly owned places while a meeting is in process is prohibited. ^{vi}
- It is a violation of law to dispose of cigarette butts, cigar butts, or any other tobacco-related waste within 25 feet of a playground or a “tot lot sandbox area.”^{vii}
- The East Bay Regional Park District prohibits the smoking of marijuana, as defined in Section 11018 of the Health and Safety Code, within 1000 feet of a developed area within District lands^{viii} or as prohibited and posted during declared fire season.^{ix}

The American Lung Association’s concern was that the allowance of smoking is counter to the “Healthy Parks, Healthy People” initiative as smoking has been proven to be a serious health concern. According to the U.S. Surgeon General, secondhand smoke exposure is harmful at any level. While California state law only restricts smoking within 25 feet of tot lots and playgrounds, municipalities are specifically authorized to pass stronger laws to prohibit smoking within all recreation areas.

Several other communities bordering the East Bay Regional Park District have adopted smoke-free ordinances. As of June, 2015, there were 351 municipalities in California that have restricted smoking in at least some recreation areas beyond state law. The majority of the parks and trails operated by East Bay Regional Park District border or run through cities that prohibit smoking in all recreation areas.

The cities and counties bordering the East Bay Regional Park District that restrict smoking in *all* recreation areas are:

Alameda	El Cerrito	Piedmont
Alameda County	Emeryville	Pinole
Albany	Fremont	Pittsburg
Berkeley	Hayward	Pleasant Hill
Clayton	Lafayette	Richmond
Contra Costa	Livermore	San Leandro
County	Martinez	San Ramon
Danville	Oakland	Union City
Dublin	Oakley	Walnut Creek

The California State legislature has stated the following regarding smoking:

Smoking is the single most important source of preventable disease and premature death in California. More than 30 percent of coronary heart disease cases are attributable to cigarette smoking. More than 30 percent of all annual cancer deaths are attributable to smoking, with lung cancer now the leading cancer killer in women as well as men. Smoking is responsible for one-quarter of all deaths caused by fire. Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers^x

National Park Service

The National Park Service, under the Department of the Interior, prohibits smoking except in designated areas^{xi}. The specific areas are listed to include:

- Any non-shared residential accommodation for persons and families leased or rented by the Federal Government.
- Outdoor parking lots or sidewalks, unless the location violates the provisions of 4.1.1.
- Space assigned in its entirety to other agencies, where such other agencies permit smoking.
- Such places as designated in writing by the regional director or center manager, upon a finding that the exception thus created does not threaten park resources, increase the risk of fire, make it more likely that employees and/or the public will be exposed to environmental tobacco smoke, , or create a conflict between employees and the public.

The California State Park System

The Public Resource Code section 5008.9 (b) prohibits the smoking of cigars, cigarettes, or other tobacco related products on state coastal beaches.^{xiii} Smoking is also prohibited in area of extreme fire hazards in the California State Parks.^{xiii}

The Midpeninsula Open Space District

The Midpeninsula Open Space prohibits smoking except in designated areas. According to Michael Newburn, Operations Manager, the General Manager has the authority to designate smoking areas within the District. There are currently no designated smoking areas with the exception of employee areas.^{xiv}

IV. Proposed Recommendation

In researching a solution to the issue, several factors were considered in relation to creating a “Smoke-free Parks” Ordinance amendment. The first was to establish clear language regarding smoking within the East Bay Regional Park District. To accomplish this task, the following reviewed language is proffered:

Suggested Ordinance 38 language:

Smoking is prohibited in the East Bay Regional Park District with the exception of in campsites. “Smoking” means inhaling, exhaling, burning or carrying any lighted pipe, cigar, cigarette, weed, plant or other combustible organic or chemical substance, the smoke from which is specifically designed or intended to be inhaled or drawn into the nose or mouth. In addition “smoking” for the purpose of this Ordinance includes the use of any vapor device, of any product name or descriptor, which releases gases, particles or vapors into the air as a result of combustion, electrical ignition or vaporization intended to be drawn into the nose or mouth (excluding any United States Food and Drug Administration approved nebulized medication).

The determination of designated smoking areas is also a logistical concern as each park has so much to offer and there is much to take into consideration. The recommendation of the working group is that designated smoking areas for employees are to be determined by the individual Park

Supervisors with approval of the Unit Manager. Upon appeal, the ultimate approval will rest with the Chief of Park Operations or his/her designee. Additionally, the working group offers the following recommended criteria to be considered when identifying an employee smoking area:

- Location must be in accordance with existing California Law.
- Locations should be 20 feet away from building entrances, doors, and air intake areas.
- Locations should not interfere with normal park usage by the non-smoking members of the public (e.g. reservable picnic areas, fishing piers, campsites).
- Locations should be out of the paths of travel for the non-smoker.
- Receptacles for smoking materials must be contained within the designated smoking area.
- Designated areas must not be in high fire danger areas.
- Areas must be in accordance with the American with Disabilities Act.
- Areas must be a minimum of 250 feet away from a waterway (e.g. lake, creek, or shoreline) to reduce or eliminate the possibility of smoking debris entering the waterway.
- The prevailing winds and the direction of the smoke.
- Smoking areas should be defined as a reasonable distance of no more than 20 feet from the smoking material receptacle.

V. Benefits

The Working Group recommends that the Park District use the strategy outlined in this white paper due to the following benefits that the District would derive from it. The proposed strategy, in brief, is an overarching prohibition on smoking and the use of "vaping" device in all East Bay Regional Parks, codified by amending Ordinance 38, with the exception of campsites and carefully chosen, designated smoking areas for employees out of public view.

The recommended approach is responsive to public desires for a smoke-free park environment and a reduction in exposure to second-hand smoke in public areas, and would also discourage smoking-related litter from coming into the parks. This strategy draws on the examples of neighboring jurisdictions and park agencies throughout the San Francisco Bay Area that are fairly restrictive, but some of which allow some smoking in designated areas. In addition to prohibiting smoking, the District's proposed new ordinance section would prohibit vaping devices, which are promoted as a safer alternative to smoking, but are still used to inhale a chemical and which may have second-hand effects on non-smokers, because the potential health effects of the chemicals in the vapor are not well documented.

The proposal is consistent with the East Bay Regional Park District's promotion of the "Healthy Parks Healthy People" program, yet compassionate because it allows smoking in designated areas for staff who smoke, acknowledging that tobacco use is addictive and cannot be quit immediately.

The District's approach to smoke-free parks would be progressive; beginning with an educational timeframe. After the implementation of the Ordinance amendment, it would be treated as any other violation of Ordinance 38.

Overall, the benefits of this proposed approach to the District's Smoke-free Parks program would be that it is a well-reasoned, compassionate policy approach that is responsive to

public health concerns, a desire for reduced exposure to second-hand smoke and reduction of smoking related litter.

VI. Evaluation

The evaluation of the program will take into account the public's response, staff time, calls for service to the police department, and a review of any additional subsequent legislation. The program's success will be determined by the acceptance and support of park visitors and staff, a reduction in smoking related litter, and the positive image of the East Bay Regional Park District.

The program's failure will be determined by the public's disregard of the new amendment to Ordinance 38, no change in smoking related litter, or a negative view of the District by the public in relation to smoking.

If desired, in July of 2017 (a year after implementation), staff can provide a status report from Operations and Public Safety regarding the successes of the program if desired by the Board of Directors. At the direction of the Board of Directors, a more detailed survey can be completed to answer specific questions about the program. To complete this survey, there will be additional costs associated with this data collection, which is not addressed in this paper.

This program can be continually reviewed as part of the Ordinance 38 review process.

VII. Cost

The initial cost of the program will be the printing and erection of signs advising of the change in Ordinance 38 as well as designating smoking areas. The estimated categories for hard costs are as follows:

- Temporary Signs advising of the coming change to Ordinance 38 as a part of public education estimated at \$3,000 (600 signs @ \$5 per sign).
- Permanent Signs designating Smoking Areas and Smoke-free Parks Ordinance is estimated at \$7,000 (350 signs at \$20 per sign).
- Cigarette Butt receptacles estimated at \$2500 - \$7500 (50 locations @ \$50-\$150 per receptacle) based on the style of the unit
- Permanent Designated Smoking Area Signs are estimated at \$1,000 (50 signs at \$20 per sign).

Sample Cost Estimate

Temporary Signs	\$5	600	\$3,000.00
Permanent Signs	\$20	350	\$7,000.00
Cigarette Butt Receptacles	\$50- \$150	50	\$ 2500 - \$7500
Smoking Area Signs	\$20	100	\$ 1000.00

The total cost estimate is \$13,500-\$18,500 plus the cost of labor. The number of designated smoking areas will ultimately affect the total cost associated.

The operational cost for staff to install the signs, and for the police department to enforce and educate are arbitrary and cannot be accurately forecasted. Salary and benefits for a Park Ranger II is calculated at \$52.64 per hour and an officer's salary and benefits are calculated at \$73.41.

There is no appropriate estimate for the number of calls the Police Department may respond to or the time spent responding to calls of this nature.

ⁱ <https://www.savesfbay.org/secure/cigbutthotspots>

ⁱⁱ California Health and Safety Code Section 118948

ⁱⁱⁱ Ibid. Section 104495 (b).

^{iv} California Code of Regulations Section 5148 and California Labor Code section 6404.5

^v California Penal Code 308 (b)

^{vi} California Health and Safety Code Section 118885

^{vii} Ibid. Section 104495 (c)

^{viii} East Bay Regional Park District Ordinance 38-416

^{ix} Ibid. Section 404.2

^x California Health and Safety Code Sections 104350 (a) 1-5).

^{xi} US Department of the Interior, National Park Service Director's Order #50D: Smoking Policy; effective June 29, 2009.

^{xii} California Public Resource Code section 5008.9(b)

^{xiii} California Code of Regulations Section 4311.

^{xiv} Midpeninsula Regional Open Space District Regulation 404.2