



Staff Report

City of Manhattan Beach

TO: Mayor Tell and the Honorable Members of the City Council

THROUGH: *DC* David N. Carmany, City Manager

FROM: Eve R. Irvine, Chief of Police
Julie Dahlgren, Management Analyst
Christi Hogin, Interim City Attorney *CH*

DATE: August 2, 2011

SUBJECT: Consideration of an Ordinance Prohibiting Smoking on the Strand and Veterans Parkway (the Valley Ardmore Greenbelt).

RECOMMENDATION:

Staff recommends that Council waive further reading and introduce Ordinance No. 2152 prohibiting smoking on the Strand and along Veterans Parkway (the Valley Ardmore Greenbelt) and establishing penalties for violations thereof.

FISCAL IMPLICATION:

Staff does not anticipate any significant fiscal impact from adoption or enforcement of this Ordinance.

BACKGROUND:

Significant research and information has been amassed to justify regulation of smoking in the interests of the public health, safety and welfare.

Tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States,¹ accounting for about 443,000 deaths each year.²
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth.³
- Some of the most common types of cancers including stomach, liver, uterine, cervical, and kidney are related to tobacco use.⁴

¹ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf.

² US Department of Health and Human Services, Centers for Disease Control and Prevention. "Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses — United States, 2000-2004." *Morbidity and Mortality Weekly Report*, 57(45): 1226-1228, 2008. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm.

³ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf.

⁴ Leistikow B, Zubair K, et al. "Male Tobacco Smoke Load and Non-Lung Cancer Mortality Associations in Massachusetts." *BMC Cancer*, 8:341, 2008. Available at: www.biomedcentral.com/1471-2407/8/341.

Secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke.⁵
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure.⁶
- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm.⁷

Exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 73,000 deaths among nonsmokers each year in the United States.⁸
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent.⁹
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year¹⁰ and exacerbates childhood asthma.¹¹

Tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is \$193 billion.¹²
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately \$96 billion.¹³
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10 billion per year in the United States in 2005.¹⁴
- The total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone.¹⁵

⁵ US Department of Health and Human Services, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. 2007. Report highlights available at: www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet7.html.

⁶ Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: www.arb.ca.gov/regact/ets2006/res0601.pdf; See California Environmental Protection Agency, Air Resources Board. *News Release, California Identifies Secondhand Smoke as a "Toxic Air Contaminant."* Jan. 26, 2006. Available at: www.arb.ca.gov/newsrel/nr012606.htm.

⁷ California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*. 2006, p. 8 & 17. Available at: www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf.

⁸ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm.

⁹ Barnoya J and Glantz S. "Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking." *Circulation*, 111: 2684-2698, 2005. Available at: www.circ.ahajournals.org/cgi/content/full/111/20/2684.

¹⁰ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf.

¹¹ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm.

¹² Centers for Disease Control and Prevention. *News Release, Slightly Lower Adult Smoking Rates*. 2008. Available at: www.cdc.gov/media/pressrel/2008/r081113.htm.

¹³ Centers for Disease Control and Prevention. *News Release, Slightly Lower Adult Smoking Rates*. 2008. Available at: www.cdc.gov/media/pressrel/2008/r081113.htm.

¹⁴ Behan DF, Eriksen MP and Lin, Y. *Economic Effects of Environmental Tobacco Smoke*. Schaumburg, IL: Society of Actuaries, 2005, p. 2. Available at: [www.soa.org/files/pdf/ETSReportFinalDraft\(Final%203\).pdf](http://www.soa.org/files/pdf/ETSReportFinalDraft(Final%203).pdf).

¹⁵ Max W, Rice DP, Zhang X, et al. *The Cost of Smoking in California, 1999*. Sacramento, CA: Tobacco Control Section, California Department

- California's Tobacco Control Program saved the state and its residents \$86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly.¹⁶

Exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers.¹⁷
- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette.¹⁸
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two lane road.¹⁹
- Studies on a cruise ship have found that even while cruising at 20 knots and with unlimited air volume, outdoor smoking areas contained carcinogens in nearly the same amounts as inside the ship's casino where smoking was allowed.²⁰

Cigarette butts pose a health threat to young children, as evidenced by the following:

- In 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarettes, cigarette butts, and other tobacco products.²¹
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging.²²

Cigarette butts are a major and persistent source of litter, as evidenced by the following:

- It is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year.²³
- Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean.²⁴

of Health Services, 2002, p. 74. Available at: <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1026&context=ctcre>.

¹⁶ Lightwood JM, Dinno A and Glantz SA. "Effect of the California Tobacco Control Program on Personal Health Care Expenditures." *PLoS Med*, 5(8): e178, 2008. Available at: www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178.

¹⁷ Klepeis NE, Ott WR, and Switzer P. *Real-Time Monitoring of Outdoor Environmental Tobacco Smoke Concentrations: A Pilot Study*. San Francisco: University of California, San Francisco and Stanford University, 2004, p. 34, 80. Available at: http://exposurescience.org/pub/reports/Outdoor_ETS_Final.pdf; See also Klepeis NE, Ott WR and Switzer P. "Real-Time Measurement of Outdoor Tobacco Smoke Particles." *Journal of Air and Waste Management Association*, 57: 522-534, 2007. Available at: www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf.

¹⁸ Junker MH, Danuser B, Monn C, et al. "Acute Sensory Responses of Nonsmokers at Very Low Environmental Tobacco Smoke Concentrations in Controlled Laboratory Settings." *Environmental Health Perspectives*, 109(10): 1046-1052, 2001. Available at: www.pubmedcentral.nih.gov/picrender.fcgi?artid=1242082&blobtype=pdf; Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

¹⁹ Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

²⁰ Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

²¹ American Association of Poison Control Centers. *2004 Annual Report of the American Association of Poison Control Centers Toxic Exposure Surveillance System*. Elsevier Inc., 2004, p. 645. Available at: www.poison.org/prevent/documents/TESS%20Annual%20Report%202004.pdf.

²² US Department of Health and Human Services, Centers for Disease Control and Prevention. "Ingestion of Cigarettes and Cigarette Butts by Children - Rhode Island, January 1994-July 1996." *Morbidity and Mortality Weekly Report*, 46(06): 125-128, 1997. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm.

²³ Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, www.surfridersd.org/hotyb.php.

²⁴ Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, www.surfridersd.org/hotyb.php.

- Cigarette filters, made of plastic cellulose acetate, take approximately 15 years to decompose.²⁵

Laws restricting the use of tobacco products have recognizable benefits to public health and medical costs, as evidenced by the following:

- Cities with smokefree laws see an appreciable reduction in hospital admittances for heart attacks in the months and years after such laws are passed.²⁶
- Smoking bans help people reduce the number of cigarettes they smoke or quit altogether.²⁷
- Strong smoking regulations for restaurants decrease the number of children who transition from experimenting with smoking to becoming actual smokers.²⁸

Creating smokefree areas helps protect the health of the 86.7% of Californians who are nonsmokers.²⁹

Current Manhattan Beach Municipal Code provides three separate references to bans on smoking:

- **12.08.320 - Smoking prohibited on beaches (Effective 2004)**

When originally presented to City Council, this ordinance included the Beach, the pier, the Strand, and beach parking lots (parking lots located west of the Strand). However, some Councilmembers were concerned that it was too far reaching. The ordinance was scaled back to include **only the beach and the pier**. A violation of this section is an infraction.

- **12.48.056 - Smoking prohibited in parks (Effective 2004)**

This ordinance was intended to prohibit smoking in recreational facilities including parks, parkettes, athletic fields, tennis courts, basketball courts, or other such recreation areas. A violation of this section is an infraction.

- **4.116 - Regulation of smoking in public areas and places of employment (Effective 1987; Amended in 1994)**

The requirements of this section are less stringent compared to the requirements now in place at the state and federal levels and have been superseded by state and federal statutes.

Federal law restricts smoking in airplanes, day care facilities, and schools. California law currently regulates smoking in workplaces; multi-unit residences; State, county, and city buildings; tot-lots and playgrounds; day care facilities; smoking in vehicles with children; public transit systems; airplanes and trains; and youth buses and public paratransit vehicles. Under California Health and Safety Code Section 118910, "a local governing body may completely ban the smoking of tobacco or may regulate smoking in any manner not inconsistent with State law."

²⁵ Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, www.surfridersd.org/hotyb.php.

²⁶ US Department of Health and Human Services, Centers for Disease Control and Prevention. "Reduced Hospitalizations for Acute Myocardial Infarction After Implementation of a Smoke-Free Ordinance – City of Pueblo, Colorado, 2002 – 2006." *Morbidity and Mortality Weekly Report*, 57(51&52): 1373-1377, 2009. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5751a1.htm; Glantz SA. "Meta-Analysis of the Effects of Smokefree Laws on Acute Myocardial Infarction: An Update." *Preventive Medicine*, 47(4): 452-453, 2008.

²⁷ Neighmond P. "Smoking Bans Help People Quit, Research Shows." *National Public Radio*, October 25, 2007. Available at: www.npr.org/templates/story/story.php?storyId=15610995.

²⁸ Siegel M, Albers AB, Cheng DM, et al. "Local Restaurant Smoking Regulations and the Adolescent Smoking Initiation Process: Results of a Multilevel Contextual Analysis Among Massachusetts Youth." *Archives of Pediatrics and Adolescent Medicine*, 162(5): 477-483, 2008. Available at: <http://archpedi.ama-assn.org/cgi/reprint/162/5/477.pdf>.

²⁹ Hong M, Barnes RL and Glantz SA. *Tobacco Control in California 2003-2007: Missed Opportunities*. San Francisco: Center for Tobacco Control Research and Education, 2007, p. 9. Available at: <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1074&context=ctcre>.

What Other Cities are Doing

More than 40 cities and counties in California have adopted what are considered “comprehensive outdoor smoking ordinances,” according to the American Lung Association’s Center for Tobacco Policy and Organizing. In their research, there are seven outdoor areas that smoking ordinances most commonly target: dining areas, recreation areas, public events, service areas, entryways, sidewalks (sometimes citywide, sometimes in specific areas, e.g. downtown areas or shopping centers), and worksites (such as construction areas). More than 40 cities prohibit smoking in at least five of the seven areas. More than 100 cities have adopted ordinances prohibiting smoking from outdoor recreation areas.

Examples of California cities that limit smoking in all public places (with few exceptions) include: Calabasas, Carpentaria, El Cajon, Loma Linda, Moorpark, Del Mar, Hayward, and San Luis Obispo. The City of Carson is currently exploring this type of ban.

Public Health Law and Policy, a non-profit organization dedicated to building healthy communities nationwide, has brought together a team of attorneys, policy analysts, and urban planners to provide legal information on matters relating to public health. The organization’s Technical Assistance Legal Center has developed model smoking ban ordinances for California communities. Their model ordinances have served as the basis for many of the smoking bans in place in cities across California today.

Carpenteria conducted a survey in Fall 2010 of other California cities that have implemented ordinances. It found that most cities are able to achieve voluntary compliance without the need to issue a citation. Visitors, unaware of the laws, are often those in violation and simple education about local laws has proved effective in resolving the matter without the need for a citation or penalty.

In Manhattan Beach, no smoking signs are currently posted at City parks, the beach, and pier. Additional signs may be desired on the Strand and the Veteran’s Parkway (Valley-Ardmore path)

Additional Benefits of Implementation

The Los Angeles Regional Water Quality Control Board (LARWQCB) is setting a goal for zero trash in Santa Monica Bay. Most of the land-based debris discharged to the marine environment enters through storm drains. To achieve the goal of zero trash, cities will be required to develop and implement plans for full capture systems for stormwater systems. Because litter from tobacco products poses a significant risk to marine life and makes up a portion of the trash that currently enters the marine environment, LARWQCB has provided an incentive (a three-year extension on the final compliance date for zero trash) to cities that voluntarily adopt local ordinances banning smoking in public places, banning plastic bags, and banning single use polystyrene food packaging.

DISCUSSION:

At its July 5, 2011 meeting, the City Council considered a report with respect to Fiscal Year 2010-11 Work Plan Item 32 regarding the development of an ordinance to prohibit smoking on the Strand. After discussion, the Council directed staff to develop an ordinance prohibiting smoking on the Strand and the Valley-Ardmore Greenbelt and present it at a subsequent meeting for the Council’s consideration. The attached ordinance would prohibit smoking on both the Strand and

the Valley Ardmore Greenbelt. Penalties for violation of the ordinance mirror those set forth in Chapter 4.116 (Regulation of Smoking in Public Areas and Places of Employment). The first violation would be punishable by a fine of \$50. A second violation in the same year would be punishable by a fine of \$100. Additional violations within the same year would each be punishable by a fine of \$250.

As part of the City's commitment to and support of the Healthways Blue Zones Vitality City initiative, City Council was asked to consider implementing a "Tobacco-free Policy for all Public Places." Staff has researched a smoking ban which encompasses all public spaces. At Council's direction, such an ordinance may be prepared for Council's consideration.

ALTERNATIVES:

Provide additional direction to staff.

ATTACHMENT:

A. Ordinance No. 2152

ORDINANCE NO. 2152

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH
PROHIBITING SMOKING ON THE STRAND AND ALONG VETERANS
PARKWAY (THE VALLEY ARDMORE GREENBELT) AND
ESTABLISHING PENALTIES FOR VIOLATIONS THEREOF

The City Council of the City of Manhattan Beach does ordain as follows:

SECTION 1. Chapter 12.12 of the Manhattan Beach Municipal Code is hereby amended to read as follows:

Chapter 12.12 – SMOKING PROHIBITED ON STRAND AND GREENBELT

12.12.010 – Definitions.

For purposes of this chapter:

- A. "Smoke" and "smoking" mean the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, or any other combustible substance. Smoking shall include the emitting or exhaling the fumes of any of the foregoing.
- B. "Strand" means the paved public right of way between the beach and the westerly property line of the properties nearest the Pacific Ocean.
- C. "Veterans Parkway" is the Valley Ardmore greenbelt and path that separates Valley Drive and Ardmore Avenue.

12.12.020 – Prohibitions.

- A. Smoking is prohibited on or along the Strand.
- B. Smoking is prohibited and on or along the Valley Ardmore Greenbelt.
- C. No person shall dispose of any cigarette, cigar or other tobacco product or any part thereof on the Strand or the Valley Ardmore Greenbelt except in a designated waste disposal container.

12.12.030 – Penalties.

- A. Each separate violation of this chapter is an infraction punishable by:
 - 1. A fine not to exceed \$50 for the first violation.
 - 2. A fine not to exceed \$100 for the second violation of this chapter within one year.
 - 3. A fine not to exceed \$250 for each additional violation of this chapter within one year.
 - 4. Punishment under this section shall not preclude punishment pursuant to Health and Safety Code Section 13002, Penal Code Section 374.4 or any other law proscribing the act of littering. Nothing in this section shall preclude any person, corporation or governmental entity from seeking any other remedies, penalties or procedures provided by law whether civil or criminal.

SECTION 2. If any part of this ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this ordinance are severable.

SECTION 3. Repeal or amendment of any provision of the Manhattan Beach Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before, this ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this ordinance.

SECTION 4. The City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published in the manner prescribed by law within fifteen (15) days after its passage, and said ordinance shall become effective thirty (30) days after adoption.

PASSED, APPROVED, and ADOPTED this 6th day of September, 2011.

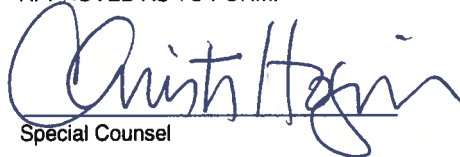
Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:


Special Counsel