

ORDINANCE NO. 2995

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING CHAPTER 8.38 TO TITLE 8 (HEALTH AND SAFETY) OF THE WHITTIER MUNICIPAL CODE RELATING TO SMOKING IN CITY PARKS AND PUBLIC FACILITIES

WHEREAS, the U.S. Surgeon General and the U.S. Environmental Protection Agency have concluded that secondhand smoke causes lung cancer and heart disease in healthy nonsmokers;

WHEREAS, the City Council of the City of Whittier finds that the smoking of tobacco, or any other weed or plant, is a danger to health and a material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined and open spaces;

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

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;

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);

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

WHEREAS, the City Council finds that 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.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 8.38 of Title 8 of the Whittier Municipal Code is hereby added as follows:

Chapter 8.38. Smoking in Public Facilities

8.38.010 Purpose and Intent.

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 smoking of tobacco, or any other weed, plant or substance in or on public facilities owned or operated by the City of Whittier as stated and required in this chapter.

8.38.020 Definitions.

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

(a) *Park* shall have the same meaning as section 12.42.020(F) of the Whittier Municipal Code. Parks shall include, but not be limited to:

- (1) Anaconda Park, 14575 Anaconda Street;
- (2) Bailey Ranch House, 13421 Camilla Street;
- (3) Broadway Park, 12816 Broadway;
- (4) Central Park, 6532 Friends Avenue;
- (5) Founders Memorial Park, 6031 Citrus Avenue;
- (6) Friends Park, 7630 Washington Avenue (Joe Miller Field) and 7630 Washington Avenue (Skate Park);
- (7) Greenway Trail, Mills Avenue to Pioneer Boulevard (4.5 miles);
- (8) Guirado Park, 5760 Pioneer Avenue;
- (9) Hellman Park, Greenleaf Avenue;
- (10) Kennedy Park, 8530 Painter Avenue;
- (11) Laurel Park, 8825 Jacmar Avenue;
- (12) Lee Owens Park, 7930 Greenleaf Avenue;
- (13) Leffingwell Ranch Park, 15740 Starbuck;
- (14) Lou Henry Hoover Foundation, 10839 Beverly Boulevard;
- (15) Michigan Park, 8228 Michigan Avenue;
- (16) Murphy Ranch Park, 16200 Las Cumbres;
- (17) Palm Park, 5703 Palm Avenue and 5706 El Rancho Drive;
- (18) Parnell Park, 10711 Scott Avenue;
- (19) Patricia Ryan Nixon Foundation, southwest corner of Mar Vista Street and Colima Road;
- (20) Penn Park, 13950 Penn Street;
- (21) J.G. Whittier Park, 7227 Whittier Avenue;
- (22) Transit Depot Park, 7333 Greenleaf Avenue,
- (23) York Field, 9110 Santa Fe Springs Road;

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

- (1) The consumption of tobacco products by burning or inhalation; or
- (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.

8.38.030 Smoking prohibited.

Smoking is prohibited and is unlawful within all areas 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) Within any park, including parking lot areas; and
- (b) 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.

8.38.040 Disposal of tobacco 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, in any place where smoking is prohibited.

8.38.050 Administration.

The smoking prohibitions established by this chapter shall be administered by any city employee authorized to enforce violations of this Code, or state code relating to smoking.

8.38.060 Violations and penalties.

- (a) Any violation of section 8.38 shall be punishable in accordance with the provisions set out in chapter 1.08 of this Code
- (b) Ejection. Any person who violates chapter 8.38 shall be subject to ejection from the park by any city employee authorized to enforce violations of this Code or state law.

(c) Three or more violations of Section 8.38 by the same individual within any twelve month period within the same park or public facility 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. Any such individual may be ordered to stay away from the public facility, sports facility, or park where the violations occurred for up to twelve (12) months following the most recent violation.

8.38.070 Declaration of nuisance

Whenever the city manager finds that a person has committed three or more violations of Section 8.38.030, he shall set the matter for public hearing before a hearing officer, who shall be designated as such by the city manager.

8.38.080 Abatement hearing-Notice

The hearing officer shall give ten days' written notice to the person that has committed three or more violations of the time and place of hearing, by United States Postal Service, postage prepaid, addressed to him/her at his/her last known address.

8.38.090 Abatement hearing-Procedure

(a) At the time and place set for the hearing, the hearing officer shall hear and consider all relevant evidence, including but not limited to, applicable staff reports, objections or protests relative to the existence of the alleged public nuisance and/or the manner proposed for abatement of them. The hearing may be continued from time to time, without further written notice.

(b) Upon the conclusion of the hearing, the hearing officer shall, based upon the evidence presented at the hearing, determine whether the person constitutes a public nuisance, as defined in this chapter. If the hearing officer finds that a public nuisance exists, the person may be ordered to stay away from the public facility, sports facility, or park where the most recent violation occurred for up to twelve (12) months. The hearing officer shall give notice of his determination by serving a copy of the order upon the person who committed three or more violations of Section 8.38.030, and from any person requesting a copy of the order. If the hearing officer finds a nuisance does not exist, he shall dismiss the proceedings. The determination of the hearing officer shall be final and conclusive in the absence of an appeal.

8.38.100 Appeal

(a) The person who has committed three or more violations of Section 8.38.030, which is a subject of a proceeding, may appeal the hearing officer's determination to the city council. Such an appeal shall be timely only if filed within fifteen calendar days from and after the giving of notice by the hearing officer of his determination.

(b) The appeal shall be in writing, and shall set forth the grounds for the appeal. The appeal shall be filed with the city clerk-treasurer within the time permitted pursuant to this chapter. A filing and processing fee, if required by resolutions of the city council, shall be paid contemporaneously by the appealing party with the filing of the appeal with the city clerk-treasurer. Upon the receipt by the city clerk-treasurer of such an appeal, and the filing and processing fee, the clerk-treasurer shall prepare an administrative record which shall consist of a transcript of the proceedings before the hearing officer, copies of the written material submitted in the hearing, if any, and a copy of the hearing officer's determination. The administrative record, as certified by the city clerk-treasurer, shall be transmitted to each member of the city council by the clerk-treasurer, who also shall set a time and a place for the council's hearing upon the appeal.

(c) At the time of the hearing, which shall be noticed by the clerk-treasurer, the city council shall permit any interested person to present written or oral arguments relating to the appeal, but shall not permit the introduction of any evidence, unless a showing is made by the offering party that the evidence could not reasonably have been presented to the hearing officer at the time and place of that hearing. Thereafter, based upon the administrative record, the evidence as may be presented pursuant to the provisions of this chapter, and the written or oral arguments of interested persons, the city council shall determine whether the person constitutes a public nuisance within the meaning of this chapter. If it finds a public nuisance exists, it shall; if it finds the nuisance does not exist, it shall dismiss the proceeding. The decision of the city council shall be final.

8.38.110 Abatement order service

A copy of the final order of abatement of the nuisance shall be served upon the person who has committed three or more violation of Section 8.38.030, by United States Postal Service, postage prepaid, addressed to the person who has committed three or more violations of Section 8.38.030 at his/her last known address.

SECTION 2. Any provision of the Whittier Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 3. 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 Whittier 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 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AND ADOPTED this 8th day of January 2013.

OWEN NEWCOMER, Mayor

ATTEST:

KATHRYN A. MARSHALL
City Clerk Treasurer

CITY OF WHITTIER)
) SS
STATE OF CALIFORNIA)

I, Kathryn A. Marshall, City Clerk-Treasurer in and for the City of Whittier, California, hereby certify that the foregoing ordinance was duly introduced at a regular meeting of the City Council of the City of Whittier on the 11th day of December 2012, and adopted at a regular meeting of the City Council of the City of Whittier on the 8th day of January 2013 by the following roll call vote:

AYES: C. Warner J.A. Vinatieri O. Newcomer

NOES: None

ABSENT: F. Dutra R.L .Henderson

WITNESS my hand and the official seal of the City of Whittier, California, this
_____ day of _____ 2013.

KATHRYN A. MARSHALL
City Clerk-Treasurer

Published as required by law: January 22, 2013.