

MEMORANDUM

TO: Jeff Muck, Director of Parks, Recreation & Cultural Services
Victor Cardenas, City Manager
Cortney Hanson, City Clerk

FROM: Tom Schultz, City Attorney

RE: Potential Regulations Related to Smoking in City Parks

DATE: September 16, 2025

You asked our office to provide some information about the City's ability to ban or regulate smoking in public parks. We've had an opportunity to look at both the law and cases relating to the City's authority to regulate activity on City-owned properties and some sample ordinances and/or park rules that have attempted to do so. Our answer is that you could enact that kind of regulation or rule and that it would be enforceable. The analysis breaks down to three questions: Can the City ban or regulate smoking on city-owned park property? What would be the available mechanisms for doing so? And would such a regulation be enforceable in practice?

Can the City ban or regulate smoking on city-owned park property?

The City has broad authority under the Home Rule City Act (MCL 117.4j) to enact regulations relating to conduct on its own property:

Each city may in its charter provide:

* * *

(3) For the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state. [Emphasis added.]

As you know, the City has already adopted limitations on smoking near municipally-owned buildings (within 100 feet of same). (See Section 22-101 of the City Code.) That regulation followed the state legislation that banned smoking in all enclosed workplace and outdoor patios of bars and restaurants, with certain exceptions, commonly referred to as the Dr. Ron Davis Smoke Free Air Law, and is codified as section 12603 of the older Michigan Smoke Free Air Act, found

at 333 MCL § 12601 *et seq.* That law is cited in the City’s current prohibition in Chapter 22 of the City Code.

What would be the available mechanisms for doing so?

There are a couple different ways to accomplish a ban or regulation if that’s what the City wants to do. The first would be to enact an **ordinance**. There are at least two areas in the City Code where an ordinance provision banning or limiting smoking in public parks would make sense. The first is in Chapter 22, which is where the current ban on smoking within 100 feet of municipal buildings currently exists. The other would be in Chapter 25 of the City Code, which is the chapter that regulates City parks and, in particular, conduct within City parks.

If the City prefers not to enact an actual ordinance, under Chapter 25 it could adopt a park **rule**. Section 25-19 of the City Code states that “rules and regulations for public parks shall be adopted by the council by resolution.” As far as I am aware, the City Council has never adopted a document entitled “Park Rules” by resolution or otherwise. (Your website has a link for “park rules,” but it is just a link to some of the provisions of Chapter 25—in other words, it’s not a separate set of rules.) But in theory the City Council could adopt a no smoking rule of some kind by way of resolution.

To the extent you are interested in regulating or banning smoking by park **buildings**—e.g., concession stands or pavilions with roofs—you could likely argue that the current language in Chapter 22 already applies to those; it’s possible that all you need to do is post those areas.

If you are looking at extending the regulation to playgrounds, I think you could accomplish that with an ordinance amendment or new park rule, so long as the areas are clearly and obviously demarcated as to their boundaries (i.e., where the boundary starts/stops).

Would such a regulation be enforceable in practice?

We can really only speak about **legal** enforceability on this issue. Obviously, an **ordinance** would be enforceable in the normal way. Violation of Chapter 22 (the City regulations relating to municipal buildings) is deemed to be a civil infraction, rather than a misdemeanor, with a civil fine of no more than \$50 for first offense, and no more than \$100 for each subsequent offense. (Section 22-101(f).)

A **rule** adopted by resolution under Section 25-19 of the Parks Ordinance is also fully enforceable. The immediately following section, Section 25-20, relates to the enforcement of rules adopted by the Council, and it states:

Police department, the director of parks and recreation, and park employees shall have the authority to order any person acting in violation of the rules and regulations to leave a park or recreation area. [Emphasis added.]

Section 25-21 then states that:

Any person who willfully fails to obey an order by a police officer, director of parks and recreation, or public park employee to leave a park or recreation area shall be guilty of a misdemeanor. [Emphasis added.]

We presume that any ordinance or rule adopted by the City would be enforced on a complaint basis—that is, only in the event that the violation is noticed and brought to the attention of someone at the City. We also presume that there would be appropriate posting of signage. Where those signs would go and how extensive they might need to be would depend, of course, on what kind of regulation the City chose.

Our suggestion is that, if the Commission wants to pursue this, they make a recommendation to the Ordinance Review Committee as to their preferred approach, which ORC can then take to the Council as a whole.

I hope that answers your questions. If you have any more questions, please don't hesitate to call.