

ORDINANCE NO. 787-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EVERSON, WASHINGTON, PROHIBITING SMOKING AND TOBACCO USE IN PUBLIC PARKS AND TRAILS, ADDING A NEW SECTION 12.08.115 AND AMENDING SECTION 12.08.160 OF THE EVERSON MUNICIPAL CODE, AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Everson through the exercise of its police power has the authority to regulate parks and trails located within the City in order to promote the health, public safety, and the general welfare of the public; and

WHEREAS, the City's parks and trails are intended for the healthy enjoyment of all residents and visitors to the City, including children and youth, and those partially or wholly disabled by respiratory disease; and

WHEREAS, a 2006 study conducted by the Surgeon General entitled *Health Consequences of Involuntary Exposure to Tobacco Smoke*, concluded that children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome, acute respiratory infections, ear problems, and more severe asthma, and that the scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke; and

WHEREAS, the US Environmental Protection Agency has classified second hand smoke as a Group A human carcinogen and therefore concludes that secondhand smoke is a risk to nonsmokers; and there is no safe level of exposure to secondhand smoke and even brief exposure can cause immediate harm; and

WHEREAS, the American Lung Association has reported that tests by the US Food and Drug Administration identified detectable levels of toxic cancer causing chemicals were found in some e-cigarettes and that there may be risks associated with secondhand emissions from e-cigarettes; and

WHEREAS, many parks and trails in the City contain brush and trees, which can be combustible, particularly in dry summer months, and the parks and trails do not contain facilities for disposing of tobacco products, and tobacco products that are not completely extinguished pose an increased risk of fire, and the City has no reasonably effective mechanism to assure that any lit tobacco products used in a City park or on a City trail are completely extinguished prior to disposal; and

WHEREAS, City staff have reported that smoking, e-cigarette use, and tobacco use in parks and trails has resulted in litter of cigarette butts, cigar butts, and other related waste, requiring City resources to remove and dispose of; and

WHEREAS, public notice was provided in the Lynden Tribune on November 22, 2017 regarding the holding of a public hearing before the Everson City Council on December 12, 2017 to consider proposed amendments to Chapter 12.08 of the Everson Municipal Code prohibiting smoking in City parks and trails; and

WHEREAS, on November 22, 2017, the City of Everson, acting as lead agency under RCW 43.21C, the State Environmental Policy Act (SEPA), issued a Determination of Nonsignificance with respect to said proposed amendments to Chapter 12.08 EMC; and

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WHEREAS, a duly advertised public hearing before the Everson City Council was held on December 12, 2017 where opportunity for public comment was provided and public testimony was received; and

WHEREAS, after considering the testimony received at the public hearing, the City Council has determined that it is in the interest of the public health and safety, and in the best interests of the citizens of Everson, to prohibit smoking, the use of e-cigarettes, and the use of tobacco and related smoking products in the public parks and trails within the City, and to establish a civil penalty for violation of the prohibition and declare and establish that any second or further violations of the prohibition shall be a misdemeanor; and the City Council has further determined that signage identifying that a City park and/or trail is "Smoking and Tobacco-Free," and that smoking and the use of tobacco products is in violation of city code should be erected in all City parks and along all City trails;

NOW THEREFORE, the City Council of the City of Everson, Washington do hereby ordain as follows:

Section 1: A new Section 12.08.115 is hereby added to the Everson Municipal Code to read as follows:

12.08.115 Smoking prohibited.

It is unlawful for any person to smoke or light cigars, cigarettes, tobacco or other smoking material, including electronic nicotine delivery devices including, but not limited to, electronic cigarettes, vapor cigarettes, or similar products, within city parks or on city trails. The first violation of this section shall be a civil infraction under subsection 12.08.160 (A) of the Everson Municipal Code shall be subject to the penalties set forth therein. Any second or further violation of this prohibition shall be a misdemeanor under subsection 12.08.160 (B) EMC and shall be subject to the penalties and punishments set forth therein.

Section 2: Section 12.08.160 of the Everson Municipal Code is hereby amended to read in its entirety as follows:

12.08.160 Violation – Penalty.

- A. First Offense. The first violation of any of the provisions of this chapter within a 365-day period shall be a civil infraction punishable by a maximum penalty of \$250.00.
- B. Second Offense. A second or further violation of any of the provisions of this chapter within a 365-day period shall be a simple misdemeanor, and may be punished by a fine of not more than \$1,000 or by imprisonment not to exceed 90 days or by both such fine and imprisonment.

Section 3: Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

Section 4: Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

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PASSED by a majority of the whole membership of the City Council of the City of Everson, Washington, and there signed and approved by its Mayor, at a regular meeting of said Council held this 12th day of December 2017.

CITY OF EVERSON, WASHINGTON



JOHN PERRY, Mayor

ATTEST:



JENNIFER BELL
City Clerk

APPROVED AS TO FORM:



JONATHAN SITKIN
City Attorney