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In Montclair: Smoking Ban Draws Support, Criticism

Eric Kiefer, May 25 2014

Individual freedoms versus the rights of the public ... where do you stand?

Montclair's new smoking ban, approved by the Township Council on April 29, took effect on Monday, making it illegal to puff on a cigarette, cigar or e-cigarette in any municipal park or on certain township-owned properties such as the Municipal Building, Police Department Headquarters, the Department of Community Services Yard and the Montclair Water Bureau. Violations of the ordinance are punishable by a \$250 fine for the first offense and \$500 for each additional offense.

The Times contacted several municipal officials and proponents/opponents of the ban, asking them to share their views about the new law.

AN EXAMPLE OF OVERREGULATION

Councilman-at-Large Rich McMahon, the lone dissenting vote in approving the ban, told The Times that the ordinance is an example of "overregulation" in America.

"We all have to respect each other, but do we need ordinances or just common sense and decency?" questioned McMahon, who pointed out that he's a nonsmoker but still opposes the ban.

"Smoke goes up ... I don't think someone smoking a cigarette a hundred yards away from someone else is going to affect anyone."

"This law is a symptom of a greater wrong, government overreach," stated Audrey Silk, founder of NYC Citizens Lobbying Against Smoker Harassment (CLASH), an organization that filed a successful lawsuit in 2013 that helped to overturn a smoking ban in New York's state parks.

Citing recent studies and research from sources such as the Journal of the National Cancer Institute, Silk stated that the debate regarding harm from cigarette smoke indoors remains controversial.

"It's long been the strategy of anti-smoker crusaders to use the threat of harm from secondhand smoke to create fear among nonsmokers," posited Silk.

Some Montclairites, such as Alex Zarenin of Buckingham Road, only have problems with certain aspects of the ban, such as the prohibition of e-cigarettes.

"While regular cigarettes bring smoke, litter, and fire hazards, electronic vaping devices have nothing of that," stated Zarenin. "Lumping them together with real cigarettes into a common ban is simply wrong ... In my view, this is an

encroachment on personal liberties without any societal benefit."

PROTECTING PUBLIC HEALTH

Fourth Ward Councilwoman Renée Baskerville told The Times that the new ban will help to promote a healthier lifestyle, and in the long run, will reduce the community-borne cost of treating tobacco-related illnesses.

"I certainly think that every individual has a right to choose to smoke in their car or in their home," said Baskerville. "But when it's inflicted on others who don't want it afflicted on them, that's where I have a concern."

Mayor Robert Jackson told The Times that while there are strong feelings on both sides of the issue, he thinks the ordinance "balances the need to protect public health without creating inordinate impositions on the rights of smokers."

Also speaking in favor of the new ban, Deputy Mayor Robert Russo said that the rights of individuals to smoke have to be balanced against the legitimate health needs and concerns of the general public.

"The concentration of smoke and cigarette debris around the entrances to our township buildings is very annoying to most residents who use our facilities," Russo said. "And the bad effects of smoke in our parks on children and the elderly make it essential we protect them from this increasing health hazard."

According to Karen Blumenfeld, executive director of Global Advisors on Smokefree Policy (GASP), the law will provide for a healthy environment for children to play. Blumenfeld stated the law will also protect the environment from tobacco litter and lower fire risk, thus reducing parks maintenance costs.

GASP reports that eight other Essex County municipalities have 100 percent smoke-free parks and recreational areas, including West Orange, Nutley and Fairfield.

ENFORCING THE LAW

Now that the law is in place, how will it be enforced?

According to Township Attorney Ira Karasick, successful prosecution would require a credible witness to a violation, such as a municipal code enforcement officer, as well as the issuance of a summons.

"I can't speculate on whether enforcement will be difficult," Karasick told The Times, "But I'm sure there will be challenges."

Baskerville said it's her belief that people move to certain area because they want to be part of the prevailing social culture, and if the culture in Montclair includes an ordinance that prevents people from smoking in parks, then people will eventually come to accept the law.

"I envision it as a goodwill effort," said Baskerville, who said she thinks the majority of smokers will opt to not violate the ordinance.

McMahon didn't share his colleague's optimism, and told The Times that the ordinance would be difficult to enforce: "Frankly, I don't think anyone's ever received a ticket in the town of Montclair for smoking, and I don't anticipate that will change."

"Ultimately, when all is said and done, unless the police have nothing better to do than patrol parks for smokers, the worth of this ban is the price of the piece of paper it's written on," opined Silk of CLASH.

"Enforcement of such outdoor bans across the country prove to be nonexistent, and people continue to smoke, contrary to any grasp at a legitimizing straw that it's self-enforcing through signage and empowered nonsmokers. That couldn't be further from the truth. It's a pure perception game by lawmakers to show that they've done something."

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