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Lake County Board of Supervisors,

I appreciate the opportunity to bring back the discussion regarding a Tobacco Retail License, as well as looking into others ways we can address the Lake County's consistently low Health Rankings. Cigarette smoking remains the leading cause of preventable disease, disability and death in the United States. Thank you for taking the time to learn more about the health risks of Tobacco Products, Secondhand Smoke (SHS) and effects of tobacco litter on the environment!

It is our hope that this valuable material will solidify information that you may already know, educate you on new and different facts, and provide you with resources that can help you in your work to address Lake County's Health Rankings.

Included within this packet is the draft Tobacco Retail License (TRL) that was developed with the board of supervisor's suggestions prior to the COVID-19 pandemic, a model ordinance for addressing Smoke and Tobacco-Free Outdoor Areas, some facts, figures and technical information on the dangers and harms of SHS, the economic and ecological impact of tobacco litter, and supporting documentation. This educational packet contains resources that may be useful as you review these issues.

If you have any questions please feel free to call or email.

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February 7, 2023 Agenda Item Resources

Tobacco Retail License

- Draft Tobacco Retail License with County of Lake Board of Supervisors suggested revisions from January 2020 (LCTEP)
- Comprehensive Tobacco Retailer License Policy Options
 - Flavored Tobacco: SB793 fact sheet (LCTEP)
 - Tobacco Product Waste: The Burden of Tobacco on the Environment (LCTEP)
 - Product Placement and Advertising plug in options (Norcal4health)

Smoke-free outdoor Places

- Smoke- And Tobacco-Free Outdoor Areas Model Ordinance (LCTEP)
 - City of Clearlake Smoking in Public Places Ordinance
 - Health Services Smoke-free campus Policy
 - County Ord. No. 2215 Tobacco and smoke-free jail

Smoke-free Multi-Unit Housing

- Everyone Deserves To Have a Healthy, Smoke-free Home! (HASPI-CAN)
- US Laws for 100% Smoke-Free Multi-Unit Housing

Additional Resources:

Youth Voices video

<https://www.youtube.com/watch?v=haki-ij3oY>

Tobacco Product Waste video

https://youtu.be/9-Y_IVE9xLQ

[Tobacco-Product-Waste-Toolkit.pdf \(publichealthlawcenter.org\)](#)

[Retail Sales, Internet Sales, and Licensure | Public Health Law Center](#)

[Online-Sales-E-Cigarettes-Other-Tobacco-Products.pdf \(publichealthlawcenter.org\)](#)

[Online-E-Cigarette-Sales-and-Shipments-to-Consumers-State-Laws-Prohibiting-Them.pdf \(publichealthlawcenter.org\)](#)

Chapter 0.00 - TOBACCO RETAILER LICENSE

0.00.000 - Purpose and application.

- A. In promoting the health, safety, and general welfare of its residents, the County has a substantial interest in encouraging compliance with Federal, State, and local laws regulating tobacco sales and use.
- B. State law permits local governments to enact ordinances regarding the local licensing of retailers of tobacco and allows for the suspension or revocation of a local license for a violation of any State tobacco control law.
- C. This Chapter is adopted to: (1) ensure compliance with business standards and practices of the County; (2) to encourage responsible retailing of tobacco; and (3) to discourage violations of tobacco-related laws, but not to expand or reduce the degree to which the acts regulated by Federal or State law are criminally proscribed or otherwise regulated.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Definitions.

For the purpose of this Chapter, the following words and terms shall have the following meaning:

- A. "Department" means the Lake County Health Services Department.
- B. "Drug paraphernalia" shall have the definitions set forth in California Health and Safety Code Section 11014.5, as that Section may be amended from time to time.
- C. "Health Officer" means the Health Officer of the County of Lake or his or her designee.
- D. "License" means a tobacco retailer license issued by the County pursuant to this Chapter.
- E. "Licensee" means any proprietor holding a license issued by the County pursuant to this Chapter.
- F. "License fee" means the charge established by resolution of the Board of Supervisors of the County of Lake, calculated to recover the reasonable regulatory costs of issuing and administering licenses, retailer education, performing investigations, inspections, and the administrative enforcement and adjudication thereof.
- G. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- H. "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten (10) percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.
- I. "Tobacco accessories" means any item designed or marketed for the consumption, use, or preparation of tobacco products.
- J. "Tobacco product" means:

(1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and

(2) any electronic device that delivers nicotine or other substances to the Person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.

(3) Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately. "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

K. "Tobacco retailer" means any person who engages in tobacco retailing.

L. "Tobacco retailing" means selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco accessories without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Mandatory license.

- A. Any person who is or intends to become a tobacco retailer shall obtain pursuant to this Chapter a license for each fixed location at which tobacco retailing is to occur.
- B. Any person who is a tobacco retailer as of the effective date of the ordinance enacting this Chapter shall obtain a license within ninety (90) days of the effective date of the ordinance that enacted this Chapter.
- C. Any person who intends to act as a tobacco retailer shall obtain a license prior to acting as a tobacco retailer.
- D. Each license shall be prominently displayed in a publicly visible location at the licensed location.
- E. Nothing in this Chapter shall be construed to grant any licensee any status or right other than to act as a tobacco retailer at the location identified on the face of the license, subject to compliance with all other applicable laws, regulations, or ordinances.
- F. Nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Issuance of license.

- A. No license shall be issued to authorize tobacco retailing at other than a fixed business location. It is unlawful for any person to engage in tobacco retailing at non-fixed locations. For example, tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.
- B. No license shall be issued to authorize tobacco retailing at a temporary or recurring temporary event. For example, tobacco retailing at flea markets and farmers' markets is prohibited.
- C. No license shall be issued to authorize tobacco retailing at any location for which a license suspension is in effect or during a period of ineligibility following a revocation pursuant to Section 0.00.000.
- D. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this Chapter for a licensee, or any of the licensee's agents or employees, to violate any local, State, or Federal law applicable to tobacco products, tobacco paraphernalia, or tobacco retailing.

- E. No person engaged in tobacco retailing shall sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of twenty-seven (27) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under State law to purchase and possess the tobacco product or tobacco paraphernalia.
- F. No person who is younger than the minimum age established by State law for the purchase or possession of tobacco products shall engage in tobacco retailing.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Applications for license.

All applications for a license shall be submitted to the Department in the name of each proprietor proposing to conduct tobacco retailing and signed by each prospective proprietor or an authorized agent. Each license application must be accompanied by the required license fee, which is set by resolution of the Board of Supervisors. A proprietor proposing to conduct tobacco retailing at more than one (1) location shall submit a separate application for each location. Every application shall contain the following information:

- A. The name, address, and telephone number of each prospective proprietor;
- B. The business name, address, and telephone number of the fixed location for which the license is sought;
- C. Whether or not each prospective proprietor has previously been issued a license pursuant to this Chapter that is, or was at any time, suspended or revoked and, if so, the date of the suspension or revocation;
- D. Proof that the location for which a license is sought has been issued a valid State cigarette and tobacco products retail license by the State of California Board of Equalization pursuant to the California Cigarette and Tobacco Products Licensing Act of 2003 (Cal. Bus. & Prof. Code, §§ 22970 et seq.);
- E. A statement signed by each prospective proprietor that no drug paraphernalia is or will be sold at the location for which the license is sought;
- F. A statement signed by each prospective proprietor that the proprietor is informed of the laws affecting licenses; and
- G. Such other information as the County deems necessary for the administration of this Chapter.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Issuance of a license.

- A. Upon the receipt of a complete application for a license and the license fee required by this Chapter, the Health Officer shall issue a license unless one (1) or more of the following grounds exists:
 - 1. The application is incomplete or inaccurate;
 - 2. The application seeks authorization for tobacco retailing at a location for which a suspension is in effect pursuant to this Chapter, for which a license has been revoked pursuant to this Chapter, or for which this Chapter otherwise prohibits issuance of licenses;
 - 3. The application seeks authorization for tobacco retailing for a prospective proprietor for whom a suspension is in effect pursuant to this Chapter for the subject location or another location,

whose License has been revoked pursuant to this Chapter for the subject location or another location, or to whom this Chapter otherwise prohibits a license to be issued;

4. The Department has information that the prospective proprietor or his or her agent or employee has violated any local, State or Federal tobacco control law, including this Chapter, within the preceding twelve (12) months; or
 5. The application seeks authorization for tobacco retailing that is prohibited pursuant to this Chapter, that is otherwise unlawful pursuant to this Code, or that is unlawful pursuant to any other local, State, or Federal law.
- B. Any denial of an application for a license shall be in writing, setting forth the reasons for the denial and notifying the applicant for a license that the decision to deny an application for a license shall become final unless the applicant seeks an appeal pursuant to Section 0.00.000 within fourteen (14) calendar days of the date of service of the Health Officer's decision. Service of the decision shall be provided in accordance with the service requirements set forth in Subsection A of Section 0.00.000.
- C. All information required to be submitted pursuant to Section 0.00.000 in order to apply for a license shall be updated whenever the information changes. A tobacco retailer shall provide the Department with any updates within ten (10) business days of a change.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - License renewal and expiration.

- A. A license is invalid unless the appropriate license fee has been paid in full and the term of the license has not expired. The term of a license is one (1) year beginning each fiscal year on July 1st and ending on June 30th of the following year. Each tobacco retailer shall apply for the renewal of his or her license and submit the license fee no later than thirty (30) calendar days prior to expiration of the term.
- B. A license that is not timely renewed shall expire at the end of its term. To reinstate a license that has expired, or to renew a license not timely renewed pursuant to Subsection A of this Section, the proprietor must:
1. Submit the license fee; and
 2. Submit a signed affidavit affirming that the proprietor:
 - a. Has not sold and will not sell any tobacco product or tobacco paraphernalia after the license expiration date and before the license is renewed; or
 - b. Has waited the appropriate ineligibility period established for tobacco retailing without a license, as set forth in Section 0.00.000, before seeking renewal of the license.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - License nontransferable.

- A. A license may not be transferred from one person to another or from one location to another. Whenever a tobacco retailing location has a change in proprietors, a new license is required.
- B. Notwithstanding any other provision of this Chapter, prior violations at a location shall continue to be counted against a location, and license ineligibility periods shall continue to apply to a location unless:
1. The location has been fully transferred to an entirely new proprietor or fully transferred to entirely new proprietors; and

2. The new proprietor(s) provides the Department with clear and convincing evidence that the new proprietor(s) has acquired or is acquiring the location in an arm's length transaction. As used in this Section, the term "arm's length transaction" shall mean a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two (2) informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this Chapter is not an arm's length transaction.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Inspections, investigations and enforcement.

- A. Compliance with this Chapter shall be monitored by the Department or any law enforcement officer. Employees of the Department or a law enforcement officer may conduct compliance checks, including but not limited to youth decoy operations. Any law enforcement officer may enforce the penal provisions of this Chapter. Compliance checks may be unannounced.
- B. The County shall not enforce any tobacco-related minimum age law against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:
 1. The youth decoy is participating in a compliance check supervised by an employee of the Department or a law enforcement officer;
 2. The youth decoy is acting as an agent of a person designated by the County to monitor compliance with this Chapter;
 3. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Department.
- C. Whenever evidence of a violation of this Chapter is obtained in any part through the participation of a person under the age of eighteen (18) years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Suspension or revocation of license.

- A. In addition to any other remedy authorized by law, after notice and opportunity to be heard pursuant to Section 0.00.020 of this Chapter, a license may be suspended or revoked as provided in this Section if the Health Officer finds by a preponderance of the evidence that the licensee, or any of the licensee's agents or employees, has:
 1. Violated any of the requirements, conditions prohibitions of this Chapter; or
 2. Pleaded guilty, "no contest" or its equivalent, or admitted to any of the following:
 - a. The original or renewal application contained incorrect, false, or misleading information;
 - b. One or more of the grounds for denial listed in Section 0.00.000 existed before the license was issued; or

- c. A licensee is convicted of a misdemeanor or felony violation of any Federal, State, or local tobacco retailing law or regulation, including any provision of this Chapter.
- B. During any period of suspension or revocation, the licensee shall remove all tobacco products and tobacco paraphernalia from public view. Failure to do so may be considered a subsequent violation.
- C. When the Health Officer finds a violation as set forth in Subsection A of this Section, the license shall be suspended or revoked as follows:
 - 1. Upon a finding by the Health Officer of a first license violation, the license shall be suspended for thirty (30) days, with an administrative penalty of five hundred and no/100ths (\$500.00) dollars.
 - 2. Upon a finding by the Health Officer of a second license violation within any sixty (60) month period, the license shall be suspended for sixty (60) days, with an administrative penalty of seven hundred fifty and no/100ths (\$750.00) dollars.
 - 3. Upon a finding by the Health Officer of a third license violation in any sixty (60) month period, the license shall be suspended for one hundred twenty (120) days, with an administrative penalty of one thousand and no/100ths (\$1,000.00) dollars.
 - 4. Upon a finding by the Health Officer of a fourth license violation within any sixty (60) month period, the license shall be revoked and no new license shall issue for the location until five (5) years has passed from the date of revocation.
 - 5. Upon a finding by the Health Officer of more than one violation in a twelve (12) month period, the license shall be suspended for three hundred and sixty five (365) days.
- D. Violation by a licensee at one location shall not be construed as a violation at another location of the same licensee, nor shall violations by a prior licensee at the same location be accumulated against a subsequent licensee at the same location.
- E. A license shall be revoked if the Health Officer finds that one or more of the grounds for denial of an application for a license pursuant to Section 0.00.000 existed at the time the application was made or at any time before the license was issued.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Penalties for tobacco retailing without a license.

- A. In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Health Officer finds after notice and opportunity to be heard pursuant to Section 0.00.000 of this Chapter, that any person has engaged in tobacco retailing at a location without a valid license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a License as follows:
 - 1. After a first violation of this Section at a location, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until sixty (60) days have passed from the date of the violation.

2. After a second violation of this Section at a location within any sixty (60) month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until one hundred eighty (180) days have passed from the date of the violation.
 3. After a third or subsequent violation of this Section at a location within any sixty (60) month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until five (5) years have passed from the date of the violation.
- B. Any imposition of a penalty pursuant to this Section shall be in writing, setting forth the reasons for the imposition of a penalty and notifying the person subject to the penalty that the decision to impose the penalty shall become final unless the person seeks an appeal pursuant to Section 0.00.000 within fourteen (14) calendar days of the date of service of the Health Officer's decision. Service of the decision shall be provided in accordance with the service requirements set forth in Subsection A of Section 0.00.000.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Health Officer decision.

- A. Upon determining the existence of any of the grounds pursuant to this Chapter for the suspension or revocation of a license, or the imposition of a penalty for tobacco retailing without a license, the Health Officer shall issue a notice of intended decision to the applicant for a license, the licensee, or the person against whom the penalty for tobacco retailing without a license is directed. The notice shall be provided by personal service or by first class mail, postage prepaid, and shall include a copy of the affidavit or certificate of mailing.
- B. The notice of intended decision shall state all the grounds upon which the revocation, suspension, or imposition of penalty is based.
- C. The notice of intended decision shall specify the effective date of the action.
- D. The notice of intended decision shall state that the Health Officer shall give the applicant for a license, the licensee, or the person against whom the penalty for tobacco retailing without a license is directed an opportunity to request a hearing thereon. The hearing shall be an informal hearing before the Health Officer. Following the hearing, or within a reasonable time if no hearing is requested, the Health Officer shall issue a decision and serve the decision in accordance with the service requirements set forth in Subsection A of this Section.
- E. The decision of the Health Officer shall be in writing, setting forth the reasons for the decision, and shall advise the applicant for a license, the licensee, or the person against whom the penalty for tobacco retailing without a license is directed that the decision to suspend or revoke the license, or to impose the penalty for tobacco retailing without a license shall become final unless the applicant for a license, the licensee, or the person against whom the penalty for tobacco retailing without a license is directed seeks an appeal pursuant to Section 0.00.000.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Appeal procedures.

With regard to any denial of an application for a license pursuant to Section 0.00.000 or any decision issued by the Health Officer pursuant to Section 0.00.000, the following rules apply:

- A. A decision of the Health Officer to deny an application for a license, to suspend or revoke a license, or to impose a penalty for tobacco retailing without a license can be appealed to a Hearing Officer, subject to the following requirements and procedures. A person served with a decision issued pursuant to Subsection B of Section 0.00.000 or Subsection D of Section

0.00.000 may seek an appeal by filing with the Health Officer a written request for hearing within fourteen (14) calendar days of service of the decision. Failure to timely file a written request for hearing shall be deemed a waiver of the right to challenge the decision of the Health Officer and a failure to exhaust administrative remedies. The hearing officers shall be individuals selected by the County who may hear the appeals, issue subpoenas, receive evidence to administer oaths, rule on questions of law and the admissibility of evidence, prepare a record of the proceedings, and issue orders with regard to an appeal.

B. The **Board of Supervisors** Hearing Officer shall schedule a hearing.

1. Written notice of the time, date and location of a hearing before the Hearing Officer shall be given by personal service or by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the appellant.
2. Hearing Procedures.
 - a. Requirements for Taking Testimony. In any proceeding before a Hearing Officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the Hearing Officer, his/her clerk, or other designee shall have the power to administer oaths and affirmations and to certify to official acts. Oaths of witnesses may be given individually or en masse. Witnesses shall be asked to raise their right hands and to swear or affirm that the testimony they shall give will be the truth, the whole truth, and nothing but the truth.
 - b. Continuances. The Hearing Officer may continue the hearing as determined appropriate by the Hearing Officer.
 - c. Administrative Interpretations. In conducting the hearing, the Hearing Officer shall consider the previously established interpretation of an ordinance provision by the Department charged with its enforcement unless that interpretation is shown to be clearly erroneous or unauthorized.
 - d. Hearing Officer Decisions. Within thirty (30) calendar days after the close of the hearing, the Hearing Officer shall issue a written decision, including a statement of the basis for the decision. The Hearing Officer's written decision shall constitute the final administrative decision of the County.
 - e. In the event a civil action is initiated to obtain enforcement of the decision of the Hearing Officer, and judgment is entered to enforce the decision, the person against whom the order of enforcement has been entered shall be liable to pay the County's total costs of enforcement, including reasonable attorney's fees.

C. The appellant's failure to appear at the hearing on appeal shall constitute an abandonment of the review request and a failure to exhaust administrative remedies.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Other penalties.

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

- A. Violations of this Chapter may, in the discretion of the District Attorney, be prosecuted as infractions or misdemeanors.
- B. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a violation.
- C. Violations of this Chapter are hereby declared to be public nuisances.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Stipulated fine in lieu of hearing.

For a first alleged violation of this Chapter the Health Officer may allow a tobacco retailer alleged to have violated this Chapter to stipulate in writing to the penalties provided in this Section in lieu of the penalties that would otherwise apply pursuant to this Chapter and to forego any right the tobacco retailer may have to a hearing pursuant to Section 0.00.000. Notice of any stipulation shall be provided to the Sheriff's Office, and no hearing shall be held. Stipulations shall not be confidential, shall be in writing, and shall contain the following terms plus any other noncriminal provisions established by the Health Officer in the interests of justice:

A. After a first alleged violation of the Chapter at a location:

1. A tobacco retailer can opt to pay a one-time only administrative penalty of one thousand and no/100ths (\$1,000.00) dollars;

1. An agreement by the tobacco retailer to stop acting as a tobacco retailer for one (1) day;

2. An administrative penalty of one thousand and no/100ths (\$1,000.00) dollars;

3. An admission by the tobacco retailer that the first alleged violation of the Chapter at the location occurred; and

4. An agreement that the first alleged violation of the Chapter at the location shall be considered in determining the penalty for any future violation.

B. After a second alleged violation of the Chapter at a location within any sixty (60) month period:

1. An agreement by the tobacco retailer to stop acting as a tobacco retailer for ten (10) days;

2. An administrative penalty of five thousand and no/100ths (\$5,000.00) dollars;

3. An admission by the tobacco retailer that the second alleged violation of the Chapter at the location occurred; and

4. An agreement by the tobacco retailer that the second alleged violation of the Chapter at the location will be considered in determining the penalty for any future violations.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Implementation.

The Department shall begin implementing the provisions of this Chapter effective 00 0, 2020.

(Ord. No. 0000, § 0, 0-00-2020)

0.00.000 - Severability.

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter or the application of such provision to other persons or circumstances shall not be affected thereby.

(Ord. No. 0000, § 0, 0-00-2000)

Tobacco Retail License Policy Options

Tobacco Retail Licensing (TRL) is a cost-effective best practice to reduce availability of addictive and deadly tobacco products. The policies provide resources for local enforcement and are proven to reduce illegal sales. A license fee is just large enough to fund administration and enforcement of tobacco laws.

CORE ELEMENTS OF A TOBACCO RETAIL LICENSE POLICY

- All tobacco product retailers must obtain a nontransferable License.
- Pay an annual licensing fee that fully covers all program costs, including administration and enforcement.
- Licensing program will be administered by (e.g. who issues the license?):
- Licensing program will be enforced by _____ but also enforceable by any agency.
- Youth decoy operations will be conducted by (if different from enforcement agency):
- Each violation results in a suspension of the privilege to sell tobacco products and paraphernalia for (30) days for a 1st licensing violation; (90) days for a 2nd violation; (365) days for a 3rd violation; and revocation of the privilege for a 4th violation.
- Number of years past violations will be tracked (minimum of 5 years):
- Number of mandatory inspections is (e.g. times each store is checked per year):
- The hearing process will be an administrative process (attorneys and court system need not be involved).

ADDITIONAL OPTIONS (with brief explanation). Additional options can be tailored to each community as needed.

License Eligibility

- **No new licenses near schools and youth-populated areas (500-1000').** Youth exposure to tobacco retailers is directly correlated to youth initiation to smoking.
- **New tobacco retailers must be located a specified minimum distance from existing retailers.** This prevents inequitable concentration of unhealthy options in certain neighborhoods.
- **No license for a business that contains a pharmacy.** Corporate pharmacies (such as Safeway and Rite-Aid) are now used to this and will comply without argument.
- **Number of available licenses is limited based on population.** State Alcoholic Beverage Control (ABC) recommends 1 retailer for every 2,500 people.
- **No tobacco sales at restaurants and bars.** Non-traditional retailers such as restaurants have sold tobacco to youth at higher rates than the statewide average. Smoking in restaurants and bars is already illegal.
- **No tobacco sales at businesses that allow smoking.** State law prohibits smoking in most businesses, except in tobacco shops, private smokers' lounges, and

unenclosed areas such as bar patios. This also covers hookah bars, whose primary profit is from actively inducing and encouraging people to smoke.

- **No mobile vending.** This supports the statewide effort to reduce availability of illegal delivery of tobacco products bought through the mail or online.

Product, Price, Place & Promotion

- **Prohibit the sale of all flavored tobacco products, including menthol cigarettes.** Flavored tobacco is the main reason kids start smoking, which has led to the alarming increase in youth tobacco use.

Tobacco companies spend most of their promotional dollars (nearly one-million dollars an hour) on activities to keep the price of tobacco products low. This is even more prevalent in rural communities. The following three policies create a price barrier that protects youth from addiction and helps smokers quit:

- **Prohibition on redemption of tobacco discounts, coupons, and promotions.** Tobacco companies target low-income neighborhoods and rural areas with price discounts to keep addiction cheap while charging full price in higher income areas.
- **Establishment of a minimum package size for little cigars and cigars.** Little flavored cigars are a favorite among youth. This policy raises the cost barrier without increasing the cost of the product.
- **Establishment of a Minimum price for cigarettes, little cigars, and cigars.** In conjunction with minimum pack size, this policy sets a minimum floor price to prevent increased sales of cheap products (such was the case when flavored cigarettes were banned and kids started smoking flavored little cigars).
- **Reducing placement of unhealthy advertising in kid-friendly locations.** This could be applied to all products that are documented as unhealthy to kids, not just tobacco.
- **Reduce outdoor signage.** This provision promotes visibility into the store to improve public safety and can also improve community aesthetics by reducing advertising clutter.

Other Provisions

- **No drug paraphernalia sales.** This provision can be part of a local tobacco retailer licensing to make violations of state laws regarding drug paraphernalia or controlled substances a violation of a tobacco retailer license as well.

California Law Prohibits the Sale of Menthol Cigarettes and Other Flavored Tobacco Products from Stores and Vending Machines

Health and Safety Code Section 104559.5

Fact Sheet

On August 28, 2020, California Governor Gavin Newsom signed Senate Bill (SB) 793 (Chapter 34, Statutes of 2020) into law, and on November 8, 2022, California voters upheld the law via referendum. The new law prohibits the sale of menthol cigarettes and nearly all other flavored tobacco products, including flavored electronic cigarettes (e-cigarettes), as well as tobacco product flavor enhancers, from stores and vending machines in California.

Effective upon certification of the vote, sales of the following tobacco products from retail locations are no longer permitted:

- Flavored e-cigarettes or vapes that deliver nicotine or another vaporized liquid, e-juice, pods, or cartridges
- Menthol cigarettes
- Flavored little cigars and cigarillos
- Flavored smokeless tobacco products
- Flavored blunt wraps
- Flavored loose-leaf roll-your-own tobacco
- Flavored tobacco rolling papers
- Tobacco product flavor enhancers

The law does not apply to flavored premium cigars with a wholesale price of \$12 or more, and flavored loose-leaf pipe tobacco. Flavored shisha/hookah tobacco may only be sold in licensed stores that only allow people 21 or older on the premises at any time.

Licensed stores must also operate in accordance with all state and/or local laws relating to the sale of tobacco and use of tobacco on the premises (for hookah retailers that permit use of tobacco on the premises).

Penalties: Retailers or their agents or employees that sell, offer for sale, or possess with the intention of selling, any of the flavored tobacco products covered by the law or tobacco product flavor enhancers will be guilty of an infraction and fined \$250 for each violation.

This law does not include penalties for personal purchase, use, or possession with the intent to use a flavored tobacco product. The penalties in the law only apply to retailers who *sell, offer for sale, or possess* with the intention of selling a

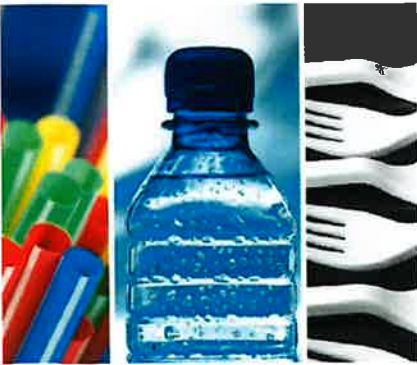
flavored tobacco product or tobacco product flavor enhancer. Compliance with the law lies solely with retailers.

Compliance: Retailers are expected to comply with the law and are required to immediately remove the current stock of flavored tobacco products covered by the law and tobacco product flavor enhancers from their shelves.

Jurisdictions with Existing Local Flavored Tobacco Laws: All jurisdictions in California must now implement the state law and prohibit the retail sale of flavored tobacco products covered by the law. In jurisdictions that have an existing ordinance related to the sale of flavored tobacco products, the state law replaces an existing local ordinance unless the local ordinance is more restrictive than the state law. If an existing local ordinance is more restrictive than the state law (for example, prohibits the sale of all flavored tobacco products or any of the products not covered in the state law), then retailers in that jurisdiction must continue to abide by the stronger local ordinance. The state law allows for local jurisdictions to continue to pass more restrictive local ordinances that prohibit sales of flavored tobacco products not included in the state law. For example, a jurisdiction may apply these same restrictions to hookah tobacco and prohibit the sale of all hookah tobacco from all stores in that jurisdiction.

The Burden of Tobacco on the Environment

Single-Use Plastics and Disposable Vapes



WHAT ARE SINGLE-USE PLASTICS?

Single-use plastics are just what they sound like: a plastic item that is made to be disposed of after use. Common examples of single-use plastics include bottles, wrappers, straws, and plastic bags. Single-use plastic accounts for half of all plastic created worldwide each year - over 150 million tons - and only about 90% of that plastic is actually recycled. Left alone, these plastic items never fully breakdown but instead become microplastics that can contaminate waterways, oceans, ecosystems, and even the air we breathe. The production of single-use plastics is also a major contributor to climate change and planet-warming greenhouse emissions.^{1, 2, 3}



SINGLE-USE PLASTICS AND VAPING DEVICES

Vaping devices and their component parts are considered single-use plastics. This includes the device itself and all pods, cartridges, e-liquid containers, and any product packaging. Disposable vapes are also classified as a single-use plastic product. After use, all of these items are considered hazardous for the environment and are referred to as vape waste.^{4, 5}



THE ENVIRONMENTAL IMPACT OF PLASTIC VAPE WASTE

Vape waste is particularly hazardous for the environment because it creates plastic waste (the device, cartridges, and pods), toxic bio-hazard waste (the nicotine), and electronic waste (the battery) - each of which needs to be disposed of separately. Device manufacturers do not provide guidance or take responsibility for the disposal of their product's vape waste. As a result, the majority of vape waste is thrown in the trash, flushed, or littered. Once discarded, the cartridges and pods can leak toxic heavy metals into our soil and water system, posing a danger to both wildlife and humans. It is estimated that over a billion pieces of plastic vape waste is created each year, and there is no safe way to dispose of any of it.^{6, 7, 8, 9}



THE GROWING POPULARITY OF SINGLE-USE DISPOSABLE VAPES AMONG YOUTH AND YOUNG ADULTS.

Single-use disposable vapes have become increasingly popular with young people in the last year. The surge in popularity is due to a loop hole in the federal policy regulating flavored e-cigarettes, which limits flavored closed pod systems like Juul, but exempts pre-filled disposable products, like Puff Bars. The availability, low cost, and variety of youth-friendly flavors accounts for the **1000% increase of disposable vape use among high school students in the last year**. Popular disposable vape brands include Puff Bar, Stig, Ezzy, Switch, and Hype Bar. Like other vape waste, there is currently no way to safely dispose of any of these single-use disposable vapes.^{10, 11}

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- 1 Natural Resources Defense Council (2020). Single-Use Plastics 101. Retrieved from: <https://www.nrdc.org/stories/single-use-plastics-101>.
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- 8 Public Health Law Center (2019). Disposing of E-Cigarette Waste. Retrieved from: <https://www.publichealthlawcenter.org/sites/default/files/resources/Disposing-of-E-Cigarette-Waste-FAQ-for-Schools-and-Others.pdf>.
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- 10 Gentzke AS, Wang TW, Jamal A, et al. Tobacco Product Use Among Middle and High School Students — United States, 2020. MMWR Morb Mortal Wkly Rep 2020;69:1881-1888. DOI: <http://dx.doi.org/10.15585/mmwr.mm6950a1>
- 11 Truth Initiative (2020). New Federal Data: Flavored e-cigarettes continue to drive youth vaping epidemic with disposable use up 1,000% among high schoolers. Retrieved from: <https://truthinitiative.org/research-resources/emerging-tobacco-products/new-federal-data-flavored-e-cigarettes-continue-drive>.



Reduce Youth Tobacco and Nicotine Use: Product Placement and Advertising



TOBACCO COMPANIES KNOW...¹

- 90% OF SMOKERS TODAY STARTED BEFORE THEY WERE 18
- EXPOSURE TO MARKETING MORE THAN DOUBLES THE ODDS THAT KIDS WILL USE TOBACCO
- YOUTH ARE MORE LIKELY TO BE INFLUENCED BY ADS THAN BY PEER PRESSURE
- YOUTH ARE 3 TIMES MORE SENSITIVE TO TOBACCO ADS THAN ADULTS



WHAT WE KNOW

POINT OF SALE ADVERTISING BANS ARE ASSOCIATED WITH
LESS EXPERIMENTAL SMOKING AMONG YOUTH¹

ACTIONS COMMUNITIES CAN TAKE

- **LIMIT** storefront advertising to no more than 10% coverage of doors and windows.
- **RESTRICT** placement of tobacco/vape advertising, displays and products within a certain distance of youth-oriented merchandise (candy, soda, snacks, etc.).

LOCAL TOBACCO CONTROL PROJECTS CAN HELP

- Provide model policy language.
- Offer free legal resources and technical assistance.
- Help draft retail licensing policy specific to the needs of local communities.
- Provide opportunities for community collaboration and action through local coalitions.



For assistance and more
information visit:

www.NorCal4Health.org
Facebook: [NorCal 4 Health](https://www.facebook.com/NorCal4Health)



¹ - The Association between Point-of-Sale Advertising Bans and Youth Experimental Smoking: Findings from the Global Youth Tobacco Survey (GYTS). DECEMBER, 2015. AIMS Public Health, 2 (4): 832-843 DOI: 10.3934/publichealth.2015.4.832



Sample Policy Language:

Tobacco Product Placement & Advertising



A healthy retail environment is best practice to reduce youth initiation into tobacco and nicotine use.

Point-of-sale marketing is the main way tobacco companies reach customers and potential customers (kids). Most of the money spent on marketing (95.2%) is in the form of price promotions that keep the cost of addiction affordable.¹

RURAL COUNTY TAKES ACTION

September 13, 2022 Del Norte County Board of Supervisors unanimously passed a Tobacco Retail License with a restriction on advertising and tobacco product placement.

Title: 9 - Health and Safety

Chapter: 11 - Regulation of Tobacco Retail

Section: 50 - Restriction on Advertising Tobacco Products

- (a) No person may place or maintain, or cause or allow to be placed or maintained, in any manner, any advertising or promotion of Tobacco Product on an advertising display sign in a publicly visible location within 500 hundred feet of the perimeter of an elementary or secondary school, high school, public playground or playground area in a public park (e.g., a public park with equipment such as swings and seesaws, baseball diamonds or basketball courts), child day care facility as defined in Health and Safety Code Section 1596.750, public community center or public library.
- (b) No Tobacco Retailer may place or maintain, or cause or allow to be placed or maintained, in any manner, any advertising or promotion of Tobacco Products or any display containing tobacco products within 5 feet of candy, snack, or nonalcoholic beverage displays.
- (c) The restriction under subsection (b) does not apply to a Tobacco Retailer where access to the premises is prohibited for those under 21 years of age.

COMMUNITIES ARE CHANGING THE VIEW

In 2015, the City of San Diego, California adopted the following ordinance:²

§58.0302 Location of Tobacco Products and Advertising Inside Retail Establishments

- (a) It is unlawful for any person, business, tobacco retailer, or electronic cigarette retailer to place or maintain, or cause to be placed or maintained, any displays containing tobacco products within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell tobacco products, electronic cigarettes, electronic cigarette paraphernalia, or vaping juice.
- (b) It is unlawful for any person, business, tobacco retailer, or electronic cigarette retailer to place or maintain, or cause to be placed or maintained, any advertising display sign for tobacco products within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell tobacco products, electronic cigarettes, electronic cigarette paraphernalia, or vaping juice.

COMMUNITIES ARE CHANGING THE VIEW

§58.0303 Location of Electronic Cigarettes and Advertising Inside Retail Establishments

- (a) It is unlawful for any person, business, tobacco retailer, or electronic cigarette retailer to place or maintain, or cause to be placed or maintained, any displays containing electronic cigarettes, electronic cigarette paraphernalia, or vaping juice within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell tobacco products, electronic cigarettes, electronic cigarette paraphernalia, or vaping juice.
- (b) It is unlawful for any person, business, tobacco retailer, or electronic cigarette retailer to place or maintain, or cause to be placed or maintained, any advertising display sign for electronic cigarettes, electronic cigarette paraphernalia, or vaping juice within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell tobacco products, electronic cigarettes, electronic cigarette paraphernalia, or vaping juice.

§58.0304 Exceptions to Location of Tobacco Products, Electronic Cigarettes, and Advertising Inside Retail Establishments

- (a) Sections 58.0302 and 58.0303 do not apply to commercial establishments where access to the premises by persons under 18 years of age is prohibited by law.
- (b) Sections 58.0302(a) and 58.0303(a) do not apply to displays in any establishment that are located behind a counter and not accessible to patrons.

A FRIENDLY REMINDER

Per Public Health Law center, first amendment analysis is specific to each jurisdiction. It is important for jurisdictions to articulate the specific purpose of the ordinance and ensure that is carefully aligned with that purpose. Courts will look to whether there are means that are less restrictive of speech that would accomplish the same legislative purpose. It will be important to have findings indicating the effectiveness of limiting youth exposure to tobacco advertising for achieving the jurisdiction's goals.

Public Health Law center is funded to provide jurisdictions with technical assistance on commercial tobacco control, but does not lobby and cannot provide legal advice. It is suggested that jurisdictions work with their legal counsel for final language.

Helping communities create conditions for better health and prosperity



www.NorCal4Health.org



A PROJECT OF
CALIFORNIA HEALTH
COLLABORATIVE

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1 - Federal Trade Commission. (2021). Federal Trade Commission Cigarette Report for 2020.

2 - Available at <https://onbase.sandiego.gov/OnBaseAgendaOnline/Meetings/ViewMeeting?id=2019&doctype=1>. Item #54

SMOKE- AND TOBACCO-FREE OUTDOOR AREAS

Model Ordinance

 This Smoke- and Tobacco-Free Outdoor Areas Model Ordinance was prepared for California cities and counties interested in creating smoke-free or tobacco-free outdoor areas in their jurisdiction.¹

Over the last decade, many California communities have passed tobacco-free laws or regulations that cover outdoor areas such as parks, recreational facilities, beaches, outdoor workplaces, restaurant and bar patios, transit waiting areas,

and public events such as county fairs and farmers' markets. As of January 2019, more than 235 California cities and counties had adopted outdoor secondhand smoke ordinances.²



1 This 2020 model ordinance builds on a similar Smoke-Free Places ordinance developed by ChangeLab Solutions in 2013 and updated in 2018. The Public Health Law Center acknowledges the excellent work done by ChangeLab Solutions in creating the original ordinance. For more guidance on indoor areas, see our *Model Smoke-Free Multi-Unit Housing Ordinance*.

2 Tam D. Vuong et al., California Tobacco Facts and Figures, Cal. Dep't Public Health (2019), <https://www.cdph.ca.gov/Programs/CCD-PHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CATobaccoFactsandFigures2019.pdf>.

This model ordinance is based on an independent and objective analysis of the relevant law, evidence, and available data, as well as work done for the California Tobacco Control Program. The model offers cities and counties several options to tailor the ordinance to meet local needs. Readers should consider all the evidence and decide for themselves which approach is appropriate for their smoke-free or tobacco-free outdoor area needs. This policy pairs well with our *Smoke-Free Multiunit Housing Model Ordinance*.

Policy Benefits

Public Health Impact. Tobacco use is the number one cause of preventable death in California.³ Secondhand smoke has repeatedly been identified as a health hazard, and the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke.⁴

3 U.S. DEP'T OF HEALTH AND HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING: 50 YEARS OF PROGRESS, A REPORT OF THE SURGEON GENERAL (2014), https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.

4 U.S. DEP'T OF HEALTH AND HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE, A REPORT OF THE SURGEON GENERAL (2006), https://www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm.



In 2006, the California Air Resources Board identified secondhand smoke as a toxic air contaminant, in the same category as the most toxic automotive and industrial air pollutants, and a serious health threat for which there is no safe level of exposure.⁵ In its research, the Board monitored secondhand smoke concentrations at outdoor locations at an airport, a junior college campus, a public building, an office complex, and an amusement park. It found that when smokers were present, concentrations of secondhand smoke levels could be similar to those in indoor areas that allowed smoking.⁶

Many studies have also found that levels of secondhand smoke exposure outdoors can reach levels recognized as hazardous, depending on direction and amount of wind, number and proximity of smokers, and enclosures such as walls or roofs.⁷

For jurisdictions pursuing a tobacco-free policy, smokeless tobacco is not a safe alternative to smoking and causes its own share of death and disease. This includes nicotine addiction, many types of cancers, and increased risk for heart disease and stroke.⁸

Outdoor tobacco-free laws also help those who are trying to quit, by eliminating the sight and smell of tobacco use. As with all tobacco-free policies, these measures send a message to children and youth that tobacco use is not an acceptable behavior or a norm in the community.

E-cigarettes. As electronic smoking devices have proliferated and youth usage has soared, many localities have expanded or amended their outdoor clean air measures to prohibit the use of any tobacco product, including e-cigarettes. Electronic smoking device aerosol is not harmless water vapor. Evidence continues to build that exposure to electronic smoking device aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and thus likely poses a risk to human health.⁹

5 Cal. Env'tl. Protection Agency, *Frequently Asked Questions — Environmental Tobacco Smoke*, <https://ww2.arb.ca.gov/our-work/programs/environmental-tobacco-smoke-identified-toxic-air-contaminant>.

6 Cal. Env'tl. Protection Agency, *Technical Support Document for the Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant, Part A: Exposure Assessment at V6-V19 (2003)*, https://ww2.arb.ca.gov/sites/default/files/classic/toxics/id/summary/etspt_a.pdf.

7 See sources cited in attached Model Policy *infra*, nn.14-19.

8 See, e.g., INTERNATIONAL AGENCY FOR RESEARCH ON CANCER, WORLD HEALTH ORGANIZATION, *Smokeless Tobacco and Some Tobacco-Specific N-Nitrosamines*, 89 IARC Monographs on the Evaluation of Carcinogenic Risks to Humans (WHO, Int'l Agency for Research on Cancer, ed., 2007), <https://publications.iarc.fr/107>.

9 See sources cited in attached Model Policy *infra*, nn.25, 27, 29-35; see also Public Health Law Center, E-Cigarettes (web-site with many resources on options on regulating e-cigarettes).

Environmental Impact. Discarded cigarette butts are a non-biodegradable form of litter that can take decades to break down. Cigarette filters are made of the plastic material cellulose acetate, which breaks down into microplastics, moving deep into the food chain and water supply.¹⁰ Used cigarette butts are known to leach toxic amounts of nicotine, pesticides, polycyclic aromatic hydrocarbons, arsenic, and heavy metals such as lead and cadmium, potentially for years after use.¹¹ Even unsmoked cigarette butts are toxic to animals, plants, and aquatic life.¹² Discarded cigarettes are also a significant cause of outdoor fires, accounting for hundreds of millions of dollars in annual costs in environmental damage, personal property losses, firefighting expenses, and restorative efforts.¹³ For more information on tobacco product waste, see our publication *Tobacco Product Waste: Frequently Asked Questions*.

E-cigarettes also create many environmental problems. E-cigarette cartridges typically contain hazardous substances such as nicotine, as well as other potentially harmful constituents, such as formaldehyde, acetaldehyde, benzene, and toluene.¹⁴ Discarded devices may leach lead, cobalt, and other substances into the environment in toxic amounts. Toxic chemicals from commercial tobacco product waste can accumulate in animals, soil, and aquatic ecosystems.

Cannabis Considerations

Secondhand cannabis smoke is a health hazard. The California Environmental Protection Agency includes cannabis smoke on its list of chemicals known to cause cancer.¹⁵ Exposure to secondhand cannabis smoke leads to cannabinoid metabolites in bodily fluids and has caused individuals to report psychoactive effects.¹⁶

10 WORLD HEALTH ORGANIZATION, TOBACCO AND ITS ENVIRONMENTAL IMPACT: AN OVERVIEW 26 (2017), <https://apps.who.int/iris/bitstream/handle/10665/255574/9789241512497-eng.pdf>.

11 Hiroshi Moriwaki et al., *Waste on the Roadside, 'Poi-Sute' Waste: Its Distribution and Elution Potential of Pollutants into Environment*, 29 WASTE MANAGEMENT 3 (2009).

12 Dannielle S. Green et al., *Cigarette Butts Have Adverse Effects on Initial Growth of Perennial Ryegrass and White Clover*, 182 ECOTOXICOLOGY AND ENVIRONMENTAL SAFETY 109418 (2019).

13 See, e.g., Nat'l Park Serv., *Wildfire Causes and Evaluations*, <https://www.nps.gov/articles/wildfire-causes-and-evaluation.htm>.

14 Maciej Lukasz Goniewicz et al., *Levels of Selected Carcinogens and Toxicants in Vapour from Electronic Cigarettes*, 23 TOBACCO CONTROL 133-9 (2014).

15 See sources cited in attached Model Policy *infra*, nn.11, 39.

16 See source cited in attached Model Policy *infra*, n.41.

With the state legalization of cannabis for adult use in California, there are a few things to keep in mind for outdoor smoke-free ordinances. Under state law, except for authorized special events, cannabis use is prohibited in all public places and within 1,000 feet of any school, day care, or youth center when children are present.¹⁷ State law likely already prohibits cannabis use in areas contemplated under an outdoor smoke-free ordinance. Once tobacco smoking is prohibited in these areas, cannabis smoking will also be prohibited under state law.¹⁸

Legal Considerations

Although outdoor tobacco-free policies have proliferated in recent years, only a few have been legally challenged. In most cases, courts have upheld local laws prohibiting smoking in outdoor areas on the grounds that such laws: (1) are within the authority of local governments to protect public health, safety, and welfare; and (2) are not preempted by statewide smoke-free laws.¹⁹

In California, state law prohibits smoking within 25 feet of playgrounds and tot lots as well as within 20 feet of public buildings, and expressly authorizes local communities to enact additional restrictions.²⁰ In fact, California cities and counties have the legal authority to adopt local laws that prohibit all outdoor tobacco use in areas not already covered by state law.²¹

Customizing the Ordinance

Context boxes are included throughout the ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A city or county wishing to adopt all or part of this ordinance should keep this in mind and remove the context boxes.

In some instances, blanks (such as [_____]) prompt you to customize the language to fit your community's needs. In other instances, the ordinance offers you a choice of options (such

17 CAL. HEALTH & SAFETY CODE § 11362.3(a)(1) & (2).

18 CAL. HEALTH & SAFETY CODE § 11362.3(a)(2) (stating that the state smoke-free law "does not permit any person to ... smoke cannabis or cannabis products in a location where smoking tobacco is prohibited").

19 See, e.g., *Gallagher v. Clayton*, 699 F.3d 1013 (8th Cir. 2012) (upholding the City of Clayton's ordinance prohibiting smoking on any city-owned or -leased property, including buildings, grounds, parks and playgrounds, which a city resident had challenged on constitutional grounds, asserting that "the health threat of secondhand smoke from outdoor tobacco use is *de minimis*," and that the city lacked a sufficient rationale for prohibiting it), <http://media.ca8.uscourts.gov/opndir/12/11/113880P.pdf>.

20 CAL. HEALTH & SAFETY CODE § 104495; CAL. GOV'T CODE §§ 7596–7598.

21 CAL. LAB. CODE § 6404.5(h).

as [choice one / choice two]). Some options are followed by a note that describes the legal provisions in more detail. A degree of customization is always necessary to make sure the ordinance is consistent with a community's existing laws. Such customization also ensures that communities are using this model ordinance to address local needs and promote health equity.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use. Communities differ on their readiness and willingness to adopt certain commercial tobacco control policies intended to help make that world a reality. For that reason, this model ordinance represents a balance among state and federal minimum standards, best public health policy practices, and practical implementation for local governments in California. This model ordinance contains several policy components that communities may or may not choose to adopt at this time that may go beyond minimum state and federal requirements.

While the Public Health Law Center does not lobby, advocate, or directly represent communities, we can provide legal technical assistance through our publications and referrals to experts in the field. Education, stakeholder and community engagement, and a strong advocacy plan are key steps in adopting effective commercial tobacco control policies. If a community is unaware of available resources for engaging the community and developing an advocacy plan, or if a local government is considering adopting an ordinance and is interested in learning about the range of resources available, please contact the Public Health Law Center.

If you have any questions about this ordinance, you can reach us at publichealthlawcenter@mitchellhamline.edu.

This publication was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice. This model ordinance was made possible by funds received from Grant Number 19-10229 with the California Department of Public Health, California Tobacco Control Program, and the American Lung Association in California.

**AN ORDINANCE OF THE [CITY/COUNTY OF _____]
AMENDING THE [_____] MUNICIPAL CODE TO REGULATE
SMOKING [AND TOBACCO USE]**

The [city council/county board of supervisors] of [_____] does ordain as follows:

SECTION I. [See Appendix A: Findings]

Note

Findings are brief statements of fact or statistics that outline the issue being addressed, support the need for the policy, and help clarify the policy goal. A findings section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies. The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal code. In addition to serving an educational purpose and building support for the ordinance, the findings can also serve a legal purpose. If the ordinance is challenged in court, the findings are an admissible record of the factual determinations made by the legislative body when considering the ordinance. Courts will generally defer to legislative determinations of factual issues, which often influence legal conclusions. A list of findings supporting this model ordinance appears in "Appendix A: Findings." Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law.

**SECTION II. [Article/Chapter] of the [City/County of _____]
Municipal/County Code is hereby amended to read as follows:**

Sec. [_____ (*1)]. DEFINITIONS. For the purposes of this [article/chapter] the following definitions shall govern unless the context clearly requires otherwise:

- (A) "Cannabis" has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- (B) "Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

- (C) “Employee” means any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.
- (D) “Employer” means any person or nonprofit entity that retains the service of one or more employees.
- (E) “Enclosed area” means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

Note

It is against state law to smoke or use electronic smoking or vaping devices, such as e-cigarettes, in an enclosed space at a place of employment or owner-operated business. (Labor Code section 6404.5). A place of employment is any place where employees or owner-operators carry on their work. Local governments may impose and enforce their own indoor smoking restrictions if they apply to areas not covered by state law. *City of San Jose v. Dep’t of Health Services*, 66 Cal. App. 4th 35, 44 (1998). However, to the extent that state law currently prohibits smoking in an enclosed place of employment, a local government may only enforce the state law (and not a similar local law) (Labor Code section 6404.5). If a jurisdiction has a separate clean indoor air act, it should ensure this ordinance aligns with any definition of enclosed areas so that all enclosed and unenclosed areas are covered.

- (F) “Multiunit Residence” means property containing two or more units, including, but not limited to, apartment buildings, common interest developments, senior and assisted living facilities, and long-term health care facilities.
- (G) “Outdoor Dining Area” means any publicly or privately owned outdoor area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used for consuming food or drink.

Note

Smoking in indoor dining areas is already prohibited by state law (Labor Code section 6404.5).

- (H) "Person" means any natural person, business, corporation, partnership, cooperative association, personal representative, receiver, trustee, assignee, or any other legal entity.
- (I) "Place of employment" means an area under the control of an employer that an employee or the general public may enter in the normal course of operations, regardless of the hours of operation, including work areas and construction sites.
- (J) "Public event areas" means any publicly or privately owned place used for an event open to the general public, regardless of any fee or age requirement, including a farmers' market, parade, fair, or festival.
- (K) "Public place" means any publicly or privately owned place that is open to the general public, regardless of any fee or age requirement, including sidewalks, streets, parking lots, plazas, shopping areas, stadiums, or sporting facilities.

Note

This is a very broad definition, intended to include all public areas that do not fall within other definitions in this Model Ordinance.

The definition includes sidewalks and streets. If a jurisdiction would prefer not to cover sidewalks and streets, it could substitute the following definition:

"Public place" means any publicly or privately owned place that is open to the general public, regardless of any fee or age requirement, including parking lots, plazas, shopping areas, stadiums, or sporting facilities. The term "public place" does not include streets or sidewalks used only as pedestrian or vehicular thoroughfares.



Note

State law prohibits cannabis smoking in “a public place.” (Health and Safety Code section 11362.3(a)(1)). While this phrase is generally understood to include places open and accessible to the public, “public place” is not defined in the statute so the definitions may be interpreted differently.

- (L) “Recreational area” means any publicly or privately owned area [, including streets and sidewalks located within the area,] that is open to the general public for recreational purposes, regardless of any fee or age requirement. The term “Recreational Area” includes, but is not limited to, facilities, parks, playgrounds, athletic fields, restrooms, beaches, picnic areas, spectator and concession areas, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, roller and ice-skating rinks, skateboard parks, amusement parks, zoos, and aquatic areas.

Note

The bracketed text allows a jurisdiction to select whether to apply the restrictions to streets and sidewalks. If a jurisdiction includes an exemption for streets and sidewalks, it is worth considering what impact congregating tobacco use in those areas will have on users of the facility or neighbors to the facility.

Although this definition applies to all recreational areas, state law (Labor Code section 6404.5) already prohibits smoking inside places of employment, so Section [_____(*3) (a)] limits the prohibition to outdoor recreational areas only.

- (M) “Service area” means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term “service area” includes, but is not limited to, areas including or within 25 feet of information kiosks, automatic teller machines (ATMs), service lines, bus stops or shelters, or cab stands.

Note

Although this definition applies to all service areas, state law (Labor Code section 6404.5) already prohibits smoking inside places of employment, so Section [_____(*3)(a)] limits the prohibition to outdoor service areas only.

(N) "Service lines" means an outdoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, mobile vendor lines, movie ticket lines, and sporting event lines.

(O) "Smoke" or "Smoking" means:

- (1) inhaling, exhaling, or burning, any tobacco, nicotine, cannabis, or plant product, whether natural or synthetic;
- (2) carrying any lighted, heated, or activated tobacco, nicotine, cannabis, or plant product, whether natural or synthetic, intended for inhalation; or
- (3) using an electronic smoking device or hookah.

(P) "Tobacco product" means:

- (1) any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
- (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

"Tobacco product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(Q) "Tobacco product waste" means any component, part, or remnant of any tobacco product. Tobacco product waste includes any waste that is produced from the use of a tobacco product, including all tobacco product packaging and incidental waste such as lighters or matches, whether or not it contains tobacco or nicotine.

(R) "Tobacco use" means the act of smoking or the consumption of any other tobacco product in any form.

(S) "Unenclosed area" means any area that is not an enclosed area.

Sec. [_____ (*3)]. PROHIBITION OF SMOKING [AND TOBACCO USE] IN UNENCLOSED AREAS.

Note

This section prohibits smoking in a wide range of outdoor areas. If a community wants to prohibit the use of all tobacco products (including smokeless products like chewing tobacco and snus), then it should include the optional bracketed text referring to tobacco use.

(A) Smoking [and tobacco use] is prohibited in the unenclosed areas of the following places within the [City/County of _____]:

- (1) Recreational areas;
- (2) Service areas;
- (3) Outdoor dining areas;
- (4) Places of employment;
- (5) Public event areas; or
- (6) Other public places.

(B) Nothing in this [article/chapter] prohibits any person or employer with control over any property from prohibiting smoking [and tobacco use] on any part of such property, even if smoking [or tobacco use] is not otherwise prohibited in that area.

[(C) It is not a violation of this [article/chapter] to use tobacco as part of a Native American spiritual or cultural ceremony. Approval from [city/county] administration must be requested and received prior to the ceremony.]

Note

Some smoke-free policies provide exceptions for traditional, ceremonial, and sacred uses of tobacco practiced by some tribal communities, while prohibiting the use of commercial tobacco. If you would like more information about this topic, please visit keepitsacred.org.

Sec. [_____ (*4)]. SMOKE-FREE BUFFER ZONES.

Smoking in all unenclosed areas shall be prohibited within 25 feet from any area in which smoking is prohibited under Sec. [_____ (*3)] of this [article/chapter] or by any other law. This prohibition shall not apply to unenclosed areas of private residential properties that are not multiunit residences.

Note

If a jurisdiction preferred to cover private residential unenclosed areas when they are within 25 feet from an enclosed area covered by the law, it could remove this last sentence.

Sec. [_____ (*5)]. TOBACCO WASTE.

- (A) No person or employer shall permit smoking ash receptacles within an area under their control and in which smoking [or tobacco use] is prohibited by law, including within twenty-five (25) feet from any area in which smoking [or tobacco use] is prohibited. The presence of smoking ash receptacles in violation of this subsection shall not be a defense to a charge of smoking [or tobacco use] in violation of any provision of this [article/chapter].
- (B) No person shall dispose of tobacco product waste within the boundaries of an area in which smoking [or tobacco use] is prohibited.

Sec. [_____ (*6)]. ENFORCEMENT.**Note**

Enforcement of smoke-free outdoor area policies is important because there is no risk-free amount of exposure to secondhand smoke and because we know that even outdoors, secondhand smoke can reach hazardous levels. But enforcement should balance the goal of protecting the public from secondhand smoke exposure with the knowledge that punitive measures are unlikely to help those struggling with tobacco addiction to end their tobacco use. Research tells us the best approaches to help those confronting addiction are counseling and education.

Since most people will refrain from smoking if they know a tobacco-free policy is in place, the best way to improve enforcement is to educate the public and local businesses about the policy throughout the implementation process. Greater community compliance will be achieved if the policy is easy to understand, the boundaries and areas covered under the policy are clearly identified, and active steps are taken to communicate its impact to all affected groups.

We also know that there are significant equity concerns with criminal penalties. For instance, racial profiling and discriminatory racial patterns are well documented in the enforcement of many crimes, including lower-level offenses. Another consideration is that the criminal process may trigger a probation or parole violation, a summons that could create a criminal record or a warrant, or other significant ripple effects in an individual's interaction with the justice system. In turn, these criminal sanctions could jeopardize the individual's housing, benefits, education, and employment. For these reasons, the enforcement provisions in this model policy do not include criminal sanctions. We also recommend prioritizing non-law enforcement interactions, such as starting with other civil public employees like recreation center staff, before contacting law enforcement to enforce the policy.

We focus primary responsibility for enforcement on property owners by holding them accountable with appropriate civil penalties for any failure to enforce the rules required under this law.

While we do include monetary administrative penalties, we acknowledge that these too can carry risks of discriminatory enforcement and create financial hardship, and we recommend pursuing enforcement actions against property owners whenever possible. We do not include private lawsuit enforcement options in this Model Policy, due to the potential for abuse.

The following provisions are designed to offer several enforcement options to the jurisdiction and residents. While not all enforcement mechanisms may be pursued, allowing multiple enforcement mechanisms in the ordinance may increase the likelihood of compliance, enforcement, and, in turn, protection from second-hand smoke.



- (A) No person or employer shall permit smoking [or tobacco use] in an area that is under the control of that person or employer and in which smoking [or tobacco use] is prohibited by this article or any other law.
- (B) A person or employer that has control of an area in which smoking [and tobacco use] is prohibited by this [article/chapter] shall post a clear, conspicuous, and unambiguous “No Smoking” [and “No Tobacco Use”] or “Smoke-Free” [and “Tobacco-Free”] sign at each entrance to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include the international “No Smoking” symbol. Signs posted on the exterior of buildings to comply with this section shall include the 25-foot distance requirement set forth in Sec. [_____ (*4)]. The presence or absence of signs shall not be a defense to a charge of smoking [or tobacco use] in violation of any other provision of this [article/chapter].

Note

To encourage cessation, a jurisdiction may also want to consider adding a cessation hotline or other cessation information to signage. Potential language to promote this could be:

“At least one sign placed in each place where smoking is prohibited must include the following tobacco cessation hotline number: _____.”

To provide information about how to submit complaints, another option is to include the following language:

“At least one sign with the [City / County] phone number for complaints must be placed conspicuously in each place in which smoking is prohibited.”

In addition, jurisdictions may want to indicate on their signs that use of electronic smoking devices is also prohibited and include an illustration of an electronic smoking device.

- (C) [City/County] staff and volunteers will be notified about the requirements of this [article/chapter] through the employee manual.
- (D) [City/County] staff will communicate the requirements of this [article/chapter] to public event organizers. [City/County] staff will also make periodic observations of recreational areas and other [city/county] property covered by this [article/chapter] to monitor for compliance. Anyone found by [city/county] staff to be violating this [article/

chapter] will be reminded of its requirements and asked to comply before being subject to ejection from the property.

- (E) A person or employer that has control of an area in which smoking [and tobacco use] is prohibited by this [article/chapter] shall direct anyone who is smoking [or using tobacco] in violation of this [article/chapter] to extinguish the product being smoked [or stop using the tobacco product]. If they do not stop smoking [or using the tobacco product], the person or employer shall refuse any service and shall immediately ask them to leave the property. If the ejection is from a public event, it shall be for the duration of the public event.
- (F) No person or employer shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this [article/chapter].

[(G) The [Director of _____] or their designee shall conduct an ongoing educational program to explain and clarify the purposes and requirements of this [article/chapter], as well as to provide guidance to persons or employers about compliance. Lack of receiving or participating in such education program shall not be a defense to a violation of this [article/chapter].]

Sec. [_____ (*7)]. VIOLATIONS AND PENALTIES.

- (A) Each refusal to comply with a request from a [city/county] employee in violation of Secs. [_____ (*6)(d) or (e)] may be subject to a [fifty dollar (\$50)] administrative fine.

Note

A jurisdiction may also wish to include a non-monetary penalty here as an alternative to the administrative fine, such as required community service.

- (B) A person or employer that has control of an area in which smoking [and tobacco use] is prohibited by this [article/chapter] and that fails to comply with this [article/chapter] shall be guilty of an administrative fine punishable by:
- (1) A fine not exceeding one hundred dollars (\$100) for a first violation.
 - (2) A fine not exceeding one hundred and fifty dollars (\$150) for a second violation within one year.

- (3) A fine not exceeding two hundred and fifty dollars (\$250) for each additional violation within one year.
- (C) Multiple violations of this [article/chapter] by a person or employer that has control of an area in which smoking [and tobacco use] is prohibited by this [article/chapter] may result in the suspension or revocation of any permit or license issued to the person for the property on which the violations occurred.
- (D) Any violation of this [article/chapter] is hereby declared to be a public nuisance.

Note

By expressly declaring that a violation of this ordinance is a public nuisance, this provision allows enforcement of the ordinance by the city or county through the administrative nuisance abatement procedures commonly found in municipal codes. It also facilitates restraining orders, or preliminary or permanent injunctions to stop the nuisance.

- (E) Any violation of this [article/chapter] may be remedied by a civil action brought by the [city attorney/county counsel], including, but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.

Note

It is common to provide that the local government's lawyers may go to court to seek injunctions and other penalties in addition to fines. The express provision for injunctive relief lowers the showing required to obtain a preliminary or permanent injunction as described in *IT Corp. v. County of Imperial*, 35 Cal. 3d 63 (1983).

- (F) Each instance of smoking [or tobacco use] in violation of this [article/chapter] shall constitute a separate violation. For violations other than for smoking, each day of a continuing violation of this [article/chapter] shall constitute a separate violation.
- (G) The remedies provided by this [article/chapter] are cumulative and in addition to any other remedies available at law or in equity.

SECTION III. STATUTORY CONSTRUCTION & SEVERABILITY.

It is the intent of the [City Council/Board of Supervisors] of the [City/County] of [_____] to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other person or circumstance. The [City Council/Board of Supervisors] of the [City/County] of [_____] declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase independently, even if any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases were declared invalid or unenforceable.

Appendix A: Findings.

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:

- The World Health Organization (WHO) estimates that tobacco kills up to half of its users, amounting to more than 8 million deaths each year worldwide, including nearly half a million people who die prematurely from smoking in the United States alone;²
- Tobacco use causes disease in nearly all organ systems and is responsible for an estimated 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all chronic obstructive pulmonary disease deaths in the United States;²
- The estimated economic damage attributable to smoking and exposure to secondhand smoke in the United States is nearly \$300 billion annually;²
- Despite significant progress, tobacco use remains the leading cause of preventable death and disease in the United States,² and
- [insert local tobacco toll data if available]

WHEREAS, tobacco use is the number one cause of preventable death in California² and continues to be an urgent public health issue, as evidenced by the following:

- An estimated 40,000 California adults die from smoking annually;³

- Each year, smoking costs California an estimated \$13.3 billion in direct health care expenses, \$3.6 billion in Medicaid costs, and \$10.4 billion in productivity losses;⁴
- Research indicates that more than 25% of all adult cancer deaths in California are attributable to smoking;⁵ and
- [insert local tobacco toll data if available]

WHEREAS, significant disparities in tobacco use exist in California, which create barriers to health equity,⁶ as evidenced by the following:

- African American (17.0%) and American Indian (19.1%) Californians report a higher smoking prevalence than white Californians (11.8%);⁷
- The American Indian population in California reports the highest cigarette smoking rate among adults, and American Indian youth report the highest rate of smoking among high school students;⁷
- Californians with the highest levels of educational attainment and annual household income report the lowest smoking rates;⁷
- Those who identify as lesbian, gay, bisexual, or transgender in California report smoking at higher rates than those who do not;⁷
- Californians who live in multiunit housing report smoking cigarettes at a higher rate (13.1%) than those who live in a house (9.7%);⁷
- Californians who reported experiencing psychological distress in the preceding month smoked at a rate far higher (26.7%) than the average statewide smoking rate (11.0%);⁷ and
- [insert local tobacco toll data if available]

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

- In 2006, the U.S. surgeon general concluded that there is no risk-free level of exposure to secondhand smoke;⁸
- In 2006, the California Air Resources Board identified secondhand smoke as a toxic air contaminant, in the same category as the most toxic automotive and industrial air pollutants, and a serious health threat for which there is no safe level of exposure;^{9,10}

- In 2006, the California Environmental Protection Agency added secondhand smoke to the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;¹¹

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

- Levels of secondhand smoke exposure outdoors can reach levels recognized as hazardous, depending on direction and amount of wind, number and proximity of smokers, and enclosures like walls or roofs;¹²⁻¹⁸
- Smoking cigarettes near building entryways can increase air pollution levels by more than two times background levels, with maximum levels reaching the “hazardous” range on the United States EPA’s Air Quality Index;^{15,17} and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move 20 to 29 feet away from the source of the smoke, about the width of a two-lane road;^{15,19,20}

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

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;²
- Secondhand smoke was responsible for an estimated 34,000 heart disease-related and 7,300 lung cancer-related deaths among adult nonsmokers each year during 2005–2009 in the United States;²
- Research indicates that exposure to secondhand smoke increases the risk of coronary heart disease by 25% to 30% and increases the risk of stroke by 20% to 30%;^{2,21} and
- Secondhand smoke kills more than 400 infants every year;²²

WHEREAS, electronic smoking device aerosol may be considered a health hazard, as evidenced by the following:

- Research has found electronic smoking device aerosol contains at least 12 chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm,^{11,23,24} such as formaldehyde, acetaldehyde, lead, nickel, chromium, arsenic, and toluene;^{24,25}

- Electronic smoking device aerosol is not harmless water vapor as it contains varying concentrations of particles and chemicals with some studies finding particle sizes and nicotine concentrations similar to, or even exceeding, conventional cigarette smoke;^{24, 26-28}
- Evidence continues to build that exposure to electronic smoking device aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and poses a risk to human health;^{24,26,28-34}
- Given the increasing prevalence of electronic smoking device use, especially among youth and young adults, widespread nicotine exposure resulting in addiction and other harmful consequences serious concerns;^{24,26,35,36}

WHEREAS, secondhand cannabis smoke has been identified as a health hazard, as evidenced by the following:

- The California Environmental Protection Agency includes cannabis smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer;^{11,37}
- Cannabis smoke contains at least 33 known carcinogens;³⁷
- In one study, exposure to cannabis smoke in an unventilated setting resulted in detectable levels of cannabinoids in non-smoker participants' blood and urine, and participants experienced minor increases in heart rate and impaired cognitive performance;³⁸ and
- A recent systematic review of the literature concluded that secondhand exposure to cannabis smoke leads to cannabinoid metabolites in bodily fluids and individuals experiencing self-reported psychoactive effects;³⁹

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and can reduce medical costs; these outcomes, consistently demonstrated in peer-reviewed research, include the following:

- Reduced prevalence of tobacco use;^{40,41}
- Reduced secondhand smoke exposure, as measured by self-report and laboratory analysis of biomarkers or indoor air;⁴⁰⁻⁴³
- Increased cessation of tobacco use;^{40,41}
- Reduced initiation of tobacco use among young people;⁴⁰
- Fewer hospitalizations from tobacco-related diseases, such as asthma and cardiovascular disease;^{40,41,44} and

- An estimated annual savings rate in the U.S. of \$148,000 to \$409,000 (2011 U.S. dollars) per 100,000 people in averted secondhand smoke-related healthcare costs;⁴⁰

Include the following findings about smokeless tobacco if your community will be incorporating the optional language to create completely tobacco-free spaces.

[WHEREAS, smokeless tobacco is not a safe alternative to smoking and causes its own share of death and disease, as evidenced by the following:

- Smokeless tobacco use can lead to nicotine addiction;^{2,45}
- Smokeless tobacco use causes oral, esophageal, and pancreatic cancers;^{2,45,46}
- Smokeless tobacco use is associated with increased risk for heart disease and stroke,⁴⁶⁻⁴⁸ and stillbirth and preterm delivery;^{49,50} and
- [insert local smokeless tobacco use disparities data if available]]

WHEREAS, tobacco waste is a major, consequential, and persistent source of litter, as evidenced by the following:

- The roughly 6.3 trillion cigarettes smoked globally each year result in 300 billion packs that produce almost 2 million tons of waste paper, cellophane, foil, and glue as well as trillions of butts littered across roadways, sidewalks, parks, and other green spaces;^{51,52}
- Both tobacco industry and peer-reviewed research found that most smokers admit littering their cigarette butts,^{53,54} for example, one study found 74.1% of smokers admitted littering cigarette butts at least once in their life and 55.7% admitted to littering them in the past month;⁵⁴
- In an observational study of nearly 10,000 individuals, 65% of smokers disposed of their cigarette butts as litter;⁵⁴
- Cigarette butts are perennially the most common form of litter collected during cleanup programs worldwide,^{53,56} for example, in 2018, cigarette butts made up nearly 16% of all litter collected through cleanup programs in the U.S. (809,538 out of 5,106,515 items);⁵⁶
- 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;⁵¹
- Non-cigarette forms of tobacco waste, such as plastic cigar tips and little cigar wrappers, also significantly contribute to litter;⁵⁷⁻⁵⁹

- Waste from electronic smoking devices has become a recognized and growing form of litter.^{58,60,61} For example, a recent study among twelve high schools in the San Francisco Bay Area found that electronic cigarette waste made up nearly 20% (172 of 893 items) of all tobacco or cannabis product waste found on school property with the largest amount (152 items) and highest percentage (39.4%) of electronic cigarette waste observed at upper income schools;⁵⁸ and
- As of August 2019, the U.S. Environmental Protection Agency recognizes nicotine-containing electronic smoking devices as acute hazardous waste when disposed;⁶²

WHEREAS, cigarette butts, smokeless tobacco, and electronic smoking devices pose a health threat of poisoning to young children, as evidenced by the following:

- In 2018, American poison control centers logged nearly 13,000 cases involving exposure to cigarettes, cigarette butts, electronic smoking devices, or other tobacco products, and of these, more than 10,000 (79.0%) occurred in children aged 5 years and younger;⁶³
- Among the 10,266 cases of nicotine and tobacco product exposure recorded in 2018 among children 5 years of age and younger by American poison control centers, 50.3% involved cigarettes, 18.4% involved electronic smoking devices, and 8.0% involved other tobacco products;⁶³
- The annual number of electronic cigarette exposure cases among children less than 5 years of age reported to American poison control centers increased from 10 in 2010 to 1,835 in 2018, a 14,015% increase;⁶⁴ and
- Children who ingest tobacco products can experience vomiting, nausea, lethargy, and gagging,⁶⁵ with e-liquids potentially posing a greater risk of toxicity or fatality through either ingestion or transdermal absorption;⁶⁶

WHEREAS, exemptions and loopholes in California's smoke-free workplace laws⁶⁷ disproportionately impact low-income communities and communities of color as well as those who work predominantly outdoors as evidenced by the following:

- California Labor Code does not prohibit smoking in cabs of trucks, long-term care facilities, outdoor places of employment, tobacco shops, private smokers' lounges, and up to 20 percent of hotel rooms. Employees in these areas are disproportionately individuals of low-income and individuals of color;⁶⁸
- One study in California found Hispanic/Latino workers were most likely to report secondhand smoke exposure at work (19.5%), followed by non-Hispanic other race

(13.7%), Asian/Pacific Islander (10.5%), African American (10.4%), and Caucasian (9.7%) workers;⁶⁹ and

- In a survey of employed Bay Area young adults, 32.6% reported workplace exposure to secondhand smoke, nearly all of whom (95.7%) reported outdoor exposure, and most of whom worked in one of four occupational categories: construction and extraction, transportation and material moving occupations, building and grounds cleaning and maintenance, and food preparation and serving;⁷⁰

WHEREAS, California cities and counties have the legal authority to adopt local laws that prohibit all tobacco use indoors and outdoors in areas not already covered by state law;⁷¹

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots as well as within 20 feet of public (state, county, city, or community college district) buildings, among other locations, and expressly authorizes local communities to enact additional restrictions;⁷²⁻⁷⁴

WHEREAS, there is broad public recognition of the dangers of secondhand smoke and support for smoke-free air laws, as evidenced by the following:

- A 2017 survey of California adults found that an overwhelming majority agree that secondhand smoke causes cancer and 82.1% agree that aerosol and vapor from electronic smoking devices are harmful;⁷⁵
- A 2018 survey of California adults found widespread public agreement that smoking should not be allowed at public beaches (78%);⁷ and
- In a 2015 survey of California voters, 70% supported prohibiting electronic smoking device use where smoking is prohibited;⁷⁶

WHEREAS, as of January 2019, there are more than 235 California cities and counties with outdoor secondhand smoke ordinances;⁷

WHEREAS, as of April 1, 2020, more than 140 local jurisdictions in California prohibit the use of electronic smoking devices in specific locations;⁷⁷

WHEREAS, as of October 2017, there are more than 210 California municipalities with local laws restricting smoking in parks;⁷⁸ 64 with local laws restricting smoking at beaches;⁷⁹ 104 with local laws restricting smoking in all bar patio and outdoor dining places;⁸⁰ and 112 with local laws restricting smoking at outdoor public transit waiting areas;⁸¹

WHEREAS, there is no Constitutional right to smoke;⁸² and

NOW THEREFORE, it is the intent of the [City Council/County Board of Supervisors], in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking [and tobacco use] around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work, and play; by reducing the potential for children to wrongly associate smoking [and tobacco use] with a healthy lifestyle; and by affirming and promoting a healthy environment in the [city/county].

Endnotes

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5-22 SMOKING IN PUBLIC PLACES.

Prior legislation: Ords. #2012-156 and 2012-158.

5-22.1 Purpose.

The City Council of the City of Clearlake declares the purposes of this section are:

- a. To protect public health, safety and general welfare;
- b. To guarantee the right of nonsmokers to breathe air free of tobacco smoke and noxious vapor and to recognize that the need to breathe air free of tobacco smoke and noxious vapor has priority over the desire to smoke tobacco products and electronic smoking devices;
- c. To reduce addiction to tobacco products by youth and young adults;
- d. To discourage the use of tobacco or other weeds, plants or devices that produce noxious smoke or vapor around persons who do not use such products;
- e. To protect the public from exposure to tobacco smoke or noxious vapor and other weeds, plants or devices that produce noxious smoke or vapor and to reduce smoking-related pollution; and
- f. Affirming and promoting a family-friendly atmosphere at City parks and City-sponsored events. (Ord. #233-2019, § 2)

5-22.2 Definitions.

The following words and phrases, whenever used in this section, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

BAR means a separate establishment which is devoted to the serving of alcoholic beverages and in which the serving of food is incidental to the consumption of such beverages, including cocktail lounge or tavern. A bar, cocktail lounge, or tavern which is in the same building as and part of a restaurant is not considered under this definition of a bar, except if physically separated by full walls from the remaining room(s) of the restaurant and in which no person under the age of eighteen (18) years is allowed to enter, except to travel to restroom facilities or a nonbar portion of the restaurant.

BUSINESS means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities under which professional services are delivered.

CANNABIS and **CANNABIS PRODUCTS** have the same meaning as set forth in California Health and Safety Code Sections [11018](#) and [11018.1](#), and any future amendments to those code sections that may result.

DINING AREA means any area, including streets and sidewalks, which is available to or customarily used by the general public, and which is designed, or regularly used, for consuming food or drink.

ELECTRONIC SMOKING DEVICE includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration for the use in the mitigation, treatment, or prevention of disease.

EMPLOYEE means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, including those employed full-time, part-time, temporarily or contracted for from a third party.

EMPLOYER means any person, partnership, corporation, or nonprofit entity who employs the services of one (1) or more persons, including themselves.

ENCLOSED means closed in by a roof and four (4) or more connected, floor-to-ceiling walls with appropriate openings for ingress and egress. If an enclosed area is divided by internal partial walls or other "office landscaping," it is still, in its entirety, enclosed. This would include but not be limited to lobbies, lounges, waiting areas, elevators, hallways, restrooms, and stairwells, that are a structural part of the building.

NO SMOKING SIGN means a sign with letters of no less than one (1") inch in height or which contains the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

NONPROFIT ENTITY means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are not for private financial gain. A public agency is not a "nonprofit entity" within the meaning of this section.

PLACE OF EMPLOYMENT means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

PUBLIC PLACE means any area, publicly or privately owned, to which the public is invited or in which the public is permitted, including but not limited to clubhouses, meeting halls, community centers, elevators, restrooms, lobbies, public hallways, waiting rooms, banks, retail stores, laundromats, beauty and barbershops,

hotels/motels, retail food marketing establishments, including grocery stores and supermarkets, galleries, restaurants, clubs, taxis and buses.

PUBLIC RECREATION AREA means a public park or other public recreation area within the City of Clearlake including, but not limited to, the following: Redbud Park, Valentine Ballfields, Highlands Park, Andy Johnson Memorial BMX/Skatepark; Austin Park and Austin Resort area, and Haverty Field. It is the intent of this section to include, but not be limited to, parks, picnic areas, playgrounds, sports fields, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, skateboard parks and amusement parks open to the public for recreational use.

RESTAURANT means any coffee shop, cafeteria, including private and public school cafeteria, sandwich stand, and any other eating establishment and associated outdoor eating area, which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions, except that the term “restaurant” shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a “bar” as defined in this section.

SERVICE AREA means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one (1) or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term “service area” includes, but is not limited to, areas including or within twenty-five (25') feet of information kiosks, automated teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, and cab stands.

SMOKE means the gases, particles or vapors released into the air by combustion, electronic ignition or vaporization when the apparent or usual purpose of the combustion, electronic ignition or vaporization is human inhalation of the resulting combustion products, including but not limited to tobacco smoke, cigarette smoke, cannabis smoke, and gases, aerosol or vapor released by the ignition of e-cigarettes or e-devices. “Smoke” does not include the product of combustion of incense or similar products when used solely for olfactory purposes and does not contain tobacco or nicotine.

SMOKING means inhaling or exhaling from, or burning or carrying, any lighted cigarette, cigar, pipe, cannabis, plant, or other combustible substance whose smoke is intended to be inhaled or inhaling or exhaling from any electronic smoking device. “Smoking” includes the use of an electronic cigarette, electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

TOBACCO PRODUCT means (1) product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff; (2) an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah; (3) any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco products” do not include products approved by the U.S. Food and Drug Administration for sale as a tobacco

cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

WORK AREA or WORKPLACE means any area of a place of employment enclosed by floor-to-ceiling walls in which one (1) or more employees are assigned to perform work for an employer. (Ord. #233-2019, § 2)

5-22.3 Smoking Prohibited.

- a. Smoking is prohibited within any public recreation area.
- b. Smoking is prohibited within twenty-five (25') feet of public entrances, public exits, not including emergency only exits, open windows, or ventilation systems of any of the following enclosed places:
 1. Places of employment;
 2. Public places, whether publicly or privately owned or operated;
 3. Bars and restaurants.
- c. Smoking is prohibited within twenty-five (25') feet of the following unenclosed places:
 1. Outdoor dining areas;
 2. Service areas;
 3. Stairways of public buildings or buildings where members of the public are invited;
 4. Any event at which a special event permit is issued by the City, such as farmer's markets, street fairs, street dances, etc., and where signs have been posted prohibiting smoking in the event area. (Ord. #233-2019, § 2)

5-22.4 Duty of Employer, Business, Nonprofit Entity or Landlord.

- a. No employer, business, nonprofit entity or landlord shall knowingly or intentionally permit smoking in an area which is under their control and in which smoking is prohibited. No person shall be found in violation of this subsection unless they have first been issued a written notice of violation by the City within the prior year.
- b. No owner, operator, manager or other person having control of an area shall place or permit the presence or placement of ash receptacles, such as, without limitation, ash trays or ash cans, within an area which is under their control and in which smoking is prohibited by this section.

c. Nothing in this section prohibits a person in control of an area in which smoking would otherwise be permitted from declaring that area as a nonsmoking area. (Ord. #233-2019, § 2)

5-22.5 Smoking in Optional Areas.

Notwithstanding any other provision of this section to the contrary, the following areas shall not be subject to the smoking restrictions of this section:

- a. Private detached single-family residences, except when used as a childcare or health care facility;
- b. Multi-unit dwellings leased to a residential tenant. (Ord. #233-2019, § 2)

5-22.6 Posting of Signs.

a. “No smoking” signs shall be clearly, sufficiently and conspicuously posted on the exterior of every building or other place where smoking is prohibited by this section, by the owner, operator, manager or other person having control of such building or other place. The sign shall include the smoking distance limitations contained in this section.

1. For multi-unit commercial properties, “No smoking” signs may be posted at the entrances to property where the restrictions apply in lieu of posting signage on each building. Signs which have been removed shall be replaced within five (5) working days.

b. “No smoking” signs shall be clearly, sufficiently and conspicuously posted at public recreation areas, bus stops and bus shelters where smoking is prohibited by this section. The sign shall include the smoking distance limitations contained in this section.

c. The City may direct an employer, business, nonprofit entity or landlord to install signage when smoking occurs in an area under their control and in which smoking is prohibited. Notice shall be delivered in writing and is subject to appeal to the City Manager. Signage shall be installed within thirty (30) days of the written notice. (Ord. #233-2019, § 2)

The Clearlake Municipal Code is current through Ordinance 266-2022, passed September 1, 2022.

Disclaimer: The City Clerk’s Office has the official version of the Clearlake Municipal Code. Users should contact the City Clerk’s Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.clearlake.ca.us

Code Publishing Company



LAKE COUNTY HEALTH SERVICES DEPARTMENT

POLICY AND PROCEDURE

SUBJECT: SMOKE FREE DEPARTMENT POLICYREVISED: EFFECTIVE: 9/1/14 REVIEW DATE:

POLICY: In accordance with Lake County Board of Supervisors approved Resolution No. # 2014-81 signed effective June 24, 2014, use of any tobacco products in any form including cigarettes, cigars, pipes, etc.; and smoking or "vaping" of any electronic nicotine delivery devices (ENDD) or e-cigarettes, by any person (employee or visitor) in or on the Lake County Department of Health Services (LCHD) facility and property located at 922 Bevins Ct. is prohibited. This includes privately owned vehicles parked in the LCHD parking lot. This policy shall remain in effect during all days of the week and during all hours of the day.


RATIONALE / JUSTIFICATION: To provide for the health, safety, and welfare of the public and employees by discouraging the use of tobacco; by protecting children from exposure to tobacco and secondhand smoke while visiting the Health Services Department; by reducing the potentials for children to associate smoking and tobacco use with a healthy lifestyle; eliminating cigarette related litter and pollution; and by affirming and promoting the family-friendly atmosphere of the Health Services Department.

PROCEDURE:

All LCHD staff and administration shall be informed of this policy in writing and "No Smoking" signs will be placed at several outdoor locations to inform all visitors of this policy.

Visitors who have been asked to comply with the LCHD Smoke-Free Department Policy will be provided with a "Thank You" card provided by the Tobacco Education Program, which lists the California Smokers Helpline telephone number. Employees who smoke and would like information on how to quit can contact the Tobacco Education Program at extension 140 or 159 for materials and services available.

This policy shall be a means of promoting healthy behavior, not a punishment for current practices.



Signature: Director of Health Services

8/27/14
Date

Sec. 2-151. - Definitions.

Lake County Jail

151.1 *County Jail* shall mean any facility within the County of Lake where inmates are held in the custody of the Sheriff, deputy sheriff, correctional officer, probation officer or other peace officer.

(Ord. No. 2215, § 1, 12-7-93)

151.2 *Sheriff* shall mean the Sheriff of the County of Lake or his or her designee.

(Ord. No. 2215, § 1, 12-7-93)

151.3 *Tobacco product* shall mean any cigarette, tobacco or any other preparation of tobacco.

(Ord. No. 2215, § 1, 12-7-93)

151.4 *Tobacco paraphernalia* shall mean any cigarette paper, pipe or other device or instrument intended to be used for the smoking or ingestion of tobacco, and shall also include matches, cigarette lighters and similar devices.

(Ord. No. 2215, § 1, 12-7-93)

Sec. 2-152. - Smuggling Tobacco or Tobacco Paraphernalia Into County Jail Facilities or Grounds.

152.1 It shall be unlawful for any person to knowingly smuggle or bring or assist in smuggling or bringing into any County Jail or any other place where inmates are being held under the custody of the Sheriff, deputy sheriff, correctional officer, probation officer or other peace officer or within the grounds of any County Jail, any tobacco product or any tobacco paraphernalia, without having authority to do so by the rules of the County Jail, or by the specific authorization of the Sheriff, the jail commander or other person in charge of the jail or place.

(Ord. No. 2215, § 1, 12-7-93)

Sec. 2-153. - Penalties.

153.1 A violation of any provision of this chapter [article] is punishable as an infraction by a fine not exceeding two hundred dollars (\$200.00) or as a misdemeanor by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the County Jail for a period of not more than six (6) months, or by both such fine and imprisonment.

(Ord. No. 2215, § 1, 12-7-93)



EVERYONE DESERVES TO HAVE A HEALTHY, SMOKEFREE HOME!

DID YOU KNOW?

People living in apartments are more likely to be exposed to secondhand smoke.¹

- » Smoke can enter your home through vents, electrical outlets, windows, and even tiny cracks in walls.



65%

Up to 65% of the air in an apartment can come from other units in the building.²



ANY AMOUNT OF SECONDHAND SMOKE CAN BE HARMFUL

- » **41,000 nonsmokers die** from secondhand smoke each year in the U.S.³



It is especially dangerous for children and can cause permanent damage to growing lungs.⁴



YOUR LUNGS CAN'T TELL THE DIFFERENCE

- » **Marijuana secondhand smoke is harmful just like cigarette smoke.**⁵ It has many of the same toxic chemicals that cause cancer and other diseases.
- » Vaping produces tiny droplets of harmful chemicals, including lead. **It's NOT just harmless water vapor!**⁶



TO FULLY PROTECT YOUR HOME FROM SECONDHAND SMOKE, YOUR ENTIRE APARTMENT COMPLEX NEEDS TO BE SMOKEFREE

This includes:

- » Inside units
- » On patios and balconies
- » Outdoor common areas such as pools, parking lots, stairways, and courtyards.



Free help to quit tobacco is available from the Kick It California.

Visit kickitca.org

Call **1-800-300-8086**

Text **“Quit Smoking”** or **“Quit Vaping”** to **66819**

Download the free **No Butts**
or **No Vape** mobile apps

YOU CAN MAKE A DIFFERENCE!

- » Apartment owners have the legal authority to make their property entirely smokefree. Contact your local health department for resources to offer managers and landlords about the benefits of a smokefree property.
- » Share information with neighbors about the harms of all forms of secondhand smoke. Try posting information on bulletin boards or in laundry rooms.
- » Reach out to city officials about local laws that would require apartments and other multi-unit housing to be smokefree.
- » Check the strength of your city's smokefree policies and take action at www.secondhandangers.org

REFERENCES:

- » Tsai, J., et al. (2018). Exposure to Secondhand Smoke Among Nonsmokers - United States, 1988-2014. *Morbidity and Mortality Weekly Report*, 67(48), 1342-1346.
- » Center for Energy and Environment. (2004). Reduction of Environmental Tobacco Smoke Transfer in Minnesota Multifamily Buildings Using Air Sealing and Ventilation Treatments.
- » U.S. Department of Health and Human Services. (2014). The health consequences of smoking – 50 years of progress: A report of the surgeon general. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.
- » Ibid.
- » Graves, BM, et al. (2020). Comprehensive characterization of mainstream marijuana and tobacco smoke. *Scientific Reports*, 10(1), 7160. <https://doi.org/10.1038/s41598-020-63120-6>
- » National Academies of Sciences, Engineering, and Medicine. (2018). Public Health Consequences of E-Cigarettes.



U.S. Laws for 100% Smokefree Multi-Unit Housing

January 1, 2023

This list represents communities with laws that regulate smoking in **private units** of multi-unit housing.

As of January 1, **77 municipalities** have enacted a law at the city or county level that prohibits smoking in **100% of private units** of rental multi-unit housing properties. Of these municipalities, **70** have laws that prohibits smoking in **100% of private units** of both rental and owner-occupied multi-unit housing properties. The vast majority of the laws—66 municipalities—apply to properties with 2 or more units.

For public housing policies, see [U.S. Public Housing Authority Policies Restricting or Prohibiting Smoking](#).

See Definitions and Explanatory Notes starting on page 4.

Visit our smokefree multi-unit housing page at no-smoke.org/at-risk-places/homes/ for more information.

Municipalities with Laws for 100% Smokefree Multi-Unit Housing:

This table represents communities that have **municipal laws** at the city or county level that prohibit smoking in **100% of private units** of all specified types of multi-unit housing. These laws apply to both privately-owned and publicly-owned multi-unit residences, as well as all existing and future buildings, and do not permit current residents to continue smoking in the building (i.e. no “grandfather” clause). Most, but not all, municipal laws include condominiums and other owner-occupied properties.

Municipalities marked with # require multi-unit buildings to be 100% smokefree when the law is in full effect as of the listed Final Effective Date. Municipalities marked **Some** under “% of Units Currently Smokefree” will be 100% when the law is in full effect.

Municipality	State	% of Units Currently Smokefree	Final Effective Date	Minimum Number of Units	Includes Patio/Balcony	Includes Condos
1. Alameda	CA	100%	1/1/2013	2	Yes	Yes
2. Alameda County	CA	100%	7/1/2022	2	Yes	Yes
3. Albany	CA	100%	3/24/2018	2	Yes	Yes
4. Bell Gardens	CA	100%	6/1/2021	3	Yes	Yes
5. Belmont	CA	100%	1/8/2009	2	Yes	Yes
6. Belvedere	CA	100%	11/9/2017	2	Yes	Yes
7. Benicia	CA	100%	9/2/2020	2	Yes	Yes
8. Berkeley	CA	100%	5/1/2014	2	Yes	Yes
9. Beverley Hills	CA	100%	1/1/2019	2	Yes	Yes
10. Brisbane	CA	100%	6/3/2017	2	Yes	Yes
11. Burlingame	CA	100%	2/13/2016	2	Yes	Yes
12. Clayton	CA	100%	5/1/2019	2	Yes	Yes
13. Compton	CA	100%	1/1/2013	3	Yes	Yes
14. Concord	CA	100%	1/1/2021	2	Yes	Yes
15. Contra Costa County	CA	100%	7/1/2019	2	Yes	Yes
16. Corte Madera	CA	100%	6/17/2022	2	Yes	Yes
17. Cotati	CA	100%	1/1/2017	2	Yes	Yes

Municipality	State	% of Units Currently Smokefree	Final Effective Date	Minimum Number of Units	Includes Patio/Balcony	Includes Condos
18. Crescent City	CA	100%	1/1/2022	2	Yes	Yes
19. Cudahy	CA	100%	1/3/2020	2	Yes	Yes
20. Culver City	CA	100%	5/26/2016	2	Yes	Yes
21. Cupertino	CA	100%	10/1/2021	2	Yes	Yes
22. Daly City	CA	100%	1/21/2014	2	Yes	No
23. Danville	CA	100%	5/1/2016	3	Yes	Yes
24. El Cerrito	CA	100%	10/1/2015	2	Yes	Yes
25. El Monte	CA	100%	8/19/2017	3	Yes	Yes
26. Emeryville	CA	100%	7/1/2019	2	N/S	Yes
27. Firebaugh	CA	100%	7/1/2019	2	Yes	Yes
28. Foster City	CA	100%	11/5/2015	N/S	Yes	Yes
29. Fresno	CA	100%	1/1/2022	2	No	No
30. Guadalupe	CA	100%	8/27/2020	2	Yes	Yes
31. Half Moon Bay	CA	100%	1/15/2020	2	Yes	Yes
32. Healdsburg	CA	100%	5/6/2020	2	N/S	Yes
33. Hercules	CA	100%	6/13/2020	10	Yes	Yes
34. Huntington Park	CA	100%	7/1/2013	2	Yes	Yes
35. Larkspur	CA	100%	9/17/2022	2	Yes	Yes
36. Los Gatos	CA	100%	6/25/2017	2	Yes	No
37. Manhattan Beach	CA	100%	5/5/2017	3	Yes	Yes
38. Marin County	CA	100%	10/14/2021	2	Yes	Yes
39. Mill Valley	CA	100%	11/18/2016	2	Yes	Yes
40. Millbrae	CA	100%	1/1/2020	2	Yes	Yes
41. Milpitas	CA	100%	1/1/2022	2	Yes	Yes
42. Monte Sereno	CA	100%	10/1/2020	2	Yes	Yes
43. Moorpark	CA	100%	2/1/2019	2	Yes	No
44. Morro Bay	CA	100%	8/1/2020	2	Yes	Yes
45. Mountain View	CA	100%	1/1/2022	3	Yes	Yes
46. Novato	CA	100%	1/1/2018	2	Yes	Yes
47. Pacific Grove	CA	100%	10/1/2021	2	Yes	Yes
48. Pacifica	CA	100%	10/9/2020	2	Yes	Yes
49. Palo Alto	CA	100%	1/1/2018	2	Yes	Yes
50. Pasadena	CA	100%	1/1/2013	2	Yes	Yes
51. Petaluma	CA	100%	1/1/2014	2	Yes	Yes
52. Pleasanton	CA	100%	10/4/2018	2	Yes	No
53. Rancho Cordova	CA	100%	11/4/2021	2	N/S	Yes
54. Redwood City	CA	100%	1/1/2019	2	Yes	Yes
55. Richmond	CA	100%	1/1/2011	2	Yes	Yes
56. Rohnert Park	CA	100%	4/23/2018	2	Yes	Yes
57. Ross	CA	100%	2/9/2020	2	Yes	Yes
58. San Anselmo	CA	100%	1/8/2016	2	Yes	Yes
59. San Bruno	CA	100%	2/22/2018	2	Yes	Yes
60. San Carlos	CA	100%	7/8/2020	2	Yes	Yes
61. San Mateo	CA	100%	11/14/2015	2	Yes	Yes
62. San Mateo County	CA	100%	2/4/2016	2	Yes	Yes
63. San Pablo	CA	100%	7/1/2021	2	Yes	No
64. San Rafael	CA	100%	11/14/2013	3	Yes	Yes
65. Santa Clara	CA	100%	8/1/2019	2	Yes	Yes

Municipality	State	% of Units Currently Smokefree	Final Effective Date	Minimum Number of Units	Includes Patio/Balcony	Includes Condos
66. Santa Clara County	CA	100%	2/9/2012	2	Yes	Yes
67. Santa Rosa	CA	100%	8/7/2016	2	Yes	Yes
68. Saratoga	CA	100%	9/16/2016	4	Yes	Yes
69. Sebastopol	CA	100%	11/2/2011	2	Yes	Yes
70. Sonoma	CA	100%	12/12/2016	2	Yes	Yes
71. Sonoma County	CA	100%	1/12/2013	2	Yes	Yes
72. South San Francisco	CA	100%	11/9/2017	2	N/S	Yes
73. Sunnyvale	CA	100%	9/23/2016	2	Yes	Yes
74. Tiburon	CA	100%	10/16/2018	4	Yes	Yes
75. Union City	CA	100%	2/23/2012	2	Yes	No
76. Walnut Creek	CA	100%	1/30/2014	2	Yes	Yes
77. Windsor	CA	100%	8/15/2017	2	Yes	Yes

= Law requires multi-unit buildings to be 100% smokefree, but the law is not yet fully in effect.

Municipalities with Laws that Partially Restrict Smoking in Multi-Unit Housing:

This table represents communities that have **municipal laws** at the city or county level that **restrict smoking in some private units** of multi-unit housing, but do not require multi-unit buildings to be 100% smokefree.

The trend is now for communities to adopt laws that require multi-unit properties to be 100% smokefree, as listed in the chart above. It is not recommended that communities adopt the types of partial laws represented in the chart below.

Municipalities marked **Some** under "All Units Currently Smokefree?" have some buildings that are required to be 100% smokefree. Often, these laws prohibit smoking in all newly occupied buildings or newly leased units, but either do not address smoking in existing buildings or only apply to a certain percent of units in existing buildings.

Municipalities marked **No** under "All Units Currently Smokefree?" have no buildings required to be 100% smokefree now or in the future. These laws may apply to only a certain percent of units in existing and future buildings, or permit current residents to continue smoking in the building indefinitely (a "grandfather" clause).

Additionally, communities not represented on this list may have local laws that do not address smoking in private units, but restrict smoking in multi-unit housing to a lesser extent, such as by prohibiting smoking in indoor common areas or only on patios and balconies.

Municipality	State	All Units Currently Smokefree?	Min. % of Units Currently Smokefree	Initial Effective Date	Final Effective Date	Min. # of Units	Includes Condos
1. Baldwin Park	CA	Some	80%	6/21/2012	Not Specified	2	Yes
2. Burbank	CA	No	N/S		5/1/2011	N/S	Yes
3. Calabasas	CA	No	N/S		Not Specified	2	No
4. Dublin	CA	No	75%		1/1/2013	16	N/S
5. Fairfax	CA	No	75%		9/1/2012	4	N/S
6. Fremont	CA	Some	N/S	2/1/2017	Not Specified	2	Yes
7. Glendale	CA	Some	N/S	6/27/2013	Not Specified	2	Yes

Municipality	State	All Units Currently Smokefree?	Min. % of Units Currently Smokefree	Initial Effective Date	Final Effective Date	Min. # of Units	Includes Condos
8. Jurupa Valley	CA	Some	N/S		Not Specified	3	No
9. Lafayette	CA	Some	N/S	2/10/2014	Not Specified	3	Yes
10. Loma Linda	CA	No	N/S		Not Specified	2	No
11. Oakley	CA	No	N/S	4/1/2014	4/1/2014	2	Yes
12. Pinole	CA	Some	N/S	5/20/2010	Not Specified	2	Yes
13. Pleasant Hill	CA	Some	N/S	5/5/2010	Not Specified	4	No
14. Santa Monica	CA	Some	N/S	11/22/2012	Not Specified	N/S	Yes
15. Sausalito	CA	Some	80%	2/27/2014	Not Specified	2	Yes
16. South Pasadena	CA	Some	80%	3/3/2011	Not Specified	2	Yes
17. Temecula	CA	No	25%		6/7/2012	10	N/S
18. West Hollywood	CA	Some	N/S	5/19/2021	7/15/2021	3	Yes

Definitions and Explanatory Notes:

Communities on the two charts of municipal laws adopted a municipal ordinance to regulate smoking in all (first chart) or some (second chart) types of multi-unit housing.

= Law will require all multi-unit buildings to be 100% smokefree as of a future date, but currently the law provides partial coverage.

Minimum Percent of Units Currently Smokefree:

The percent of specified multi-unit housing that is currently required to be smokefree:

100%: All units in specified multi-unit housing must be smokefree.

Another stated %: The stated percent of units in specified multi-unit housing must be smokefree.

N/S = Not Specified: The law does not specify the percent of units currently required to be smokefree or the percent of units currently required to be smokefree cannot be determined by how the law is written, such as: applying only to new multi-unit buildings but not to existing multi-unit buildings or designating at certain percentage of units as nonsmoking or limiting smoking to certain buildings or permitting current residents to continue to smoke indefinitely.

Initial Effective Date:

The date when some multi-unit housing must be 100% smokefree. For example, Baldwin Park, CA (marked as Some for *All Units Currently Smokefree*) requires that all newly occupied buildings must be 100% smokefree as of 6/21/2012, which is the Initial Effective Date. Baldwin Park also requires that at least 80% of units in all existing buildings be smokefree. Because existing buildings may never be fully smokefree, the Final Effective Date is "Not Specified."

Final Effective Date:

For communities marked as Yes or Some for All Units Currently Smokefree, the Final Effective Date is when all buildings must be 100% smokefree. For communities marked as No for All Units Currently Smokefree, the Final Effective Date is when the strongest provisions of the law goes into effect.

Not Specified:

The law does not specify when all multi-unit buildings must be completely smokefree, due to provisions such as: law permits current residents to continue smoking indefinitely **or** law applies only to newly constructed buildings **or** law applies only to a certain percent of existing units.

ANR Foundation is actively collecting additional laws. **If you know of local laws that you think should be included on the list**, or want to inquire about additional information on particular laws, please contact the ANR Foundation at info@no-smoke.org or 510-841-3032.

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