

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/DCCID/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 minim[i]s*,” 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.

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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

- 1 World Health Organization. *WHO Report on the Global Tobacco Epidemic, 2019: Offer Help to Quit Tobacco Use*. Geneva: World Health Organization. 2019. Available at: <https://apps.who.int/iris/handle/10665/326043>.
- 2 U.S. Department of Health and Human Services. *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. 2014. Available at: https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.
- 3 Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs — 2014*. 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. 2014. Available at: https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf.
- 4 Campaign for Tobacco-Free Kids. *The Toll of Tobacco in California*. <https://www.tobaccofreekids.org/problem/toll-us/california>. Accessed June 15, 2020.
- 5 Lortet-Tieulent J, Sauer AG, Siegel RL, et al. State-level cancer mortality attributable to cigarette smoking in the United States. *JAMA Intern Med*. 2016;176(12):1792-1798. doi:10.1001/jamainternmed.2016.6530.
- 6 U.S. National Cancer Institute. *A Socioecological Approach to Addressing Tobacco-Related Health Disparities*. National Cancer Institute Tobacco Control Monograph 22. NIH Publication No. 17-CA-8035A. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. 2017. Available at: <https://cancercontrol.cancer.gov/brp/tcrb/monographs/22/index.html>.
- 7 California Tobacco Control Program, California Department of Public Health. *California Tobacco Facts and Figures 2019*. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CATobaccoFactsandFigures2019.pdf>. Accessed June 17, 2020.
- 8 U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke. 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. 2006. Available at: www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm.
- 9 Air Resources Board, California Environmental Protection Agency. *Frequently Asked Questions — Environmental Tobacco Smoke*. Available at: www.arb.ca.gov/toxics/ets/factsheetets.pdf. Accessed June 17, 2020.
- 10 California Identifies Secondhand Smoke as a “Toxic Air Contaminant” [press release]. January 26, 2006. Available at: www.arb.ca.gov/newsrel/nr012606.htm. Accessed June 17, 2020.
- 11 Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. *The Proposition 65 List*. <https://oehha.ca.gov/proposition-65/proposition-65-list>. Accessed June 17, 2020.

- 12 Air Resources Board, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. *Technical Support Document for the Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant: Appendix III*. 2005. Available at <https://ww3.arb.ca.gov/regact/ets2006/app3exe.pdf>. Accessed November 30, 2020.
- 13 Sureda X, Fernández E, López MJ, Nebot M. Secondhand Tobacco Smoke Exposure in Open and Semi-Open Settings: A Systematic Review. *Environ Health Perspect*. 2013;121(7):766-773. doi:10.1289/ehp.1205806.
- 14 Licht AS, Hyland A, Travers MJ, Chapman S. Secondhand Smoke Exposure Levels in Outdoor Hospitality Venues: A Qualitative and Quantitative Review of the Research Literature. *Tob Control*. 2013;22(3):172-179. doi:10.1136/tobacco-control-2012-050493.
- 15 Klepeis NE, Ott WR, Switzer P. Real-time measurement of outdoor tobacco smoke particles. *J Air Waste Manag Assoc*. 2007;57(5):522-534. doi:10.3155/1047-3289.57.5.522.
- 16 Sureda X, Bilal U, Fernandez E, et al. Second-hand Smoke Exposure in Outdoor Hospitality Venues: Smoking Visibility and Assessment of Airborne Markers. *Environ Res*. 2018;165:220-227. doi: 10.1016/j.envres.2018.04.024.
- 17 Kaplan B, Carkoglu A, Ergor G, et al. Evaluation of Secondhand Smoke Using PM2.5 and Observations in a Random Stratified Sample in Hospitality Venues From 12 Cities. *Int J Environ Res Public Health*. 2019;16(8):1381. doi: 10.3390/ijerph16081381.
- 18 Zhang M, Garcia AD, Zamora M, Anderson IA, Jativa DF. Exposure to Secondhand Tobacco Smoke at Airport Terminals. *J Environ Public Health*. 2019;2019:9648761. doi: 10.1155/2019/9648761.
- 19 Repace J. Benefits of Smokefree Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles. *William Mitchell Law Rev*. 2008;34(4):1621-1638. Available at: <https://open.mitchellhamline.edu/wmlr/vol34/iss4/15/>.
- 20 Hwang J, Lee K. Determination of Outdoor Tobacco Smoke Exposure by Distance from a Smoking Source. *Nicotine Tob Res*. 2014;16(4):478-484. doi:10.1093/ntr/ntt178.
- 21 DiGiacomo SI, Jazayeri MA, Barua RS, Ambrose JA. Environmental Tobacco Smoke and Cardiovascular Disease. *Int J Environ Res Public Health*. 2018;16(1):96. doi: 10.3390/ijerph16010096.
- 22 Centers for Disease Control and Prevention (CDC). *CDC Vital Signs—Secondhand Smoke: An Unequal Danger*. February 2015. Available at: www.cdc.gov/vitalsigns/pdf/2015-02-vitalsigns.pdf. Accessed June 11, 2020.
- 23 California Tobacco Control Program, California Department of Public Health. *State Health Officer's Report on E-Cigarettes: A Community Health Threat*. Sacramento, CA. 2015. Available at: www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/Policy/ElectronicSmokingDevices/StateHealthEcigReport.pdf.
- 24 National Academies of Sciences, Engineering, and Medicine. *Public Health Consequences of E-Cigarettes*. 2018. Washington, DC: The National Academies Press. Available at: <https://www.nap.edu/catalog/24952/public-health-consequences-of-e-cigarettes>.
- 25 Fowles J, Barreau T, Wu N. Cancer and Non-Cancer Risk Concerns from Metals in Electronic Cigarette Liquids and Aerosols. *Int J Environ Res Public Health*. 2020;17(6):2146. doi: 10.3390/ijerph17062146.
- 26 U.S. Department of Health and Human Services. *E-Cigarette Use Among Youth and Young Adults: 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. 2016. Available at: https://www.ncbi.nlm.nih.gov.ezp1.lib.umn.edu/books/NBK538680/pdf/Bookshelf_NBK538680.pdf.
- 27 Romberg AR, Miller Lo EJ, Cuccia AF, et al. Patterns of nicotine concentrations in electronic cigarettes sold in the United States, 2013-2018. *Drug Alcohol Depend*. 2019;201:1-7. doi: 10.1016/j.drugalcdep.2019.05.029.
- 28 Cao DJ, Aldy K, Hsu S, et al. Review of Health Consequences of Electronic Cigarettes and the Outbreak of Electronic Cigarette, or Vaping, Product Use-Associated Lung Injury. *J Med Toxicol*. 2020 Apr 16. Doi: 10.1007/s13181-020-00772-w.

- 29 Staudt MR, Salit J, Kaner RJ, Hollmann C, Crystal RG. Altered lung biology of healthy never smokers following acute inhalation of E-cigarettes. *Respiratory Research*. 2018;19:78. doi:10.1186/s12931-018-0778-z.
- 30 Tzortzi A, Teloniatis SI, Matiampa G. et al. Passive exposure to e-cigarette emissions: Immediate respiratory effects. *Tob. Prev. Cessation*. 2018;4(May):18. doi.org/10.18332/tpc/89977.
- 31 Shields PG, Berman M, Brasky TM, et al. A Review of Pulmonary Toxicity of Electronic Cigarettes in the Context of Smoking: A Focus on Inflammation. *Cancer Epidemiol Biomarkers Prev*. 2017;26(8):1175-1191. doi:10.1158/1055-9965.EPI-17-0358.
- 32 Visser WF, Klerx WN, Cremers HWJM, et al. The Health Risks of Electronic Cigarette Use to Bystanders. *Int J Environ Res Public Health*. 2019;16(9):1525. doi: 10.3390/ijerph16091525.
- 33 Bayly JE, Bernat D, Porter L, Choi K. Secondhand Exposure to Aerosols from Electronic Nicotine Delivery Systems and Asthma Exacerbations Among Youth With Asthma. *Chest*. 2019;155(1):88-93. doi: 10.1016/j.chest.2018.10.005.
- 34 Tzortzi A, Teloniatis S, Matiampa G, et al. Passive Exposure of Non-Smokers to E-Cigarette Aerosols: Sensory Irritation, Timing and Association With Volatile Organic Compounds. *Environ Res*. 2020;182:108963. doi: 10.1016/j.envres.2019.108963.
- 35 Cullen KA, Ambrose BK, Gentzke AS, et al. Notes from the field: use of electronic cigarettes and any tobacco product among middle and high school students — United States, 2011–2018. *MMWR Morb Mortal Wkly Rep*. 2018;67(45):1276-1277. doi: 10.15585/mmwr.mm6745a5.
- 36 Lin C, Baiocchi M, Halpern-Felsher B. Longitudinal trends in e-cigarette devices used by Californian youth, 2014–2018. *Addict Behav*. 2020;108:106459. doi: 10.1016/j.addbeh.2020.106459.
- 37 California Environmental Protection Agency. *Evidence on the Carcinogenicity of Cannabis Smoke*. Sacramento, CA: California Environmental Protection Agency, Office of Environmental Health Hazard Assessment, Reproductive and Cancer Hazard Branch. 2009. Available at: <https://oehha.ca.gov/media/downloads/proposition-65/chemicals/finalmjsmokehid.pdf>.
- 38 Herrmann, ES, Cone, EJ, Mitchell, JM, et al. Non-Smoker Exposure to Secondhand Cannabis Smoke II: Effect of Room Ventilation on the Physiological, Subjective, and Behavioral/Cognitive Effects. *Drug Alcohol Depend*. 2015;151:194–202. doi: 10.1016/j.drugalcdep.2015.03.019.
- 39 Holitzki H, Dowsett LE, Spackman E, Noseworthy T, Clement F. Health effects of exposure to second- and third-hand marijuana smoke: a systematic review. *CMAJ Open*. 2017;5(4):E814–E822. doi:10.9778/cmajo.20170112.
- 40 Community Preventive Services Task Force. *Tobacco Use and Secondhand Smoke Exposure: Smoke-Free Policies*. 2012. Available at: <https://www.thecommunityguide.org/findings/tobacco-use-and-secondhand-smoke-exposure-smoke-free-policies>.
- 41 Young W, Karp S, Bialick P, et al. Health, Secondhand Smoke Exposure, and Smoking Behavior Impacts of No-Smoking Policies in Public Housing, Colorado, 2014–2015. *Prev Chronic Dis*. 2016;13:E148. doi: 10.5888/pcd13.160008.
- 42 Hollar TL, Cook N, Quinn D, Phillips T, DeLucca M. Smoke-free multiunit housing policies show promise in reducing secondhand smoke exposure among racially and ethnically diverse, low-income seniors. *J Immigr Minor Health*. 2017;19(6):1281–1289. doi.org/10.1007/s10903-016-0430-2.
- 43 Sureda X, Martinez-Sanchez JM, Fu M, et al. Impact of the Spanish Smoke-Free Legislation on Adult, Non-Smoker Exposure to Secondhand Smoke: Cross-Sectional Surveys Before (2004) and After (2012) Legislation. *PLoS One*. 2014;9(2):e89430. doi: 10.1371/journal.pone.0089430.
- 44 Mayne SL, Widome R, Carroll AJ, et al. Longitudinal Associations of Smoke-Free Policies and Incident Cardiovascular Disease: CARDIA Study. *Circulation*. 2018;138(6):557–566. doi: 10.1161/CIRCULATIONAHA.117.032302.
- 45 World Health Organization. *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Volume 89: Smokeless Tobacco and Some Tobacco-Specific N-Nitrosamines*. Lyon (France): World Health Organization, International Agency for Research on Cancer. 2007. Available at: <https://publications.iarc.fr/107>.

- 46 Inoue-Choi M, Shiels MS, McNeel TS, et al. Contemporary Associations of Exclusive Cigarette, Cigar, Pipe, and Smokeless Tobacco Use With Overall and Cause-Specific Mortality in the United States. *JNCI Cancer Spectr.* 2019;3(3):pkz036. doi: 10.1093/jncics/pkz036.
- 47 Arefalk G, Hambraeus K, Lind L, Michaëlsson K, Lindahl B, Sundström J. Discontinuation of smokeless tobacco and mortality risk after myocardial infarction. *Circulation.* 2014;130(4):325–32.
- 48 Rostron BL, Chang JT, Anic GM, et al. Smokeless Tobacco Use and Circulatory Disease Risk: A Systematic Review and Meta-Analysis. *Open Heart.* 2018;5(2):e000846. doi: 10.1136/openhrt-2018-000846.
- 49 Baba S, Wikström A-K, Stephansson O, Cnattingius S. Influence of snuff and smoking habits in early pregnancy on risks for stillbirth and early neonatal mortality. *Nicotine Tob Res.* 2014;16(1):78–83. doi:10.1093/ntr/ntt117.
- 50 Gould GS, Havard A, Lim L, The Psanz Smoking in Pregnancy Expert Group, Kumar R. Exposure to Tobacco, Environmental Tobacco Smoke and Nicotine in Pregnancy: A Pragmatic Overview of Reviews of Maternal and Child Outcomes, Effectiveness of Interventions and Barriers and Facilitators to Quitting. *Int J Environ Res Public Health.* 2020;17(6):2034. doi: 10.3390/ijerph17062034.
- 51 Novotny TE, Lum K, Smith E, Wang V, Barens R. Cigarettes Butts and the Case for an Environmental Policy on Hazardous Cigarette Waste. *Int J Environ Res Public Health.* 2009;6(5):1691-1705. doi: 10.3390/ijerph6051691.
- 52 Novotny TE, Aguinaga Bialous S, Burt L, et al. The environmental and health impacts of tobacco agriculture, cigarette manufacture and consumption. *Bull World Health Organ.* 2015;93(12):877-880. doi: 10.2471/BLT.15.152744.
- 53 Smith EA, Novotny TE. Whose Butt Is It? Tobacco Industry Research About Smokers and Cigarette Butt Waste. *Tob Control.* 2011;20(Suppl 1):i2-9. doi: 10.1136/tc.2010.040105.
- 54 Rath JM, Rubenstein R a, Curry LE, Shank SE, Cartwright JC. Cigarette litter: Smokers' attitudes and behaviors. *Int J Environ Res Public Health.* 2012;9(6):2189–203. doi:10.3390/ijerph9062189.
- 55 Schultz PW, Bator RJ, Large LB, Bruni CM, Tabanico JJ. Littering in Context: Personal and Environmental Predictors of Littering Behavior. *Environ Behav.* 2013;45(1):35-39. doi: 10.1177/0013916511412179.
- 56 Ocean Conservancy, International Coastal Cleanup. The Beach and Beyond — 2019 Report. Washington, DC: Ocean Conservancy. 2019. Available at: <https://oceanconservancy.org/wp-content/uploads/2019/09/Final-2019-ICC-Report.pdf>.
- 57 Hardy SD, Bartolotta J. Plastic cigar tips debris: Exploring use and disposal issues for Lake Erie beaches. *Marine Pollut Bull.* 2018;137:262-266. doi: 10.1016/j.marpolbul.2018.10.020.
- 58 Mock J, Hendlin YH. Notes From the Field: Environmental Contamination From E-cigarette, Cigarette, Cigar, and Cannabis Products at 12 High Schools — San Francisco Bay Area, 2018-2019. *MMWR Morb Mortal Wkly Rep.* 2019;68(40):897-899. doi: 10.15585/mmwr.mm6840a4.
- 59 Public Health Law Center. *Commercial Tobacco, Health, and the Environment.* Saint Paul, MN: Public Health Law Center, Mitchell Hamline School of Law. 2019. Available at: <https://publichealthlawcenter.org/sites/default/files/resources/Commerical-Tobacco-Health-and-the-Environment.pdf>.
- 60 Hendlin YH. Alert: Public Health Implications of Electronic Cigarette Waste. *Am J Public Health.* 2018;108(11):1489-1490. doi: 10.2105/AJPH.2018.304699.
- 61 Public Health Law Center. *Disposing of E-Cigarette Waste: FAQ for Schools and Others.* Saint Paul, MN: Public Health Law Center, Mitchell Hamline School of Law. 2019. Available at: <https://www.publichealthlawcenter.org/sites/default/files/resources/Disposing%20of%20E-Cigarette%20Waste%20Publication-FINAL.pdf>.
- 62 Resource Conservation and Recovery Act; EPA Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine, 84 Fed. Reg. § 5816 (August 21, 2019) (to be codified at 40 C.F.R. pt. 266(p)).

- 63 Gummin DD, Mowry JB, Spyker DA, et al. 2018 Annual Report of the American Association of Poison Control Centers' National Poison Data System (NPDS): 36th Annual Report. *Clin Toxicol.* 2019;57(12):1220-1413. doi: 10.1080/15563650.2019.1677022.
- 64 Wang B, Liu S, Peroskie A. Poisoning Exposure Cases Involving E-Cigarettes and E-Liquid in the United States, 2010-2018. *Clin Toxicol.* 2020;58(6):488-494. doi: 10.1080/15563650.2019.
- 65 Lewander W, Wine H, Carnevale R, et al. Ingestion of cigarettes and cigarette butts by children — Rhode Island, January 1994–July 1996. *Morb Mortal Wkly Rep.* 1997;46(6):125-128. Available at: <https://www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm>.
- 66 Chang JT, Rostron BL. Electronic Nicotine Delivery System (ENDS) Liquid Nicotine Exposure in Young Children Presenting to US Emergency Departments, 2018. *Inj Epidemiol.* 2019;6:43. doi: 10.1186/s40621-019-0219-6.
- 67 Cal. Lab. Code § 6404.5.
- 68 ChangeLab Solutions. *Left Behind in the Smoke: How Exemptions in California's Smokefree Workplace Act Affect Health Inequities.* Oakland, CA: ChangeLab Solutions. 2019. Available at: https://www.changelabsolutions.org/sites/default/files/2019-06/LeftBehindInTheSmoke_FINAL_20190626.pdf.
- 69 Max W, Sung H-Y, Shi Y. Exposure to Secondhand Smoke at Home and at Work in California. *Public Health Reports.* 2012;127(1):81-88. doi:10.1177/003335491212700109.
- 70 Holmes LM, Ling PM. Workplace secondhand smoke exposure: a lingering hazard for young adults in California. *Tobacco Control.* 2017;26(e1):e79-e84. doi:10.1136/tobaccocontrol-2016-052921.
- 71 Cal. Lab. Code § 6404.5(h).
- 72 Cal. Health & Safety Code § 104495.
- 73 Cal. Gov. Code §§ 7596–7598.
- 74 Cal. Ed. Code § 89031.
- 75 California Tobacco Control Program. *California Tobacco Facts and Figures 2018.* Sacramento, CA: California Department of Public Health. 2018. Available at: <https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CATobaccoFactsFigures2018.pdf>.
- 76 Unger JB, Barker D, Baezconde-Garbanati L, Soto, DW, Sussman, S. Support for electronic cigarette regulations among California voters. *Tob Control.* 2017;26(3):334-337. doi:10.1136/tobaccocontrol-2016-052918.
- 77 Americans for Nonsmokers' Rights Foundation. *States and Municipalities with Laws Regulating Use of Electronic Cigarettes.* Available at: <https://no-smoke.org/wp-content/uploads/pdf/ecigslaws.pdf>. Accessed June 11, 2020.
- 78 Americans for Nonsmokers' Rights Foundation. *Municipalities with Smokefree Park Laws.* Available at: <https://no-smoke.org/wp-content/uploads/pdf/SmokefreeParks.pdf>. Accessed June 11, 2020.
- 79 Americans for Nonsmokers' Rights Foundation. *Municipalities with Smokefree Beach Laws.* Available at: <https://no-smoke.org/wp-content/uploads/pdf/SmokefreeBeaches.pdf>. Accessed June 11, 2020.
- 80 Americans for Nonsmokers' Rights Foundation. *Municipalities with Smokefree Outdoor Dining and Bar Patio Laws.* Available at: <https://no-smoke.org/wp-content/uploads/pdf/SmokefreeOutdoorDining.pdf>. Accessed June 11, 2020.
- 81 Americans for Nonsmokers' Rights Foundation. *Municipalities with Smokefree Outdoor Public Transit Waiting Area Laws.* Available at: <https://no-smoke.org/wp-content/uploads/pdf/SmokefreeTransitStops.pdf>. Accessed June 11, 2020.
- 82 Public Health Law Center. *There Is No Constitutional Right to Smoke or Toke.* Saint Paul, MN: Public Health Law Center. 2019. Available at: <https://publichealthlawcenter.org/sites/default/files/resources/No-Constitutional-Right-Smoke-Toke-2019.pdf>.