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**Comprehensive Smokefree [and Tobacco Free] Places Ordinance**

**A Model California Ordinance**

**Regulating Smoking (and Tobacco Use)**

**in Indoor and Outdoor Areas**

with Annotations

Updated September 2018

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Developed by ChangeLab Solutions

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## Introduction

ChangeLab Solutions developed this Model Ordinance to help California cities and counties limit tobacco use and unwanted exposure to secondhand smoke both indoors and outdoors. As the dangers of tobacco use and secondhand smoke become increasingly well-documented, one of the most important steps a community can take to protect and improve its residents’ health is to create more smokefree and tobacco-free spaces.

Almost all indoor places of employment in California are now required to be smokefree under state law. The Model Ordinance can assist California cities and counties in making *all* indoor workplaces smokefree by eliminating the few remaining exceptions contained in California Labor Code section 6404.5.

In addition, the Model Ordinance is designed to help local jurisdictions create smokefree *outdoor* workplaces to protect the health of employees and the public in these environments. The Model Ordinance is designed to cover all outdoor spaces, but it is fully customizable to fit the specific needs of an individual community. By addressing outdoor tobacco use, this Model Ordinance also helps limit tobacco-related waste and promotes Clean Water Act compliance for storm sewers.

This 2018 edition of the Model Ordinance will also help local jurisdictions address a significant change in state law—the legalization of cannabis for adult use. Although it is now legal for adults to use non-medicinal cannabis, state law clearly limits where one can smoke it. Specifically, cannabis cannot be smoked in public places or anywhere smoking tobacco is prohibited, whether by state or local law. Thus, the Model Ordinance regulates cannabis smoking—indoors and out—wherever tobacco smoking is prohibited.

To assist cities and counties in creating smokefree and tobacco-free places, this Model Ordinance includes

* extensive findings documenting the health risks associated with tobacco use and exposure to secondhand tobacco smoke and the aerosol produced by electronic smoking devices;
* prohibitions on smoking in all enclosed workplaces, including the few indoor places of employment not covered by the state smokefree workplace law;
* prohibitions on smoking in outdoor places including outdoor places of employment such as construction sites and restaurant patios, parks and other recreational areas, bus stops, public event sites, and outdoor common areas of multiunit housing;
* optional language that can be included to prohibit *all* tobacco use (including the use of smokeless tobacco, for instance) in indoor and outdoor places;
* requirements for posting No Smoking signs; and
* robust enforcement mechanisms, including the option for private individuals and organizations to enforce the provisions of this ordinance.

While state law only recently expanded its definition of tobacco products to specifically incorporate electronic smoking devices (eg, e-cigarettes), the Model Ordinance has included electronic smoking devices within its definition of “Tobacco Products” since 2015. Having this broad definition ensures that the use of electronic smoking devices is regulated in the same manner as conventional tobacco products.

Some of the comments in the Model Ordinance describe ways to narrow the scope of the smoking restrictions, should that be desired. In addition, optional language is available to broaden the scope of the ordinance to restrict not only smoking but *all* tobacco use (eg, smokeless tobacco).

The Model Ordinance offers a variety of options. In some instances, blanks (eg, [ \_\_\_\_ ] ) prompt you to customize the language to fit your community’s needs. In other cases, the ordinance offers you a choice of options (eg, [ choice one / choice two ] ). Some of the options are followed by a comment that describes the legal provisions in more detail. Some degree of customization is always necessary to make sure that the ordinance is consistent with a community’s existing laws. Your city attorney or county counsel will likely be the best person to check this for you.

ChangeLab Solutions also has developed a separate [Smokefree Housing Model Ordinance](http://changelabsolutions.org/publications/model-ord-smokefree-housing) to create smokefree multiunit housing by limiting smoking inside units and common areas. Some of the areas covered by that ordinance are also included in this Model Ordinance.

This introduction section summarizes our nonpartisan analysis and study of the public health problem surrounding tobacco use. It also provides a rationale for regulations on the use of tobacco products as one possible policy intervention. It is intended for broad distribution to the public for the purpose of education and dissemination of information. Our presentation of this Model Ordinance, including this introduction, is based on our independent and objective analysis of the relevant law, evidence, and available data, and should enable you to draw your own opinions and conclusions about the merits of this Model Ordinance. You should consider all the evidence and decide for yourself which approach is appropriate for your local jurisdiction. If your community would like to adopt a more customized approach, it can combine aspects of ChangeLab Solutions’ other ordinances with this ordinance. For example, we can provide language to prohibit smoking in some or all units in multiunit housing. If you have questions about how to adapt this ordinance for your community, please contact ChangeLab Solutions through our website at [*www.changelabsolutions.org/tobaccoquestions*](http://www.changelabsolutions.org/tobaccoquestions)*.*

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AN ORDINANCE OF THE [ CITY / COUNTY ] OF [ \_\_\_\_ ]   
AMENDING THE [ \_\_\_\_ ] MUNICIPAL CODE TO REGULATE  
SMOKING [ AND TOBACCO PRODUCT USE ]

The [ City Council of the City / Board of Supervisors of the County ] of [ **\_\_\_\_**] does ordain as follows:

**comment:** This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

**SECTION I.** [ See **Appendix A: Findings** ]

**comment:** The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal code. An ordinance based on this Model Ordinance should include findings of fact—data, statistics, relevant epidemiological information, for instance—that support the purposes of this ordinance, as well as any legal precedent that directly supports the ordinance. 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” on page 26. 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 / Section ] of the [ *Insert Jurisdiction Name* ] Municipal Code is hereby amended to read as follows:

**Sec. [ \_\_\_\_ (\*1) ]. DEFINITIONS.** The following words and phrases, whenever used in this [ article / chapter ], shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) “Business” means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes. A Business also includes owner-operated entities with no Employees in which the owner is the only worker.

(b) “Cannabis” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

(c) “Common Area” means every Enclosed Area and Unenclosed Area of a Multiunit Residence that residents of more than one Unit of that Multiunit Residence are entitled to enter or use, including, but not limited to, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

**comment:** California Labor Code section 6404.5 (the state smokefree workplace law) prohibits Smoking in indoor Common Areas if the Multiunit Residence has Employees, such as maintenance workers, property managers, or others who work on site.   
  
The definition of Common Area in the Model Ordinance does not include balconies, patios, or decks associated with individual Units because these are not shared areas. Balconies, patios, and decks are included in the definition of Unit.

(d) “Dining Area” means any 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.

**comment:** This definition covers all Dining Areas, indoors and out, but Section [\_\_\_\_(\*3)(a)] of this Model Ordinance specifically prohibits Smoking in outdoor Dining Areas, because Smoking in indoor Dining Areas is already prohibited by state law (Labor Code section 6404.5).

(e) “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.

**comment:** This definition makes clear that Employees include volunteers, contract employees, and salaried staff.

(f) “Employer” means any Business or Nonprofit Entity that retains the service of one or more Employees.

(g) “Enclosed Area” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has

(1) any type of overhead cover, whether or not that cover includes vents or other openings, and at least [ three (3) ] walls or other vertical constraint to airflow, including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or

(2) [ four (4) ] walls or other vertical constraints to airflow, including, but not limited to, vegetation, that exceed [ six (6) ] feet in height, whether or not those boundaries include vents or other openings.

**comment:** This definition is narrow so that most areas will be considered Unenclosed Areas and therefore subject to the outdoor Smoking restrictions in this ordinance. (The definition of Unenclosed Area includes all areas that are not Enclosed Areas.)  
  
The number of walls and the height threshold can be customized to meet the needs of your community, and changing these numbers will affect the scope of the ordinance. For instance, reducing the number of walls in this definition would broaden the definition of Enclosed Area and narrow the definition of Unenclosed Area, thereby limiting the scope of the outdoor Smoking restrictions in this ordinance.  
  
An area with partial overhead covering would be analyzed under subparagraph (1), whereas areas that are completely uncovered would be analyzed under subparagraph (2).   
  
It can be difficult to apply Labor Code section 6404.5 to areas that are surrounded by lattice, hedges, and other nonsolid structures. For purposes of this ordinance, any type of vertical physical constraint to airflow, regardless of composition, constitutes an “other vertical constraint to airflow” for application of this definition.   
  
NOTE: If the municipal code already has Smoking restrictions, it may contain a definition of “enclosed.” Review the code and make any necessary modifications to existing definitions and/or operative provisions to ensure consistency with this new definition.

(h) “Multiunit Residence” means property containing two (2) or more Units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. [Multiunit Residences do not include the following:

(1) a hotel or motel that meets the requirements of California Civil Code section 1940(b)(2);

(2) a mobile home park;

(3) a campground;

(4) a marina or port;

(5) a single-family home, except if used as a health care facility subject to licensing requirements; and

(6) a single-family home with a detached or attached in-law or second Unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2, or an ordinance of the [ City / County ] adopted pursuant to those sections, except if the single-family home or in-law/second unit is used as a health care facility subject to licensing requirements.].

**comment:** This definition is intended to be used in conjunction with the definition of Unit in this Model Ordinance, which makes clear that this term is limited to dwelling spaces.  
  
Because the definition of Unit is broad and includes all types of dwelling places—from rooms in a hotel to tents at a campground—a community may want to limit the types of dwelling places covered by this Model Ordinance. The optional language provides examples of the types of exceptions that communities are likely to consider. Single-family residences are suggested as an exemption because the definition of Unit in this ordinance includes individual bedrooms in a single-family home. Thus, a two-bedroom free-standing house would be a Multiunit Residence per the definitions in this ordinance, unless the exemption is included.  
  
Note that the definition of Multiunit Residence without any exemptions would include the following types of dwelling places: apartments, condominiums, townhomes, co-ops, and co-housing; affordable housing (for seniors, for disabled tenants, for Section 8, etc.); long-term health care facilities, assisted living facilities, hospitals, and family support facilities; hotels, motels, single room occupancy (SRO) facilities, dormitories, and homeless shelters; mobile home parks, campgrounds, marinas, and ports; single-family homes and single-family homes with an in-law Unit.   
  
The U.S. Department of Housing and Urban Development requires public housing agencies to adopt a policy prohibiting Smoking in all indoor areas, including residential units, and outside spaces within 25 feet of indoor areas by July 31, 2018.

(i) “Nonprofit Entity” means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association, or other entity created for charitable, religious, philanthropic, educational, political, social, or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a Nonprofit Entity within the meaning of this [ article / chapter ].

**comment:** This definition is broader than the IRS designation of a nonprofit organization in order to cover more informal groups and associations.

(j) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

**comment:** This definition incorporates numerous entities, including Business, Employer, Nonprofit Entity, landlord, and individual. In addition, it includes the City or County.   
  
The municipal code may contain a definition of “person”; review any existing definition of “person” in the municipal code to determine whether to include this definition in your ordinance.   
  
Note: If Section [(\*6)(g)]—private citizen enforcement—is included in the ordinance, keep this specific definition of “Person.”

(k) “Place of Employment” means any area under the legal or de facto control of an Employer that an Employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation.

(l) “Public Place” means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

**comment:** This is a very broad definition, intended as a “catchall” to include all public areas that do not fall within any other definition in this Model Ordinance.   
  
This definition is also broad enough to include all streets and sidewalks, even when they are not being used as an event site or to provide a service to the public. Section [\_\_\_\_(\*3(a)(6)] contains optional language that can be used to exclude streets and sidewalks from most Smoking restrictions.   
  
Note: Although state law prohibits Smoking of Cannabis in “any public place,” “public place” is not defined within the statute. While this phrase is generally understood to include places open and accessible to the public, it may not be as broad or expansive as the definition of Public Place used in this Model Ordinance.

(m) “Reasonable Distance” means a distance of [ twenty-five (25) ] feet in any direction from an area in which Smoking is prohibited.

**comment:** The number of feet constituting Reasonable Distance can be changed to ensure a sufficient buffer from drifting Smoke. In addition, the municipal code may contain a definition of “reasonable distance.” Review any existing definition of “reasonable distance” in the municipal code to determine whether revisions to the code may be necessary to include this measurable definition in your ordinance.

(n) “Recreational Area” means any area [ , including streets and sidewalks, ] that is [ publicly or privately owned / owned, controlled, or used by the [ City / County of \_\_\_\_\_\_ ] and 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, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, amusement parks, and beaches.

**comment:** This definition can apply to all recreational areas that are open to the general public, whether on public or private land. If the community wants to limit the reach of the ordinance to include only publicly owned or operated recreational facilities, then it should select the phrase “*owned, controlled or used by the City / County of* **\_\_\_\_.***”*

This definition can also be expanded to encompass streets and sidewalks that are used as Recreational Areas by adding the optional bracketed language “*including streets and sidewalks.*”

This definition includes all Recreational Areas, indoors and out, but Section [\_\_\_\_(\*3)(a)] of this Model Ordinance prohibits Smoking only in outdoor Recreational Areas because the state smokefree workplace law (Labor Code section 6404.5) already prohibits smoking inside places of employment. This includes indoor Recreational Areas with employees, such as enclosed roller skating rinks and bowling alleys.

(o) “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 adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.

**comment:** This definition includes all Service Areas, indoors and out, but Section [\_\_\_\_(\*3)(a)] of this Model Ordinance prohibits Smoking only in outdoor Service Areas because the state smokefree workplace law already prohibits smoking in indoor Service Areas with employees.

(p) “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine *and* the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, vapors from an electronic device, and Cannabis smoke.

**comment:** Proposition 64 was a 2016 ballot initiative that legalized the use of Cannabis for persons aged 21 years or older. Like many ballot initiatives, Proposition 64 created ambiguities in its interpretation and implementation. Some interpretations regarding the regulation of Cannabis use at the local level may carry legal risk. Communities should consult with their city attorney or county counsel to determine the best course of action for their jurisdiction. Please contact ChangeLab Solutions for more information about the regulation of Cannabis in local smokefree ordinances.

**comment:** This is a special definition that differs from the common understanding of what “smoke” is. For example, smoke from a fireplace or a barbecue grill is not “Smoke” for the purposes of this ordinance because the smoke generated by those activities is not produced for the purpose of inhalation. The limitation placed on “Smoke” by this definition is important to prevent unintended consequences, such as inadvertently prohibiting the burning of incense or use of barbecue grills.

At the same time, this definition is designed to be broad enough to cover any emissions released into the air as a result of combustion or heating, so long as the purpose of the combustion or heating is to inhale the byproduct. By clarifying that the term “Smoke” applies to not just solid particles but also vapor and gas, this definition covers products such as electronic cigarettes, electronic hookahs, etc.

(q) “Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic device, or plant product, using any other method or device that delivers nicotine or other substances to a person.

(r) “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.

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 drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

**comment:** This definition is written broadly to include nonconventional tobacco and nicotine products, such as electronic smoking devices, nicotine gel, and nicotine lollipops, but without interfering with the FDA’s mission of approving safe and effective medical products, such as nicotine patches and other nicotine cessation products.

(s) “Unenclosed Area” means any area that is not an Enclosed Area.

**comment:** This definition establishes the scope of the ordinance very broadly, and includes all areas that are not defined as Enclosed Areas.

(t) “Unit” means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. “Unit” includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy (“SRO”) facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit.

**comment:** This definition is intentionally extremely broad. It is designed to capture all conceivable “dwelling spaces” as the examples illustrate. However, due to the design of this model ordinance, any limitations on the types of housing covered by the ordinance should be added to the defined term “Multiunit Residence” and *not to the definition of “Unit.”* For example, some “mobile homes” in mobile home parks may be included in this definition and even cited in the examples, but nevertheless, “mobile homes” can be specifically excluded from the ordinance under the definition of “Multiunit Residence.”

**Sec. [ \_\_\_\_ (\*2) ]. PROHIBITION OF SMOKING [ AND TOBACCO PRODUCT USE ] IN ENCLOSED AREAS.**

(a) Smoking [ and the use of Tobacco Products ] is prohibited in the Enclosed Areas of the following places within the [ City / County of **\_\_\_\_** ]:

**comment:** This provision prohibits Smoking (which is defined to include the use of both combustible Tobacco Products and electronic smoking devices) in all Enclosed Areas. The optional language would also prohibit the use of non-combustible Tobacco Products, such as snus and chewing tobacco, in those same places, making the Enclosed Areas entirely tobacco-free.

(1) Places of Employment;

(2) Public Places; and

(3) Common Areas of Multiunit Residences.

**comment:** California Labor Code section 6404.5 (the state smokefree workplace law) may already prohibit Smoking in indoor Common Areas if the Multiunit Residence has Employees, such as maintenance workers, property managers, or others who work on site.

(b) Smoking [ and the use of Tobacco Products ] is prohibited by this [ article / chapter ] in all Enclosed Areas exempted by the California smokefree workplace law (Labor Code section 6404.5(d), as that section may be amended from time to time) [ except as provided below ].

**comment:** This provision clarifies that Smoking is prohibited in all workplaces exempt from the state smokefree workplace law, unless a community adopts some of the optional language below. It also contains optional language that would prohibit the use of non-combustible Tobacco Products in those same locations.

[ (1) Smoking is not restricted by this subsection in up to [ ten percent (10%) ] of guest room accommodations in a hotel, motel, or similar transient lodging establishment that meets the requirements of California Civil Code section 1940(b)(2) if the hotel or motel permanently designates particular guest rooms as nonsmoking rooms such that [ ninety percent (90%) ] or more of guest rooms are permanently nonsmoking, and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent “No Smoking” signage shall be placed in nonsmoking guest rooms. ]

**comment:** This optional language is only for those communities that do not want to require 100 percent smokefree hotels or motels.

[ (2) Smoking inside a Tobacco Shop is not prohibited by this subsection if: (a) the Tobacco Shop does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises; (b) the Tobacco Shop prohibits minors from entering the store at all times; and (c) the premises of the Tobacco Shop is an independent freestanding building unattached to any other building, establishment, or use. For the purposes of this exception, “Tobacco Shop” means any tobacco retailer that derives more than [ seventy-five percent (75%) ] of gross sales receipts from the sale or exchange of Tobacco Products and tobacco paraphernalia. ]

**comment:** This optional language is provided for communities that wish to permit Smoking inside a very small subset of *bona fide* Tobacco Shops that don’t allow any food or drink to be consumed inside or don’t share walls with other establishments or residential property. It would apply to Tobacco Shops that sell conventional Tobacco Products as well as stores that sell emerging Tobacco Products, like vape lounges.

Note that *reducing* the percentage of gross sales receipts required *increases* the number of retailers able to invoke this exception and legally permit Smoking indoors.

[ (3) Smoking in a theatrical production by the actors is not prohibited by this subsection if Smoking is an integral part of the story, and the use of a fake, prop, or special effect cannot reasonably convey the idea of Smoking in an effective way to a reasonable member of the anticipated audience. ]

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

**comment:** This section prohibits Smoking in a broad array of outdoor areas. If a community wants to prohibit the use of all Tobacco Products (including those that do not produce Smoke, such as chewing tobacco and snus) in addition to Smoking, then it should include the optional bracketed text referring to the use of Tobacco Products each time Smoking is referenced in the ordinance.

(a) Smoking [ and the use of Tobacco Products ] is prohibited in the Unenclosed Areas of the following places within the [ City / County of **\_\_\_\_** ]:

(1) Recreational Areas;

(2) Service Areas;

(3) Dining Areas;

(4) Places of Employment;

(5) Common Areas of Multiunit Residences [ , provided, however, that a Person with legal control over a Common Area may designate a portion of the Unenclosed Area of the Common Area as a designated Smoking area if the area:

**comment:** The bracketed optional language would permit landlords or property managers, for example, to locate a designated Smoking area in the outdoor portion of the Common Area of a Multiunit Residence. By allowing for an outdoor Smoking area, residents will have a place to go where they will not expose their family members or other residents to Smoke.

(i) is located a Reasonable Distance from any Unit or Enclosed Area where Smoking is prohibited by this [ article / chapter ] or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a Person with legal control over the property. In the case of a nonsmoking area created by agreement or designation, this provision does not apply unless the Person designating the Smoking area has actual knowledge of, or has been given notice of, the agreement or designation. A Person with legal control over a designated Smoking area may be obliged to modify, relocate, or eliminate it as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established;

**comment:** This clause limits where a Smoking area can be located to prevent drifting Smoke from entering smokefree areas. As written, it includes areas on neighboring property that are designated as nonsmoking by contract (eg, a smokefree lease term for a rental Unit next to, but not a part of, the Multiunit Residence) and areas on neighboring property designated by a property owner or lessee as nonsmoking (eg, a neighboring Business).

(ii) does not include, and is a Reasonable Distance from, Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, school campuses, and sandboxes;

(iii) is no more than [ ten percent (10%) ] of the total Unenclosed Area of the Multiunit Residence for which it is designated;

(iv) has a clearly marked perimeter;

(v) is identified by conspicuous signs;

(vi) is completely within an Unenclosed Area; and

(vii) does not overlap with any Enclosed or Unenclosed Area in which Smoking is otherwise prohibited by this [ article / chapter ] or other provisions of this code, state law, or federal law ];

(6) Other Public Places [ , when being used for a public event including, but not limited to, a farmers market, parade, craft fair, festival, or any other event open to the general public / , provided that Smoking is permitted on streets and sidewalks used only as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this [ article / chapter ] or other law ].

**comment:** This is a very broad restriction, which can capture all Public Places that are not otherwise specifically defined in the ordinance. If a community would like to limit the Smoking restrictions to Public Places that are being used as a public event site, it should include the single-underlined optional language. Your community may wish to tailor the public event description in this section to include and/or cross-reference any existing local permit ordinance requirements.

This definition of Public Place is also broad enough to cover streets and sidewalks, even when those areas are not used as an event site or to provide a service to the public. If your community does not want such a broad restriction, include the double-underlined optional language. Regardless of which option you include in your ordinance, Smoking on some streets and sidewalks will be restricted by the ordinance if those areas are within the Reasonable Distance requirement or subject to another nonsmoking law.

If you would like to further customize the Smoking restrictions in your community (such as restricting Smoking in certain commercial districts or establishing designated Smoking areas), include the necessary language in this subsection. Please contact ChangeLab Solutions for assistance in drafting language to fit the needs of your community.

Note: Although state law prohibits smoking of Cannabis in “any public place,” there is no definition of this phrase in the state statute. While this provision is generally understood to include places open and accessible to the public, it may not be as broad or expansive as the definition of Public Place used in this Model Ordinance.

(b) Nothing in this [ article / chapter ] prohibits any Person, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking [ and Tobacco Product use ] on any part of such property, even if Smoking [ or the use of Tobacco Products ] is not otherwise prohibited in that area.

[ (c) The [ director of ] or his/her 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, Employers, and Nonprofit Entities about compliance. However, lack of receiving or participating in such education program shall not be a defense to a violation of this [ article / chapter ]. ]

**comment:** This optional provision would require that the city or county provide education to those affected by this ordinance. You should identify which government official will be in charge of this program.

### **Sec. [ \_\_\_\_ (\*4) ]. REASONABLE SMOKING DISTANCE REQUIRED.**

(a) Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited [ , except while the Person Smoking is actively passing on the way to another destination ].

**comment:** This creates a buffer zone around Enclosed smokefree areas, with the bracketed language allowing someone to smoke only if the smoker is passing through the zone.

(b) Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any Unenclosed Areas in which Smoking is prohibited under Sec. [ \_\_\_\_ (\*3) ] of this [ article / chapter ], except while the Person Smoking is actively passing on the way to another destination.

**comment:** This creates a buffer zone around Unenclosed smokefree areas, allowing someone to smoke only if the smoker is passing through the zone.

(c) The prohibitions in subdivisions (a) and (b) shall not apply to Unenclosed Areas of private residential properties that are not Multiunit Residences.

### **Sec. [ \_\_\_\_ (\*5) ]. OTHER REQUIREMENTS AND PROHIBITIONS.**

(a) No Person, Employer, or Nonprofit Entity shall knowingly permit Smoking [ or the use of Tobacco Products ] in an area which is under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking [ or the use of Tobacco Products ] is prohibited by law.

**comment:** This provision makes anyone who is in control of an area responsible for any Smoking in violation of this and other smokefree laws. Thus, enforcement actions can be taken against a Business, landlord, Employer, or Nonprofit Entity, in addition to the individual Tobacco Product user, who or which knowingly breaks the law.

(b) No Person, Employer, or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as ashtrays or ash cans, within an area under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking [ or the use of Tobacco Products ] is prohibited by law, including, without limitation, within a Reasonable Distance required by this [ article / chapter ] from any area in which Smoking [ or the use of Tobacco Products ] is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of Smoking [ or the use of Tobacco Products ] in violation of any provision of this [ article / chapter ].

(c) No Person shall dispose of used Smoking or Tobacco Product waste within the boundaries of an area in which Smoking [ or Tobacco Product use ] is prohibited, including within any Reasonable Distance required by this [ article / chapter ].

(d) A Person, Employer, or Nonprofit Entity that has legal or de facto control of an area in which Smoking [ and the use of Tobacco Products ] is prohibited by this [ article / chapter ] shall post a clear, conspicuous, and unambiguous “No Smoking” [ and “No Use of Tobacco Products” ] or “Smokefree” [ and “Tobacco-Free” ] sign at each point of ingress 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 (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). Signs posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement set forth in Sec. [ \_\_\_ (\*4) ]. [ At least one sign with the [ City / County ] phone number for complaints must be placed conspicuously in each place in which Smoking is prohibited. ] For purposes of this section, the [ City Manager / County Administrative Officer ] or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the [ City / County ]. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of Smoking [ or the use of Tobacco Products ] in violation of any other provision of this [ article / chapter ].

**comment:** Communities concerned about enforcement, and that have funds to print local signs, may wish to include the bracketed sentence, which requires signs to have the phone number for complaints. Note that this may be more expensive than using standard signs.

(e) No Person, Employer, or Nonprofit Entity 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 ].

(f) Each instance of Smoking [ or Tobacco Product 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) Pursuant to California state law, Health and Safety Code sections 11362.3 and 11362.79, Cannabis Smoking is prohibited wherever Smoking is prohibited.

**Sec. [ \_\_\_\_ (\*6) ]. PENALTIES AND ENFORCEMENT.**

(a) The remedies provided by this [ article / chapter ] are cumulative and in addition to any other remedies available at law or in equity.

**comment:** The following provisions are designed to offer a variety of options to the drafter and the enforcing agency. Drafters may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency will have the discretion to choose which enforcement tools to use in general and in a particular case. As a practical matter, these enforcement options would not be applied simultaneously, although multiple remedies might be used against a particularly egregious violator over time.

(b) Each incident of Smoking [ or use of Tobacco Products ] in violation of this [ article / chapter ] is an infraction subject to a [ one hundred dollar ($100) ] fine [ or otherwise punishable pursuant to section \_\_\_ of this code ]. Enforcement of this chapter shall be the responsibility of [ **\_\_\_\_** ]. In addition, any peace officer or code enforcement official also may enforce this chapter.

**comment:** The first sentence establishes the penalty for the core type of violation: Smoking where it is prohibited. The fine amount can be modified but cannot exceed $100 for a first infraction. It is separated from the main enforcement provision that follows so that law enforcement officers can simply write a ticket for illegal Smoking. This provision also designates a primary enforcement agency, which is recommended, but remains flexible by permitting any enforcement agency to enforce the law.

(c) Violations of this [ article / chapter ] are subject to a civil action brought by the [ City / County of **\_\_\_\_** ], punishable by a civil fine not less than [ two hundred fifty dollars ($250) ] and not exceeding [ one thousand dollars ($1,000) ] per violation.

**comment:** This provision provides civil fines for violating the ordinance. It requires that a lawsuit be filed by the city or county (possibly in small claims court). The fine amounts can be adjusted but cannot exceed $1,000 per violation. See California Government Code section 36901.

(d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this [ article / chapter ] shall also constitute a violation of this [ article / chapter ].

**comment:** This is standard language that is typically included in a city or county code and may be omitted if duplicative of existing code provisions.

(e) Any violation of this [ article / chapter ] is hereby declared to be a nuisance.

**comment:** By expressly declaring that a violation of this ordinance is a nuisance, this provision allows enforcement of the ordinance by the city or county via the administrative nuisance abatement procedures commonly found in municipal codes. It also facilitates injunctive relief—ie, a court order compelling someone to stop the nuisance activity.

Note that this declaration merely says that *violating* the ordinance qualifies as a nuisance (eg, when Smoking in a Recreational Area, the *violation* is the nuisance, not the *Smoke*). It is not the same thing as a local ordinance declaring Smoke a nuisance. Please [contact ChangeLab Solutions](https://www.changelabsolutions.org/changelab-solutions-contact-us) for more information on how a local ordinance can declare that all nonconsensual exposure to secondhand smoke is a nuisance. In either case, eviction should be a remedy of last resort for nuisance complaints.

(f) In addition to other remedies provided by this [ article / chapter ] or by other law, 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 or criminal code enforcement proceedings, and suits for injunctive relief.

**comment:** 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).   
  
A public agency should think carefully about the nuisance abatement procedure it chooses in enforcing this ordinance after it is adopted. A local government may provide for treble damages for the second or subsequent nuisance abatement judgment within a two-year period, as long as the ordinance is enacted pursuant to Government Code section 38773.5. See Government Code section 38773.7. Treble damages are not available, however, under the alternative nuisance abatement procedures in Government Code section 38773.1 (nuisance abatement liens) and Health & Safety Code section 17980 (abatement of substandard buildings). Government Code section 38773.7 (authorizing treble damages) establishes a procedure for nuisance abatement by which the cost of abatement can be collected via the property tax roll as a special assessment against the property on which the violation occurs.

(g) Any Person acting for the interests of itself, its members, or the general public (hereinafter “Private Enforcer”) may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this [ article / chapter ] against any Person who has violated this [ article / chapter ] two or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment. [ If there is insufficient or no proof of actual damages for a specific violation, the court shall award [ one hundred and fifty dollars ($150) ] for each violation as statutory damages. ]

**comment:** This provision enables private citizens (“Private Enforcers”) to go to court—including trial court or small claims court—to seek *compliance* with the ordinance through an injunction (a trial court order to do or not do something) or a conditional judgment (a small claims court order requiring the defendant to choose between two options, such as “stop smoking or pay money”). Monetary damages are available to compensate for actual financial losses. If the optional last sentence is included, a court would be able to award statutory damages of $150 per violation when actual damages are difficult or impossible to prove. The amount of statutory damages can be adjusted.   
  
A private citizen may bring a lawsuit against an individual or organization only for alleged *repeat* violations of the law. This limitation is intended to address concerns about the potential for abusive lawsuits.  
  
Note: If using this subsection, it is recommended to include the definition of “Person” from this code, even if the municipal code already contains another definition of “Person,” because this subsection relies on the broadly inclusive definition of “Person” in Section [ \_\_\_\_(\*1)].

[ (h) Notwithstanding any other provision of this [ article / chapter ], a Private Enforcer may bring a civil action to enforce this [ article / chapter ] only if the following requirements are met:

(1) The Private Enforcer’s civil action is begun more than [ sixty (60) ] days after the Private Enforcer has given written notice of the alleged violations of this [ article / chapter ] to the [ City Attorney / County Counsel ] and to the alleged violator; and

(2) On the date the Private Enforcer’s civil action is filed, no other Person acting on behalf of the [ City / County ] or the state has commenced or is prosecuting an administrative, civil, or criminal action based upon, in whole or in part, any violation which was the subject of the Private Enforcer’s notice [ ; and

[ (3) A Private Enforcer shall provide a copy of his, her, or its action to the [ City Attorney / County Counsel ] within [ seven (7) ] days of filing it. ].

[ (i) Upon a settlement or judgment based upon, in whole or in part, any violation that was the subject of the Private Enforcer’s notice, the Private Enforcer shall give the [ City Attorney / County Counsel ] notice of the settlement or judgment and final disposition of the case within [ thirty (30) ] days of the date of the settlement or judgment. No settlement by a Private Enforcer of a violation of this [ article / chapter ] shall be valid or enforceable if, within [ thirty (30) ] days of receiving notice of the settlement, the [ City Attorney / County Counsel ] determines the settlement to be unreasonable in light of the purposes of this [ article / chapter ]. Any settlement or judgment that does not meet the requirements of this subsection may be set aside upon motion to a court of competent jurisdiction by the [ City Attorney / County Counsel ]. ]

**comment:** This optional provision enables a city attorney or county counsel to exercise “oversight” of private citizen enforcement actions permitted in Section [ \_\_\_\_(\*6)(g)], above. If included, this provision allows a city attorney or county counsel to track and monitor Private Enforcer lawsuits, and if desired, pursue local government enforcement instead. This oversight provision is intended to address concerns about the potential for abusive lawsuits.

This provision requires a Private Enforcer seeking to prosecute violations of the smokefree or tobacco-free law to notify the city attorney or county counsel prior to filing the lawsuit. If the optional double-underlined language is included, it would also require the Private Enforcer to share a copy of the complaint with the city attorney or county counsel. No affirmative action is required by the city attorney or county counsel upon receipt of any of these documents; responding is optional.

The last part of this subsection requires the Private Enforcer to submit a copy of the final settlement or judgment to the city attorney or county counsel. The city attorney or county counsel then has the opportunity to review and evaluate settlement agreements (but not court-issued judgments) to assess whether such agreements are reasonably designed to address the violation of the law. This is designed to avoid potentially collusive or otherwise abusive settlement agreements (“sweetheart deals”). Finally, the city attorney or county counsel also has the authority to set aside a court judgment if the Private Enforcer fails to comply with the requisite notice requirements.

[ (j) Except as otherwise provided, enforcement of this [ article / chapter ] is at the sole discretion of the [ City / County ]. Nothing in this [ article / chapter ] shall create a right of action in any Person against the [ City / County ] or its agents to compel public enforcement of this [ article / chapter ] against private parties. ]

**comment:** This is an optional provision, which makes clear that a city or county cannot be liable to any Person for failure to enforce the restrictions in this ordinance.

**Sec. [ \_\_\_\_ (\*7) ]. OTHER LAWS.**

1. It is not the intention of this [ article / chapter ] to regulate any conduct where the regulation of such conduct has been preempted by the State of California.
2. Notwithstanding any provision to the contrary, nothing in this ordinance shall be interpreted to restrict or otherwise regulate the use of a drug, device, or combination product authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

**comment:** This section clarifies that the local jurisdiction does not intend to regulate activity if the regulation of such activity is preempted by state law. Labor Code section 6404.5 preempts local governments from adopting smoking prohibitions in areas that are required to be smokefree by the state law. Local jurisdictions, however, are free to enact prohibitions that are stricter or more comprehensive than state law. For example, local jurisdictions may designate as smokefree areas that are not covered by the state smokefree workplace law, such as outdoor workplaces. Additionally, local jurisdictions may prohibit the use of *all* tobacco products, including electronic smoking devices and smokeless tobacco products, anywhere in the jurisdiction, even in areas where conventional smoking is prohibited by state law.   
  
Together with state law, a local jurisdiction can create a more comprehensive smokefree (or tobacco-free) community. This section (and comment) simply addresses the issue of whether a local jurisdiction will enforce *state* or *local* law.

**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 [ \_\_\_\_ ] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof independently, irrespective of the fact that any one or more other sections, subsec­tions, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

**comment:** This is standard language.

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 7 million deaths each year worldwide,[[1]](#endnote-2) including nearly half a million people who die prematurely from smoking in the United States alone;[[2]](#endnote-3)

Tobacco use causes disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 32 percent of coronary heart disease deaths, and 79 percent of all chronic obstructive pulmonary disease cases in the United States;[[3]](#endnote-4) and

The economic damage attributable to smoking and exposure to secondhand smoke in the United States has climbed to almost $300 billion annually,[[4]](#endnote-5)

Despite significant progress, tobacco use remains the leading cause of preventable death and disease in the United States,[[5]](#endnote-6) and

**[ insert local tobacco toll data if available ].**

WHEREAS,tobacco use is the number one cause of preventable death in California[[6]](#endnote-7) and continues to be an urgent public health issue, as evidenced by the following:

* 40,000 California adults die from smoking annually;[[7]](#endnote-8)
* Smoking costs California $13.3 billion in direct health care expenses, $3.6 billion in Medicaid costs caused by smoking, and $10.4 billion in smoking-caused productivity losses;[[8]](#endnote-9)
* More than 25% of all adult cancer deaths in California are attributable to smoking;[[9]](#endnote-10)
* **[ insert local tobacco toll data if available ]**

WHEREAS,significant disparities in tobacco use exist in California, which create barriers to health equity,[[10]](#endnote-11) as evidenced by the following:

* African American (20 percent), Asian (15.6 percent), Hispanic (15 percent), and American Indian/Alaska Native (36.2 percent) males all report a higher smoking prevalence than white, non-Hispanic males (14.8 percent);[[11]](#endnote-12)
* More than half of low socioeconomic status American Indian/Alaska Native Californians smoke, the highest smoking prevalence among all populations;[[12]](#endnote-13)
* Smoking prevalence increased among high school–age African American youth from 2002 to 2012 while rates decreased for high school–age youth overall, and for all other race/ethnicity groups;[[13]](#endnote-14)
* Californians with the highest levels of educational attainment and annual household income have the lowest smoking rates;[[14]](#endnote-15)
* Those who identify as bisexual, compared with heterosexual, gay/lesbian/homosexual, not sexual, celibate, or other, smoke at rates disproportional to their representation in California;[[15]](#endnote-16)
* Those who rent their homes, compared with those who own their homes or have other arrangements, smoke at rates disproportional to their representation in California;[[16]](#endnote-17)
* A 2014 report noted that those who reported they likely experienced psychological distress in the preceding year smoked at rates disproportional to their representation in California;[[17]](#endnote-18) and
* **[ insert local disparities data if available ].**

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

The U.S. surgeon general concluded that there is no risk-free level of exposure to secondhand smoke;[[18]](#endnote-19)

The California Air Resources Board categorized secondhand smoke as a toxic air contaminant, along with most toxic automotive and industrial air pollutants, for which there is no safe level of exposure;[[19]](#endnote-20),[[20]](#endnote-21)

The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;[[21]](#endnote-22) and

The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) has concluded that “the only means of effectively eliminating health risk associated with indoor exposure [to secondhand smoke, cannabis smoke, and aerosol from electronic smoking devices] is to ban smoking activity.”[[22]](#endnote-23),[[23]](#endnote-24)

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 attained indoors depending on direction and amount of wind, number and proximity of smokers, and enclsoures like walls or roofs;[[24]](#endnote-25),[[25]](#endnote-26),[[26]](#endnote-27),[[27]](#endnote-28)

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;[[28]](#endnote-29) 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.[[29]](#endnote-30),[[30]](#endnote-31),[[31]](#endnote-32)

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;[[32]](#endnote-33)

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;[[33]](#endnote-34)

Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent[[34]](#endnote-35) and increases the risk of stroke by 20 percent to 30 percent;[[35]](#endnote-36) and

Secondhand smoke kills more than 400 infants every year;[[36]](#endnote-37)

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 10 chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm,[[37]](#endnote-38),[[38]](#endnote-39) such as formaldehyde, acetaldehyde, lead, nickel, and toluene;[[39]](#endnote-40),[[40]](#endnote-41),[[41]](#endnote-42),[[42]](#endnote-43),[[43]](#endnote-44),[[44]](#endnote-45)
* 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;[[45]](#endnote-46)
* 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;­­­[[46]](#endnote-47),[[47]](#endnote-48),[[48]](#endnote-49),[[49]](#endnote-50),[[50]](#endnote-51),[[51]](#endnote-52),[[52]](#endnote-53),[[53]](#endnote-54),[[54]](#endnote-55),[[55]](#endnote-56)
* 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 is a serious concern;[[56]](#endnote-57) and
* A number of health authorities, including the U.S. surgeon general, ASHRAE, and State of California’s Tobacco Education and Research Oversight Committee (TEROC) all support inclusion of electronic smoking devices in regulations of smoking and other tobacco product use.[[57]](#endnote-58),[[58]](#endnote-59),[[59]](#endnote-60)

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

* The California EPA included cannabis smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer;[[60]](#endnote-61),[[61]](#endnote-62)
* Cannabis smoke contains at least 33 known carcinogens;[[62]](#endnote-63)
* In one study, exposure to cannabis smoke in an unventilated setting resulted in detectible levels of cannabinoids in non-smoker participants’ blood and urine, and participants experienced minor increases in heart rate and impaired cognitive performance;[[63]](#endnote-64) 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.[[64]](#endnote-65)

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs, with a review of over 80 peer-reviewed research studies from 2000 to 2011 (search period July 2009 – December 2011) showing that smokefree policies effectively do the following:

Reduce tobacco use: Tobacco use reduced by 2.7 median percentage points;[[65]](#endnote-66)

Reduce exposure to secondhand smoke: Indoor air pollution reduced by a median of 88 percent and biomarkers for secondhand smoke reduced by a median of 50 percent;[[66]](#endnote-67)

Increase the number of tobacco users who quit: Cessation of tobacco use increased up to 17.4 percentage points with a median of 3.8 percentage points;[[67]](#endnote-68)

Reduce initiation of tobacco use among young people;[[68]](#endnote-69)

Reduce tobacco-related illnesses and death: There was a 5.1 percent median decrease in hospitalizations from heart attacks and a 20.1 percent median decrease in hospitalizations from asthma attacks;[[69]](#endnote-70) and

One study estimated a $8,803 cost per life year gained while other studies found a range of $148,000 to $409,000 in health care costs per 100,000 people averted in one year;[[70]](#endnote-71)

*[ 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 can lead to nicotine addiction;[[71]](#endnote-72)

Smokeless tobacco use causes oral, esophageal, and pancreatic cancers;[[72]](#endnote-73)

Smokeless tobacco is associated with increased risk for heart disease and stroke,[[73]](#endnote-74),[[74]](#endnote-75),[[75]](#endnote-76) and stillbirth and preterm delivery;[[76]](#endnote-77) and

**[ insert local smokeless tobacco use disparities data if available ].**

WHEREAS, tobacco waste is a major 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;[[77]](#endnote-78)

In one study, 74.1 percent of smokers admitting littering cigarette butts at least once in their life and 55.7 percent admit to littering cigarettes in the last month;[[78]](#endnote-79)

In an observational study of nearly 10,000 individuals, after cigarettes were smoked, 45 percent of cigarettes ended up as litter;[[79]](#endnote-80)

Tobacco litter represents nearly 34.4 percent of all litter in outdoor recreation areas such as hiking trails and parks;[[80]](#endnote-81)

In 2011, 22.6 percent of all debris collected from beaches and coastal areas are smoking-related products;[[81]](#endnote-82) and

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;[[82]](#endnote-83),[[83]](#endnote-84)

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

In 2012, American poison control centers received nearly 8,648 reports of poisoning by the ingestion of cigarettes, cigarette butts, and other tobacco products and 84.5 percent of these poisonings were in children ages 5 and younger;[[84]](#endnote-85)

From 2012 to 2015, American poison control centers received over 29,000 calls for nicotine and tobacco product exposures among children 5 years old and younger, of which 60.1 percent were cigarettes, 14.2 percent were electronic smoking devices, and 16.4 percent were other tobacco products;[[85]](#endnote-86) and

Children who ingest tobacco products can experience vomiting, nausea, lethargy, and gagging,[[86]](#endnote-87) with e-liquids potentially posing a greater risk of toxicity or fatality through either ingestion or transdermal absorption;[[87]](#endnote-88)

WHEREAS, exemptions and loopholes in California’s smokefree workplace laws[[88]](#endnote-89) 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 up to 20 percent of hotel rooms, cabs of trucks, long-term care facilities, outdoor places of employment, tobacco shops, and private smokers’ lounges, which disproportionately employ individuals of low-income and individuals of color;[[89]](#endnote-90)

Hispanic/Latino workers are the most likely to report being exposed to secondhand smoke at work in California (19.5 percent), followed by non-Hispanic other (13.7 percent), Asian/Pacific Islanders (10.5 percent), African Americans (10.4 percent), and Caucasians (9.7 percent);[[90]](#endnote-91) and

* Among employed Bay Area young adults, 32.6 percent reported workplace exposure to secondhand smoke with most (31.2 percent) reporting outdoor exposure and lower-skilled and trade occupations demonstrating the four highest significant associations (construction and extraction, transportation and material moving occupations, building and grounds cleaning and maintenance, and food preparation and serving related);[[91]](#endnote-92)

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;[[92]](#endnote-93) and

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;[[93]](#endnote-94),[[94]](#endnote-95),[[95]](#endnote-96) and

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

A 2008 survey of California voters found that 97 percent thought that secondhand smoke is harmful, 88 percent thought secondhand smoke was harmful even outdoors, 65 percent were bothered by secondhand smoke, and 73 percent support laws restricting smoking in outdoor public places;[[96]](#endnote-97) and

In a 2015 survey of California voters, 70 percent supported prohibiting electronic smoking device use where smoking is prohibited;[[97]](#endnote-98)

WHEREAS, as of March 2018, there are at least 104 California cities and counties with comprehensive outdoor secondhand smoke ordinances;[[98]](#endnote-99) and

WHEREAS, as of July 1, 2018, at least 120 local jurisdictions in California prohibit the use of electronic smoking devices in specific locations;[[99]](#endnote-100) and

WHEREAS, as of January 2015, there are at least 382 California cities and counties with local laws restricting smoking in recreational areas,[[100]](#endnote-101) 101 with local laws restricting smoking in all outdoor dining places,[[101]](#endnote-102) and 126 with local laws restricting smoking within 20 feet (or more) of entryways;[[102]](#endnote-103) and

WHEREAS, there is no Constitutional right to smoke;[[103]](#endnote-104)

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 ].

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