



public health law & policy

# Tobacco Control Policy 101

*Understanding the Legislative Process*

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# Public Health Law & Policy



# Public Health Law & Policy

We partner with state and local leaders to improve health in all communities, especially the underserved.



# Public Health Law & Policy

We partner with state and local leaders to improve health in all communities, especially the underserved.

We do this by researching legal and policy questions, drafting policy language, and training community leaders to put these ideas to work.



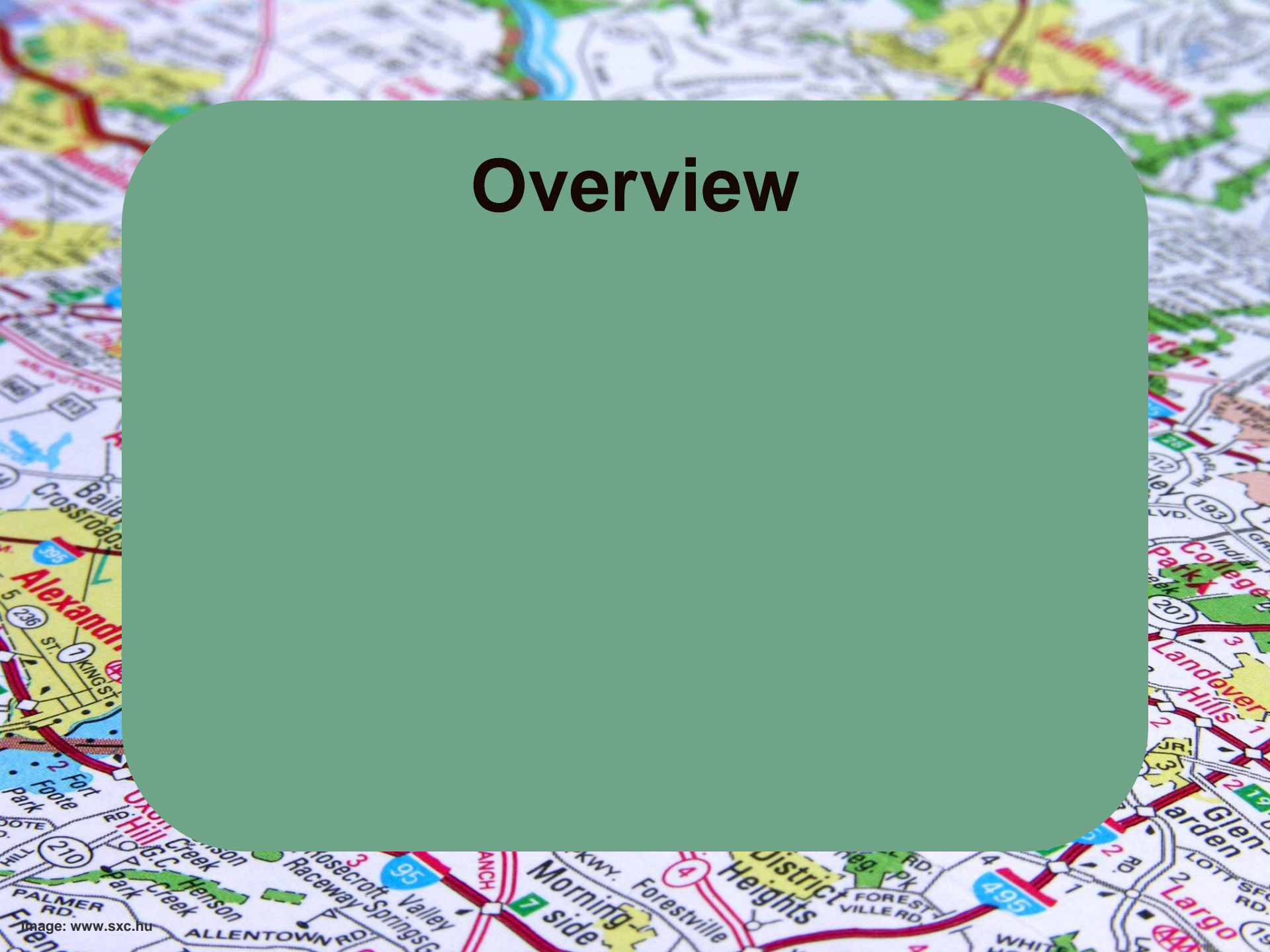


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PHLP



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Staff Attorney  
PHLP

# Overview



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- Policy vs. ordinance

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- Policy vs. ordinance
- Legal authority for local tobacco control laws



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- Using TALC's materials and services

# Overview

- Policy vs. ordinance

# Organizational Policies



# Organizational Policies

- Employer, property owner, or event organizer adopts policy (i.e., a no-smoking policy)



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- Employer, property owner, or event organizer adopts policy (i.e., a no-smoking policy)
- Applies to a specific workplace, building, or event





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## Local Ordinances



## Local Ordinances

- City or county elected officials pass a **law** restricting or requiring certain activities, with penalties for noncompliance



## Local Ordinances

- City or county elected officials pass a **law** restricting or requiring certain activities, with penalties for noncompliance
- Applies within the boundaries of that jurisdiction





## **Organizational Policies: Pros**





## Organizational Policies: Pros

- Applies to some people or specific site



## **Organizational Policies: Pros**

- Applies to some people or specific site
- Builds support and acceptance



# Organizational Policies: Cons



# Organizational Policies: Cons

- Facility-by-facility approach



## Organizational Policies: Cons

- Facility-by-facility approach
- Any new employer, owner, or organization could discontinue the policy







## **Local Ordinances: Pros**





## Local Ordinances: Pros

- Widespread application



## Local Ordinances: Pros

- Widespread application
- Long-term policy solution



## Local Ordinances: Pros

- Widespread application
- Long-term policy solution
- Social norm change



# Local Ordinances: Cons



## Local Ordinances: Cons

- Can generate strong opposition



## Local Ordinances: Cons

- Can generate strong opposition
- Must have political will



# Overview

- Policy vs. ordinance
- Legal authority for local tobacco control laws



# Legal Authority - Express



# Legal Authority - Express

## State Smokefree Laws

**“This section shall not preempt the authority of any county, city, city and county, California Community College campus, campus of the California State University, or campus of the University of California to adopt and enforce additional smoking and tobacco control ordinances, regulations, or policies that are more restrictive than the applicable standards required by this chapter.” (Smokefree Entryway Law, Gov’t Code section 7597)**

# Legal Authority - Express

## State Licensing Law

**“Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.”**

# Legal Authority - Police Power



# What Is “Police Power”?

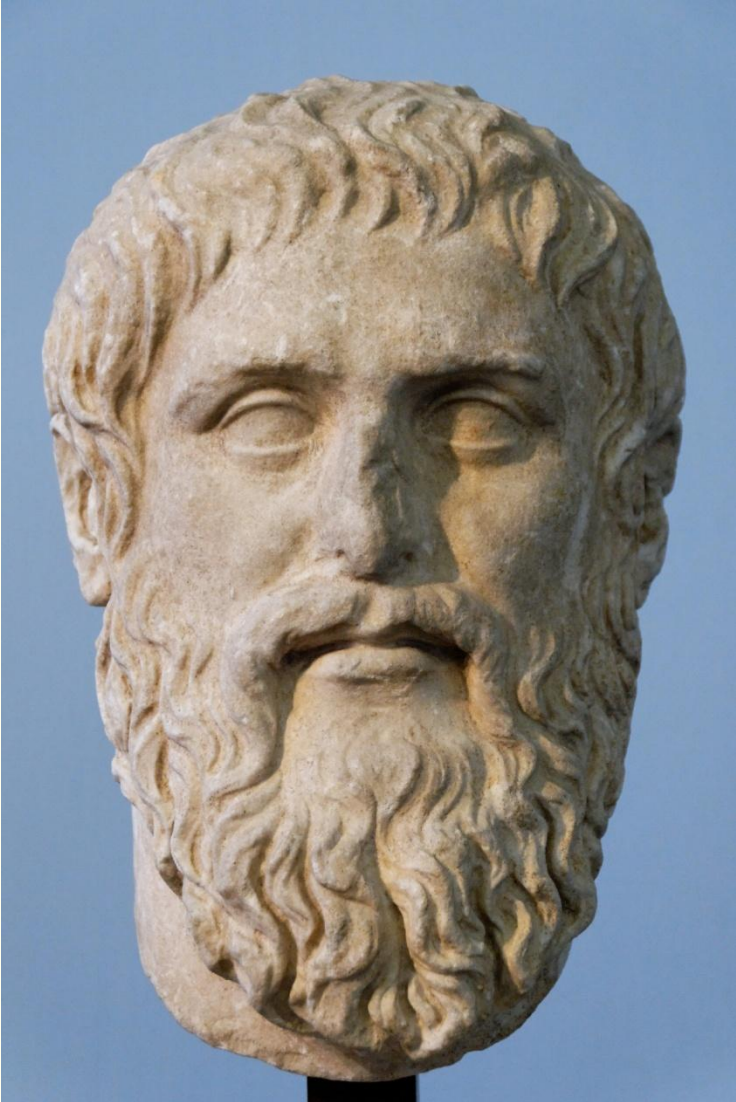


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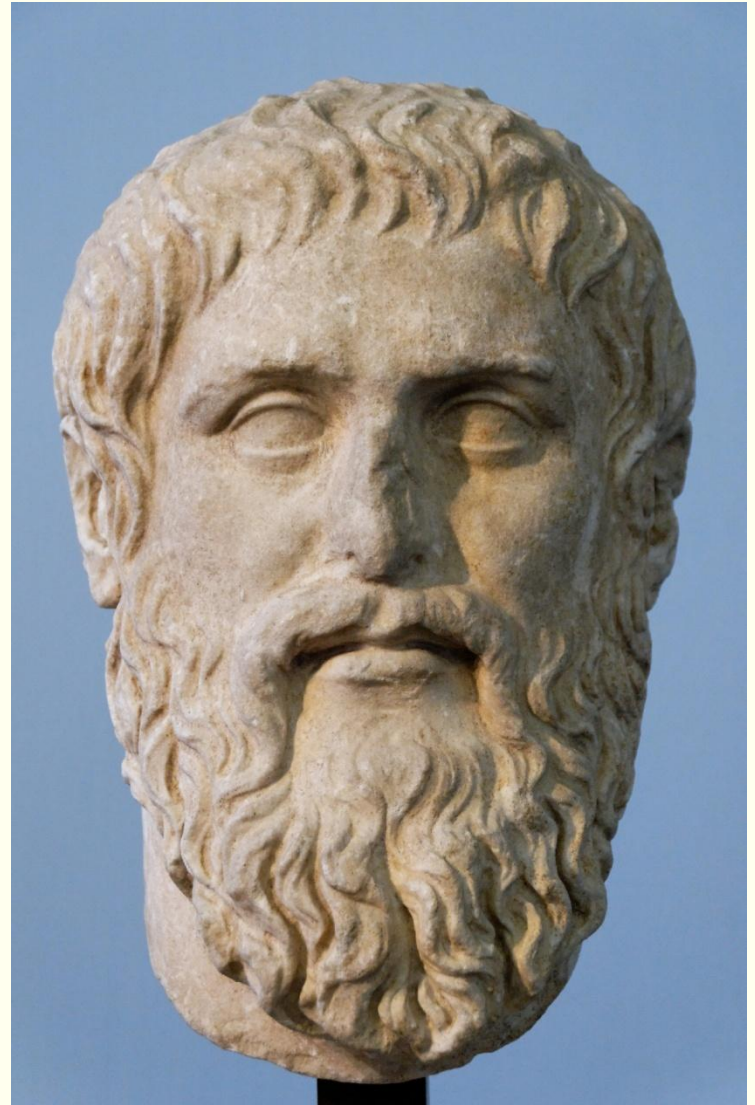
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# “Police Power”

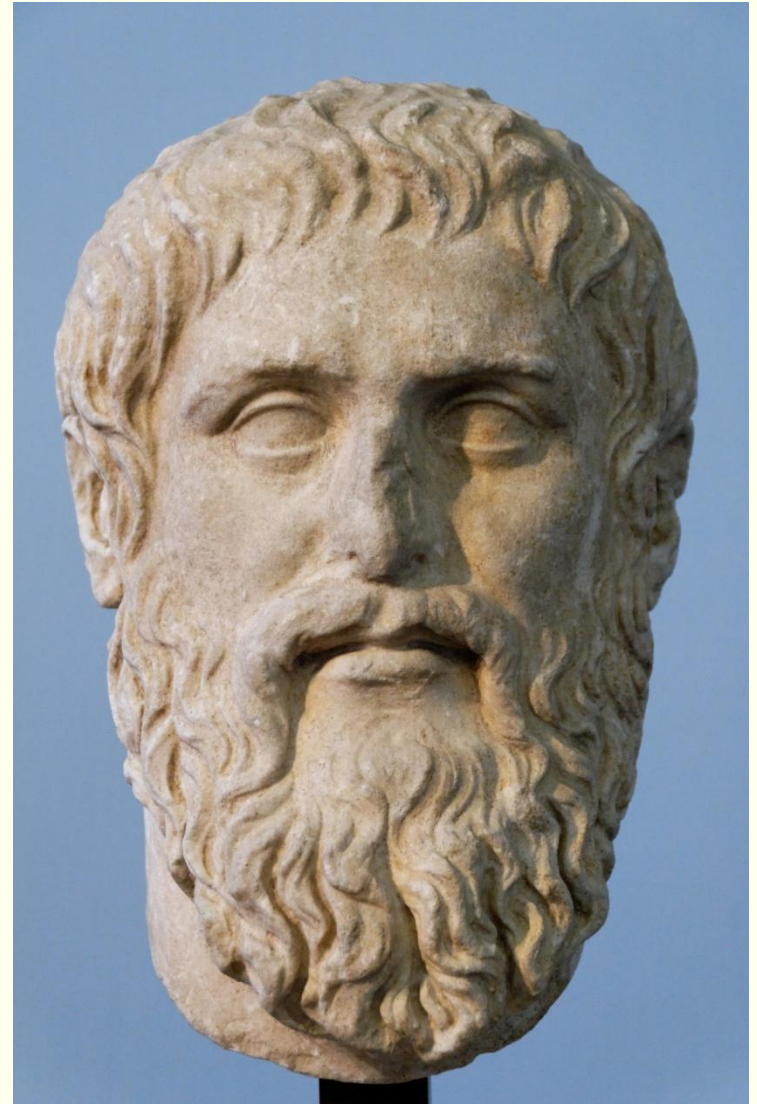
From the Greek word  
“Politeia”



# “Police Power”

From the Greek word  
“Politeia”

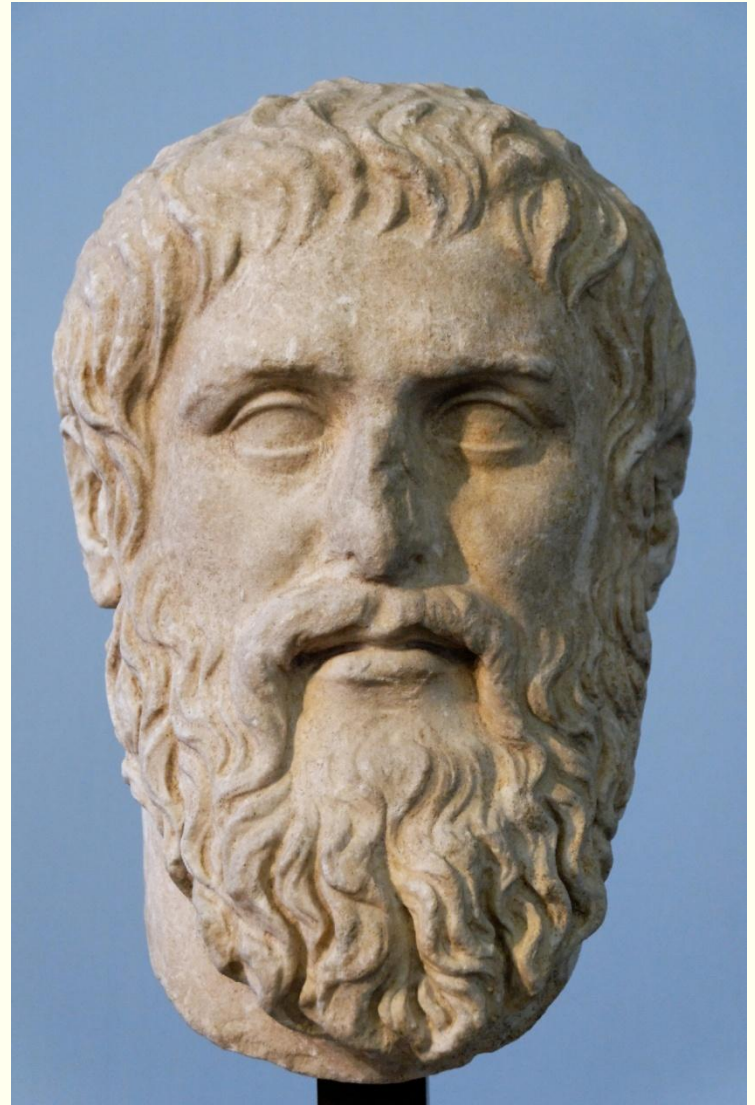
- State
- Administration
- Government





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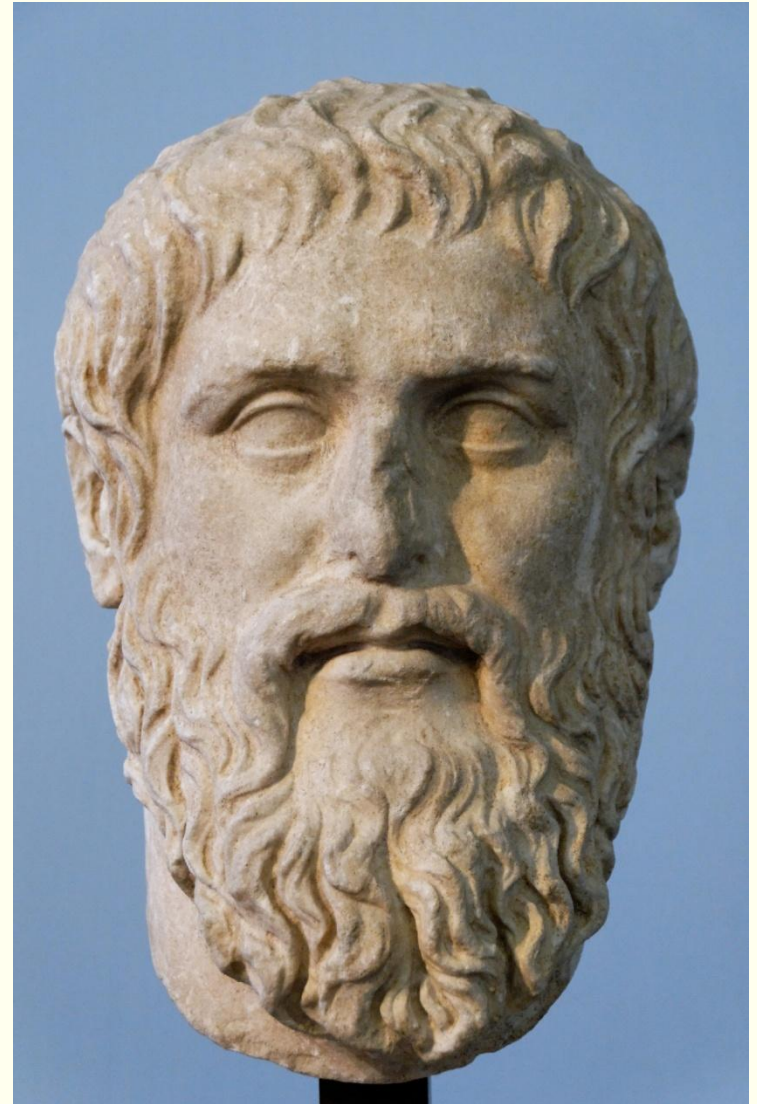
The power of government to...



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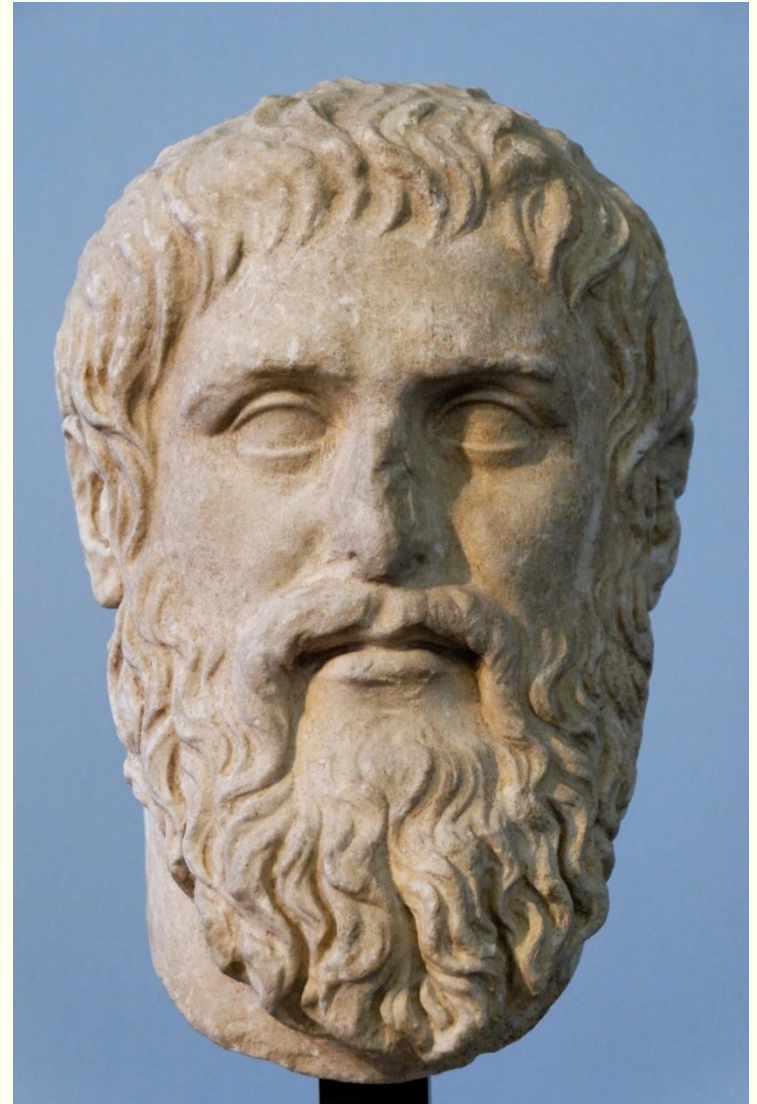
- Promote the public health, morals, or safety, and the general well-being of the community



# “Police Power”

The power of government to...

- Promote the public health, morals, or safety, and the general well-being of the community
- Enact and enforce laws for the promotion of the general welfare



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# “Police Power”

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- Enact and enforce laws for the promotion of the general welfare
- California Constitution Art. XI, Sec. 7



# **Uses of Police Power to Advance Public Health Goals**



**Investigate infectious disease outbreaks**

# ORDER

		calorie range
Burrito	rice, beans, meat, salsa, cheese or sour cream	420-918
Fajita Burrito	all of the above, with peppers & onions instead of beans	390-880
Burrito Bowl	served in a bowl, no tortilla	130-628
Tacos	soft or crispy tacos with meat, salsa, cheese or sour cream, romaine lettuce	310-590

Require menu labeling in restaurants





RCW 70.160

**No Smoking  
Inside or  
Within  
25 Feet  
of this**

**Create smokefree places**



**Impose restrictions on tobacco sales**

# Overview

- Policy vs. ordinance
- Legal authority for local tobacco control laws
- Anatomy of an ordinance



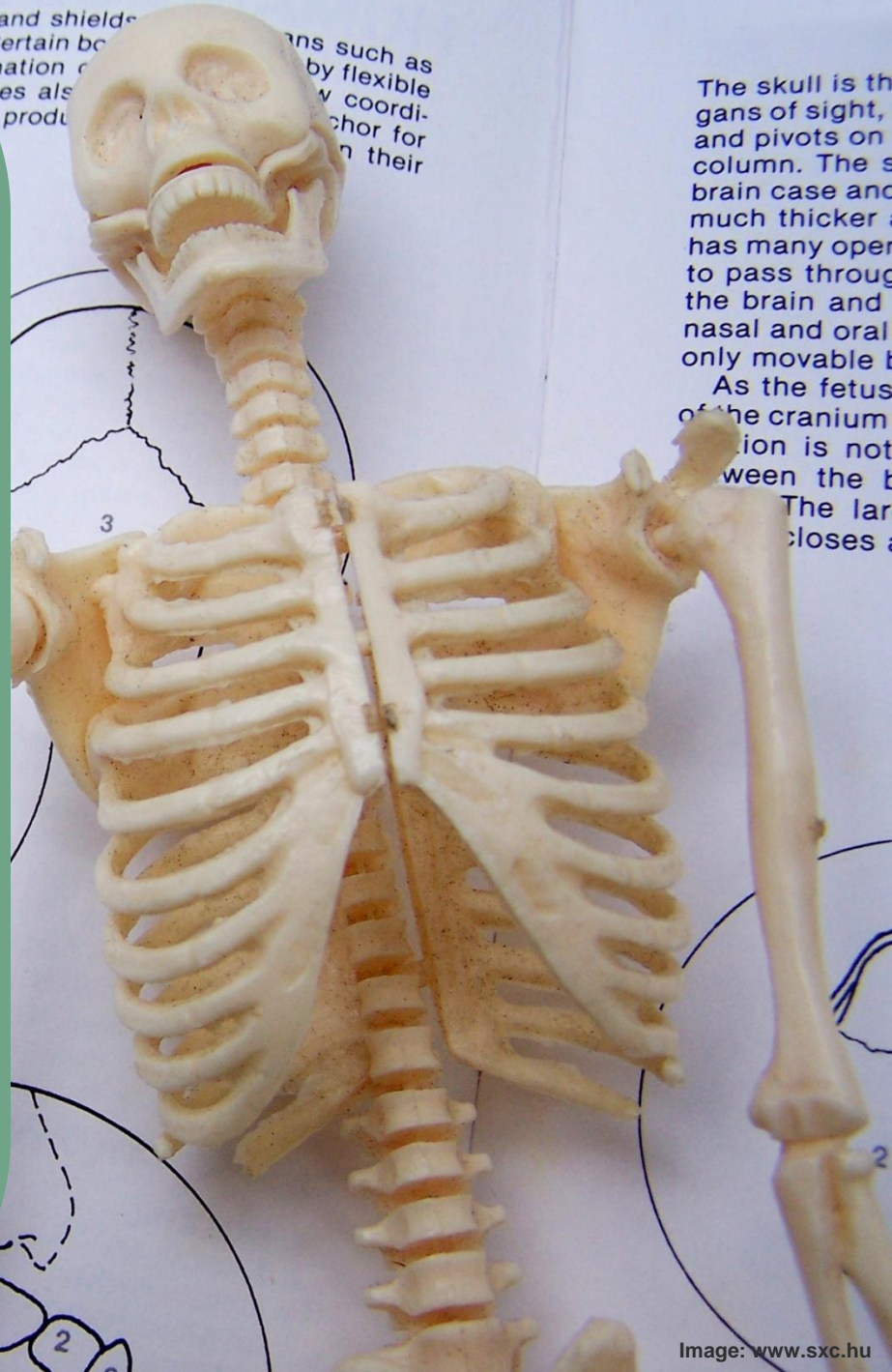
# Anatomy of an Ordinance:

- Findings
- Definitions
- Prohibitions
- Requirements
- Duties/Responsibilities
- Penalties/Enforcement
- Severability Clause

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# Findings



# Findings

***WHEREAS**, the California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure*

# Findings

***WHEREAS***, despite the state's efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that each day, nearly 4,000 children under 18 years of age smoke their first cigarette, and almost 1,500 children under 18 years of age begin smoking daily



# Definitions

... that is ruled by a dicta  
military dictatorship ► dyktatura

(a) **\*dictionary** /'dɪkʃənəri; US -neri/ noun [C] (dictionaries) **1** a book that lists the words of a language in alphabetical order and that tells what they mean, in the same or another language: to look up a word in a dictionary ◦ a French dictionary ◦ a French-English dictionary

► **słownik** **2** a book that lists the words connected with a particular subject and tells you what they mean: a dictionary of medical dictionary

DO1,2

# Definitions

**“Tobacco Retailer”** means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia.

# Definitions

“**Dining Area**” means any area, including streets and sidewalks, which is available to or customarily used by the general public or an Employee, and which is designed, established, or regularly used for consuming food or drink.

# Prohibitions



# Prohibitions

Smoking shall be prohibited in the following unenclosed places within the City:

1. Places of Employment;
2. Service Areas;
3. Dining Areas;
4. Multi-Unit Residence Common Areas;
5. Sites of public events; and
6. Recreational Areas

# Prohibitions

SELF-SERVICE DISPLAYS PROHIBITED.  
Tobacco Retailing by means of a Self-Service  
Display is prohibited.

# Requirements



# Requirements

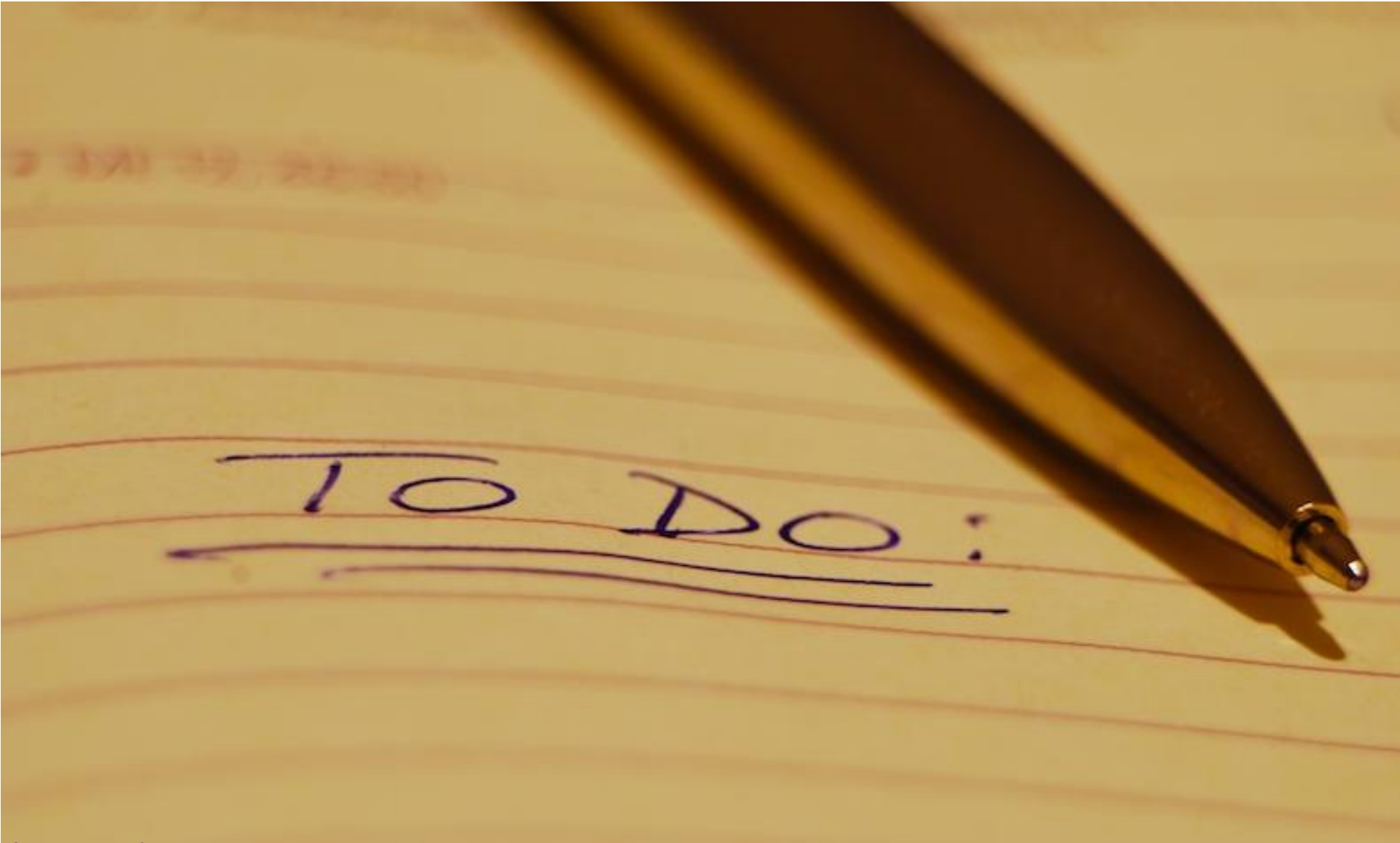
TOBACCO RETAILER LICENSE REQUIRED. It shall be unlawful for any Person to act as a Tobacco Retailer in the City without first obtaining and maintaining a valid Tobacco Retailer's license...



# Requirements

SMOKEFREE LEASE TERMS. Every lease or other rental agreement for the occupancy of a Unit in a Rental Complex...shall include the provisions set forth below...

# Duties and Responsibilities



# Duties and Responsibilities

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license.

# Duties and Responsibilities

A Person, Employer, or Nonprofit Entity that has control of an Unenclosed Area in which Smoking is prohibited shall post a clear, conspicuous and unambiguous “No Smoking” sign at each point of ingress to the area and in at least one other conspicuous point within the area.

# Penalties and Enforcement



# Penalties and Enforcement

Violations of this article are subject to a civil action brought by the County Counsel and is punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

# Severability Clause



**Vs.**



# Severability Clause

If any section of this ordinance is for any reason held to be invalid or unenforceable, then such invalidity or unenforceability shall not affect the remaining sections of this Ordinance.



# Overview

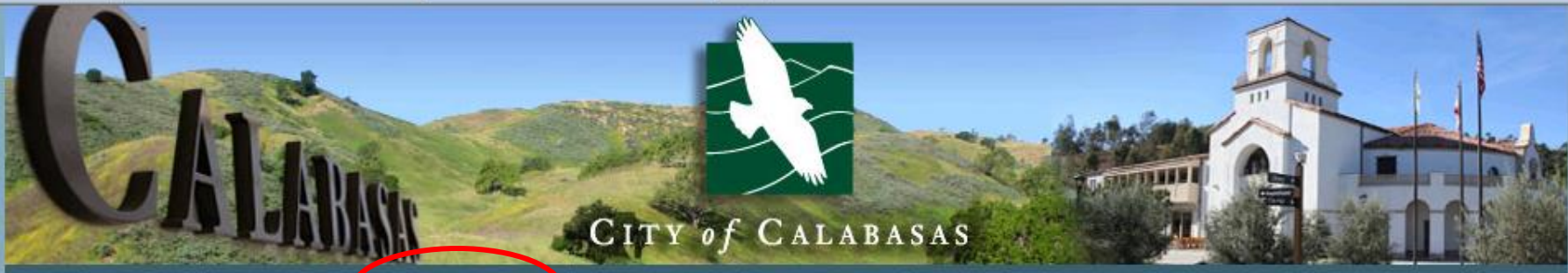
- Policy vs. ordinance
- Legal authority for local tobacco control laws
- Anatomy of an ordinance
- Process for adopting an ordinance





## Step 1: locate existing laws

- State & federal laws
- City & County laws



- HOME
- ABOUT US
- GOVERNMENT**
- RESIDENTS
- CONNECT
- CTV
- LIBRARY
- SEARCH
- WHAT'S NEW

# HOME

3:31 pm

Welcome to the City of Calabasas, the gateway to the Santa Monica Mountains National Recreation Area in northern Los Angeles County. This website will help you navigate the many services offered by our City.

## CITY HIGHLIGHTS



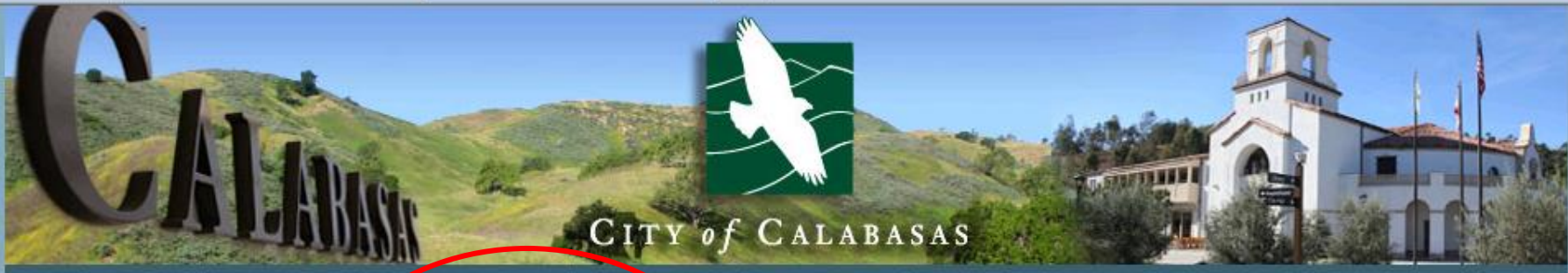
**2010 Pumpkin Festival**  
Tickets are available now!



**Mountain View Estates**  
Information on Possible Annexation into the City of Calabasas



*City of Calabasas*



HOME ABOUT US GOVERNMENT RESIDENTS CONNECT CTV LIBRARY SEARCH WHAT'S NEW

HOME

3:31 pm

Welcome to the gateway to the Santa Monica Mountains in northern Los Angeles County. This website will help you find the services offered by our City.

- City Council
- Commissions
- Departments
- Calabasas Municipal Code
- Meeting Agendas

Search the Site



2010 Pumpkin Festival Tickets are available now!



Mountain View Estates Information on Possible Annexation into the City of Calabasas



City of Calabasas

**Calabasas, California - Code of C**

- CITY OF CALABASAS MUNICIPAL CODE
- Title 1 - GENERAL PROVISIONS
- Title 2 - ADMINISTRATION AND PERSONNEL
- Title 3 - REVENUE AND FINANCE
- Title 4 - (Reserved)
- Title 5 - BUSINESS LICENSES AND REGULA
- Title 6 - ANIMALS
- Title 7 - (Reserved)
- Title 8 - HEALTH AND SAFETY**
- Title 9 - PUBLIC PEACE AND WELFARE
- Title 10 - VEHICLES AND TRAFFIC
- Title 11 - (Reserved)
- Title 12 - STREETS, SIDEWALKS AND PUBL
- Title 13 - PUBLIC SERVICES (Reserved)
- Title 14 - (Reserved)
- Title 15 - BUILDINGS AND CONSTRUCTION
- Title 16 - (Reserved)
- Title 17 - LAND USE AND DEVELOPMENT
- STATUTORY REFERENCES
- Appendices (Reserved)
- ORDINANCE LIST AND DISPOSITION TABLE
- CODE COMPARATIVE TABLE AND DISPOST

[Calabasas, California, Code of Ordinances](#) >> [Title 8 - HEALTH AND SAFETY](#) >>

**TITLE 8 - HEALTH AND SAFETY****Chapters:**

[Chapter 8.02 - HEALTH CODE](#)

[Chapter 8.04 - FIREWORKS](#)

[Chapter 8.12 - SECOND-HAND SMOKE CONTROL\\*](#)

[Chapter 8.16 - COLLECTION OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS](#)

[Chapter 8.18 - FOOD PACKAGING MATERIALS](#)

[Chapter 8.20 - PUBLIC NUISANCE AND ABATEMENT](#)

[Chapter 8.24 - PARK REGULATIONS](#)

[Chapter 8.28 - STORM WATER AND URBAN RUNOFF POLLUTION PREVENTION CONTROLS](#)

[Chapter 8.30 - MOBILE COMMERCIAL WASHING OPERATIONS](#)

[Chapter 8.32 - USE OF SKATEBOARDS](#)

[Chapter 8.34 - GRAFFITI ABATEMENT](#)

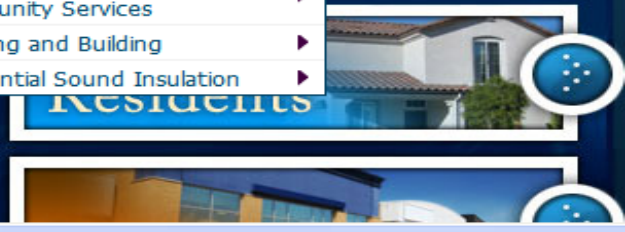


- Administrative Office
- City Attorney's Office**
- City Clerk's Office
- City Treasurer's Office
- Community Development
- Finance
- Fire Services
- Information Technology & Communications
- Library
- Human Resources
- Police
- Public Works
- Parks, Recreation and Community Services
- Planning and Building
- Residential Sound Insulation

- Meet the City Attorney
- Organization Chart
- Municipal Codes**

Initializing

*Events* Tue, October 19, 2010  
*Latest News...* October 14, 2010



# CITY OF BURBANK CALIFORNIA

Search... **GO**

- Home
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- Residents
- Business
- Visitors
- Departments**
- I Want To...

- BURBANK TV
- MEETINGS & AGENDAS
- PERMIT CENTER
- GOING GREEN
- ONLINE SURVEY



- Burbank Water & Power
- City Attorney's Office
- City Clerk's Office**
- City Manager's Office
- Public Information Division
- City Treasurer's Office
- Community Development
- Financial Services
- Fire
- Information Technology
- Library Services
- Management Services
- Park, Recreation and Community Services
- Police
- Public Works
- Agenda Forecast
- Meeting Agendas & Minutes
- Burbank Municipal Code**
- Election Information
- Previous Municipal Elections
- Boards, Commissions & Committees
- Thumbnail Sketch
- Forms
- Contact Us

**WELCOME**  
the City of Burbank

**Centennial Celebration**  
Coming Soon!

**CITY NEWS**

**City of Burbank - Consolidated Annual Performance Evaluation Report**

**UPCOMING EVENTS**

City Council Meeting  
10/19/2010  
6:00 PM

National Community Planning Month Drawing Contest

10						
	T	F	S			
30	1	2				
3	4	5	6	7	8	9
10	11	12	13	14	15	16





## Draft the ordinance

- Create legal language to implement policy goals
- Some legally required provisions (enacting clause, signature, attestation)
- City attorney has ultimate responsibility to approve





## Two “Readings”

- Ordinance “introduced” at first reading and “adopted” at second reading
- At least 5 days apart
- Ordinance cannot be altered after introduction (except to correct typos and clerical errors)



Signature

... whom I have  
August Two Thousand



## After adoption

- Publication by Clerk
- Effective date – 31 days after adoption
- **Exception:** Interim “urgency” ordinances

Signature



Ian McLaughlin, JD  
Senior Staff Attorney  
PHLP



Kristine Glaze  
Outreach Coordinator  
Search to Involve Pilipino  
Americans

# Overview

- Policy vs. ordinance
- Legal authority for local tobacco control laws
- Anatomy of an ordinance
- Process for adopting an ordinance
- Key players in the process



# Key Players





## Key Players

- Legislative



## Key Players

- Legislative
- Executive



## Key Players

- Legislative
- Executive
- City Attorney/County Counsel



## Key Players

- Legislative
- Executive
- City Attorney/County Counsel
- Department Heads



## Key Players

- Legislative
- Executive
- City Attorney/County Counsel
- Department Heads
- City Clerk



## Key Players

- Legislative
- Executive
- City Attorney/County Counsel
- Department Heads
- City Clerk
- Stakeholder Groups



Matthew Moore, JD, MPH  
Staff Attorney  
PHLP



Denice Dennis, MPH  
Tobacco Prevention  
Project Manager  
Contra Costa Health  
Services



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# TALC's Products and Services





## Technical Assistance

- Create language for ordinances
- Review draft ordinances
- Help explain enforcement options
- Research legal issues
- Explain legal issues in non-legalese

# How does the process work?



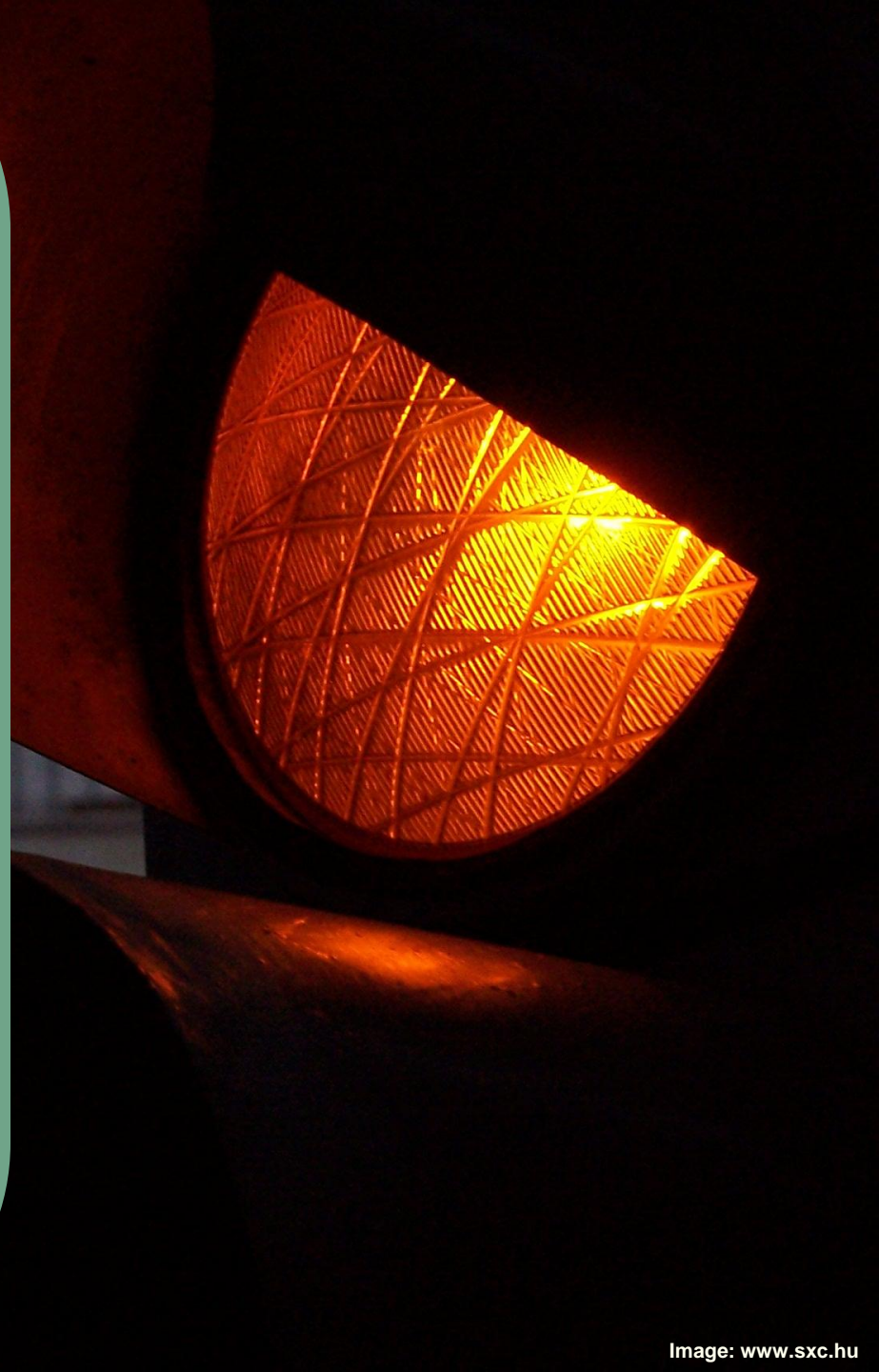
# How does the process work?

- Determine policy goals *then* contact TALC
- 2 – 4 weeks to customize an ordinance
- Revise as campaign moves forward
- Call TALC with legal questions along the way
- **For best results – contact TALC early and often!**



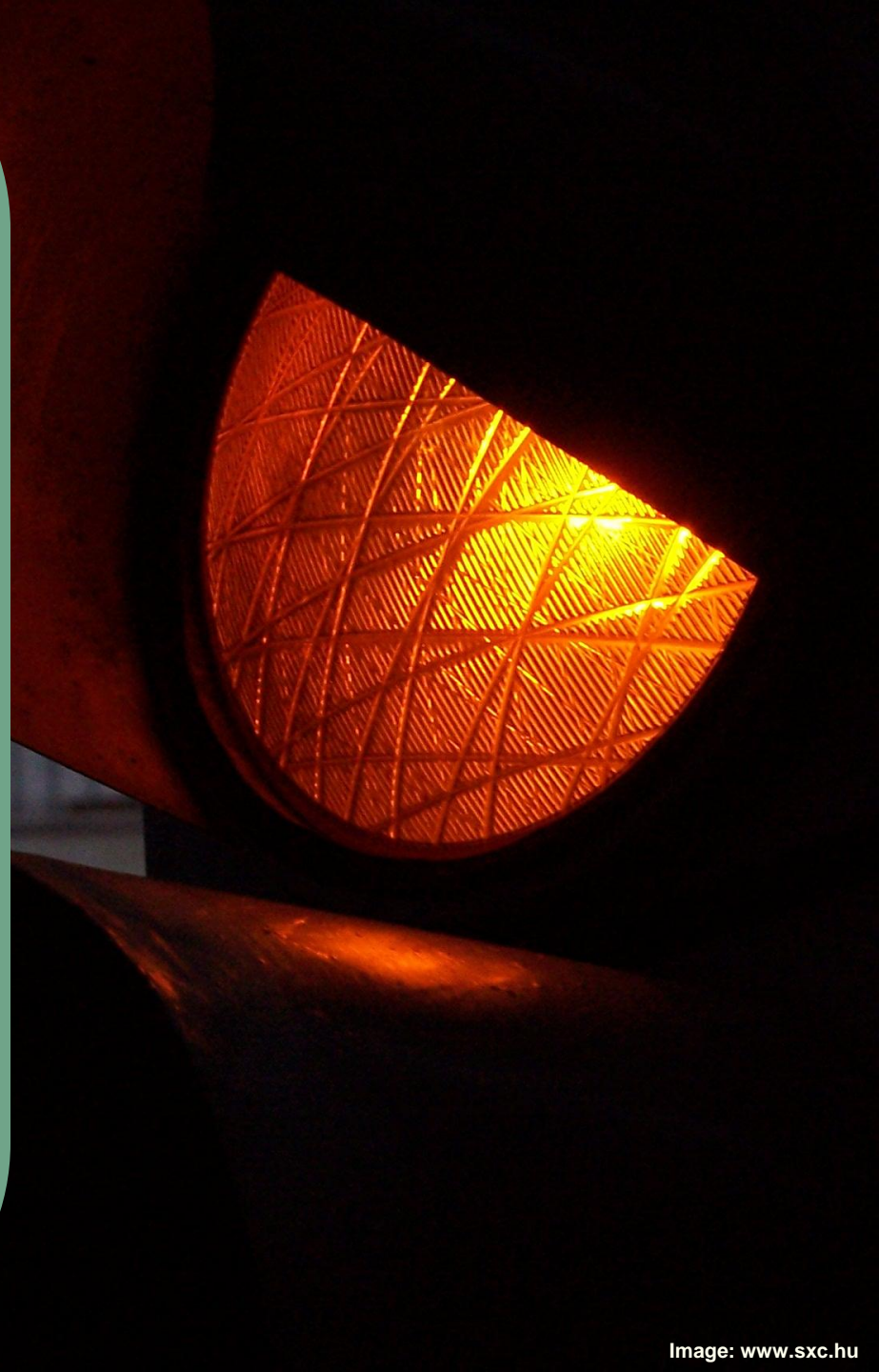
# Disclaimers

*The information provided in this presentation is for informational purposes only, and does not constitute legal advice. Public Health Law & Policy does not enter into attorney-client relationships.*



# Disclaimers

*The primary purpose of this presentation is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation. PHLP incorporates objective non-partisan analysis, study, and research in all our work.*





# Tobacco Retailer Licensing

A local licensing ordinance can be used to encourage tobacco retailers to comply with all laws that apply to tobacco sales.

A licensing ordinance not only requires retailers to obtain a license to sell tobacco products but also provides meaningful penalties if the merchant sells tobacco to minors or violates any other law related to

tobacco sales. For retailers who continue to violate these laws, licensing offers a means to eliminate them from the tobacco product marketplace.

TALC's *Model California Ordinance Requiring a Tobacco Retailer License* and its accompanying "plug-in" provisions provide a range of policy

options to consider when designing a local licensing ordinance. The ordinance language you select should be part of a larger strategy to have the ordinance adopted in your community.

To guide your planning, the Center for Tobacco Policy and Organizing has developed the five-phase model below.

**Campaign Trail START**

Contact "The Center" for help planning your campaign steps and working through the phases.



The Center for Tobacco Policy and Organizing (The Center) helps local coalitions wage effective tobacco control policy campaigns. The Center can assist you with resources, tools, and effective strategies to help you narrow down your issue, do a political assessment, complete a strategy chart, recruit new members, and re-energize your coalition.

The Center for Tobacco Policy & Organizing  
(916) 554-5864  
www.centerfortobaccopolicy.org

## Investigation & Assessment

Identify local issues and resources to build an understanding of what might influence decision makers. Determine your issue, a location (city or county), and a goal.

PHASE 1

## Strategy & Planning

Assess the political environment and decision makers. Develop a preliminary strategy and establish a rough timeline.

This phase includes the development of the ordinance - this is the time to call on TALC.

PHASE 2

## Recruitment

Now that you've prepared the groundwork, it's time to involve more people. Train campaign members in outreach and recruitment strategies. Meet with key opinion leaders. Plan a campaign "kick-off" event.

PHASE 3

## The Campaign

Finalize and then implement the timeline, strategy, and tactics with your newly recruited members. Form action teams: e.g., ordinance-drafting, media, action, speakers' bureau. A key tactic will be meeting with decision makers.

PHASE 4

## Evaluation

Determine effectiveness of the campaign and tactics.

PHASE 5

**WIN!**



The Technical Assistance Legal Center (TALC) helps advocates, city and county attorneys, and elected officials by providing and reviewing ordinance language, researching and analyzing state and federal legal issues, and providing training and consulting on legal strategies for tobacco control.

Technical Assistance Legal Center  
(510) 444-8252  
www.talc.phl.org

Made possible with funds received from the California Department of Public Health, under contract #04-35336. TALC is a project of Public Health Law & Policy and the Public Health Institute.

# Licensing Ordinance Checklist

Your community has a range of policy choices to consider when designing a local tobacco retailer licensing ordinance. The options below are included in TALC's *Model California Ordinance Requiring a Tobacco Retailer License* and accompanying "plug-ins," all of which are available at [www.phlpnet.org/tobacco-control](http://www.phlpnet.org/tobacco-control). The provisions that TALC and The Center consider essential already include a check mark. Contact TALC for help drafting an ordinance based on your community's choices.

## POLICY OPTIONS IN MODEL ORDINANCE

### WHO MUST OBTAIN LICENSE

- All tobacco product retailers must obtain a nontransferable license
- Define "tobacco product" to include all nicotine and nontraditional tobacco products (e.g., nicotine gel, snus)
- Retailers of "tobacco paraphernalia" (e.g., rolling papers, pipes) must also obtain license
- No license may be issued to mobile vendors

### REQUIREMENTS AND PROHIBITIONS FOR LICENSES

- Pay an annual licensing fee that fully covers all program costs, including administration and enforcement
- Violating any tobacco law is also a violation of the license
- Require license be displayed in a prominent location
- Require clerks to check ID if purchaser appears under age 27
- Prohibit all self-service displays (e.g., bar vending machines)
- Clerks selling tobacco must be old enough to purchase tobacco under state law (e.g., 18 years old)

### ENFORCEMENT OF LICENSE REQUIREMENTS

- Licensing program will be administered by (e.g., who issues the license?): \_\_\_\_\_
- Licensing program will be enforced by \_\_\_\_\_ but also enforceable by any agency
  - Youth decoy operations will be conducted by (if different from enforcement agency): \_\_\_\_\_
- Number of mandatory inspections is (e.g., times each store is checked per year): \_\_\_\_\_
- The hearing process will be an administrative process (attorneys and court system need not be involved)
- Grant youth decoys partial immunity

### CONSEQUENCES OF LICENSE VIOLATION

- Each violation results in a temporary revocation (or suspension) of the privilege to sell tobacco products (and paraphernalia, if applicable) for \_\_\_\_\_ days for a 1st licensing violation; \_\_\_\_\_ days for a 2nd violation; \_\_\_\_\_ days for a 3rd violation; and \_\_\_\_\_ days for a 4th violation
- Number of years past violations will be tracked (the "look-back period"): \_\_\_\_\_ (minimum of 5 years)
- Prohibit display of tobacco products during revocation (or suspension) period
- Prohibit display of tobacco product advertising during revocation (or suspension) period
- Increase revocation (or suspension) periods and penalties for retailers who sell tobacco without a license
- Seize and destroy tobacco products offered for sale without a license

## "PLUG-IN" POLICY PROVISIONS

### LIMITATIONS ON LICENSE ISSUANCE

- No license for a new significant tobacco retailer (e.g., a "mostly tobacco" store)
- No license for a restaurant or a bar
- Only businesses that sell alcohol for off-site consumption may obtain license
- No license for a business that allows smoking anywhere on the premises (e.g., no hookah bars)
- No license for addresses zoned residential
- No licenses near schools and youth-populated areas
- Available licenses limited by population and density

### ADDITIONAL RETAILER REQUIREMENTS AND PROHIBITIONS

- Violating storefront sign laws is a license violation
- Violating nontobacco age-of-purchase laws is a license violation (e.g., selling alcohol to a minor)
- Violating state laws prohibiting sales of drug paraphernalia is a license violation
- Tobacco look-alike products may not be sold by any person
- Retailers may not distribute free tobacco products ("sampling")

### ENFORCEMENT

- Allow the retailer to pay a fine in lieu of license revocation
- Allow private citizens to get an injunction in addition to enforcement by the city or county
- Allow private citizens and local governments to sue a retailer in small claims court and win a modest fine (e.g., \$500)

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### ENFORCEMENT OF LICENSE REQUIREMENTS

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- Licensing program will be enforced by \_\_\_\_\_ but also enforceable by *any* agency
  - Youth decoy operations will be conducted by (if different from enforcement agency): \_\_\_\_\_
- Number of mandatory inspections is (e.g., times each store is checked per year): \_\_\_\_\_
- The hearing process will be an *administrative process* (attorneys and court system need not be involved)
- Grant youth decoys partial immunity

### CONSEQUENCES OF LICENSE VIOLATION

- Each violation results in a *temporary revocation* (or suspension) of the privilege to sell tobacco products (and paraphernalia, if applicable) for \_\_\_\_\_ days for a 1st licensing violation; \_\_\_\_\_ days for a 2nd violation; \_\_\_\_\_ days for a 3rd violation; and \_\_\_\_\_ days for a 4th violation
- Number of years past violations will be tracked (the "look-back period"): \_\_\_\_\_ (minimum of 5 years)
- Prohibit display of tobacco products during revocation (or suspension) period
- Prohibit display of tobacco product advertising during revocation (or suspension) period
- Increase revocation (or suspension) periods and penalties for retailers who sell tobacco without a license
- Seize and destroy tobacco products offered for sale without a license

## "PLUG-IN" POLICY PROVISIONS

### LIMITATIONS ON LICENSE ISSUANCE

- No license for a new significant tobacco retailer (e.g., a "mostly tobacco" store)
- No license for a restaurant or a bar
- Only businesses that sell alcohol for off-site consumption may obtain license
- No license for a business that allows smoking anywhere on the premises (e.g., no hookah bars)
- No license for addresses zoned residential
- No licenses near schools and youth-populated areas
- Available licenses limited by population and density

### ENFORCEMENT

- Allow the retailer to pay a fine in lieu of license revocation
- Allow private citizens to get an injunction in addition to enforcement by the city or county
- Allow private citizens and local governments to sue a retailer in small claims court and win a modest fine (e.g., \$500)

### REQUIREMENTS AND PROHIBITIONS FOR LICENSES

- Pay an *annual* licensing fee that *fully covers all program costs*, including administration and enforcement
- Violating *any* tobacco law is also a violation of the license
- Require license be displayed in a prominent location
- Require clerks to check ID if purchaser appears under age 27
- Prohibit all self-service displays (e.g., bar vending machines)
- Clerks selling tobacco must be old enough to purchase tobacco under state law (e.g., 18 years old)

### ADDITIONAL RETAILER REQUIREMENTS AND PROHIBITIONS

- Violating storefront sign laws is a license violation
- Violating nontobacco age-of-purchase laws is a license violation (e.g., selling alcohol to a minor)
- Violating state laws prohibiting sales of drug paraphernalia is a license violation
- Tobacco look-alike products may not be sold by any person
- Retailers may not distribute free tobacco products ("sampling")

# Licensing Ordinance Checklist

Your community has a range of policy choices to consider when designing a local tobacco retailer licensing ordinance. The options below are included in TALC's *Model California Ordinance Requiring a Tobacco Retailer License* and accompanying "plug-ins," all of which are available at [www.phpnet.org/tobacco-control](http://www.phpnet.org/tobacco-control). The provisions that TALC and The Center consider essential already include a check mark. Contact TALC for help drafting an ordinance based on your community's choices.

## POLICY OPTIONS IN MODEL ORDINANCE

### WHO MUST OBTAIN LICENSE

- All tobacco product retailers must obtain a nontransferable license
- Define "tobacco product" to include all nicotine and nontraditional tobacco products (e.g., nicotine gel, snus)
- Retailers of "tobacco paraphernalia" (e.g., rolling papers, pipes) must also obtain license
- No license may be issued to mobile vendors

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June 2010

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June 2010

# Resources from TALC – Smokefree Outdoor Areas

## Smokefree Outdoor Areas Ordinance Checklist

Your community has a range of policy choices to consider when designing a local ordinance regulating smoking in outdoor areas. The options below are based on TALC's Model California Ordinance Regulating Smoking in Outdoor Areas. Policy provisions that TALC considers essential already include a check mark. Contact TALC for an ordinance based on your community's choices.

**POLICY OPTIONS**

**WHAT IS REGULATED**

- Smoking
- Use of other tobacco products (e.g., smokeless tobacco)

**WHERE SMOKING OR TOBACCO USE IS PROHIBITED**

- Outdoor:
  - Recreational Areas
  - Service Areas
  - Dining Areas
  - Places of Employment
  - Multi-Unit Residence Common Areas
  - Except for a designated "smoking area" that meets certain criteria
  - Other Public Places:
    - Only Public Places when being used for a public event
    - Excluding streets and sidewalks being used in their traditional capacity
    - Excluding areas and sidewalks being used in an Enclosed Area
- Within a Reasonable Distance of [\_\_\_] feet from any Unenclosed Area where an
- Within a Reasonable Distance of [\_\_\_] feet from any Unenclosed Area where an

**ADDITIONAL PROVISIONS**

- Prohibit ash cans and ashtrays from being placed within an area where smoking
- Require property owners and managers to prevent patrons and guests from
- Require that No Smoking signs be posted

**ENFORCEMENT PROVISIONS**

- Designate that the ordinance will be enforced by \_\_\_\_\_ by \_\_\_\_\_ enforcement officer
- Declare violations based on illegal smoking [or tobacco use] to be infractions or a more than \$100
- Declare other violations of the ordinance to be an infraction or a more than \$100
- Allow the city or county to file a civil action for any violation:
  - Seeking injunctive relief or nuisance abatement
  - Seeking injunctive relief or nuisance abatement
- Declare that violation of the ordinance constitutes a nuisance
- Allow private citizens to get an injunction against individual
- Allow private citizens to get an injunction against individual

## Smokefree Outdoor Areas

As the dangers of secondhand smoke and tobacco use become increasingly well documented, one of the most important steps a community can take to protect its residents' health is to create more smokefree or tobacco-free spaces.

Increasingly, many California communities are interested in limiting secondhand smoke exposure and tobacco use in outdoor areas such as parks and playgrounds, dining patios, bus stops, and public events. Ordinances prohibiting smoking and tobacco use outdoors also help to reduce tobacco-related litter.

TALC's Model California Ordinance Regulating Smoking in Outdoor Areas provides a comprehensive approach to prohibit smoking and tobacco use in nearly every outdoor area in your community. There are a number of options to consider in designing your ordinance, and the language you should be part of a larger strategy for the ordinance adopted in your community.

To guide your planning, the Center for Tobacco Policy and Organization developed the five phase model.

**Campaign Trail START**

Contact "The Center" for help planning your campaign steps and working through the phases.

**PHASE 1: Investigation & Assessment**

Identify local issues and resources to build an understanding of what might influence decision makers. Determine your issue, a location (city or county), and a goal.

**PHASE 2: Strategy & Planning**

Assess the political environment and decision makers. Develop a preliminary strategy and establish a rough timeline.

**PHASE 3: Recruitment**

Now that you've got time to involve key members in our Meet with key members "kick-off" event.

**PHASE 4: The Campaign**

Finalize the strategy, and members, drafting, and tactical will.

**PHASE 5: Evaluation**

Evaluate the ordinance's impact and make adjustments as needed.

**public health law & policy technical assistance legal center**

The Technical Assistance Legal Center (TALC) helps advocates, city and county attorneys, and elected officials by providing and reviewing ordinance language, researching and analyzing state and federal legal issues, and providing training and consulting on legal strategies for tobacco control.

Technical Assistance Legal Center  
 (510) 302-3380  
 www.phpnet.org

Model provided with funds received from the California Department of Public Health under contract #04-35306. TALC is a project of Public Health Law & Policy and the Public Health Institute.

**public health law & policy technical assistance legal center**

## Smokefree Outdoor Areas Ordinance

### A Model California Ordinance Regulating Smoking in Outdoor Areas (with Annotations)

June 2009

Developed by the Technical Assistance Legal Center (TALC), a project of Public Health Law & Policy.

This material was made possible by funds received from the California Department of Public Health, under contract #04-35306.

Public Health Law & Policy is a nonprofit organization that provides legal information and resources relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

www.phpnet.org • talc@phpnet.org • (510) 302-3380

# Resources from TALC – Smokefree Housing

## Smokefree Housing

Because the negative health effects of secondhand smoke exposure are well documented, one of the most important steps a community can take to improve the health of its residents is to create smokefree spaces—especially where people live.

Increasingly, many California communities are interested in limiting secondhand smoke exposure in multi-unit housing. An ordinance prohibiting smoking in multi-unit housing also helps decrease the risk of accidental fires and reduce insurance and turnover costs.

TALC's *Model California Ordinance Regulating Smoking in Multi-Unit Residences* provides a number of policy options to consider.

local ordinance prohibiting smoking in multi-unit housing. The ordinance language you select should be part of a larger strategy to have the ordinance adopted in your community.

To guide your planning, the Center for Tobacco Policy and Organizing has developed the first phase model checklist.

**Consider the TALK START**

Consider "The Center" for planning your campaign and working through the

**Investigation & Assessment**

Identify local issues and resources to build an understanding of what single ordinance decision makers. Determine your issue, a location (city or county), and a goal.

## Smokefree Housing Ordinance Checklist

Your community has a range of policy choices to consider when designing a local ordinance regulating smoking in multi-unit housing. These policy provisions that TALC highly recommends are checked (☑) those that we listed but are not checked are options a community may want to consider, depending on political will and community conditions. All the options listed below are part of TALC's *Model California Ordinance Regulating Smoking in Multi-Unit Residences*, available at [www.phpnet.org/tobacco-control](http://www.phpnet.org/tobacco-control). Contact TALC for help making an ordinance based on your community's choices.

**TYPE OF MULTI-UNIT HOUSING REGULATED**

Single-unit detached homes with an attached or second unit

Single-unit condominiums

Triplex

Multi-unit residential buildings (including condominiums unless excluded here)

Other multi-unit housing

## How Disability Laws Can Help Tenants Suffering from Drifting Tobacco Smoke

June 2008

If you have a medical condition made worse by secondhand smoke drifting into your apartment, federal and state disability laws might help you address the problem. Depending on the nature of your disability, your landlord may be required to make changes to reduce your exposure.

**Disability Laws**

California and other states have laws designed to ensure that people with disabilities have equal opportunities. If you are not covered under state law, other legal options may apply to you. See TALC's fact sheet, *Options for Tenants with Disabilities from Drifting Tobacco Smoke*, at [www.talc.org](http://www.talc.org).

## Creating Smokefree Policies for Affordable Housing in California

November 2009

Do you want to help create policies limiting smoking in housing geared toward low-income residents? This fact sheet explains briefly what "affordable housing" is and policies for this type of housing in your community.

**What is affordable housing?**

Affordable housing is housing that is affordable to those with low to moderate incomes. It is often managed by private or public entities. It may be owned by private or public entities. It may be managed by private or public entities. It may be managed by private or public entities.

**Why is affordable housing important?**

Affordable housing is important because it provides a safe and stable living environment for low-income residents. It also helps to reduce the risk of homelessness and other social problems.

php public health law & policy technical assistance legal center

## Smokefree Housing Ordinance

A Model California Ordinance Regulating Smoking in Multi-Unit Residences (with Annotations)

Revised December 2009 (Originally issued April 2005)

Developed by the Technical Assistance Legal Center, a project of Public Health Law & Policy.

This material was made possible by funds received from the California Department of Public Health, under contract #09-11182.

Public Health Law & Policy is a nonprofit organization dedicated to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal information, contact your attorney.

[www.phpnet.org](http://www.phpnet.org) • [talc@phpnet.org](mailto:talc@phpnet.org)

## Smokefree Housing Ordinance Summary

April 2010

By creating nonsmoking living environments in multi-unit residences such as apartments, condominiums, senior housing, and single resident occupancy hotels, communities can provide an opportunity for everyone to live smokefree—even people who can't afford to live in a single-family home. A number of cities and counties throughout California already have adopted local laws to protect people living in multi-unit residences from their neighbors' drifting tobacco smoke.

The Technical Assistance Legal Center (TALC) developed this *Model Ordinance* to help California communities limit secondhand smoke exposure in multi-unit residences. The Model Ordinance includes provisions to restrict smoking in common areas (lobbies and outdoors), create smokefree buffer zones, and prohibit smoking in individual units. This Model Ordinance is very broad and can be used to limit smoking in all types of multi-unit dwellings—from hotels to long-term health care facilities—as well as apartments and condominiums.

Your community may choose to include some or all of the options offered in the Model Ordinance, depending on your jurisdiction's policy objectives. To help your community make policy choices, TALC created a *Smokefree Housing Ordinance Checklist* that highlights key policy options contained in the Model Ordinance.

If you have questions about this ordinance or would like assistance adapting it for your community, contact TALC at (510) 302-3380 or submit your questions via our website at [www.phpnet.org/tobaccoquestions](http://www.phpnet.org/tobaccoquestions).

Developed by the Technical Assistance Legal Center (TALC), a project of Public Health Law & Policy (PHLP). This material was made possible by funds received from the California Department of Public Health, under contract #09-11182. PHLP is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal information, contact your attorney.

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## Making a New Smokefree Housing Law Work

A guide for tobacco control advocates and policymakers

This guide provides practical advice on how to implement a new smokefree housing ordinance. It covers topics such as identifying key stakeholders, conducting outreach, and addressing common challenges.



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