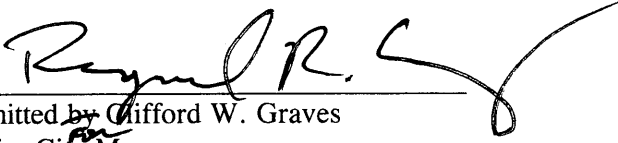
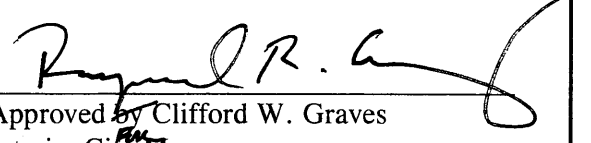




# City of Carson Report to Mayor and City Council

June 15, 2011  
New Business Discussion

**SUBJECT: CONSIDERATION OF THE CITY OF CARSON'S COMPREHENSIVE SMOKE FREE POLICIES**

 Submitted by Clifford W. Graves Interim City Manager	 Approved by Clifford W. Graves Interim City Manager
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## **I. SUMMARY**

This item is on the agenda at the request of Mayor *Pro Tem* Ruiz-Raber and Councilmember Santarina.

Mayor *Pro Tem* Ruiz-Raber directed that staff research the comprehensive smoke free policies from a list of local cities, and compare those policies to the current smoke free policies in Carson. A memo dated May 26, 2011, was provided to the City Council from the Interim City Manager outlining the varying differences between the cities policies (Exhibit No. 1). On June 9, 2011 Councilmember Santarina provided staff with the attached sample ordinance developed by the Technical Assistance Legal Center, a project of Public Health Law and Policy (Exhibit No. 2). Tonight the City Council is asked to consider the attached ordinance and provide direction to staff on how to proceed.

## **II. RECOMMENDATION**

CONSIDER and PROVIDE direction.

## **III. ALTERNATIVES**

TAKE another action the City Council deems appropriate.

## **IV. BACKGROUND**

Carson's current smoke free policy is somewhat limited compared to the other cities polled. In the city of Carson, smoking is currently prohibited at polling places during an election, in any facility owned by the City or the Carson Redevelopment Agency, and in parks, playgrounds, and recreation centers.

Staff researched the municipal codes of Baldwin Park, Beverly Hills, Burbank, Calabasas, Glendale, Pasadena, and Santa Monica. Currently, all of these cities have stronger smoke free policies than Carson.

## **V. FISCAL IMPACT**

None.

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## VI. EXHIBITS

1. Memo, Comprehensive smoke free policies dated May 26, 2011. (pg. 3)
2. Summary of Smoke-Free Policies in Surrounding Local Cities. (pg. 4-5)
3. Smoke Free Outdoor Areas Ordinance. (pgs. 6-27)

Document2

Prepared by: Dani Cook, Community Services Coordinator  
Lisa Berglund, Principal Admin. Analyst

TO:Rev032811

Reviewed by:

City Clerk	<u>City Treasurer</u>
<u>Administrative Services</u>	<u>Development Services</u>
<u>Economic Development Services</u>	<u>Public Services</u>

## Action taken by City Council

Date_____	Action_____



**CITY OF CARSON**  
**INTEROFFICE MEMORANDUM**

**TO: CLIFFORD W. GRAVES, INTERIM CITY MANAGER**  
**FROM: DANI COOK, COMMUNITY SERVICES COORDINATOR**  
**SUBJECT: COMPREHENSIVE SMOKE-FREE POLICIES**  
**DATE: MAY 26, 2011**

This memo is written in response to a request from Mayor Pro Tem Julie Ruiz-Raber. She asked that staff research the comprehensive smoke free policies from a list of local cities, and compare those policies to the current smoke free policies in Carson. If the other cities have stronger policies than Carson does, she would like staff to draft an ordinance for an agenda item for the second meeting in June, 2011.

Carson's current smoke free policy is somewhat limited compared to the other cities polled. In the City of Carson, smoking is prohibited at polling places during an election, in any facility owned by the City or the Carson Redevelopment Agency, and in parks, playgrounds, and recreation centers. I have attached the current policy for your convenience.

After researching the municipal codes of Baldwin Park, Beverly Hills, Burbank, Calabasas, Glendale, Pasadena, and Santa Monica, I learned that all of these cities do in fact have stronger smoke free policies than Carson. For example, many of the other cities prohibit smoking in outdoor dining areas, outdoor service lines, public transit stations, and outdoor shopping areas. The City of Calabasas probably has the strictest policy, prohibiting smoking "everywhere in the city", with the exception of designated smoking areas and private residences. I have summarized and attached a copy of the current policies in these cities. I also have a hard copy of each policy in its entirety, which I can provide for you under separate cover if you wish.

There is certainly room to strengthen the City of Carson's smoke free policies if that is the desire of Mayor Pro Tem Ruiz-Raber. I am happy to assist in drafting an ordinance if that is the direction we are given. Please let me know if you have any questions, or if you need further information.

cc: Lisa Berglund, Senior Administrative Analyst

document

EXHIBIT NO. 01

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## SMOKE-FREE POLICIES

Below is a list of where smoking is prohibited in other cities.

### Baldwin Park:

1. Any elevator.
2. Any city-owned premises.
3. Any public park.
4. Any service area (defined as any place located outside of an enclosed building where people wait to access goods or services, including farmer's markets, bus stops, the Metrolink Station, ATM's, vending machines, information kiosks, etc.)
5. Any dining area.
6. Within 20 feet of any entrance to, exit from, or any open window of any building open to the public.

### Beverly Hills:

1. All open air dining areas located on private or public property, including the public right of way.
2. Within five feet (5') of an open air dining area, except while actively passing on the way to another destination.
3. Cigarette vending machines are prohibited.

### Burbank:

1. City facilities and parks (enclosed and non-enclosed) except for in designated smoking areas, certain areas of DeBell Golf Course, and public transit facilities.
2. All sidewalks and public rights-of-way within 20 feet of the property lines of any City facility.
3. All non-enclosed sidewalks, paseos, and other pedestrian areas in Downtown Burbank accessible to the general public.
4. All non-enclosed areas within five feet (5') of any pedestrian path or area in Downtown Burbank.
5. Chandler Bikeway and public rights-of-way within twenty feet (20') of Chandler Bikeway.
6. Outdoor dining areas and non-enclosed areas within five feet (5') of any outdoor dining area.
7. Outdoor service areas and non-enclosed areas within twenty feet (20') of outdoor service areas.
8. City transit vehicles and stations, and non-enclosed areas within twenty feet (20') of transit stations.
9. Outdoor gathering and event areas (permanent or temporary grandstands, bleachers, viewing areas, playing courts and fields, circulation areas, lobbies, foyers, restrooms, concession areas.
10. Outdoor shopping areas and centers, like farmer's markets, swap meet, street fair, plant nursery, etc. Also includes non-enclosed areas within twenty feet (20') of those areas.
11. Elevators
12. Proximity to buildings open to the public: Within twenty feet (20') of building entrance/exit
13. Designated non-smoking areas.
14. Common residential areas, such as swimming pools, hot tub area, children's play areas, enclosed common areas such as laundry rooms, recreation rooms, and gyms.
15. Private residential areas such as private balconies, patios, and non-enclosed areas.

**Calabasas:**

1. Everywhere in the city, including but not limited to: public places, places of employment, multi-unit residence common areas, enclosed and unenclosed places of hotels, businesses, restaurants and bars, and other public accommodations. (There are designated public smoking areas, as well as a designated number of guest rooms in any hotel or motel, and "smokers' outposts" in unenclosed areas in shopping mall common areas.)

**Glendale:**

1. On City property, in City vehicles and public transportation vehicles, and at city public transit stations, as well as within twenty feet (20') of city facilities.
2. In a place of employment, and within a twenty foot (20') distance from a place of employment.
3. Enclosed public places, and within a 20 foot (20') distance from an enclosed public place.
4. Non-enclosed public place, outdoor dining area, outdoor event, outdoor seating area, public transit station or stop.
5. Within a 20-foot (20') distance from the property line of a school.
6. Common areas of multiunit rental housing and residential condo complexes, and on outdoor balconies and patios of units.

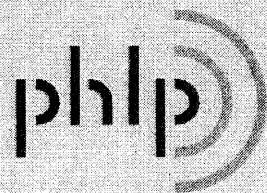
**Pasadena:**

1. Any dedicated city park, playground, or recreation center.
2. All public places within the city, including but not limited to: elevators, hospitals and health care facilities, indoor service lines, public meeting rooms and places of public assembly, public restrooms, theaters and auditoriums, restaurants, hotel lobbies, and common areas within hotels and motels, excluding guest rooms.
3. All enclosed workplaces, including on-site cafeterias and lunchrooms, and lounges.
4. Outdoor areas of shopping malls.
5. Unenclosed areas of bars and restaurants.
6. Service waiting lines and within twenty feet (20') of such lines.
7. Outdoor public gathering events/special events/parades/fairs.

**Santa Monica:**

1. Any elevator.
2. Any public park, public beach, and anywhere on the Santa Monica Pier.
3. Any outdoor service area.
4. Inside any public building.
5. Any outdoor dining area.
6. Within twenty feet (20') of the entrance, exit, or open window of any building open to the public.
7. The Third Street Promenade.
8. Any Farmer's Market.
9. The property of any public library.





**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 #04-35336.

Public Health Law & Policy 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 advice, readers should consult a lawyer in their state.

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**EXHIBIT NO. 03**



## INTRODUCTION

The Technical Assistance Legal Center (TALC) developed this Model Ordinance to help California cities and counties limit tobacco use and unwanted exposure to secondhand smoke in outdoor areas. 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 or tobacco-free spaces. By addressing outdoor tobacco use, this Model Ordinance also helps limit tobacco-related litter.

To assist cities and counties create smokefree and tobacco-free outdoor areas, this Model Ordinance includes:

- Extensive findings based on the latest scientific information documenting the health risks associated with tobacco use and exposure to secondhand tobacco smoke;
- Prohibitions on smoking in outdoor places including parks and other recreational areas, restaurant patios, bus stops, public event sites, and common areas of multi-unit housing;
- Optional language that can be included to prohibit *all* tobacco use in outdoor places;
- Requirements for posting No Smoking signs; and
- Robust enforcement mechanisms including the option for private individuals and organizations to enforce the no-smoking provisions of this ordinance.

The Model Ordinance offers a variety of options. In some instances, blanks (e.g., [ \_\_\_\_ ] ) prompt you to customize the language to fit your community's needs. In other cases, the ordinance offers you a choice of options (e.g., [ choice one / choice two ] ). Some of the ordinance options are followed by a comment that describes the legal provisions in more detail. Some degree of customization is always necessary in order 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.

The Model Ordinance is very broad and covers every conceivable outdoor space, but it can be customized to fit the specific needs of your community. Some of the comments in the Model Ordinance describe how to narrow the scope of the smoking restrictions, should that be necessary. In addition, optional language is available to broaden the scope of the ordinance to restrict not only smoking but *all* tobacco use.

TALC has also developed a separate ordinance to create smokefree multi-unit housing by limiting smoking inside units and common areas, as well as other ordinances specifically designed to create smokefree recreational areas and beaches. Some of the areas covered by those ordinances are also included in this Model Ordinance. If you would like to adopt a comprehensive or more customized approach, some aspects of other TALC ordinances can be combined with this ordinance. If you have questions about how to adapt this ordinance for your community, please contact TALC for assistance at (510) 302-3380 or via e-mail at [talcn@phlpnet.org](mailto:talcn@phlpnet.org).



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

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. FINDINGS.**

The [ City Council of the City / Board of Supervisors of the County ] of [ \_\_\_\_ ] hereby finds and declares as follows:

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

- Tobacco-related illness is the leading cause of preventable death in the United States,<sup>1</sup> accounting for about 443,000 deaths each year;<sup>2</sup> and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;<sup>3</sup> and
- Some of the most common types of cancers including stomach, liver, uterine cervix, and kidney are related to tobacco use;<sup>4</sup> and

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;<sup>5</sup> and

<sup>1</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: [www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf](http://www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf).

<sup>2</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. "Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses — United States, 2000-2004." *Morbidity and Mortality Weekly Report*, 57(45): 1226-1228, 2008. Available at: [www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm).

<sup>3</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: [www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf](http://www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf).

<sup>4</sup> Leistikow B, Zubair K, et al. "Male Tobacco Smoke Load and Non-Lung Cancer Mortality Associations in Massachusetts." *BMC Cancer*, 8:341, 2008. Available at: [www.biomedcentral.com/1471-2407/8/341](http://www.biomedcentral.com/1471-2407/8/341).

<sup>5</sup> US Department of Health and Human Services, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. 2007. Report highlights available at: [www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet7.html](http://www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet7.html).





- 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;<sup>6</sup> and
- The California Environmental Protection Agency 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;<sup>7</sup> and

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

- Secondhand smoke is responsible for as many as 73,000 deaths among nonsmokers each year in the United States;<sup>8</sup> and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent;<sup>9</sup> and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year;<sup>10</sup> and exacerbates childhood asthma;<sup>11</sup> and

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

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

- Smokeless tobacco use causes leukoplakia, a disease causing white patches to form in the user's mouth that can become cancerous;<sup>12</sup> smokeless tobacco products are known

<sup>6</sup> Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: [www.arb.ca.gov/regact/ets2006/res0601.pdf](http://www.arb.ca.gov/regact/ets2006/res0601.pdf); See California Environmental Protection Agency, Air Resources Board. *News Release, California Identifies Secondhand Smoke as a "Toxic Air Contaminant."* Jan. 26, 2006. Available at: [www.arb.ca.gov/newsrel/nr012606.htm](http://www.arb.ca.gov/newsrel/nr012606.htm).

<sup>7</sup> California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*. 2006, p. 8 & 17. Available at: [www.oehha.ca.gov/prop65/prop65\\_list/files/P65single081106.pdf](http://www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf).

<sup>8</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm).

<sup>9</sup> Barnoya J and Glantz S. "Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking." *Circulation*, 111: 2684-2698, 2005. Available at: [www.circ.ahajournals.org/cgi/content/full/111/20/2684](http://www.circ.ahajournals.org/cgi/content/full/111/20/2684).

<sup>10</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: [www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf](http://www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf).

<sup>11</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm).

<sup>12</sup> National Cancer Institute. *Smokeless Tobacco and Cancer: Questions and Answers*. 2003, p. 2. Available at: [www.smokefree.gov/Docs2/SmokelessTobacco\\_Q&A.pdf](http://www.smokefree.gov/Docs2/SmokelessTobacco_Q&A.pdf).



to cause lung, larynx, esophageal, and oral cancer;<sup>13</sup> and the regular use of snuff doubles the user's risk of cardiovascular disease and death;<sup>14</sup> and

- Prolonged use of snus, a form of smokeless tobacco, contributes to high blood pressure, a factor of cardiovascular disease, and to a higher likelihood of suffering a fatal stroke;<sup>15</sup> and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is \$193 billion;<sup>16</sup> and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately \$96 billion;<sup>17</sup> and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10 billion per year in the United States in 2005;<sup>18</sup> and
- The total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone;<sup>19</sup> and
- California's Tobacco Control Program saved the state and its residents \$86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly;<sup>20</sup> and

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

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<sup>13</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death*. 2008, p. 2. Available at: [www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf](http://www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf).

<sup>14</sup> Hatsukami DK and Severson HH. "Oral Spit Tobacco: Addiction, Prevention, and Treatment." *Nicotine and Tobacco Research*, 1(1): 21-44, 1999.

<sup>15</sup> Karolinska Institutet. "Prolonged Use of Swedish Moist Snuff Increases Risk of Fatal Cardiovascular Disease and Stroke." *Medical News Today*, November 15, 2007. Available at: [www.medicalnewstoday.com/articles/88868.php](http://www.medicalnewstoday.com/articles/88868.php).

<sup>16</sup> Centers for Disease Control and Prevention. *News Release, Slightly Lower Adult Smoking Rates*. 2008. Available at: [www.cdc.gov/media/pressrel/2008/r081113.htm](http://www.cdc.gov/media/pressrel/2008/r081113.htm).

<sup>17</sup> Centers for Disease Control and Prevention. *News Release, Slightly Lower Adult Smoking Rates*. 2008. Available at: [www.cdc.gov/media/pressrel/2008/r081113.htm](http://www.cdc.gov/media/pressrel/2008/r081113.htm).

<sup>18</sup> Behan DF, Eriksen MP and Lin, Y. *Economic Effects of Environmental Tobacco Smoke*. Schaumburg, IL: Society of Actuaries, 2005, p. 2. Available at: [www.soa.org/files/pdf/ETSReportFinalDraft\(Final%203\).pdf](http://www.soa.org/files/pdf/ETSReportFinalDraft(Final%203).pdf).

<sup>19</sup> Max W, Rice DP, Zhang X, et al. *The Cost of Smoking in California, 1999*. Sacramento, CA: Tobacco Control Section, California Department of Health Services, 2002, p. 74. Available at: <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1026&context=ctcre>.

<sup>20</sup> Lightwood JM, Dinno A and Glantz SA. "Effect of the California Tobacco Control Program on Personal Health Care Expenditures." *PLoS Med*, 5(8): e178, 2008. Available at: [www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178](http://www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178).

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers;<sup>21</sup> and
- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette;<sup>22</sup> and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two lane road;<sup>23</sup> and
- Studies on a cruise ship have found that even while cruising at 20 knots and with unlimited air volume, outdoor smoking areas contained carcinogens in nearly the same amounts as inside the ship's casino where smoking was allowed;<sup>24</sup> and

WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

- In 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarettes, cigarette butts, and other tobacco products;<sup>25</sup> and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;<sup>26</sup> and

<sup>21</sup> Klepeis NE, Ott WR, and Switzer P. *Real-Time Monitoring of Outdoor Environmental Tobacco Smoke Concentrations: A Pilot Study*. San Francisco: University of California, San Francisco and Stanford University, 2004, p. 34, 80. Available at: [http://exposurescience.org/pub/reports/Outdoor\\_ETS\\_Final.pdf](http://exposurescience.org/pub/reports/Outdoor_ETS_Final.pdf); See also Klepeis NE, Ott WR and Switzer P. "Real-Time Measurement of Outdoor Tobacco Smoke Particles." *Journal of Air and Waste Management Association*, 57: 522-534, 2007. Available at: [www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf](http://www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf).

<sup>22</sup> Junker MH, Danuser B, Monn C, et al. "Acute Sensory Responses of Nonsmokers at Very Low Environmental Tobacco Smoke Concentrations in Controlled Laboratory Settings." *Environmental Health Perspectives*, 109(10): 1046-1052, 2001. Available at: [www.pubmedcentral.nih.gov/picrender.fcgi?artid=1242082&blobtype=pdf](http://www.pubmedcentral.nih.gov/picrender.fcgi?artid=1242082&blobtype=pdf); Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

<sup>23</sup> Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

<sup>24</sup> Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, 2008. Available at: <http://tobacco.health.usyd.edu.au/site/supersite/contact/pdfs/WilliamMitchellRepace.pdf>.

<sup>25</sup> American Association of Poison Control Centers. *2004 Annual Report of the American Association of Poison Control Centers Toxic Exposure Surveillance System*. Elsevier Inc., 2004, p. 645. Available at: [www.poisson.org/prevent/documents/TESS%20Annual%20Report%202004.pdf](http://www.poisson.org/prevent/documents/TESS%20Annual%20Report%202004.pdf).

<sup>26</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. "Ingestion of Cigarettes and Cigarette Butts by Children – Rhode Island, January 1994-July 1996." *Morbidity and Mortality Weekly Report*, 46(06): 125-128, 1997. Available at: [www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm).



WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- It is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year;<sup>27</sup> 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;<sup>28</sup> and
- Cigarette filters, made of plastic cellulose acetate, take approximately 15 years to decompose;<sup>29</sup> and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs, as evidenced by the following:

- Cities with smokefree laws see an appreciable reduction in hospital admittances for heart attacks in the months and years after such laws are passed;<sup>30</sup> and
- Smoking bans help people reduce the number of cigarettes they smoke or quit altogether;<sup>31</sup> and
- Strong smoking regulations for restaurants decrease the number of children who transition from experimenting with smoking to becoming actual smokers;<sup>32</sup> and

WHEREAS, creating smokefree areas helps protect the health of the 86.7% of Californians who are nonsmokers;<sup>33</sup> and

WHEREAS, society is becoming less tolerant and less accepting of cigarette smoking, as evidenced by the following,

- A 2008 survey of California voters found that 75% thought that secondhand smoke is harmful, 64% were bothered by secondhand smoke, and 73% support laws restricting

<sup>27</sup> Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, [www.surfridersd.org/hotyb.php](http://www.surfridersd.org/hotyb.php).

<sup>28</sup> Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, [www.surfridersd.org/hotyb.php](http://www.surfridersd.org/hotyb.php).

<sup>29</sup> Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, [www.surfridersd.org/hotyb.php](http://www.surfridersd.org/hotyb.php).

<sup>30</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. "Reduced Hospitalizations for Acute Myocardial Infarction After Implementation of a Smoke-Free Ordinance – City of Pueblo, Colorado, 2002 – 2006." *Morbidity and Mortality Weekly Report*, 57(51&52): 1373-1377, 2009. Available at: [www.cdc.gov/mmwr/preview/mmwrhtml/mm5751a1.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5751a1.htm); Glantz SA. "Meta-Analysis of the Effects of Smokefree Laws on Acute Myocardial Infarction: An Update." *Preventive Medicine*, 47(4): 452-453, 2008.

<sup>31</sup> Neighmond P. "Smoking Bans Help People Quit, Research Shows." *National Public Radio*, October 25, 2007. Available at: [www.npr.org/templates/story/story.php?storyId=15610995](http://www.npr.org/templates/story/story.php?storyId=15610995).

<sup>32</sup> Siegel M, Albers AB, Cheng DM, et al. "Local Restaurant Smoking Regulations and the Adolescent Smoking Initiation Process: Results of a Multilevel Contextual Analysis Among Massachusetts Youth." *Archives of Pediatrics and Adolescent Medicine*, 162(5): 477-483, 2008. Available at: <http://archpedi.ama-assn.org/cgi/reprint/162/5/477.pdf>.

<sup>33</sup> Hong M, Barnes RL and Glantz SA. *Tobacco Control in California 2003-2007: Missed Opportunities*. San Francisco: Center for Tobacco Control Research and Education, 2007, p. 9. Available at: <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1074&context=ctcre>.



smoking in outdoor public places;<sup>34</sup> and

- People living in cities with strong smokefree air laws are more likely to believe smoking is not acceptable and that smokers should attempt to quit smoking;<sup>35</sup> and
- As of 2008, there are 187 California cities and counties with local laws restricting smoking in at least one outdoor area;<sup>36</sup> and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;<sup>37</sup> and state law prohibits smoking within 20 feet of entryways and operable windows of government buildings;<sup>38</sup> and

WHEREAS, there is no Constitutional right to smoke;<sup>39</sup>

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 and around the [ City's / County's ] outdoor places.

**SECTION II.** [ Article / Chapter ] of the [ \_\_\_\_ ] 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, or other entity formed for profit-making purposes.

(b) “Common Area” means every Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example, paths, courtyards, playgrounds, swimming pools, parking lots, and picnic areas.

<sup>34</sup> Goodwin Simon Victoria Research. *Study of California Voters' Attitudes About Secondhand Smoke Exposure*. Sacramento: Center for Tobacco Policy & Organizing, 2008, p. 1-3. Available at: [www.center4tobaccopolicy.org/\\_files/\\_files/Results%20of%20SHS%20Poll%20November%202008.pdf](http://www.center4tobaccopolicy.org/_files/_files/Results%20of%20SHS%20Poll%20November%202008.pdf).

<sup>35</sup> Indiana University. *News Release, Indiana University Research at American Public Health Association Meeting*. October 27, 2008. Available at: <http://newsinfo.iu.edu/tips/page/normal/9085.html#3>.

<sup>36</sup> California Clean Air Project, California Secondhand Smoke Policy Database, <http://ccap.etr.org/index.cfm?fuseaction=policydb.home>.

<sup>37</sup> Cal. Health & Safety Code § 104495 (West 2008).

<sup>38</sup> Cal. Gov't Code § 7597 (West 2008).

<sup>39</sup> Public Health Law & Policy, Technical Assistance Legal Center. *There Is No Constitutional Right to Smoke*. 2005. Available at: [http://talc.phlaw.org/pdf\\_files/0051.pdf](http://talc.phlaw.org/pdf_files/0051.pdf).

[ “Common Area” means every Enclosed Area or Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas. ]

**COMMENT:** If you would like to prohibit Smoking in *all* Common Areas of Multi-Unit Residences, indoors and out, you can use the bracketed alternative language for this definition. If you choose this option, please contact TALC for assistance in editing Section [\_\_\_\_(\*2)] of this ordinance for internal consistency, i.e., ensuring that the title and relevant subsections appropriately reference Enclosed and/or Unenclosed Areas.

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

The definition of Common Area does not include balconies, patios, or decks of individual Units because these are not shared areas.

(c) “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.

**COMMENT:** This definition covers all Dining Areas, indoors and out, but Section [\_\_\_\_(\*2)(a)] of this Model Ordinance prohibits Smoking only in outdoor Dining Areas. Smoking in indoor Dining Areas is already prohibited by state law (Labor Code section 6404.5) and possibly by your community’s local ordinances.

(d) “Employee” means any Person who is employed or retained as an independent contractor by any Employer or Nonprofit Entity in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer or Nonprofit Entity.

**COMMENT:** This definition makes clear that volunteers and independent contractors are Employees for purposes of this section.

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

(f) “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 boundaries of any height whether or not those boundaries include vents or other openings; or

(2) [ four (4) ] walls or other vertical boundaries that exceed [ six (6) ] feet in height whether or not those boundaries include vents or other openings.

**COMMENT:** This definition describes "enclosed" places that are not covered by the prohibitions in this ordinance. (The definition of Unenclosed Area includes all areas that are not Enclosed Areas.) This definition is narrow so that most areas will be considered Unenclosed Areas and therefore subject to this ordinance.

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. Reducing the number of walls in this definition would broaden the definition of Enclosed Area, which would result in narrowing the definition of Unenclosed Area, thereby limiting the scope of the outdoor Smoking restrictions in this ordinance.

An area that is partially covered by anything would be analyzed under subparagraph (1), whereas only areas that are totally 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 vertical boundary, regardless of composition, constitutes an "other vertical boundary" 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 modification to existing definitions and/or operative provisions to ensure consistency with the new definition.

(g) "Multi-Unit Residence" means property containing two (2) or more Units [ , except the following specifically excluded types of housing:

(1) a hotel or motel that meets the requirements set forth in 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;

(6) a single-family home with a detached or attached in-law or second unit when 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; and

(7) \_\_\_\_ ] .



**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 so 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.

Note that the definition of Multi-Unit 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.

(h) “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.

(i) “Person” means any natural person, Business, cooperative association, Nonprofit Entity, personal representative, receiver, trustee, assignee, or any other legal entity including government agencies.

**COMMENT:** 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.

This definition incorporates all entities defined as a Business in this ordinance. In addition, it includes the City and County.

(j) “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.



**COMMENT:** This definition is broad enough to cover all areas of a workplace, indoors and out. Section [ \_\_\_\_ (\*2)(a) ] of this Model Ordinance prohibits Smoking only in the Unenclosed Areas of workplaces; if your community also wants to restrict Smoking in indoor workplaces exempted by the state smokefree workplace law (e.g., retail tobacco shops, warehouses, hotel lobbies, etc.) please contact TALC for assistance.

(k) “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 and is intended as a “catch-all” to include all public areas that do not fall within any other definition in this Model Ordinance.

This definition includes all Public Places, indoors and out, but Section [ \_\_\_\_ (\*2)(a) ] of this Model Ordinance prohibits Smoking only in outdoor Public Places.

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 [ \_\_\_\_ (\*2)(a)(6) ] contains optional language that can be used to exclude streets and sidewalks from most Smoking restrictions.

(l) “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.

(m) “Recreational Area” means any area [ , including streets and sidewalks, ] that is [ publicly or privately owned / owned or operated 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, horseback 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 only include publicly owned or operated recreational facilities, then select the phrase “*owned or operated 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 [\_\_\_\_>(\*2)(a)] of this Model Ordinance prohibits Smoking only in outdoor Recreational Areas.

This definition includes beaches, which is not defined in this Model Ordinance. If you would like to include a separate, more specific definition of the term "beach," please see the definition included in TALC's "Model California Ordinance Regulating Smoking and Tobacco Use on Beaches," available on TALC's website at [www.phlpnet.org](http://www.phlpnet.org).

(n) "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 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 [\_\_\_\_>(\*2)(a)] of this Model Ordinance prohibits Smoking only in outdoor Service Areas.

(o) "Smoke" means the gases and particles released into the air by combustion when the apparent or usual purpose of the combustion is human inhalation of the resulting combustion products, such as, for example, tobacco smoke, marijuana smoke, and crack cocaine smoke, except when the combusting material contains no tobacco and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense.

**COMMENT:** This is a special definition that is more limited than the common understanding of what "smoke" is. For example, smoke from a fireplace or a barbeque grill is not "Smoke" for the purposes of this ordinance because the smoke generated by those activities is not produced for the purpose of inhaling it. The limitation placed on "Smoke" by this definition is important to avoid unintended consequences, such as inadvertently prohibiting the burning of incense.

This definition includes marijuana, but Smoking marijuana for medical purposes can be excluded from the prohibitions of this ordinance should a community decide to do so. Please contact TALC for assistance in drafting a medical marijuana exception.

(p) "Smoking" means engaging in an act that generates Smoke, such as, for example: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, or a lighted cigarette of any kind; or lighting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

**COMMENT:** This definition includes marijuana, but Smoking marijuana for medical purposes can be excluded from the prohibitions of this ordinance in some circumstances; please contact TALC for assistance.

(q) “Tobacco Product” means any substance containing tobacco leaf, and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

**COMMENT:** This definition is written broadly to include nontraditional tobacco and nicotine products such as nicotine water and nicotine lollipops, but without interfering with the FDA’s mission of approving products intended to benefit public health, such as nicotine patches and other nicotine cessation products.

(r) “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.

(s) “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, because of the way that this model ordinance is designed, any limitations on the types of housing covered by the ordinance should be added to the defined term “Multi-Unit Residence” and *not* here. 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 “Multi-Unit Residence.”

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

**COMMENT:** If a community wants to prohibit the use of all Tobacco Products in addition to Smoking, then include the optional bracketed text referring to the use of



Tobacco Products each time it 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 \_\_\_\_\_ ], except places where Smoking [ or the use of Tobacco Products ] is already prohibited by state or federal law, in which case those laws apply:

**COMMENT:** The “*except places where ...*” language avoids potential preemption issues by making clear that the local ordinance is not duplicative of existing law but rather “fills in” gaps in existing state or federal law.

- (1) Recreational Areas;
- (2) Service Areas;
- (3) Dining Areas;
- (4) Places of Employment;

(5) Common Areas [ , provided 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 meets all of the following criteria:

**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 Multi-Unit 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.

(a) the area must be 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 designated Smoking area may require modification or elimination 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 in order to prevent drifting Smoke from entering smokefree areas. As written, it includes areas on neighboring property that are designated as nonsmoking by contract (e.g., a smokefree lease term for a rental unit next to, but not a part of, the Multi-Unit Residence) and areas on neighboring property

designated by a property owner or lessee as nonsmoking (e.g., a neighboring business).

(b) the area must not include, and must be 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;

(c) the area must be no more than [ ten percent (10%) ] of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;

(d) the area must have a clearly marked perimeter;

(e) the area must be identified by conspicuous signs;

(f) the area must be completely within an Unenclosed Area; and

(g) the area must 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 ]; and

(6) Other Public Places [ , when being used for a public event, including a farmers' market, parade, craft fair, festival, or any other event which may be attended by the general public / , provided that Smoking is permitted on streets and sidewalks being used in a traditional capacity 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 your community would like to limit the Smoking restrictions to Public Places that are being used as a public event site, 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 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 they 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 "smokers' areas"), appropriate language can be included



in this subsection. Please contact TALC for assistance in drafting language to fit the needs of your community.

(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 engage in an ongoing educational program to explain and clarify the purposes and requirements of this [ article / chapter ], as well as providing guidance to Persons, Employers, and Nonprofit Entities about compliance. However, lack of such education 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 should be in charge of this program.

## Sec. [        ] (\*3). 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 actively passing on the way to another destination and provided Smoke does not enter any Enclosed Area in which Smoking is prohibited.

**COMMENT:** This creates a buffer zone around Enclosed smokefree areas, allowing Smoking only if 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. [        ] (\*2) of this [ article / chapter ], except while actively passing on the way to another destination and provided Smoke does not enter any Unenclosed Area in which Smoking is prohibited.

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

**COMMENT:** Subsection (c) is optional; include it if you want to allow Smoking on private residential property that is located within the Reasonable Distance parameters. As written, subsections (a) and (b) would prohibit Smoking on private residential property, other than multi-unit housing, within twenty-five feet of an area in which Smoking is prohibited. For example, if a backyard of a private home abutted an area where Smoking is prohibited, subsections (a) and (b) will prohibit Smoking in that private backyard.

Sec. [ \_\_\_\_ (\*4) ]. **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 the Person, Employer or Nonprofit Entity and in which Smoking [ or the use of Tobacco Products ] is prohibited by law, unless otherwise required by state or federal law.

**COMMENT:** This provision makes anyone who is in control of an area responsible for any Smoking done in violation of this and other no-smoking laws. Thus, enforcement actions can be taken against a Business, landlord, Employer, or Nonprofit Entity, in addition to the individual tobacco user, if they knowingly break the law.

(b) No Person, Employer, or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of the 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 is prohibited, including inside the perimeter of any Reasonable Distance required by this [ article / chapter ].

(d) A Person, Employer, or Nonprofit Entity that has legal or de facto control of an Unenclosed Area in which Smoking [ or the use of Tobacco Products ] is prohibited by this [ article / chapter ] shall post a clear, conspicuous and unambiguous “No Smoking” [ or No Use of Tobacco Products ] or “Smokefree” [ or “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. [ \_\_\_\_ (\*3) ]. [ At least one sign with the [ City / County ] phone number where complaints can be directed must be conspicuously posted in each place in which Smoking is prohibited. ] For purposes of this section, the City Manager 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 with the 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 will 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.

**Sec. [ \_\_\_\_ (\*5) ]. 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 to 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. 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 ]. Other violations of this [ article / chapter ] may, in the discretion of the [ City Prosecutor / District Attorney ], be prosecuted as infractions or misdemeanors when the interests of justice so require. 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. The second sentence, sometimes called a "wobbler," affords the prosecuting attorney discretion whether to pursue a violation as an infraction (like a parking ticket) or a misdemeanor (a crime punishable by up to a \$1,000 fine and/or six months in County Jail). Alternatively, violations can be set as *either* an infraction or a misdemeanor in all circumstances. Misdemeanors are more serious crimes for which a jury trial is available to defendants. Fines and other criminal penalties are established by the Penal Code and are typically reflected in the general punishments provision of a local code.



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 traditional civil suit 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.

Note that this declaration merely says that *violating* the ordinance qualifies as a nuisance (e.g., 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 TALC for more information on how a local ordinance can declare that all nonconsensual exposure to secondhand smoke is a nuisance.

(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 where the cost of the abatement can be collected via the property tax roll as a special assessment against the property on which the violation occurs.

[ (g) 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 Smoking restrictions in this ordinance.

(h) Any Person acting for the interests of itself, its members, or the general public may bring a civil action to enjoin a violation of this [ article / chapter ] by a landlord, Employer, Business, or Nonprofit Entity or to enjoin repeat violations of this [ article / chapter ] by an individual.

**COMMENT:** This provision enables private citizens to go to court to seek *compliance* with the ordinance through an injunction (a court order to do or not do something). Money damages are not an available remedy. Because an injunction is the only remedy available, small claims court is not an appropriate venue for filing a lawsuit under this provision.

Note that while a landlord, Employer, Business, or Nonprofit Entity may be sued for one violation of this ordinance, an individual can be sued only for repeat violations. This limitation is intended to address concerns about the potential for abusive lawsuits.

**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

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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.

