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at Mitchell Hamline School of Law



American
Lung Association.
California

Policy 101, Part 2: Stages of Policy Development

for California Commercial Tobacco Control Grantees

Colin Welker and Neil Sircar

8/7/2025

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WHO WE ARE

Law and Policy Partnership to End the Commercial Tobacco Epidemic

The Law and Policy Partnership to End the Commercial Tobacco Epidemic (the Partnership) is a joint initiative of the American Lung Association and the Public Health Law Center to support tobacco control professionals in their work to end the commercial tobacco epidemic in California.

The Partnership provides free technical assistance, research, training, and analysis to help communities pass strong local tobacco ordinances that are both effective and legally sound.

THE PUBLIC HEALTH LAW CENTER



LAND ACKNOWLEDGMENT

We acknowledge that the land where the Public Health Law Center is located is near Bdote, the sacred confluence of the Mississippi and Minnesota Rivers and the birthplace and center of all things for the Dakota people since time immemorial. This region is also the ancestral territory of the Anishinaabe, and other Indigenous people from many Tribal Nations now call this land home. Indigenous people have made and continue to make countless, and uncounted, contributions to this region through protection of the land, air and water, the preservation and revitalization of Indigenous foodways, and demonstrating resilience in the face of relentless adversity. We recognize that the land the Public Health Law Center currently occupies was forcibly stolen and, therefore, is a part of the legacy of US law and policy aimed at carrying out the genocide and oppression of Indigenous people and that, nonetheless, this land remains and will continue to be Indigenous land. We believe that a fundamental part of our work is to repair and address this heavy legacy of the law, and apply ourselves to supporting Tribal Nations in exercising sovereignty to improve the lives of their community members.

EQUALITY:

Everyone gets the same – regardless if it's needed or right for them.



EQUITY:

Everyone gets what they need – understanding the barriers, circumstances, and conditions.



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LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development, Implementation, Defense
-  Publications
-  Trainings
-  Direct Representation
-  Lobby

RECAP! POLICY 101 PART 1

GENERAL PRINCIPLE: BE CLEAR AND SPECIFIC

PHLC Model Language: “Tobacco Product” means:

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

GENERAL PRINCIPLE: BE CLEAR AND SPECIFIC

California HSC 104559.5(17)(A)

“Tobacco product” means any of the following:

- (i) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.
- (ii) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including an electronic cigarette, cigar, pipe, or hookah.
- (iii) Any component, part, or accessory of a tobacco product, whether or not sold separately.

GENERAL PRINCIPLE: BE CLEAR AND SPECIFIC

SB793

HSC 104559.5(f):

A tobacco retailer, or agent or employee of a tobacco retailer, who violates this section is guilty of an infraction and shall be punished by a fine of two hundred fifty dollars (\$250) for each violation of this section.

AB935+AB3218+SB1230

HSC 104559.5(f) (1-7)

- Clarified how local agencies should enforce the state flavor law (using STAKE Act BPC 22958(a) and (b))
- Moved the \$250 penalty to CDTFA to assess

GENERAL PRINCIPLE: COLLABORATE FOR PRACTICAL SOLUTIONS



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AGENDA: ELEMENTS OF POLICY DRAFTING

Findings

Purpose

Definitions

Restrictions
and
Requirements

Exemptions

Enforcement

Severability



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POLICY DRAFTING: FINDINGS

Section 1. Legislative Findings. The City Council hereby finds as follows:

WHEREAS, four out of five children who use tobacco started with a flavored tobacco product; and

WHEREAS, according to a Report of the Surgeon General, internal tobacco industry documents show that the industry uses flavors to reduce the harshness of their products to make them more appealing to new users, almost all of whom are under the age of 18; and

WHEREAS, the results of a California Statewide survey among students in 2018 by the Center for Research and Intervention in Tobacco Control indicate that flavored electronic smoking products are mainly responsible for a rapid increase in youth and young adult tobacco use; and

WHEREAS, according to a fact sheet on Menthol and Cigarettes published by the California Department of Public Health, menthol flavorings are more popular with young smokers based on a national study finding that 54.5% of high school and 48.4% of middle school users of tobacco products smoke menthol cigarettes (as compared to 30-35% of adults); and

WHEREAS, within a statewide survey of high school students in 2017-2018, the Northern Region of California, including the County of Mendocino, has among the highest prevalence of tobacco use; and

WHEREAS, the results of the California Healthy Kids Survey for 2017-2019, indicate the rate of vape use among current tobacco users in Mendocino County is 9% for seventh grade, 22% for ninth grade, and 22% for eleventh grade

NOW, THEREFORE, the City Council ordains as follows: it is the intent of the City Council of Fort Bragg, in enacting this ordinance, to join numerous other California jurisdictions, which have adopted comprehensive flavor bans:

POLICY DRAFTING: PURPOSE



“This policy has been developed to protect all employees, service users, and visitors from exposure to second-hand smoke. Exposure to second-hand smoke, also known as passive smoking, increases the risk of lung cancer, heart disease and other illnesses.”

Big Valley Rancheria’s Smoke-Free Facility Policy

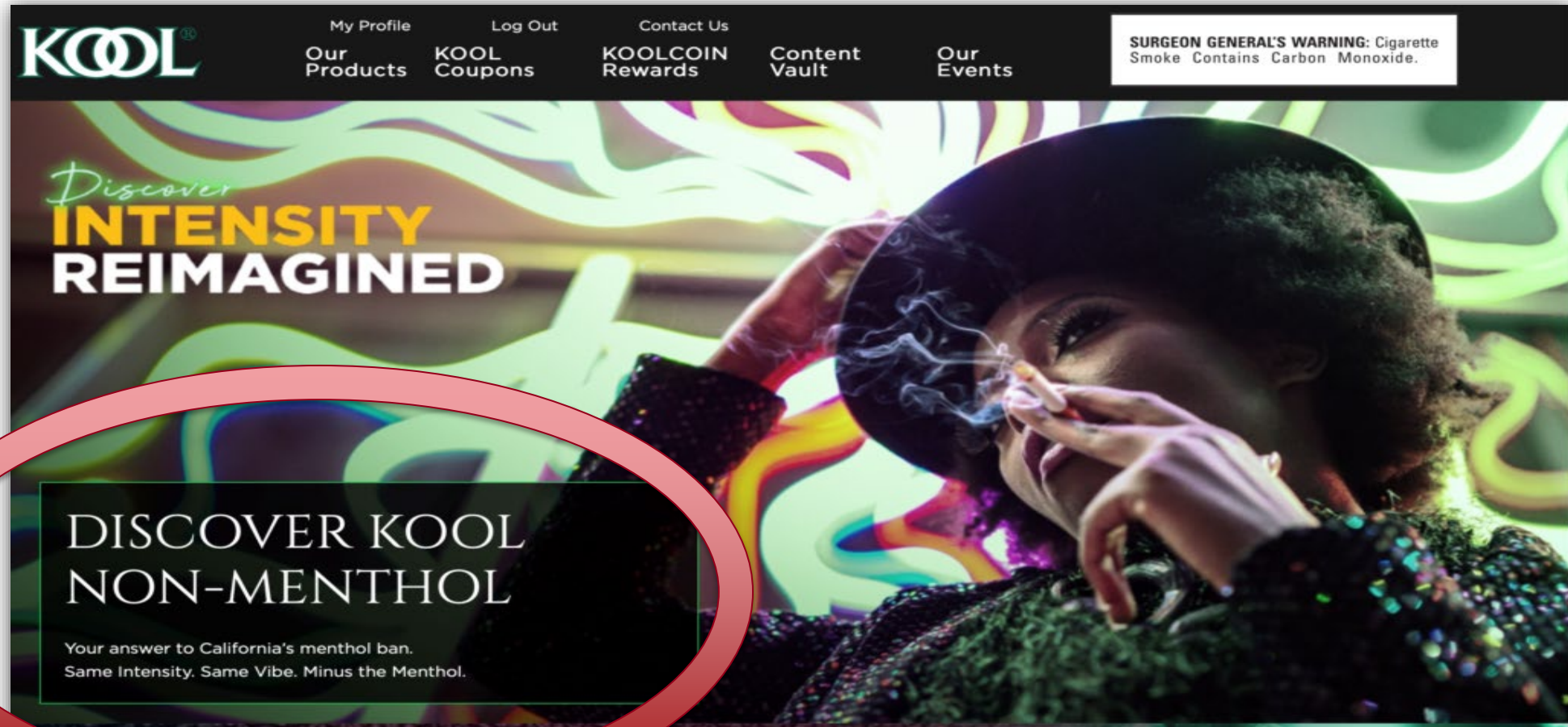
POLICY DRAFTING: DEFINITIONS

"Flavored tobacco product" means any tobacco product that imparts:

- (1) A taste or odor distinguishable by an ordinary consumer, other than the taste or odor of tobacco, either prior to or during the consumption of such tobacco product, including but not limited to tastes and odors relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb, or spice; or
- (2) A cooling or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco products.

Sonoma County Municipal Code, Sec. 32A-2 (2025).

POLICY DRAFTING: DEFINITIONS



Source: [Stanford Research into the Impact of Tobacco Advertising \(SRITA\)](#)



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Sonoma County Municipal Code, Sec. 32A-2 (2025).

POLICY DRAFTING: DEFINITIONS – SPOT CHECK!

“Tobacco product” means cigarettes and all other products containing tobacco that are intended for human consumption or use.

POLICY DRAFTING: DEFINITIONS

10.20.080 - Smoking.

- A. The smoking of any substance is not allowed in or upon any park facility. "Smoke or Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco, chemical substance or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form which can be used to deliver an inhaled dose of nicotine or other substance to the user.
- B. It shall be unlawful to dispose of any smoking material upon the grounds of any park facility or to fail to extinguish smoking material in any park facility when requested to do so by a city official or by any law enforcement official. A violation of this subsection shall be punishable as an infraction.

Redding Municipal Code 10.20.080 (2025).

POLICY DRAFTING: RESTRICTIONS AND REQUIREMENTS

Restrictions

- No flavored tobacco product sales
- No smoking (including use of e-cigarettes) in public outdoor spaces, including sidewalks and patios
- Pharmacies ineligible to be Tobacco Retailers

Requirements

- Minimum Clerk Age
- Annual License Renewal
- Fixed Location
- Signage
- “No Smoking” Licensee
- Minimum Prices and Packages
- Tobacco Product Waste Management

POLICY DRAFTING: EXEMPTIONS

General Rule: Don't

- Exemptions create opportunities to undermine the goals of tobacco control
 - politics vs good policy
- State exemptions to the flavor prohibition (hookah, loose leaf, premium cigars) and increased youth use

Use with Caution

- Who is the exemption really for?
Is an exemption the best compromise?
- Alternatives to an exemption:
 - Phase-in periods
 - (term limited) waivers
 - Partnerships/collaborations to support transition to full enforcement

POLICY DRAFTING: EXEMPTIONS



Source: keepitsacred.org

“Nothing in this Article prevents the provision of tobacco products to any person as part of an indigenous practice or a lawfully recognized religious or spiritual ceremony or practice.”

POLICY DRAFTING: EQUITABLE ENFORCEMENT



Source: [CounterTools.org](https://www.counter-tools.org/)

POLICY DRAFTING: SEVERABILITY

5-2D-16: SEVERABILITY:

If any section, subsection, paragraph, sentence, clause or phrase of this article is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this article. The city council declares that it would have adopted this article, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional. (Ord. 12-965)

Temple City Municipal Code 5-2D-16 (2025).

PHLC: WE GOT YOU



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July 2020

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SMOKE-FREE MULTIUNIT HOUSING MODEL ORDINANCE

Introduction

This Smoke-free Multiunit Housing Model Ordinance was prepared for California cities and counties interested in creating smoke-free multiunit residences by prohibiting smoking on the premises. This 2020 model ordinance builds on the ordinance developed by ChangeLab Solutions and released in 2018. The Public Health Law Center acknowledges the excellent work done by ChangeLab Solutions in creating the original ordinance.

This model ordinance is based on an independent and objective analysis of the relevant law, evidence, and available data, as well as work done for the California Tobacco Control Program. The model offers cities and counties a variety of options to tailor the ordinance to meet local needs. Readers should consider all the evidence and decide for themselves which approach is appropriate for their multiunit housing needs.



Customizing the Ordinance

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

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January 2021

Law and Policy Partnership to End the Commercial Tobacco Epidemic

SMOKE- AND TOBACCO-FREE OUTDOOR AREAS

Model Ordinance

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

Over the last decade, many California communities have passed tobacco-free laws or regulations that cover outdoor areas such as parks, recreational facilities, beaches, outdoor workplaces, restaurant and bar patios, transit waiting areas, and public events such as county fairs and farmers' markets. As of January 2019, more than 235 California cities and counties had adopted outdoor secondhand smoke ordinances.²



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

² Tam D. Vuong et al., California Tobacco Facts and Figures, Cal. Dep't Public Health (2019), <https://www.cdph.ca.gov/Programs/CCDC/PID/DCDC/CTCBA/CDPH%20Documents%20Laws/ResearchandEvaluation/FactsandFigures/CATobaccoFactsandFigures2019.pdf>

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TOBACCO
ENDGAME

January 2024

Law and Policy Partnership to End the Commercial Tobacco Epidemic

THE NICOTINE-FREE GENERATION APPROACH

A Policy Option Overview

California's lawmakers are currently considering a nicotine-free generation policy.

New York State's home rule doctrine contains protections for local government more extensive than in many other states.

Brookline, Massachusetts, is the only U.S. locality to adopt a nicotine-free generation policy and the second jurisdiction globally to implement it.

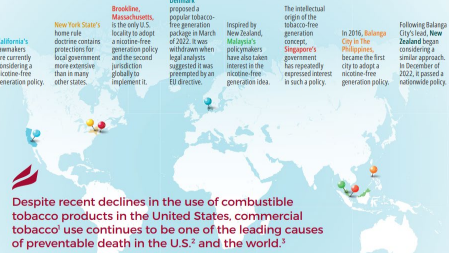
Denmark proposed a popular tobacco-free generation package in March of 2022. It was withdrawn when legal analysis suggested it was preposterously an EU directive.

Inspired by New Zealand, Malaysia's policy-makers have also taken interest in the nicotine-free generation idea.

The intellectual origin of the tobacco-free generation concept, Singapore's government has repeatedly expressed interest in such a policy.

In 2016, Raleigh City in the Philippines became the first city to adopt a nicotine-free generation policy.

Following Raleigh City's lead, New Zealand began considering a similar approach in December of 2022. It passed a nationwide policy.



Despite recent declines in the use of combustible tobacco products in the United States, commercial tobacco¹ use continues to be one of the leading causes of preventable death in the U.S.² and the world.³

The rapid market growth of e-cigarettes and related nicotine delivery products, and their popularity among young people, has raised concerns among public health authorities about the health impact of these devices and spurred discussion about effective ways to reduce tobacco consumption, particularly among youth. In addition to evidence-based tobacco control measures, such as pricing increases and licensing and marketing restrictions, some U.S. public health experts have considered additional innovative ways to reduce tobacco

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April 2022

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TOBACCO RETAILER LICENSE

Model Policy Checklist

This document summarizes the core provisions of an optimal Tobacco Retailer License Ordinance, based on the model policy developed by the Law and Policy Partnership to End the Commercial Tobacco Epidemic (the Partnership).^{*} For help tailoring an ordinance to local needs and preferences, please contact us at publichealthlawcenter.org/caltobacco. For further details, see our expanded model policy.

Core Provisions

Tobacco Retail License Requirements	Density Limitations
☐ License required for all tobacco retailing ☐ Nontransferable ☐ Fees fully cover costs of administration/enforcement ☐ Applicable to one fixed location only ☐ Age verification required for all transactions ☐ No pharmacy licenses	☐ Population density: allowable licenses limited by population ☐ Proximity to other retailers: minimum distance from another tobacco or cannabis retail licensee ☐ Proximity to youth: minimum distance from any youth-friendly facility or location (e.g., school, park, community center)

continued



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REFLECTION

- Developing a good policy is like putting together IKEA furniture – seems complex, but you can do it!
- Collaborate with stakeholders at all stages
- Seek legal counsel's input for any tricky questions
 - *And you can always ask us at PHLC to look things over, too!*

CONTACT US



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