

TOBACCO-FREE OUTDOOR AREAS

Model Ordinance



This model ordinance was prepared for municipalities and counties in New York State interested in creating tobacco-free and vape-free outdoor areas in their jurisdictions.

Over the last decade, many communities in New York State have passed commercial 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.¹ As of January 2023, more than 500 municipalities in New York State have made outdoor recreation areas tobacco-free.²

- ¹ The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. In comparison, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.keepitsacred.itcml.org>. When the word "tobacco" is used throughout this document, a commercial context is implied and intended.
- ² *Benefits of Tobacco-Free Spaces*, TOBACCO FREE NYS, <https://tobaccofreenys.org/the-issue/tobacco-use-where-we-play> (last visited Jan. 21, 2023).



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 New York State Department of Health. The model offers cities and counties several options to tailor the ordinance to meet local needs. Readers should consider all the evidence and decide for themselves which approach is appropriate for their tobacco-free and vape-free outdoor area needs.

Policy Benefits

Public Health Impact. Tobacco use is the number one cause of preventable death in New York State.³ Secondhand smoke has repeatedly been identified as a health hazard, and the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke.⁴ In New York State, over 1,400 deaths per year are attributable to secondhand smoke exposure.⁵

The New York State Department of Health recognizes the toxicity of secondhand smoke.⁶ Research has shown that when smokers were present, concentrations of secondhand smoke levels in outdoor areas could be similar to those in indoor areas that allowed smoking.⁷ Many studies have also found that secondhand smoke exposure outdoors can become hazardous, depending on the direction and amount of wind, number and proximity of smokers, and enclosures such as walls or roofs.⁸

Jurisdictions pursuing a tobacco-free and vape-free policy may wish to consider adding smokeless tobacco and nicotine products to it. Smokeless tobacco is not a safe alternative to smoking and causes its own share of death and disease. This includes nicotine addiction, many types of cancers, and increased risk for heart disease and stroke.⁹ Including smokeless tobacco and nicotine products in an outdoor areas ordinance provides a comprehensive approach to

3 U.S. DEP'T OF HEALTH & HUM. SERVS., THE HEALTH CONSEQUENCES OF SMOKING: 50 YEARS OF PROGRESS, A REPORT OF THE SURGEON GENERAL (2014), https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.

4 U.S. DEP'T OF HEALTH & HUM. SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE, A REPORT OF THE SURGEON GENERAL (2006), <https://www.ncbi.nlm.nih.gov/books/NBK44324>.

5 *Cigarette Smoking and Secondhand Smoke*, N.Y. STATE DEP'T HEALTH (Nov. 2022), https://www.health.ny.gov/prevention/tobacco_control.

6 *Id.*

7 CAL. AIR RES. BD., PROPOSED IDENTIFICATION OF ENVIRONMENTAL TOBACCO SMOKE AS A TOXIC AIR CONTAMINANT, PART A: EXPOSURE ASSESSMENT (APPENDIX III) (June 24, 2005), https://ww2.arb.ca.gov/sites/default/files/classic/toxics/id/summary/etspt_a.pdf.

8 See sources cited in attached Model Policy *infra* notes 12-14.

9 See, e.g., INT'L AGENCY FOR RSCH. ON CANCER (IARC), WORLD HEALTH ORG., SMOKELESS TOBACCO AND SOME TOBACCO-SPECIFIC N-NITROSAMINES, 89 IARC MONOGRAPHS ON THE EVALUATION OF CARCINOGENIC RISKS TO HUMANS (WHO, Int'l Agency for Rsch. on Cancer ed., 2007), <https://publications.iarc.fr/107>.



promoting New York State's tobacco- and nicotine-free social norm and removes the need to dispose of product containers and waste, such as pouches and spit.

By eliminating the sight and smell of tobacco, outdoor tobacco-free laws also help those who trying to quit tobacco use. As with all tobacco-free policies, these measures send a message to children and youth that tobacco use is not an acceptable behavior or a norm in the community.

E-cigarettes. As electronic smoking devices, such as e-cigarettes and other vapor products, have proliferated and youth usage has soared, many localities have expanded or amended their outdoor clean air measures to prohibit the use of any tobacco product, including e-cigarettes. Electronic smoking device aerosol is not harmless water vapor. Evidence continues to build that exposure to electronic smoking device aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and thus likely poses a risk to human health.¹⁰

Environmental Impact. Discarded cigarette butts are non-biodegradable and can take decades to break down. Cigarette filters are made of the plastic material cellulose acetate, which breaks down into microplastics, moving deep into the food chain and water supply.¹¹ Used cigarette butts are known to leach toxic amounts of nicotine, pesticides, polycyclic aromatic

¹⁰ See sources cited in attached Model Policy *infra* notes 19–23; see also *E-Cigarettes*, PUBLIC HEALTH LAW CENTER, <https://www.publichealthlawcenter.org/topics/commercial-tobacco-control/e-cigarettes> (website with many resources on options on regulating e-cigarettes).

¹¹ WORLD HEALTH ORG., TOBACCO AND ITS ENVIRONMENTAL IMPACT 26 (2017), <https://apps.who.int/iris/bitstream/handle/10665/255574/9789241512497-eng.pdf>.

hydrocarbons, arsenic, and heavy metals such as lead and cadmium, potentially for years after use.¹² Even unsmoked cigarette butts are toxic to animals, plants, and aquatic life.¹³ Discarded cigarettes are also a significant cause of outdoor fires, accounting for hundreds of millions of dollars in annual costs in environmental damage, personal property losses, firefighting expenses, and restorative efforts.¹⁴ For more information on tobacco product waste, see our publication [Tobacco Product Waste: A Public Health and Environmental Toolkit](#).

E-cigarettes also create many environmental problems. E-cigarette cartridges typically contain hazardous substances such as nicotine, as well as other potentially harmful constituents, such as formaldehyde, acetaldehyde, benzene, and toluene.¹⁵ Discarded devices may leach lead, cobalt, and other substances into the environment in toxic amounts. Toxic chemicals from commercial tobacco product waste can accumulate in animals, soil, and aquatic ecosystems. Also, lithium-ion batteries, which are found in rechargeable e-cigarettes, have been known to explode and catch fire, posing a risk to public safety.

Cannabis Considerations

Secondhand cannabis smoke is a health hazard. Exposure to secondhand cannabis smoke leads to cannabinoid metabolites in bodily fluids and has caused individuals to report psychoactive effects.¹⁶

With the legalization of recreational cannabis for adult use in New York State, there are a few things to keep in mind for outdoor smoke-free ordinances. State law prohibits cannabis smoking and vaping almost everywhere the smoking of tobacco products is prohibited. For example, state law prohibits smoking in several outdoor areas, including playgrounds¹⁷ and parks,¹⁸ and the definition of “smoking” specifically includes the burning of any substance

12 Hiroshi Moriwaki et al., Waste on the Roadside, ‘Poi-Sute’ Waste: Its Distribution and Elution Potential of Pollutants into Environment, 29 WASTE MGMT. 3 (2009), <https://www.sciencedirect.com/science/article/abs/pii/S0956053X08002882?via%3Dihub>.

13 Dannielle S. Green et al., *Cigarette Butts Have Adverse Effects on Initial Growth of Perennial Ryegrass and White Clover*, 182 ECOTOXICOLOGY & ENV'T SAFETY 109418 (2019), <https://www.sciencedirect.com/science/article/abs/pii/S0147651319307481?via%3Dihub>.

14 See, e.g., *Wildfire Causes and Evaluations*, NAT'L PARK SERV. (Mar. 8, 2022), <https://www.nps.gov/articles/wildfire-causes-and-evaluation.htm>.

15 See sources cited in attached Model Policy *infra* notes 24–26.

16 Maciej Lukasz Goniewicz et al., *Levels of Selected Carcinogens and Toxicants in Vapor from Electronic Cigarettes*, 23 TOBACCO CONTROL 133 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4154473>.

17 N.Y. PUB. HEALTH LAW § 1399-O-1 (2017).

18 N.Y. PUB. HEALTH LAW § 1399-O-2 (2022).

that contains cannabis or cannabinoid hemp.¹⁹ These laws do contain some exemptions (e.g., for sidewalks adjacent to parks),²⁰ and local units of government retain the authority to adopt regulations that go beyond state law in regulating smoking.²¹ Some protections are also afforded to the certified medical use of cannabis.”²²

Legal Considerations

Although outdoor tobacco-free policies have proliferated in recent years, only a few have been legally challenged. In most cases, courts have upheld local laws prohibiting smoking in outdoor areas on the grounds that such laws: (1) are within the authority of local governments to protect public health, safety, and welfare; and (2) are not preempted by statewide smoke-free laws.²³

New York State law prohibits smoking in outdoor areas, such as playgrounds²⁴ and parks,²⁵ and prohibits tobacco use on school grounds.²⁶ Smoking is also prohibited on outdoor railroad platforms and on hospital grounds.²⁷ State law expressly authorizes local communities to enact additional restrictions, such as smoking restrictions at outdoor events and various recreational areas.²⁸

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 municipality or county wishing to enact all or part of this ordinance should keep this in mind and remove the context boxes.

In some instances, blanks (such as [_____]) prompt you to customize the language to fit your community’s needs. In other instances, the ordinance offers you a choice of options

19 N.Y. PUB. HEALTH LAW § 1399-N(8) (2021).

20 N.Y. PUB. HEALTH LAW § 1399-O-2(3) (2022).

21 N.Y. PUB. HEALTH LAW § 1399-R(3) (2017).

22 See, e.g., N.Y. CANNABIS LAW § 127(2) (2021) (stating that smoke-free policies in rental properties cannot “be construed to limit the certified medical use of cannabis” on the premises).

23 See, e.g., *Gallagher v. Clayton*, 699 F.3d 1013, 1016 (8th Cir. 2012) (upholding the City of Clayton’s ordinance prohibiting smoking on any city-owned or -leased property, including buildings, grounds, parks and playgrounds, which a city resident had challenged on constitutional grounds, asserting that “the health threat of secondhand smoke from outdoor tobacco use is de minim[i]s,” and that the city lacked a sufficient rationale for prohibiting it).

24 N.Y. PUB. HEALTH LAW § 1399-O-1 (2017).

25 N.Y. PUB. HEALTH LAW § 1399-O-2 (2022).

26 N.Y. EDUC. LAW § 409(2) (2014).

27 N.Y. PUB. HEALTH LAW § 1399-O(2) (2022).

28 N.Y. PUB. HEALTH LAW § 1399-R(3) (2017).

(such as [choice one/choice two]). Some options are followed by a note that describes the legal provisions in more detail. A degree of customization is always necessary to make sure the ordinance is consistent with a community's existing laws. Such customization also ensures that communities are using this model ordinance to address local needs and promote health equity.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use. Communities differ on their readiness and willingness to adopt certain commercial tobacco control policies intended to help make that world a reality. For that reason, this model ordinance represents a balance among state and federal minimum standards, best public health policy practices, and practical implementation for local governments in New York State. This model ordinance contains several policy components that communities may or may not choose to adopt at this time that may go beyond minimum state and federal requirements.

While the Public Health Law Center does not lobby, advocate, or directly represent communities, we can provide legal technical assistance through our publications and referrals to experts in the field. Education, stakeholder and community engagement, and a strong advocacy plan are key steps in adopting effective commercial tobacco control policies. If a community is unaware of available resources for engaging the community and for developing an advocacy plan or if a local government is considering adopting an ordinance and is interested in learning about the range of resources available, please contact the Public Health Law Center.

If you have any questions about this ordinance, you can reach us at publichealthlawcenter@mitchellhamline.edu.

This publication was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health, and was made possible by a contract with the New York State Department of Health. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice.

AN ORDINANCE OF THE [municipality/county]
OF [insert jurisdiction name] AMENDING THE [_____]
MUNICIPAL CODE TO REGULATE SMOKING [and tobacco use]

The [municipal council/county board of supervisors] of [insert jurisdiction name] does ordain as follows:

SECTION I. [See Appendix A: Findings]

Note

Findings are brief statements of fact or statistics that outline the issue being addressed, support the need for the policy, and help clarify the policy goal. A findings section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies. The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal code. In addition to serving an educational purpose and building support for the ordinance, the findings can also serve a legal purpose. If the ordinance is challenged in court, the findings are an admissible record of the factual determinations made by the legislative body when considering the ordinance. Courts will generally defer to legislative determinations of factual issues, which often influence legal conclusions. A list of findings supporting this model ordinance appears in "Appendix A: Findings." Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law.

SECTION II. [Article/Chapter] of the [municipality/county] of [insert jurisdiction name] Municipal/County Code is hereby amended to read as follows:

Sec. [_____] (*1). **DEFINITIONS.** For the purposes of this [article/chapter] the following definitions shall govern unless the context clearly requires otherwise:

- (A) "Cannabis" has the meaning set forth in New York Cannabis Law Section 3, as that section may be amended from time to time.
- (B) "Cannabinoid Hemp" has the meaning set forth in New York Cannabis Law Section 3, as that section may be amended from time to time.

- (C) “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
- (D) “Employee” means any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.
- (E) “Employer” means any person or nonprofit entity that retains the service of one or more employees.
- (F) “Enclosed area” means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

Note

It is against state law to smoke or vape (i.e., use electronic cigarettes) in indoor places of employment, bars, food service establishments, and other indoor areas (N.Y. PUB. HEALTH LAW § 1399-O). A place of employment is any indoor area under the control of an employer in which employees perform services (N.Y. PUB. HEALTH LAW § 1399-N(5)). Local governments may impose and enforce their own indoor smoking restrictions if they meet the minimum standards of the state law (N.Y. PUB. HEALTH LAW § 1399-R(3)). If a jurisdiction has a separate clean indoor air act, it should ensure this ordinance aligns with any definition of enclosed areas so that all enclosed and unenclosed areas are covered.

- (G) “Multiunit Residence” means property containing two or more units, including, but not limited to, apartment buildings, common interest developments, senior and assisted living facilities, and long-term health care facilities.
- (H) “Outdoor Dining Area” means any publicly or privately owned outdoor area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used for consuming food or drink.

Note

Smoking in indoor food service establishments is already prohibited by state law (N.Y. PUB. HEALTH LAW § 1399-O(1)(c)).

- (I) “Person” means any natural person, business, corporation, partnership, cooperative association, personal representative, receiver, trustee, assignee, or any other legal entity.
- (J) “Place of employment” means an area under the control of an employer that an employee or the general public may enter in the normal course of operations, regardless of the hours of operation, including work areas and construction sites.
- (K) “Public event areas” means any publicly or privately owned place used for an event open to the general public, regardless of any fee or age requirement, including a farmers’ market, parade, fair, or festival.
- (L) “Public place” means any publicly or privately owned place that is open to the general public, regardless of any fee or age requirement, including sidewalks, streets, parking lots, plazas, shopping areas, stadiums, or sporting facilities.

Note

The definition of “public place” is very broad and intended to include all public areas that do not fall within other definitions in this model ordinance.

The definition includes sidewalks and streets. If a jurisdiction would prefer not to cover sidewalks and streets, it could substitute the following definition:

“Public place” means any publicly or privately owned place that is open to the general public, regardless of any fee or age requirement, including parking lots, plazas, shopping areas, stadiums, or sporting facilities. The term “public place” does not include streets or sidewalks used only as pedestrian or vehicular thoroughfares.

- (M) “Recreational area” means any publicly or privately owned area [, including streets and sidewalks located within the area,] that is open to the general public for recreational

purposes, regardless of any fee or age requirement. The term “recreational area” includes, but is not limited to, facilities, parks, playgrounds, athletic fields, restrooms, beaches, picnic areas, spectator and concession areas, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, roller and ice-skating rinks, skateboard parks, amusement parks, zoos, and aquatic areas.

Note

The bracketed text allows a jurisdiction to select whether to apply the restrictions to streets and sidewalks. If a jurisdiction includes an exemption for streets and sidewalks, it is worth considering what impact congregating tobacco use in those areas will have on users of the facility or neighbors to the facility.

Although this definition applies to all recreational areas, state law (N.Y. PUB. HEALTH LAW § 1399-O(1)(a)) already prohibits smoking inside places of employment, so Section [_____ (*3)(a)] limits the prohibition to outdoor recreational areas only.

- (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, areas including or within 25 feet of information kiosks, automatic teller machines (ATMs), service lines, bus stops or shelters, or cab stands.

Note

Although this definition applies to all service areas, state law (N.Y. PUB. HEALTH LAW § 1399-O(1)(a)) already prohibits smoking inside places of employment, so Section [_____ (*3)(a)] limits the prohibition to outdoor service areas only.

- (O) “Service lines” means an outdoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to ATM lines, concert lines, food vendor lines, mobile vendor lines, movie ticket lines, and sporting event lines.

(P) “Smoke” or “Smoking” means:

- (1) inhaling, exhaling, or burning, any tobacco, nicotine, cannabis, cannabinoid hemp, or plant product, whether natural or synthetic;
- (2) carrying any lighted, heated, or activated tobacco, nicotine, cannabis, cannabinoid hemp, or plant product, whether natural or synthetic, intended for inhalation; or
- (3) using an electronic smoking device or hookah.

(Q) “Tobacco product” means:

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

“Tobacco product” does not mean drugs, devices, or combination products authorized for sale and approved by the U.S. Food and Drug Administration for cessation purposes, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(R) “Tobacco product waste” means any component, part, or remnant of any tobacco product. Tobacco product waste includes any waste that is produced from the use of a tobacco product, including all tobacco product packaging and incidental waste such as lighters or matches, whether or not it contains tobacco or nicotine. Waste generated from electronic smoking devices includes e-liquid containers, cartridges or “pods” that contain liquid nicotine, and devices that contain lithium ion batteries and other e-waste.

(S) “Tobacco use” means the act of smoking or the consumption of any other tobacco product in any form.

(T) “Unenclosed area” means any area that is not an enclosed area.

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

Note

This section prohibits smoking in a wide range of outdoor areas. If a community wants to prohibit the use of all tobacco products (including smokeless products like chewing tobacco and snus), then it should include the optional bracketed text referring to tobacco use.

(A) Smoking [and tobacco use] is prohibited in the unenclosed areas of the following places within the [municipality/county] of [insert jurisdiction name]:

- (1) Recreational areas;
- (2) Service areas;
- (3) Outdoor dining areas;
- (4) Places of employment;
- (5) Public event areas; or
- (6) Other public places.

(B) Nothing in this [article/chapter] prohibits any person or employer with control over any property from prohibiting smoking [and tobacco use] on any part of such property, even if smoking [or tobacco use] is not otherwise prohibited in that area.

[(C) It is not a violation of this [article/chapter] to use tobacco as part of an Indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.]

Note

Some smoke-free policies provide exceptions for traditional, ceremonial, and sacred uses of tobacco practiced by some tribal communities, while prohibiting the use of commercial tobacco. If you would like more information about this topic, please visit [keepitsacred.org](https://www.KeepItSacred.org).

Sec. [_____ (*4)]. **SMOKE-FREE BUFFER ZONES.**

Smoking in all unenclosed areas shall be prohibited within 25 feet from any area in which smoking is prohibited under Sec. [_____ (*3)] of this [article/chapter] or by any other law. This prohibition shall not apply to unenclosed areas of private residential properties that are not multi-unit residences.

Note

If a jurisdiction prefers to cover private residential unenclosed areas that are within 25 feet of an enclosed area covered by the law, it could remove this last sentence.

Sec. [_____ (*5)]. **TOBACCO WASTE.**

No person or employer shall permit smoking ash receptacles within an area under their control and in which smoking [or tobacco use] is prohibited by law, including within twenty-five (25) feet of any area in which smoking [or tobacco use] is prohibited. The presence of smoking ash receptacles in violation of this subsection shall not be a defense to a charge of smoking [or tobacco use] in violation of any provision of this [article/chapter].

No person shall dispose of tobacco product waste within the boundaries of an area in which smoking [or tobacco use] is prohibited.

Sec. [_____ (*6)]. **ENFORCEMENT.**

Note

Enforcement of tobacco-free and vape-free outdoor area policies is important because there is no risk-free amount of exposure to secondhand smoke and because even outdoors, secondhand smoke can reach hazardous levels. But enforcement should balance the goal of protecting the public from secondhand smoke exposure with the knowledge that punitive measures are unlikely to help those struggling with tobacco addiction to end their tobacco use. Research tells us the best approaches to help those confronting addiction are counseling and education. (See, e.g., *Tobacco-free Areas Enforcement Guide*.)

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Since most people will refrain from smoking if they know a tobacco-free policy is in place, the best way to improve enforcement is to educate the public and local businesses about the policy throughout the implementation process. Greater community compliance will be achieved if the policy is easy to understand, the boundaries and areas covered under the policy are clearly identified, and active steps are taken to communicate its impact to all affected groups.

We also know that criminal penalties are related to significant equity concerns. For instance, racial profiling and discriminatory racial patterns are well documented in the enforcement of many crimes, including lower-level offenses. Another consideration is that the criminal process may trigger a probation or parole violation, a summons that could create a criminal record or a warrant, or other significant ripple effects in an individual's interaction with the justice system. In turn, these criminal sanctions could jeopardize the individual's housing, benefits, education, and employment. For these reasons, the enforcement provisions in this model policy do not include criminal sanctions. We also recommend that enforcement prioritize interactions with people who are not law enforcement. For example, enforcement could start with other civil public employees such as recreation center staff, before law enforcement is contacted to enforce the policy.

We focus primary responsibility for enforcement on property owners by holding them accountable with appropriate civil penalties for any failure to enforce the rules required under this law.

While we do include monetary administrative penalties, we acknowledge that these too can carry risks of discriminatory enforcement and create financial hardship, and we recommend pursuing enforcement actions against property owners whenever possible. We do not include private lawsuit enforcement options in this model ordinance, due to the potential for abuse.

The following provisions are designed to offer several enforcement options to the jurisdiction and residents. While not all enforcement mechanisms may be pursued, allowing multiple enforcement mechanisms in the ordinance may increase the likelihood of compliance, enforcement, and, in turn, protection from secondhand smoke.

- (A) No person or employer shall permit smoking [or tobacco use] in an area that is under the control of that person or employer and in which smoking [or tobacco use] is prohibited by this article or any other law.

(B) A person or employer that has control of an area in which smoking [and tobacco use] is prohibited by this [article/chapter] shall post a clear, conspicuous, and unambiguous sign indicating at least one of the following:

- [“No Tobacco Use”;]
- “No Smoking” or the international “No Smoking” symbol; or
- “No Vaping” or a recognizable “No Vaping” symbol.

Signs must be posted at each entrance to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height. Signs posted on the exterior of buildings to comply with this section shall reference the 25-foot distance requirement set forth in Sec. [_____ (*4)]. The presence or absence of signs shall not be a defense to a charge of smoking [or tobacco use] in violation of any other provision of this [article/chapter].

Note

To encourage cessation, a jurisdiction may also want to consider adding a cessation hotline or other cessation information to signage. Potential language to promote this could be:

“At least one sign placed in each place where smoking is prohibited must include the following tobacco cessation hotline number: _____.”

To provide information about how to submit complaints, another option is to include the following language:

“At least one sign with the [municipality/county] phone number for complaints must be placed conspicuously in each place in which smoking is prohibited.”

In addition, jurisdictions may want to indicate on their signs that use of electronic smoking devices is also prohibited and include an illustration of an electronic smoking device.

- (C) [Municipality/County] staff and volunteers will be notified about the requirements of this [article/chapter] through the employee manual.
- (D) [Municipality/County] staff will communicate the requirements of this [article/chapter] to public event organizers. [Municipality/County] staff will also make periodic

observations of recreational areas and other [municipality/county] property covered by this [article/chapter] to monitor for compliance. Anyone found by [municipality/county] staff to be violating this [article/chapter] will be reminded of its requirements and asked to comply before being subject to ejection from the property.

- (E) A person or employer that has control of an area in which smoking [and tobacco use] is prohibited by this [article/chapter] shall direct anyone who is smoking [or using tobacco] in violation of this [article/chapter] to extinguish the product being smoked [or stop using the tobacco product]. If they do not stop smoking [or using the tobacco product], the person or employer shall refuse any service and shall immediately ask the person violating the policy to leave the property. If the ejection is from a public event, it shall be for the duration of the public event.
- (F) No person or employer shall intimidate, threaten any reprisal, or effect any reprisal for the purpose of retaliating against another person who seeks to attain compliance with this [article/chapter].

[(G) The [director of _____] or their designee shall conduct an ongoing educational program to explain and clarify the purposes and requirements of this [article/chapter], as well as to provide guidance to persons or employers about compliance. Lack of receiving or participating in such an education program shall not be a defense to a violation of this [article/chapter].]

Sec. [_____ (*7)]. VIOLATIONS AND PENALTIES.

- (A) Each refusal to comply with a request from a [municipal/county] employee in violation of Secs. [_____ (*6)(d) or (e)] may be subject to a [fifty dollar (\$50)] administrative fine.

Note

A jurisdiction may also wish to include a non-monetary penalty here as an alternative to the administrative fine, such as required community service. The \$50 administrative fine in this subsection is consistent with the fine in state law for violating the smoking restriction in parks ([N.Y. PUB. HEALTH LAW § 1399-V](#)).

- (B) A person or employer that has control of an area in which smoking [and tobacco use] is prohibited by this [article/chapter] and that fails to comply with this [article/chapter] shall be guilty of an administrative fine punishable by:
- (1) A fine not exceeding one hundred dollars (\$100) for a first violation.
 - (2) A fine not exceeding one hundred and fifty dollars (\$150) for a second violation within one year.
 - (3) A fine not exceeding two hundred and fifty dollars (\$250) for each additional violation within one year.
- (C) Multiple violations of this [article/chapter] by a person or employer that has control of an area in which smoking [and tobacco use] is prohibited by this [article/chapter] may result in the suspension or revocation of any permit or license issued to the person for the property on which the violations occurred.
- (D) Any violation of this [article/chapter] is hereby declared to be a public nuisance.

Note

By expressly declaring that a violation of this ordinance is a public nuisance, this provision allows enforcement of the ordinance by the city or county through the administrative nuisance abatement procedures commonly found in municipal codes. It also facilitates restraining orders, or preliminary or permanent injunctions to stop the nuisance.

- (E) Any violation of this [article/chapter] may be remedied by a civil action brought by the [municipal attorney/county counsel], including, but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.
- (F) Each instance of smoking [or tobacco use] in violation of this [article/chapter] shall constitute a separate violation. For violations other than for smoking, each day of a continuing violation of this [article/chapter] shall constitute a separate violation.
- (G) The remedies provided by this [article/chapter] are cumulative and in addition to any other remedies available at law or in equity.

SECTION III. Statutory Construction & Severability.

It is the intent of the [municipal council/board of supervisors/county legislature] of the [municipality/county] of [insert jurisdiction name] to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other person or circumstance. The [municipal council/board of supervisors] of the [municipality/county] of [insert jurisdiction name] declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase independently, even if any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases were declared invalid or unenforceable.

Appendix A: Findings.

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

- The World Health Organization (WHO) estimates that tobacco kills up to half of its users, amounting to more than 8 million deaths each year worldwide, including nearly half a million people who die prematurely from smoking in the United States alone;¹
- Tobacco use causes disease in nearly all organ systems and is responsible for an estimated 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all chronic obstructive pulmonary disease deaths in the United States;²
- The estimated economic damage attributable to smoking and exposure to secondhand smoke in the United States is nearly \$300 billion annually;³
- Despite significant progress, tobacco use remains the leading cause of preventable death and disease in the United States;⁴ and
- [insert local tobacco toll data if available]

WHEREAS tobacco use is the number one cause of preventable death in New York State⁵ and continues to be an urgent public health issue, as evidenced by the following:

- An estimated 28,200 adults in New York State die from smoking annually;⁶

- Each year, smoking costs New York State an estimated \$12.07 billion in direct health care expenses, \$7.12 billion in Medicaid costs, and \$18.2 billion in productivity losses;⁷
- Research indicates that more than 26.5% of all adult cancer deaths in New York State are attributable to smoking;⁸ and
- [insert local tobacco toll data if available]

WHEREAS tobacco use among priority populations, especially those with lower socioeconomic status, in New York State contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

- Those without a college degree (13.7-19.0%), making less than \$25,000 a year (20%), suffering from disabilities (17.4%) and/or mental health issues (19.7%), the unemployed (20.2%), and those without private insurance (either on Medicaid, 22.9%, or no insurance, 14.2%) all report a higher smoking prevalence than the statewide average among all adults (12.0%);⁹
- [insert local tobacco toll data if available]

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

- In 2006, the U.S. surgeon general concluded that there is no risk-free level of exposure to secondhand smoke;¹⁰
- The New York State Department of Health recognizes the toxicity of secondhand smoke;¹¹

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

- Levels of secondhand smoke exposure outdoors can reach levels recognized as hazardous, depending on direction and amount of wind, number and proximity of smokers, and enclosures like walls or roofs;¹²
- Smoking cigarettes near building entryways can increase air pollution levels by more than two times background levels, with maximum levels reaching the “hazardous” range on the United States EPA’s Air Quality Index;¹³ and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move 20 to 29 feet away from the source of the smoke, about the width of a two-lane road;¹⁴

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

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;¹⁵
- Secondhand smoke was responsible for an estimated 34,000 heart disease-related and 7,300 lung cancer-related deaths among adult nonsmokers each year during 2005–2009 in the United States;¹⁶
- Research indicates that exposure to secondhand smoke increases the risk of coronary heart disease by 25% to 30% and increases the risk of stroke by 20% to 30%;¹⁷ and
- Secondhand smoke kills more than 400 infants every year;¹⁸

WHEREAS electronic smoking device aerosol may be considered a health hazard, as evidenced by the following:

- Research has found electronic smoking device aerosol contains at least 12 chemicals known to cause cancer, birth defects, or other reproductive harm,¹⁹ such as formaldehyde, acetaldehyde, lead, nickel, chromium, arsenic, and toluene;²⁰
- Electronic smoking device aerosol is not harmless water vapor as it contains varying concentrations of particles and chemicals with some studies finding particle sizes and nicotine concentrations similar to, or even exceeding, conventional cigarette smoke;²¹
- Evidence continues to build that exposure to electronic smoking device aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and poses a risk to human health;²²
- Given the increasing prevalence of electronic smoking device use, especially among youth and young adults, widespread nicotine exposure resulting in addiction and other harmful consequences serious concerns;²³

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

- Cannabis smoke contains many of the same toxins as tobacco smoke, including at least 33 known carcinogens;²⁴
- In one study, exposure to cannabis smoke in an unventilated setting resulted in detectable levels of cannabinoids in non-smoker participants' blood and urine, and participants experienced minor increases in heart rate and impaired cognitive performance;²⁵ and

- A recent systematic review of the literature concluded that secondhand exposure to cannabis smoke leads to cannabinoid metabolites in bodily fluids and individuals experiencing self-reported psychoactive effects;²⁶

WHEREAS laws restricting the use of tobacco products have recognizable benefits to public health and can reduce medical costs; these outcomes, consistently demonstrated in peer-reviewed research, include the following:

- Reduced prevalence of tobacco use;²⁷
- Reduced secondhand smoke exposure, as measured by self-report and laboratory analysis of biomarkers or indoor air;²⁸
- Increased cessation of tobacco use;²⁹
- Reduced initiation of tobacco use among young people;³⁰
- Fewer hospitalizations from tobacco-related diseases, such as asthma and cardiovascular disease;³¹ and
- An estimated annual savings rate in the U.S. of \$148,000 to \$409,000 (2011 U.S. dollars) per 100,000 people in averted secondhand smoke-related healthcare costs;³²

Note

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

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

- Smokeless tobacco use can lead to nicotine addiction;³³
- Smokeless tobacco use causes oral, esophageal, and pancreatic cancers;³⁴
- Smokeless tobacco use is associated with increased risk for heart disease and stroke,³⁵ and stillbirth and preterm delivery;³⁶ and
- [insert local smokeless tobacco use disparities data if available]]

WHEREAS tobacco waste is a major, consequential, and persistent source of litter, as evidenced by the following:

- The roughly 6.3 trillion cigarettes smoked globally each year result in 300 billion packs that produce almost 2 million tons of waste paper, cellophane, foil, and glue as well as trillions of butts littered across roadways, sidewalks, parks, and other green spaces;³⁷
- Both tobacco industry and peer-reviewed research found that most smokers admit littering their cigarette butts,³⁸ for example, one study found 74.1% of smokers admitted littering cigarette butts at least once in their life and 55.7% admitted to littering them in the past month;³⁹
- In an observational study of nearly 10,000 individuals, 65% of smokers disposed of their cigarette butts as litter;⁴⁰
- Cigarette butts are perennially the most common form of litter collected during cleanup programs worldwide,⁴¹ for example, in 2018, cigarette butts made up nearly 16% of all litter collected through cleanup programs in the U.S. (809,538 out of 5,106,515 items);⁴²
- 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;⁴³
- Non-cigarette forms of tobacco waste, such as plastic cigar tips and little cigar wrappers, also significantly contribute to litter;⁴⁴
- Waste from electronic smoking devices has become a recognized and growing form of litter.⁴⁵ For example, a recent study among twelve high schools in the San Francisco Bay Area found that electronic cigarette waste made up nearly 20% (172 of 893 items) of all tobacco or cannabis product waste found on school property with the largest amount (152 items) and highest percentage (39.4%) of electronic cigarette waste observed at upper income schools;⁴⁶ and
- As of August 2019, the U.S. Environmental Protection Agency recognizes nicotine-containing electronic smoking devices as acute hazardous waste when disposed;⁴⁷

WHEREAS laws restricting smoking and tobacco use outdoors reduce the prevalence of smoking and the presence of commercial tobacco litter, as evidenced by the following:

- After parks and beaches in New York City became smoke-free, fewer smokers were noticed, a trend that did not occur in the rest of the state;⁴⁸

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

- In 2018, American poison control centers logged nearly 13,000 cases involving exposure to cigarettes, cigarette butts, electronic smoking devices, or other tobacco products, and of these, more than 10,000 (79.0%) occurred in children aged 5 years and younger;⁴⁹
- Among the 10,266 cases of nicotine and tobacco product exposure recorded in 2018 among children 5 years of age and younger by American poison control centers, 50.3% involved cigarettes, 18.4% involved electronic smoking devices, and 8.0% involved other tobacco products;⁵⁰
- The annual number of electronic cigarette exposure cases among children less than 5 years of age reported to American poison control centers increased from 10 in 2010 to 1,835 in 2018, a 14,015% increase;⁵¹ and
- Children who ingest tobacco products can experience vomiting, nausea, lethargy, and gagging,⁵² with e-liquids potentially posing a greater risk of toxicity or fatality through either ingestion or transdermal absorption;⁵³

WHEREAS exemptions and loopholes in New York State's smoke-free workplace laws⁵⁴ disproportionately impact low-income communities and communities of color as well as those who work predominantly outdoors as evidenced by the following:

- New York State Public Health Law does not prohibit smoking in private automobiles, outdoor places of employment, retail tobacco businesses, cigar bars, and hotel and motel rooms.⁵⁵ Evidence suggests that employees in these areas are disproportionately individuals of low-income and individuals of color;⁵⁶
- In one survey of employed young adults, 32.6% reported workplace exposure to secondhand smoke, nearly all of whom (95.7%) reported outdoor exposure, and most of whom worked in one of four occupational categories: construction and extraction, transportation and material moving occupations, building and grounds cleaning and maintenance, and food preparation and serving;⁵⁷

WHEREAS cities and counties in New York State have the legal authority to adopt local laws that prohibit all tobacco use indoors and outdoors in areas not already covered by state law;⁵⁸

WHEREAS state law prohibits smoking in playgrounds and parks, on school grounds, on outdoor railroad platforms, and on hospital grounds, among other locations, and expressly authorizes local communities to enact additional restrictions;⁵⁹

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

- A 2012 survey of residents of New York City Housing Authority residents found widespread support for smoke-free public housing projects (64%);⁶⁰

WHEREAS as of April 2019, there are more than 500 cities and counties in New York State with outdoor secondhand smoke policies;⁶¹

WHEREAS New York State prohibits the use of electronic smoking devices in locations where smoking is restricted;⁶² and

WHEREAS there is no Constitutional right to smoke;⁶³

NOW THEREFORE, it is the intent of the [municipal council/county board of supervisors/county legislature], in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking [and tobacco use] around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work, and play; by reducing the potential for children to wrongly associate smoking [and tobacco use] with a healthy lifestyle; and by affirming and promoting a healthy environment in the [municipality/county].

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