



Regulating Smoking Outdoors

The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures.¹ For more details about these policy considerations, please contact the Consortium.

Smoke-free Outdoor Air

Over the last decade, as evidence of the dangers of secondhand smoke has mounted, many communities have passed smoke-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. Often these laws or regulations are extensions of, or amendments to, indoor smoke-free policies. Also, a growing number of hospital and school administrators and other employers are adopting smoke-free (or tobacco-free) campus policies, which extend to outside grounds such as parking lots, and property, whether owned, leased, rented or controlled. This brief guide provides pointers for communities and policy makers to consider when drafting and implementing smoke-free outdoor policies.

Policy Benefits

- **Public Health Impact.** Exposure to second-hand smoke is linked to a wide range of serious and life threatening health problems including heart disease, cancer, asthma and other respiratory problems.² Children exposed to second-hand smoke face increased risk of asthma, sudden infant death syndrome (SIDS), acute respiratory infections and ear problems. While most scientific evidence relates to indoor exposure, several recent studies have found that secondhand smoke exposure levels can be significant outdoors, particularly when smokers are in close proximity to others.³



In addition to preventing secondhand smoke exposure, outdoor smoke-free laws help smokers who are trying to quit, by eliminating the sight and smell of tobacco smoke. Also, as with all smoke-free policies, these measures send a message to children and youth that smoking is not an acceptable behavior or a norm in the community.

Environmental Impact. Discarded cigarette butts are a nonbiodegradable form of litter that can take decades to break down. Several trillion discarded cigarette butts litter sidewalks, beaches and other outdoor areas each year and are the single most collected item in international beach cleanups.⁴ Cigarette litter is unattractive, expensive to clean up, and an environmental blight, harmful to waterways and wildlife. Outdoor smoke-free policies can help reduce the amount of cigarette litter, as well as maintenance and cleanup costs. Discarded cigarettes are also a significant cause of outdoor fires, accounting annually for hundreds of millions of dollars in annual costs in environmental damage, personal property losses, firefighting expenses and restorative efforts.⁵

Policy Elements

Well-crafted smoke-free outdoor policies are explicit about what they cover, and how communities will implement and enforce them. Here are a few elements found in such policies:

- **Timely findings and clear policy purpose.** 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. Often smoke-free outdoor policies include current data documenting the health risks associated with exposure to secondhand tobacco smoke, as well as studies measuring exposure to smoke in outdoor areas.
- **Clear definitions and concise language.** Avoid confusion about what constitutes an outdoor or indoor (enclosed) space by clearly defining the space you want to regulate. Some policies, for example, prohibit smoking outdoors within a reasonable distance (typically, 15 to 20 feet) from an entrance, an exit, or a vent into any enclosed smoke-free area or any unenclosed area where smoking is prohibited. Other policies define outdoor space by indicating that the policy reaches all property within certain boundaries, or all property in any way controlled by the organization adopting the policy. Depending on the reach of a particular policy, it might also be helpful to define indoor spaces. Be both explicit and practical, and be sure to include any exemptions or exceptions to this policy.
- **Robust enforcement options.** Enforcing outdoor smoke-free policies can be challenging unless clear procedures are established, including a reasonable penalty and appeal process. Effective enforcement of these policies often includes coordination among different enforcement agencies and consistent procedures throughout a community. The penalties section of the policy should clearly identify how persons can be found in violation of the policy, and the penalties or fines for first, second and additional violations.

- **Well-planned implementation process.** Establish a process for publicizing the policy and educating the community and affected business owners, as well as procedures for receiving, tracking and following up on complaints. Identify other implementation requirements, such as posting “No Smoking signs” and removing ash cans and ash trays in the smoke-free areas. Make sure you set a realistic date for the policy to take effect.

Challenges

A key challenge with outdoor smoke-free policies is ensuring effective enforcement. Most outdoor policies are self-enforced, which means they depend upon the cooperation of the public – generally those who frequent the areas. Since most people will refrain from smoking if they know a smoke-free policy is in place, the best way to enhance enforcement is to educate the public and local businesses about the policy early and often in 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.

Also, be sure to consider the practical effects an outdoor policy may have on neighboring properties and public places. For example, be prepared to address problems that might arise if smokers congregate or litter on nearby private properties or heavily-traveled public sidewalks or streets.

Select Legislation and Policies

Below are examples of smoke-free policies in different outdoor areas around the U.S. If you consider adapting any language from these policies, take care to ensure the provision in question is practical and legal in your jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policies. These examples are included simply to illustrate how various jurisdictions have approached similar issues.

| Policy Type | City/ Organization | Name | Link |
|--|----------------------------------|---|---|
| Outdoor Places of Employment & Public Places | Americans for Nonsmokers' Rights | Model Ordinance Prohibiting Smoking in Outdoor Places of Employment and Public Places | http://www.no-smoke.org/document.php?id=640 |
| | Colorado | Colorado's Model Ordinance for Smoke-Free Workplaces and Public Places | http://www.gaspforair.org/gasp/ordinance/documents/ModelOrdinance2007.pdf |
| | Iowa | Iowa Code 142D: The | http://www.iowasmokefreeair.org |

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| | | Smoke-free Air Act | gov/common/pdf/iowacode142D.pdf |
| Outdoor Recreation Facilities/Parks | Tobacco Free Youth Recreation | City-Owned Outdoor Recreational Facilities Model Tobacco-Free Policy | http://www.tobaccofreeparks.org/documents/Model_City_Facilities_Policy.pdf |
| | Albert Lea, MN | Park & Recreation Department Tobacco Free Policy | http://www.tobaccofreeparks.org/documents/Policy_Albert_Lea.pdf |
| | Roseville, CA | Smoke-free Parks Ordinance | http://www.roseville.ca.us/parks/parks_n_facilities/smoke_free_parks.asp |
| Smokefree Beaches | Solano Beach, CA | Ordinance No. 316 | http://www.ci.solanabeach.ca.us/uploads/CM_NoSmokingOrd316.pdf |
| Fair Grounds | Tobacco Free Youth Recreation | Tobacco-Free Fairground Model Policy | http://www.tobaccofreeparks.org/documents/Model_Fair_Policies.pdf |
| | Humboldt County Fair | Clear Air at Humboldt County Fair | http://www.humboldtcountyfair.org/smoking.htm |
| Rodeos | Tobacco Free Youth Recreation | Tobacco-Free Rodeo Grounds Model Policy | http://www.tobaccofreeparks.org/documents/Model_Rodeo_Policies.pdf |
| Outdoor Events | Tobacco Free Youth Recreation | Outdoor Event Model Tobacco-Free Policy | http://www.tobaccofreeparks.org/documents/Model_Outdoor_Event_Policy.pdf |

Other Helpful Resources

The Consortium's parent organization, the [Public Health Law Center](#), has a [webpage](#) containing information on smoke-free regulation in outdoor areas. The Consortium also has a Tips and Tools guide on regulating a tobacco-free or smoke-free campus. [Americans for Nonsmokers' Rights](#) compiles [lists and maps](#) of smoke-free outdoor areas throughout the U.S., including beaches, parks, zoos, sports stadiums, arenas and outdoor dining areas. [Tobacco-Free Youth Recreation](#) includes on its website many policy implementation resources that cover smoke-free parks and recreation areas, fairgrounds, rodeos and outdoor events.

Contact Us

Please feel free to contact the Tobacco Control Legal Consortium at (651) 290-7506 or publichealthlaw@wmitchell.edu with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy.

¹ The information contained in this document is not intended to constitute or replace legal advice. We encourage anyone considering the implementation of any tobacco-related law or policy to seek out local legal counsel to obtain legal advice on these issues.

² U.S DEP'T OF HEALTH & HUMAN SERVICES, CENTERS FOR DISEASE CONTROL AND PREVENTION, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: Report of the Surgeon General* (2006), available at

<http://www.surgeongeneral.gov/library/secondhandsmoke/report/index.html>.

³ James Repace, *Benefits of Smoke-free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios and in Motor Vehicles*, 34 WM MITCHELL LAW REVIEW 4 (2008).

⁴ CigaretteLitter.org, *Cigarette Litter*, available at <http://www.cigarettelitter.org/>.

See, e.g., National Fire Protection Association, *Smoking-Material Fire Problem* (2010)(statistical analysis of U.S. fires started by “smoking materials,” i.e., cigarettes, available at <http://www.nfpa.org/assets/files/PDF/SmokingSummary.pdf>;

Thomas Novotny et al., *Cigarette Butts and the Case for an Environmental Policy on Hazardous Cigarette Waste*, 6 INT’L. J ENVTL. RES PUB. HEALTH 5 (2009), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2697937/>.