

Model Ordinance Prohibiting Smoking in All Workplaces and Public Places (100% Smokefree)

Sec. 1000. Title

This Article shall be known as the _____ [*name of City or County*] Smokefree Air Ordinance of _____ [*year*].

Sec. 1001. Definitions

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, taprooms, nightclubs, cocktail lounges, and cabarets.
- B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- C. "Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, electronic heated tobacco product, dab rig or vape pen, or under any other product name or descriptor.
- D. "Employee" means a person who is employed by an employer or retained as an independent contractor in consideration for direct or indirect monetary wages or profit, or a person who volunteers his or her services for a business.
- E. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- F. "Enclosed Area" means all space between a floor and a ceiling that is bounded at least [30]% by walls, doorways, or windows, whether open or closed. A wall includes but is not limited to any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
- G. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists,

dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms, and wards within health care facilities.

- H. "Hookah" means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the heating or burning of material including, but not limited to, tobacco, shisha, plant matter, vapor stones, or other matter.
- I. "Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, or health care facility.
- J. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on [City or County] grounds.
- K. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times.
- L. "Public Event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.
- M. "Public Place" means an area to which the public is invited or in which the public is permitted, including but not limited to: banks; bars; restaurants; retail food production and marketing establishments; retail service establishments; laundromats; professional offices; gambling facilities; bingo facilities; public and private educational facilities; childcare and adult daycare facilities; health care facilities including but not limited to nursing homes; hotels and motels; lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, and other multiple-unit residential facilities; parking structures; public transportation vehicles including but not limited to buses, taxicabs, rideshare vehicles; public transportation facilities including but not limited to bus, train, and airport facilities; reception areas; waiting rooms; restrooms; service lines; shopping malls; sports arenas, theaters and other facilities primarily used for exhibiting motion pictures, theaters and lecture halls, musical or other similar performances; aquariums; galleries; libraries; museums; convention facilities; elevators; parking structures; polling places; retail stores including tobacco retailers, marijuana/cannabis establishments, hookah establishments, cigar establishments, and vape shops; and rooms, chambers, and places of meeting or public assembly under the control of a municipal agency, board, commission, committee, or council. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.
- N. "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.
- O. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared

on the premises for serving elsewhere. The term “restaurant” includes the bar area within a restaurant.

- P. “Service Line” means an indoor or outdoor line in which one (1) 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, movie ticket lines, and sporting event lines.
- Q. “Shopping Mall” means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.
- R. “Smoke” or “Smoking” means:
- (1) inhaling, exhaling, or burning, any tobacco, nicotine, cannabis, shisha, or plant product, whether natural or synthetic;
 - (2) carrying any lighted, heated, or activated tobacco, nicotine, cannabis, shisha, or plant product, whether natural or synthetic, intended for inhalation;
 - (3) using an electronic smoking device; or
 - (4) using a hookah.
- “Smoking” does not include the use of traditional, sacred tobacco as part of an Indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- S. “Sports Arena” means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

Sec. 1002. Application of Article to [City-Owned or County-Owned] Facilities and Property

All enclosed areas, including buildings and vehicles owned, leased, or operated by the _____ [City or County] of _____, as well as all outdoor property adjacent to such buildings and under the control of the _____ [City or County], shall be subject to the provisions of this Article.

Sec. 1003. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the _____ [City or County] of _____.

Sec. 1004. Prohibition of Smoking in Enclosed Places of Employment

- A. Smoking shall be prohibited in all enclosed areas of places of employment without exception, including but not limited to common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 1005. Prohibition of Smoking in Private Clubs

Smoking shall be prohibited in all private clubs.

Sec. 1006. Prohibition of Smoking in Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes and other long-term care facilities.
- B. All hotel and motel guest rooms.

Sec. 1007. Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor places:

- A. Within a distance of _____ [*recommended 15-25*] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke or aerosol from entering those areas.
- B. On all outdoor property that is adjacent to buildings owned, leased, or operated by the _____ [City or County] of _____ and that is under the control of the _____ [City or County].
- C. In, and within _____ [*recommended 15-25*] feet of, outdoor seating or serving areas of restaurants, bars, and gambling facilities.
- D. In outdoor shopping malls, including parking structures.
- E. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within _____ [*recommended 15-25*] feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- F. In outdoor recreational areas, including parking lots.
- G. In, and within _____ [*recommended 15-25*] feet of, all outdoor playgrounds.
- H. In, and within _____ [*recommended 15-25*] feet of, all outdoor public events.
- I. In, and within _____ [*recommended 15-25*] feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the _____ [City or County].
- J. In all outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles, but only within _____ [*recommended 15-25*] feet of the point of service.
- K. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least _____ [*recommended 15-25*] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 1008. Prohibition of Smoking in Outdoor Places of Employment

- A. Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, but is not limited to, work areas, construction sites, and temporary offices such as trailers, restroom facilities, and vehicles.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 1009. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility.

Sec. 1010. Declaration of Establishment or Outdoor Area as Nonsmoking

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that an entire establishment, facility, or outdoor area is a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1011(A) is posted.

Sec. 1011. Posting of Signs and Removal of Ashtrays

The owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility where smoking is prohibited by this Article shall:

- A. Clearly and conspicuously post "No Smoking" signs or 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) in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited or, in the case of outdoor places, clearly and conspicuously post "No Smoking" signs in appropriate locations as determined by the _____ [Department of Health or City Manager or County Administrator] or an authorized designee.
- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

Sec. 1012. Nonretaliation; Nonwaiver of Rights

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 1014, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation.

- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 1013. Implementation

The [Department of Health or Board of Health or other appropriate authority] shall adopt rules and regulations as are necessary and reasonable to implement the provisions of this Article. Notice of the provisions of this Article shall be given to all applicants for a business license in the [City or County].

Sec. 1014. Enforcement

- A. This Article shall be enforced by the _____ [Department of Health or Board of Health or City Manager or County Administrator] or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the _____ [City or County] of _____.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the _____ [Department of Health or Board of Health or City Manager or County Administrator].
- D. The [Health Department, Fire Department, Permitting Department], or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish or turn off the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact the enforcing agency.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the _____ [Department of Health or Board of Health or City Manager or County Administrator] or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 1015. Violations and Penalties

- A. A person who refuses to comply with a request to stop smoking in an area where smoking is prohibited by the provisions of this Article shall be civilly liable, subject to an administrative citation not exceeding fifty dollars (\$50). No person shall be liable under this section unless they were previously given a warning by a person authorized to enforce this ordinance or who exercises legal or actual control over the premises where smoking is prohibited.

- B. Except as otherwise provided in Section 1012(A), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be liable for an infraction, punishable by:
1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Any violation of this article 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 administrative enforcement proceedings, an action for injunctive or any other equitable relief, and/or any other remedy available by law.
- E. Any violation of this Article is hereby declared to be a public nuisance, and may be abated in accordance with applicable law, and action may be taken to recover the costs of the nuisance abatement to the extent available by law.
- F. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.
- G. The remedies provided in this article are cumulative and in addition to any other remedies available at law or in equity.

Sec. 1016. Public Education

The _____ [Department of Health *or* City Manager *or* County Administrator] shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure and/or web page for affected businesses and individuals explaining the provisions of this ordinance. Signage and public education materials should also include locally available tobacco/nicotine cessation resources.

Sec. 1017. Governmental Agency Cooperation

The _____ [City Manager *or* County Administrator] shall annually request other governmental and educational agencies having facilities within the _____ [City *or* County] to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, _____ [County *or* City], and School District agencies to update their existing smoking control regulations to be consistent with this Article.

Sec. 1018. Other Applicable Laws

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 1019. Liberal Construction

This Article shall be liberally construed so as to further its purposes.

Sec. 1020. Severability

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Sec. 1021. Effective Date

This Article shall be effective thirty (30) days from and after the date of its adoption.

Findings and Intent

The _____ [City or County Governing Body] does hereby find that:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry.¹ According to the 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.² According to the 2014 U.S. Surgeon General's Report, *The Health Consequences of Smoking—50 Years of Progress*, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke.³ The 2024 Surgeon General's Report, *Eliminating Tobacco-Related Disease and Death: Addressing Disparities*, found that despite strong progress, exposure to secondhand tobacco smoke remains disproportionately higher among Black people, youth, and people from lower socioeconomic backgrounds, and that tobacco-related health disparities are a social injustice, in addition to an economic and health burden.⁴

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The 2024 Surgeon General's Report states that as of 2019-20, secondhand smoke was still responsible for the early deaths of approximately 19,600 infants under 1 year of age and adults aged 18 and over, representing 8.7 deaths for every 100,000 people in these two combined demographics alone.⁵

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen.⁶

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death.⁷

There is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke.⁸

In reviewing 11 studies concluding that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smokefree laws, the Institute of Medicine of the National Academies concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smokefree laws reduce heart attacks.⁹

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.¹⁰

Studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in hospitality workers find dramatic reductions in the levels of these biomarkers after a smokefree law takes effect. Average cotinine levels of New York City restaurant and bar workers decreased by 85% after the city's smokefree law went into effect.¹¹ After the implementation of Ontario, Canada's Smokefree Indoor Air Law, levels of NNAL were reduced by 52% in nonsmoking casino employees and cotinine levels fell by 98%.¹²

Smokefree indoor air laws result in a significant reduction in fine particulate matter and improved air quality. A Grand Rapids, Michigan study that monitored six restaurants before and after implementation of the state's smokefree air law found that PM2.5 fine particulate matter was reduced by 92 percent after the law went into effect, indicating that the vast majority of indoor air pollution in all six venues was due to secondhand smoke. The results in Grand Rapids were consistent with results in Wilmington, Delaware; Boston, Massachusetts; and Western New York.¹³

A 2024 study measured air quality in smoking gaming areas relative to non-smoking/non-gaming areas in which minors may be present, using data from 14 casinos and 18 distinct types of indoor casino locations. High PM2.5 peaks were recorded in casino locations even with zero, or a low percentage of, observed active smokers, including in both gaming and non-gaming areas. Indoor areas, regardless of smoking/non-smoking areas, consistently had higher PM2.5 levels than outdoor background levels. Indoor locations had median PM2.5 levels up to 18 times higher than the lowest outdoor background levels. Minors were present throughout all casino locations.¹⁴ Another 2024 study assessed air quality in the first Las Vegas resort-style casino that prohibited smoking voluntarily and compared results with similar casinos that permit

smoking. The study found PM2.5 levels 5.4 times higher in gaming areas when compared with a smoke-free casino.¹⁵

Despite an increase in general smoking protections over time, many such laws contain an exemption that permits indoor smoking in hookah lounges. In 10 hookah lounges exempted from Oregon's smokefree law, a study found that air quality measurements ranged from "unhealthy" to "hazardous" according to Environmental Protection Agency standards.¹⁶ Cigar bar exemptions are also ubiquitous, yet cigars have the same toxic and carcinogenic chemicals as cigarettes and other tobacco products. Further, cigars are larger, contain more tobacco, and have a longer smoking time than cigarettes, which means they deposit more secondhand smoke into the air.¹⁷

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.¹⁸ The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.¹⁹

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking.²⁰

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety. In 2015, ASHRAE amended its ventilation Standard for Acceptable Indoor Air Quality (62.1) to include an environment that is completely free from marijuana/cannabis smoke and emissions from electronic smoking devices.²¹

During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations.²² Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smokefree outdoor area.²³

Residual tobacco contamination, or "thirdhand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased, continuing to expose people to tobacco toxins, which represent an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion.²⁴ Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings, and gases can be absorbed into carpets, draperies, and other upholsteries, which can then be reemitted (off-gassed) back into the air and form harmful compounds.²⁵ Tobacco residue is noticeably present in dust throughout places where smoking has occurred.²⁶ The dangers of residual tobacco contamination are present in spaces that are not 100% smokefree, such as in nonsmoking rooms of hotels that allow smoking in some guest rooms. Partial smoking restrictions in hotels do not protect non-smoking guests from exposure to tobacco smoke and tobacco-specific carcinogens.²⁷

Electronic smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid that typically contains nicotine, heated through an electronic ignition system. ESD emissions are made up of a high

concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.²⁸ The January 2018 National Academies of Sciences, Engineering, and Medicine publication states that there is conclusive evidence that in addition to nicotine, most ESDs contain and emit numerous potentially toxic substances and increase airborne concentrations of particulate matter and nicotine in indoor environments. Studies show that people exposed to ESD aerosol absorb nicotine (measured as cotinine) at levels comparable to passive smokers. Many of the elements identified in the aerosol are known to cause respiratory distress and disease. ESD exposure damages lung tissues. Human lung cells that are exposed to ESD aerosol and flavorings — especially cinnamon — show increased oxidative stress and inflammatory responses.²⁹ Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions. The World Health Organization (WHO), the National Institute for Occupational Safety and Health (NIOSH), the American Industrial Hygiene Association (AIHA), and both the 2016 and 2024 Reports of the Surgeon General recommend that ESDs not be used in smokefree environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and by people using the devices and to avoid undermining the enforcement of smokefree laws.³⁰

Secondhand smoke from combusted marijuana/cannabis contains fine particulate matter that can be breathed deeply into the lungs, which can cause lung irritation and asthma attacks, thus making respiratory infections more likely. Exposure to fine particulate matter can exacerbate health problems especially for people with respiratory conditions like asthma, bronchitis, or COPD.^{31, 32} The current body of science shows that both tobacco and marijuana/cannabis smoke may have similar harmful cardiovascular effects.^{33, 34}

The 2024 Surgeon General's Report found that "Secondhand cannabis smoke contains many of the same toxic and cancer-causing chemicals found in tobacco smoke, and some of those chemicals are found in higher amounts in secondhand cannabis smoke than in secondhand tobacco smoke," and stated, "protecting all populations from exposure to secondhand tobacco smoke, including exposure to cannabis smoke, in all indoor settings should remain a priority."⁴ Research shows that levels of PM2.5 fine particulate matter inside a marijuana/cannabis consumption lounge were 10 times higher during the lounge's busiest hours than the particulate levels inside the lounge when the business was closed and were 3 times higher than the levels during slower times of day.³⁵ Another study found particulate levels from secondhand marijuana/cannabis smoke are even higher than particulate levels from secondhand tobacco smoke.³⁶ Thus, in the interest of public health, the use of combustible or aerosolized marijuana/cannabis should be prohibited wherever tobacco smoking is prohibited.

The Society of Actuaries determined in 2005 that secondhand smoke cost the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity.³⁷ Updated to 2018 dollars, lost productivity from premature death due to secondhand smoke exposure alone cost the U.S. about \$7 billion.³⁸

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.³⁹

There is no legal or constitutional "right to smoke."⁴⁰ Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.⁴¹

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses.⁴²

The smoking of tobacco, hookahs, or marijuana/cannabis and the use of ESDs are forms of air pollution and constitute both a danger to health and a material public nuisance.

Accordingly, the _____ [City or County Governing Body] finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

REFERENCES

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- ¹ U.S. Department of Health and Human Services, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.
- ² U.S. Department of Health and Human Services. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.
- ³ U.S. Department of Health and Human Services. *The Health Consequences of Smoking—50 Years of Progress*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.
- ⁴ U.S. Department of Health and Human Services. *Eliminating Tobacco-Related Disease and Death: Addressing Disparities*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2024.
<https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/index.html>
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2609 [MO-04]