



Electronic Cigarette Policy Toolkit



SOUTH
HEARTLAND
DISTRICT



**HEALTH
DEPARTMENT**

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Ten Steps to Success

Step 1 Convene a tobacco-free committee

Step 2 Create a timeline

Step 3 Craft the message

Step 4 Draft the policy

Step 5 Clearly communicate your intentions

Step 6 Educate staff and clients

Step 7 Provide tobacco cessation services

Step 8 Build community support

Step 9 Launch the policy

Step 10 Monitor the policy & respond to challenges

For more information on the Steps of Success see: Smoking Cessation Leadership Center at:
<http://smokingcessationleadership.ucsf.edu/>

Sample Policies

Sample Tobacco-free Workplace Policy

A tobacco-free environment helps create a safe and healthy workplace. Smoking and secondhand smoke are known to cause serious lung diseases, heart disease and cancer. [EMPLOYER] recognizes the hazards caused by tobacco use and exposure to secondhand tobacco smoke. Our policy to provide a tobacco-free environment for all employees and visitors was established to keep a safe and healthy workplace environment. This policy covers the smoking of any tobacco product and the use of oral tobacco products, "spit" tobacco and e-cigarettes, and it applies to both employees and non-employee visitors of [EMPLOYER].

Policies

OPTION 1 – COMPLETE TOBACCO-FREE POLICY

No use of tobacco products including cigarettes and "spit tobacco" or e-cigarettes is permitted within the facilities or on the property of [EMPLOYER] at any time.

OPTION 2 – TOBACCO-FREE IN DESIGNATED OUTDOOR AREAS ONLY POLICY

No use of tobacco products including cigarettes, e-cigarettes and "spit tobacco" will be allowed within the facilities of [EMPLOYER] at any time.

Smoking or tobacco use shall be permitted only in designated smoking areas located at least 25 feet outside the building entrance, operable windows, and ventilation systems of enclosed areas to prevent tobacco smoke from entering those areas. All materials used for smoking in designated smoking areas, including cigarette butts and matches, will be extinguished and disposed of in appropriate containers.

Procedure

1. Employees will be informed of the [EMPLOYER] Tobacco-free Policy through signs posted throughout properties owned and operated by [EMPLOYER], including company owned vehicles.
2. Visitors will be informed of the [EMPLOYER] Tobacco-free Policy by their hosts, the meeting invite, email correspondences and signs posted throughout the properties owned and operated by [ORGANIZATION NAME].
3. The [EMPLOYER] will help employees who want to quit smoking by helping them access recommended smoking cessation programs and materials. (Visit www.lung.org/stop-smoking for more information.)
4. Any violations of this policy will be handled through the standard disciplinary procedure.

[INSERT SIGNATURE]

SIGNATURE CEO or PRESIDENT

[INSERT DATE]

DATE

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STATE OWNED BUILDINGS FACILITY USE MANUAL



Exhibit 1 – SMOKING POLICY

1. Owner maintains a smoke and tobacco-free building.
2. Smoking or other use of tobacco products, including, but not limited to, cigarettes, pipes, cigars, smokeless tobacco – snuff or chewing tobacco, electronic cigarettes are not permitted inside the Demised Premises or any other interior area of the building.
3. Each facility has a designated area(s) which Owner has set aside for use of tobacco products. Tenant Agency employees shall utilize this designated area only to be respectful of other building tenants and visitors.
4. Standing at or near an entrance or fresh air intake while smoking is prohibited.
5. All smoking and tobacco materials should be disposed of in a proper manner. Receptacles are provided at designated area(s).

**South Heartland District Health Department
Employee Handbook**

Category: Health
Policy Number: HR 502
Title: Smoke-Free / Tobacco-Free Environment
Revised July 2007 version July 2014
Approved: May 2003

Tobacco product use of any kind, including use of electronic cigarettes, will be prohibited on the South Heartland District Health Department (SHDHD) premises including offices, satellite offices, vehicles, and grounds directly in front of the office. This policy includes not only staff but others who visit the office or ride in vehicles of the Health Department. Space owned or occupied by the Health Department shall be considered tobacco free. It is recognized that the Health Department does not control the public walkway; however, agency staff will not use tobacco products during normal office hours directly in front of the office. It is the responsibility of all employees of the Health Department to uphold and adhere to this policy.

New personnel shall be informed of the smoke-free/tobacco-free environment policy during orientation. No Smoking, Including Electronic Cigarette signs shall be posted on all doors, building entrances, and parking entrances at the site of the Health Department & Satellite offices

Employees are expected to honor this smoke-free/tobacco-free environment policy. Employees who violate this policy will be subject to the following disciplinary action(s).

1. First Violation: Verbal warning
2. Second Violation: Written warning with possible suspension
3. Third Violation: Written warning with possible suspension and/or termination
4. Fourth Violation: Immediate termination of employment

It is the intent of the SHDHD to create a healthy environment for its employees and visitors. Our employees are one of our most valuable resources and, in recognition of that, we promote the health, safety, and well-being of each individual.

Definition: *Tobacco product* means any product containing tobacco or nicotine, including but not limited to cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, dissolvable, tobacco products, and electronic cigarette cartridges; provided, however, that such term shall not include any tobacco cessation product that has been approved by the U.S. Food and Drug Administration.

Definition: *Electronic cigarette (e-cigarette)* means any electronic oral device, such as one composed of a heating element, battery and/or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

Model Policy for a Smokefree Workplace

ABC Company Smokefree Policy

ABC Company is dedicated to providing a healthy, comfortable, and productive work environment for our employees.

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) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (3) there is no risk-free level of exposure to secondhand smoke; and (4) 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. (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.) 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. (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.)

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 National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually.

According to the World Health Organization, scientific evidence has firmly established that there is no safe level of exposure to second-hand tobacco smoke, a pollutant that causes serious illness in adults and children, and that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke.

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.

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.

Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke.

Unregulated high-tech 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 nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." ([n.a.], "Summary of results: laboratory analysis of electronic cigarettes conducted by FDA," Food and Drug Administration (FDA), July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm> Accessed on: October 22, 2009.) E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. 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.

In light of these findings, ABC Company shall be entirely smokefree effective ____ [date].

Smoking, including the use of an e-cigarette, shall not be permitted in any enclosed company facility. Smoking shall also be prohibited in any outdoor company worksite where two or more employees are required to be in the course of their employment. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, construction sites, temporary offices such as trailers, and vehicles. This policy applies to all employees, clients, contractors, and visitors.

Copies of this policy shall be distributed to all employees. No Smoking signs shall be posted at entrances to all company facilities and at all applicable outdoor worksites.

This policy is being announced three months in advance in order to give smokers time to adapt to its restrictions and to facilitate a smooth transition to a smokefree environment. Those employees who smoke and would like to take this opportunity to quit are invited to participate in the cessation programs being offered by the company.

The success of this policy will depend on the thoughtfulness, consideration, and cooperation of both smokers and nonsmokers. All employees share in the responsibility for adhering to and enforcing this policy.

Signature of CEO or President

Date: _____

**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. 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

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 National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually.⁴

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen.⁵

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.⁶

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.⁷

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.⁸

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.⁹

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.¹⁰ 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%.¹¹

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.¹²

Following a Health Hazard Evaluation of Las Vegas casino employees' secondhand smoke exposure in the workplace, which included indoor air quality tests and biomarker assessments, the National Institute of Occupational Safety & Health (NIOSH) concluded that the casino employees are exposed to dangerous levels of secondhand smoke at work and that their bodies absorb high levels of tobacco-specific chemicals NNK and cotinine during work shifts. NIOSH also concluded that the "best means of eliminating workplace exposure to [secondhand smoke] is to ban all smoking in the casinos."¹³ A subsequent study in Nevada, whose Clean Indoor Air Act permits smoking in designated areas of casinos, bars, and taverns, indicates that strong 100% smokefree laws are the only effective way to protect indoor air quality. The study sampled the air quality in 15 casino gaming areas and corresponding nonsmoking areas, and the results indicated that the Clean Indoor Air Act failed to protect air quality in the nonsmoking areas, including children-friendly areas.¹⁴

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.¹⁵ 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.¹⁶

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.¹⁷

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.¹⁸

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.¹⁹ 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.²⁰

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 and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings. Gases can be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds.²¹ Tobacco residue is noticeably present in dust throughout places where smoking has occurred.²² Given the rapid sorption and persistence of high levels of residual nicotine from tobacco smoke on indoor surfaces, including clothing and human skin, this recently identified process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion.²³ The dangers of residual tobacco contamination are present in hotels, even in nonsmoking rooms. Compared with hotels that are completely smokefree, surface nicotine and air 3EP are elevated in nonsmoking and smoking rooms of hotels that allow smoking. Air nicotine levels in smoking rooms are significantly higher than those in nonsmoking rooms of hotels that do and do not completely prohibit smoking. Hallway surfaces outside of smoking rooms also show higher levels of nicotine than those outside of nonsmoking rooms. Partial smoking restrictions in hotels do not protect non-smoking guests from exposure to tobacco smoke and tobacco-specific carcinogens.²⁴

Unregulated high-tech 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 nicotine created by heat through an electronic ignition system. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA’s testing also suggested that “quality control processes used to manufacture these products are inconsistent or non-existent.”²⁵ According to a more recent study, electronic cigarette emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.²⁶ Electronic cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. 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 Society of Actuaries has determined that secondhand smoke costs 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.²⁷

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.²⁸

There is no legal or constitutional “right to smoke.”²⁹ 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.³⁰

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses.³¹

The smoking of tobacco, hookahs, or marijuana and the use of electronic cigarettes 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.

Sec. 1002. 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, 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 to simulate smoking through inhalation of 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, or vape pen, or under any other product name or descriptor.

- D. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- 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 on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes 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, semiprivate 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 burning of material including, but not limited to, tobacco, shisha, or other plant 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 child care, 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, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- 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, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- N. "Recreational Area" means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.
- 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" shall include a bar area within the 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. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.
- 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. 1003. 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. 1004. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the _____ [City or County] of _____, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gambling facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Parking structures.
- N. Polling places.
- O. Public transportation vehicles, including buses and taxicabs, under the authority of the _____ [City or County], and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores.
- S. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the

_____ [City or County] or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the _____ [City or County].

T. Service lines.

U. Shopping malls.

V. Sports arenas, including enclosed places in outdoor arenas.

W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 1005. Prohibition of Smoking in Enclosed Places of Employment

A. Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, 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. 1006. Prohibition of Smoking in Private Clubs

Smoking shall be prohibited in all private clubs.

Sec. 1007. 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.

B. All hotel and motel guest rooms.

Sec. 1008. Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor places:

A. Within a reasonable 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 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 and bars.
- 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. 1009. 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, without limitation, work areas, construction sites, 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. 1010. 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. 1011. 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 entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1012(A) is posted.

Sec. 1012. 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. 1013. 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 multiple-unit 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 1015, 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. 1014. Enforcement

- A. This Article shall be enforced by the _____ [Department 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 City Manager or County Administrator].
- D. The Health Department, Fire 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 a law enforcement 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 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 smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. Except as otherwise provided in Section 1013(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 guilty of 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. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the _____ [Department of Health or City Manager or County Administrator] by restraining order, preliminary and permanent injunction, or other means provided for by

law, and the _____ [City or County] may take action to recover the costs of the nuisance abatement.

- E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

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 for affected businesses and individuals explaining the provisions of this ordinance.

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 the current health findings regarding secondhand smoke.

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.

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Overview on e-Cigarettes



Electronic Cigarettes

Just a few short years ago, e-cigarettes – or e-cigs – were found mostly on the Internet or at shopping mall kiosks. While they're still available that way, there are now many stores across the country – and in Nebraska – that exclusively sell the devices and flavor cartridges.

Many e-cigarettes are designed to look like a filtered traditional cigarette. Typically, they have three components:

1. A cartridge or reservoir that contains a solution made of nicotine and other ingredients and flavorings,
2. a heating element (atomizer) that vaporizes the solution, and
3. a battery.

When the user puffs on the e-cigarette, the heating element vaporizes the solution and the resulting mist is taken into the lungs. Using an e-cigarette is commonly referred to as 'vaping.'



Image Courtesy of Legacy®

E-cigarettes are one of an array of devices that can deliver nicotine. Other devices include vape pens, e-hookahs, hookah pens, e-cigars, and more. Tank systems are generally larger e-cigarettes that can hold more solution and are oftentimes heated to a higher temperature.

The sky's the limit in terms of cartridge flavors ... with fruit and liqueur flavors common and even seasonal flavors available. The cartridges come in a variety of nicotine strengths ranging from zero to 24 mg and can be the equivalent of several traditional cigarettes.

It's important to be aware that the fatal dose of nicotine in adults is estimated at 30–60 mg; for children it's estimated at only 10 mg. Poisoning related to the nicotine in e-cigarette solutions can occur by ingestion, inhalation, or absorption through the skin.

In 2013, the [Nebraska Regional Poison Center](#) received 52 calls on e-cigarettes – up from 5 in 2012. Many of the calls were related to children under 5-years-old. Young children have been known to drink e-cigarette solutions – especially those with fruity or candy flavors and aromas. As a result, it's vital to keep cartridges away from young children. The toxic effects of nicotine range from vomiting, nausea, lethargy, gagging, and a pale or flushed appearance to depressed respiration, cardiac arrhythmia, and convulsions.

Many manufacturers and marketers claim that e-cigarettes contain none of the harmful additives found in traditional cigarettes. Yet they do contain nicotine which is highly addictive and the drug that makes it so difficult to quit using conventional tobacco products. [Click here](#) to learn more about nicotine. It's also worth noting that tank systems – that use higher voltages to heat solutions to higher temperatures – can produce vapors with levels of formaldehyde similar to the levels reported in tobacco smoke. Formaldehyde is used to preserve dead bodies, wood and fabric.

Many claim that e-cigarettes can help you quit traditional cigarette smoking altogether. However, there is no conclusive scientific evidence that e-cigarettes promote successful long-term quitting.

The flavors and novelty of e-cigarettes may also be popular with children and teens, encouraging them to take up smoking. In fact, recent findings from the [National Youth Tobacco Survey](#) showed that the percentage of middle and high school students who reported ever using an e-cigarette doubled in just one year – from 2011 to 2012. Altogether in 2012, more than 1.78 million middle and high school students nationwide had tried e-cigarettes.

E-cigarettes are not yet regulated by the U.S. Food and Drug Administration (FDA). As a result, product design, availability and use vary widely. However, in April 2014, a [proposed rule](#) was issued to extend the FDA's authority to cover additional products that meet the legal definition of a tobacco product, including e-cigarettes. Once the rule goes into effect, e-cigarettes will be subject to regulatory oversight that – among other things – will stop the unsubstantiated claims that some e-cigarette manufacturers and marketers make.

It's also important to know that during the 2014 legislative session, the Nebraska Unicameral passed a law that made it illegal to sell vapor products to minors younger than 18 in the state. For more information on the law, [click here](#).

In Nebraska, the [Smoke-Free Air Law](#) doesn't prohibit e-cigarettes since they are not 'lit.' As a result, they could be used indoors; however, it may be in the best interest of a business (especially bars) to prohibit their use because their appearance is so similar to conventional cigarettes which could cause confusion about whether or not the business is following the law.

The only way to realize the health benefits of a tobacco and nicotine free life, is to quit ALL tobacco products – lit and unlit alike. The [Nebraska Tobacco Quitline](#) can help. The free & confidential Quitline is available 24/7 at 1-800-QUIT-NOW (1-800-784-8669).

Sources: [Legacy](#); [FDA](#); [Morbidity and Mortality Weekly Report \(MMWR\)](#); [Nicotine and Tobacco Research](#)



Regulating Electronic Cigarettes and Similar Devices

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.

Overview

Electronic cigarettes (e-cigarettes) are battery-powered devices, often resembling cigarettes, cigars or pipes, designed to deliver nicotine or related substances to users in the form of a vapor.² Over the last few years, these products have enjoyed a boom in popularity, thanks largely to a lack of advertising restrictions combined with marketing claims that promote them as less hazardous, more convenient and cost-effective compared to conventional tobacco products. Because of the relative lack of research data on e-cigarettes, many public health organizations and policymakers are concerned about their safety and impact on public health.³ Also, because the federal government has yet to exercise its regulatory authority over these products, e-cigarettes are manufactured without regulatory oversight or quality controls, and broadly promoted, advertised and sold without appropriate health warnings or legal age restrictions.



Recently, a growing number of state and local governments have taken steps to regulate the sale, marketing, price and use of e-cigarettes to protect the health of users, reduce youth initiation to nicotine and tobacco products, and promote enforcement of tobacco-free laws.⁴ This guide provides a few options and pointers for communities and policy makers to consider when drafting or implementing laws or policies that regulate e-cigarettes. Given the rapidity with which the e-cigarette market is growing, this publication may be updated regularly.

Background

Product Description. E-cigarettes typically consist of battery-powered heating elements, replaceable cartridges that contain liquid nicotine or other chemicals, and an atomizer (or in some brands, a vaporizer) that, when heated, converts the contents of the cartridge into a vapor that a user inhales.⁵ In 2004, when e-cigarettes first entered the market in China, they were shaped like cigarettes, cigars or pipes and the liquid or gel heated in the cartridge contained

nicotine. Over the last decade, however, as the e-cigarette market has expanded, product designs and ingredients have evolved, making it difficult to arrive at any standard definition.⁶ Today, e-cigarettes come in hundreds of brands, including rechargeable and disposable models, and a variety of shapes mimicking common products, such as flash drives, pens, and lipstick. Depending on the brand, most e-cigarette cartridges contain tobacco-derived nicotine, humectants to produce the vapor (for example, propylene glycol or glycerol), and flavorings.⁷ Because e-cigarettes are not subject to manufacturing standards, the quality and content of ingredients varies among brands, as do the level and concentration of nicotine in e-liquid cartridges. In fact, some e-liquid does not contain nicotine derived from tobacco, but instead consists of synthetic nicotine or contains substances other than nicotine, such as lobelia.⁸

Growing Market. E-cigarettes were first sold primarily over the Internet and in shopping mall kiosks, but are widely available now in brick and mortar establishments across the U.S., such as many local convenience stores, gas stations, retail tobacco stores and even standalone e-cigarette shops. Sales of e-cigarettes in the U.S. have doubled each year since 2008, and are projected to reach \$1.7 billion in 2013.⁹ Some Wall Street analysts speculate that sales of e-cigarettes might even overtake those of traditional cigarettes within the next ten years.¹⁰ As an indication of the tobacco industry's interest in this rapidly growing market, several of the largest tobacco companies, such as Lorillard, R.J. Reynolds and Altria, have either acquired e-cigarette companies or are marketing their own electronic cigarettes.¹¹ Significantly, as e-cigarette sales have risen, product costs have dropped, making e-cigarettes far more affordable than conventional cigarettes.¹² This low cost makes these products appealing to youth, who tend to be particularly price-sensitive.¹³

Health Risks. The [U.S. Food and Drug Administration](#) (FDA) and many leading public health organizations generally agree on the need for further scientific study to assess unproven safety claims about e-cigarettes and to determine the overall public health impact of e-cigarette use.¹⁴ Potentially harmful constituents have been documented in some e-cigarette cartridges, including diethylene glycol, genotoxins, and animal carcinogens.¹⁵ The nicotine in e-cigarettes, as in all tobacco products, is highly addictive, can be toxic in high doses, and has immediate biochemical effects on the brain and body.¹⁶ Given unregulated production processes, the type and concentration of product ingredients, including nicotine, varies among e-cigarette brands. For example, e-cigarette cartridges typically contain between 6 and 24 mg of nicotine, but in some brands, the nicotine level is closer to 100 mg.¹⁷ Moreover, the nicotine content labeling on these products is not always accurate.¹⁸ In addition, much is still unknown about the health effects of e-cigarette vapor.¹⁹ Large-scale epidemiologic research is needed to determine whether these products promote cessation and help smokers quit or whether they promote experimentation, initiation or dual use of tobacco products and perpetuate addiction to nicotine.²⁰

Because of the many questions about the safety and public health impact of e-cigarettes, public health professionals are concerned about their growing popularity, particularly among youth.²¹ E-cigarettes and refill cartridges are advertised on radio, on TV, and in magazines, are distributed in bars, in nightclubs, at festivals, and at racecar and other events,²² and are widely available online, where safeguards against youth access can be breached more easily than in face-to-face purchases.²³ Moreover, e-liquid comes in hundreds of kid-friendly fruit and candy flavors (such as bubblegum, gummi bear, and watermelon) – flavors that are legally prohibited in

conventional cigarettes.²⁴ Evidence of the growing popularity of e-cigarettes among youth is supported by findings from the National Youth Tobacco Survey, conducted by the Centers for Disease Control and Prevention, which show that the percentage of e-cigarette use among middle and high school students doubled from 2011 to 2012, and that 1.8 million middle and high school students said they had tried e-cigarettes in 2012.²⁵ As a measure of concern about the lack of manufacturing requirements and sales and marketing restrictions on e-cigarettes, forty-one Attorneys General sent the FDA a letter in September 2013, urging the agency to regulate e-cigarettes to safeguard minors from nicotine addiction and other potential health effects of e-cigarettes.²⁶

Policy Options

Public health organizations support regulating e-cigarettes for several reasons, including reducing youth initiation to nicotine and tobacco products, protecting the health of all users, and promoting the enforcement of smoke-free (and tobacco-free) laws. Several policy options can advance these public health goals.

- **Regulating Sale.** As discussed below, the FDA is developing a strategy to regulate e-cigarettes as tobacco products. State, and most local, governments are able to regulate the sale of tobacco products.²⁷ For example, a government could prohibit the sale of such products anywhere within its jurisdiction, prohibit the sale of such products to minors, require these products to be kept behind the counter in stores, require e-cigarette stores and “vaping lounges” to be licensed as tobacco retailers, or allow these products to be sold only in places adults are permitted to enter.
- **Regulating Marketing.** State and local governments have an interest in protecting the public from false or misleading claims about any product. Prohibiting e-cigarette manufacturers and retailers from making unsubstantiated marketing claims about the safety and benefits of these products is in the best interest of public health. Every state and some local governments have laws in place to control misleading product claims, and these laws may be enforceable against some e-cigarette marketing efforts. For instance, state consumer protection and unfair trade practices statutes typically prohibit false or misleading advertising about products sold within the state.

State and local governments may also want to consider, in conjunction with a law prohibiting sales to minors or to all consumers, options designed to limit the targeted marketing of e-cigarettes to minors. While there are some limits to restricting commercial speech,²⁸ governments might want to work with legal counsel to consider how e-cigarettes are promoted in a community and the extent to which restrictions can be placed on those efforts.

- **Regulating Price.** Yet another option that state and local governments might consider is regulating price. One politically feasible option is to prohibit the distribution of all free samples of e-cigarettes and related products. Although the [Family Smoking Prevention and Tobacco Control Act](#) (Tobacco Control Act) restricts tobacco manufacturers from distributing free samples of “cigarettes, smokeless tobacco or other tobacco products,”²⁹

this prohibition currently does not extend to free samples of electronic cigarettes. Prohibiting free samples, as well as prohibiting the use of coupons, rebates or other discounting practices, are other ways state and local governments might regulate the price of e-cigarettes.³⁰ In addition, all states and those localities with taxing powers can consider imposing a tax on e-cigarettes and related products to help the state or locality offset health expenses and costs related to tobacco control programs or enforcement, collect revenue, and keep the prices of these products high, reducing consumption, particularly among youth.

- **Regulating Use.** Because e-cigarettes emit a vapor rather than secondhand smoke, many existing smoke-free – and some tobacco-free – laws or policies, as currently written, do not apply to the use of these products in public or in places of employment. Thus, they often are used in places where the use of combustible tobacco products is prohibited. Proponents of e-cigarettes claim these products are safer to use than conventional tobacco products, and do not expose bystanders to the risk of secondhand smoke.³¹ Even so, concern about the lack of scientific data on e-cigarettes has caused a growing number of state and local governments to prohibit their use in various public places and places of employment—often under existing or new smoke-free laws. The goal of such legislation generally is to minimize the use of unregulated products that pose unknown health risks to the user or to bystanders.

Another legislative goal is to prevent confusion in the enforcement of smoke-free laws caused by the perception that those using e-cigarettes are actually smoking combustible cigarettes. Omitting e-cigarettes from the restrictions imposed by smoke-free laws could cause smokers of conventional products to assume that smoking is permitted and nonsmokers to become needlessly concerned at what they see as a violation of a smoke-free law. Moreover, many public health professionals are concerned that permitting e-cigarettes to be used in traditionally smoke-free areas renormalizes “smoking-like behavior,” and can result in higher youth initiation rates and a slower decline in adult cessation rates.³²

Policy Elements

Regardless of the type of policy effort pursued to regulate e-cigarettes, each policy shares a few common elements, such as:

- **Clear definitions and concise language:** To avoid confusion about what constitutes an e-cigarette (or “electronic nicotine delivery system”), definitions should be explicit about what they cover yet broad enough to anticipate future product innovations. This eliminates ambiguity if new products or components are released that are similar to those already in existence but would not fall under a narrow definition. For example, when these products were first introduced they looked like cigarettes, but now they take a variety of forms. Also, because many cartridges are interchangeable, e-cigarettes are used to inhale not only tobacco-derived nicotine, but also synthetic nicotine or other substances.

When drafting definitions, it is important to consider the range of products intended to be captured, the specific activity to be addressed, the existing laws within the particular jurisdiction and the political environment. Definitions should be easy for the average person to understand and tailored to each situation. Also, it might be helpful to include language that exempts products approved by the FDA for sale as tobacco cessation aids and that are being marketed and sold for that purpose.³³

Drafting Tips: In most circumstances, existing definitions of “tobacco products” in tobacco control laws should be broadened to include e-cigarettes and similar products. In many jurisdictions, it may also be helpful to include – in the same section of the statute or ordinance – a separate definition of e-cigarette in addition to the broadened definition of “tobacco product.” Doing so may help prevent any questions from arising about which products are covered by the law. This may be more important for a community targeting a wide range of e-cigarette-type devices and related products. To ensure that drafting inconsistencies or other problems do not occur, consult with a lawyer familiar with the laws of your jurisdiction, or contact a Consortium attorney.

- **Robust enforcement options:** Enforcing restrictions on the sale, marketing, pricing and use of e-cigarettes can be challenging unless clear procedures are established, including a reasonable penalty and appeals process.³⁴ Effective enforcement of these policies often includes coordination among different enforcement agencies and consistent procedures throughout a community.
- **Well-planned implementation process:** A process should be established for publicizing the policy and educating the community, as should procedures for receiving, tracking and following up on complaints. It is important to set a realistic date on which the policy will take effect.

Policy Challenges

One of the most controversial issues affecting the regulation of electronic cigarettes has been debate over their status as either drug delivery (e.g., smoking cessation) devices or tobacco products. The regulatory status of e-cigarettes was at the heart of litigation in 2010 between the FDA and e-cigarette manufacturers, most notably in *Sottera Inc. v. Food & Drug Administration*.³⁵ Under the Tobacco Control Act, the FDA has authority to regulate “any product made or derived from tobacco that is intended for human consumption.” The brands of e-cigarettes being marketed most widely today do not contain tobacco, but generally do contain nicotine extracted from tobacco.³⁶ Between 2008 and 2010, the FDA determined that certain e-cigarettes were unapproved drug/device combination products, comparable to nicotine patches, which the agency has regulated for years under the drug and device provisions of the federal [Food, Drug and Cosmetic Act](#) (FDCA).

In December 2010, the U.S. Court of Appeals for the D.C. Circuit issued a decision in *Sottera*, stating that e-cigarettes and other products “made or derived from tobacco” are not “drugs,” “devices,” or combination products, unless they are marketed for therapeutic purposes – and that the FDA can regulate them as tobacco products under the Tobacco Control Act. On April 25,

2011, the FDA [announced](#) it would not appeal the court’s decision and that it is developing a strategy to regulate e-cigarettes containing, or derived from, tobacco as tobacco products under the Tobacco Control Act.³⁷ For the latest federal information about regulating e-cigarettes, visit the FDA’s website at <http://www.fda.gov>.

As with any tobacco control policies, state and local measures regulating the sale, marketing or price of e-cigarettes may be challenged in the courts by the tobacco industry and its allies, who may argue that those restrictions are preempted by other laws or that they violate specific constitutional provisions.³⁸ For example, in 2013 the City of Providence, Rhode Island, successfully fought off a legal challenge to its 2012 ordinances prohibiting the sale of flavored non-cigarette tobacco products in most locations and prohibiting price discounting of tobacco products.³⁹ The court did not agree with the industry’s arguments that these ordinances, which applied to flavored and discounted e-cigarettes, were preempted by federal and state law and violated the First Amendment. Policies regulating the use of e-cigarettes also may be challenged in court as a means to dissuade other communities from incorporating e-cigarette use into the definition of “smoking” in smoke-free laws. Also, public health professionals and policymakers should be on the lookout for legislation proposed by the industry that purports to regulate e-cigarettes and related devices. While the proposed laws may appear to prevent youth access to e-cigarettes, they often lack the necessary substantive provisions, exempt e-cigarettes from other tobacco product regulations, such as tax laws, or limit local authority to regulate e-cigarettes.

Select Legislation and Policies

In recent years, many state and local governments have wrestled with the most effective way to regulate e-cigarettes and the evolving market of related devices.⁴⁰ Below are a few examples of tobacco control policies that include provisions regulating the sale, marketing, price discounting, or use of e-cigarettes.⁴¹ Local and state governments might also want to consider other legislative avenues or regulatory options.

Before using any language from the following policies, take care to ensure the provision in question is practical and legal in your jurisdiction, including exploring whether the original jurisdiction faced any issues that could affect implementation in your jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policy approaches. These select examples are included simply to illustrate how various jurisdictions have approached the regulation of these products.

Select State Laws Regulating E-Cigarettes

Locality/State	Policy Name	Text of Policy
Minnesota	<u>Tobacco Modernization and Compliance Act of 2010, Minn. Stat. § 609.685</u>	Regulates sale of e-cigarettes and imposes criminal penalties for the sale of nicotine or lobelia delivery products, including e-cigarettes, to minors. “Whoever sells to a person under the age of 18 years a product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a

product, that is not tobacco as defined by section 609.685, is guilty of a misdemeanor for the first violation. Whoever violates this subdivision a subsequent time within five years of a previous conviction under this subdivision is guilty of a gross misdemeanor.”

Definition: A nicotine delivery device is “a product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined by section 609.685.”

Comment: Section 609.685 contains an expansive definition of tobacco including “any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product. . . .” The law exempts FDA-approved tobacco cessation products.

[Minn. Stat. § 297F.05 subd. 3](#)

Raises Minnesota’s excise tax on cigarettes and most other tobacco products to 95 percent of the “wholesale sales price.”

Definition. The Minnesota Department of Revenue interprets the tobacco products tax as covering electronic cigarettes. [Revenue Notice #12-10](#).

New Jersey

[New Jersey Smoke-Free Air Act, P. L. 2009, Chap. 182](#)

Prohibits the smoking of tobacco products and the use of electronic smoking devices in all enclosed indoor places of public access and workplaces.

Definition: “*Electronic smoking device* means an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe.”

North Dakota

[N.D. Cent. Code §23-12-09 \(West 2013\)](#)

Prohibits smoking, including use of e-cigarettes, in all enclosed areas of public places and places of employment, including within twenty feet of entrances, exits, operable windows, air intakes, and ventilation systems of enclosed areas in which smoking is prohibited.

Definition: “*Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form.

Smoking also includes the use of an *e-cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device* for the purpose of circumventing the prohibition of smoking in this Act. . . . *E-cigarette* means any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name, or descriptor.”

Utah	<u>Utah Code § 76-10-101, 104, 105, 111</u>	Regulates sale, gift, or distribution of e-cigarettes by manufacturer, wholesaler, or retailer. Definition: “ <i>Electronic cigarette</i> means any device, other than a cigarette or cigar, intended to deliver vapor containing nicotine into a person’s respiratory system.”
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Local Policies

New York City, New York	<u>A Local Law Establishing a Sales Age of 21 for Cigarettes, Tobacco Products & Electronic Cigarettes</u>	Raises the sales age from eighteen to twenty-one years for cigarettes and tobacco products and establishes a sales age of twenty-one years for electronic cigarettes. Definition: “ <i>Electronic cigarette</i> means a battery-operated device that contains nicotine and delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette.”
Suffolk County, New York	<u>A Local Law Banning the Sale of E-Cigarettes to Persons Under the Age of 19, Local Law No. 29-2009</u>	Prohibits the sale of e-cigarettes to minors and “the use of e-cigarettes and like products in public places where traditional forms of smoking are already allowed.” Definition: “ <i>E-cigarette</i> shall mean any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides a vapor of liquid nicotine and/or other substances mixed with propylene glycol to the user as he or she simulates smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.”
Providence, Rhode Island	<u>No. 42 Ordinance Prohibiting Sale of Flavored Tobacco</u>	Prohibits sale or offer for sale of any flavored tobacco product, except in a smoking bar. Definition: “ <i>Tobacco product</i> means any product containing tobacco or nicotine, including but not limited to

<u>Products (2012)</u>	cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, dissolvable tobacco products, and electronic cigarette cartridges; provided, however, that such term shall not include: (1) cigarettes, including those cigarettes subject to the Special Rule for Cigarettes relating to characterizing flavors of the federal Family Smoking and Tobacco Prevention Act; and (2) any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs.”
<u>No. 43</u> <u>Ordinance</u> <u>Prohibiting</u> <u>Price</u> <u>Discounting of</u> <u>Tobacco</u> <u>Products</u>	<p>*****</p> <p>Prohibits redemption of tobacco product coupons and sale of tobacco products through multi-pack offers or other price discounting methods. The law, which applies to all tobacco products including electronic cigarette cartridges, is located within the city’s local tobacco licensing scheme.</p> <p>Definition: Same as No. 42 (see above).</p>

Organizations

Americans for Nonsmokers’ Rights	<u>Model Ordinance Prohibiting Smoking in All Workplaces and Public Places</u>	<p>Findings: “Unregulated high-tech 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 nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA’s testing also suggested that “quality control processes used to manufacture these products are inconsistent or non-existent.” (“Summary of results: laboratory analysis of electronic cigarettes conducted by FDA,” <i>Food and Drug Administration (FDA)</i>, July 22, 2009; http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm.) E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. 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.”</p> <p>Definition: “<i>E-cigarette</i> means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any</p>
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other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.”

Other Helpful Resources

The Tobacco Control Legal Consortium and Public Health Law Center’s website features several [resources on e-cigarettes](#). Other legal centers affiliated with the Consortium, including [ChangeLab Solutions](#) and the New England Law | Boston’s [Center for Public Health and Tobacco Policy](#) have additional resources. For information about federal regulation of e-cigarettes, check the U.S. Food and Drug Administration’s [website on e-cigarettes](#) or the Consortium’s [FDA Tobacco Action Center](#). The Americans for Nonsmokers’ Rights website contains the latest news, reports and related [resources on e-cigarettes](#). A [paper](#) summarizing scientific research on e-cigarettes as of Oct. 2013 is available on the Tobacco-Related Disease Research Program website (see also webcast panel presentations, [E-Cigarettes: The Vapor This Time](#), Oct. 3, 2013). Other public health organizations, including [Legacy](#) and the [Campaign for Tobacco-Free Kids](#), have material on e-cigarettes on their websites as well.

Contact Us

Please feel free to contact the [Tobacco Control Legal Consortium](#) with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy regulating e-cigarettes.

Updated: November 2013

Notes

¹ The information contained in this document is not intended to constitute or replace legal advice.

² These products are sometimes referred to as Electronic Nicotine Delivery Systems (ENDS) or personal vaporizers (PVs). Although the term “vapor” is used throughout this publication, the scientific term “aerosol” is also often used in legislative definitions of these products (e.g., “vapor (or aerosol)”).

³ See, e.g., Am. Heart Assoc. et al., *Policy Guidance Document Regarding E-Cigarettes* (June 2011), available at <http://www.acscan.org/content/wp-content/uploads/2013/06/Policy-Guidance-on-E-Cigarettes-.pdf>; Am. Acad. Pediatrics, *E-Cigarettes* (2013), available at http://www2.aap.org/richmondcenter/pdfs/ECigarette_handout.pdf. See also Letter from Nat’l Assoc. Attys General to Margaret Hamburg, Comm’r Food and Drug Admin. (Sept. 24, 2013) (urging the FDA to move quickly to issue proposed regulations that will address the advertising, ingredients and sale to minors of e-cigarettes), available at <http://www.naag.org/assets/files/pdf/E%20Cigarette%20Final%20Letter%20%285%29%281%29.pdf>; Letter from Assoc. State and Territorial Health Officials to Margaret Hamburg, Comm’r Food and Drug

Admin. (Oct. 22, 2013) (urging the FDA to take all available measures to regulate “the advertising, ingredients, and sale to minors of electronic cigarettes”).

⁴ See, e.g., Legal Resource Center for Maryland Public Health Law and Policy, *State Electronic Smoking Device Legislation* (2013), available at <http://publichealthlawcenter.org/sites/default/files/resources/UofMaryland-fs-state-e-smokingdevice-legislation-9-2013.pdf> (table summarizing state legislation on electronic smoking devices as of Sept. 12, 2013).

⁵ Because the user inhales vapor, rather than smoke, the use of an e-cigarette is referred to as “vaping.”

⁶ U.S. Food & Drug Admin., Electronic Cigarettes, <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm> (last visited Oct. 8, 2013); Maciej Goniewicz et al., *Levels of Selected Carcinogens and Toxicants in Vapor from Electronic Cigarettes*, Tobacco Control (2013), available at <http://tobaccocontrol.bmj.com/content/early/2013/03/05/tobaccocontrol-2012-050859.short>.

⁷ Brian A. King et al., *Awareness and Ever Use of Electronic Cigarettes Among U.S. Adults, 2010-2011*, 15 NICOTINE & TOBACCO RESEARCH 1623-7 (2013).

⁸ Lobelia is a widely cultivated herbaceous plant also known as “Indian tobacco” or “puke weed”). Maryland Medical Ctr. Website (last visited Oct. 10, 2013), <http://umm.edu/health/medical/altmed/herb/lobelia>.

⁹ *E-Cigarette Sales are Smoking Hot, Set to Hit \$1.7 Billion*, CNBC.com (Aug. 28, 2013), <http://www.cnbc.com/id/100991511/print>.

¹⁰ See, e.g., Melissa Vonder Haar, *Are E-Cigs the Wave of the Future?*, CSP Daily News, Aug. 13, 2013, <http://www.cspnet.com/category-management-news-data/tobacco-news-data/articles/are-e-cigs-wave-future>.

¹¹ *Lorillard Inc. Acquires Blu Ecigs*, CSP DAILY NEWS, Apr. 25, 2012, <http://www.cspnet.com/category-management-news-data/tobacco-news-data/articles/lorillard-acquires-blu-ecigs>; *Reynolds Developing New Smokeless Products*, WINSTON-SALEM J., July 29, 2012, http://www.journalnow.com/business/article_cf223198-c21f-5b4e-8e7b-c5fb6190dcad.html; *Marlboro Maker Altria to Sell E-Cigarettes*, L.A. TIMES, June 11, 2013, <http://articles.latimes.com/2013/jun/11/business/la-fi-mo-altria-electronic-cigarette-20130611>; *Lorillard, Inc. Acquires British-based SKYCIG, Expanding its Electronic Cigarette Business*, CNBC.com, Oct. 1, 2013, <http://www.cnbc.com/id/101076039> <http://www.cspnet.com/category-management-news-data/tobacco-news-data/articles/lorillard-acquires-blu-ecigs>.

¹² Richard Craver, *Electronic Cigarettes Gaining on Traditional Products*, WINSTON-SALEM J., Dec. 14, 2012, http://www.journalnow.com/business/business_news/local/article_41fa04d6-4655-11e2-95d9-0019bb30f31a.html (“Refill cartridges can be purchased in different sizes and flavors; five-packs typically cost between \$9 and \$18. By comparison, a carton of cigarettes can cost between \$25 and \$50 for most name brands.”)

¹³ U. S. DEP'T OF HEALTH & HUMAN SERVS., PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL 522-29 (2012), *available at* <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>.

¹⁴ U.S. Food & Drug Admin., Electronic Cigarettes, <http://www.fda.gov/newsevents/publichealthfocus/ucm172906.htm> (last visited Oct. 10, 2013).

¹⁵ Nathan Cobb et al., *Novel Nicotine Delivery Systems and Public Health: The Rise of the "E-Cigarette,"* 100 AM. J. PUB. HEALTH, 2340-42 (2010).

¹⁶ U.S. DEP'T OF HEALTH & HUMAN SERVS., HOW TOBACCO SMOKE CAUSES DISEASE: THE BIOLOGY AND BEHAVIORAL BASIS FOR SMOKING – ATTRIBUTABLE DISEASE: A REPORT OF THE SURGEON GENERAL (2010), *available at* <http://www.surgeongeneral.gov/library/reports/tobaccosmoke/chapter4.pdf>; *see also* U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCE OF SMOKING: NICOTINE ADDICTION (1988), *available at* <http://tobaccodocuments.org/atc/71015953.html>.

¹⁷ World Health Organization, *Questions and Answers on Electronic Cigarettes or Electronic Nicotine Delivery Systems (ENDS)* (2013), http://www.who.int/tobacco/communications/statements/electronic_cigarettes/en/index.html#.

¹⁸ Michael Trehy et al., *Analysis of Electronic Cigarette Cartridges, Refill Solutions and Smoke for Nicotine and Nicotine-related Impurities*, 34 J. LIQUID CHROMATOGRAPHY & RELATED TECHNOLOGIES 1442, 1457 (2011).

¹⁹ *See, e.g.,* Monique Williams et al., *Metal and Silicate Particles Including Nanoparticles are Present in Electronic Cigarette Cartomizer Fluid and Aerosol*, 8 PLoS ONE 3 (e57987) (2013), *available at* <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3603976>; Tobias Schripp et al., *Does E-Cigarette Consumption Cause Passive Vaping*, 23 INDOOR AIR 25-31 (2013).

²⁰ *See* Am. Heart Assoc. et al., *supra* note 3.

²¹ Letter from Nat'l Assoc. Attys General, *supra* note 3.

²² Anna Edney, *E-Cigarette Marketing Seen Threatened by FDA Scrutiny*, Bloomberg.com, Oct. 16, 2013, <http://www.bloomberg.com/news/print/2013-10-16/e-cigarette-marketing-seen-threatened-by-fda-scrutiny.html>.

²³ In addition, instructive videos on how to make e-liquid are widely available online, including YouTube and e-cigarette and related product web sites. *See, e.g.,* <http://www.bing.com/videos/search?q=e-liquid+video+instructions&qpv=e-liquid+video+instructions&FORM=VDRE> (examples of videos related to e-liquid (e-juice) and instructions for filling e-cigarette cartridges).

²⁴ Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31 § 102, 123 Stat. 1776 (codified as amended in scattered sections of 5 U.S.C., 15 U.S.C. and 21 U.S.C. (2009)). According to the Act:

[a] cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor

(other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. 21 U.S.C. § 387g(a)(1)(A) (2009).

²⁵ CTRS. FOR DISEASE CONTROL AND PREVENTION, *Notes from the Field: Electronic Cigarette Use Among Middle and High School Students – U.S., 2011-2012*, 62 MORBIDITY AND MORTALITY WKLY. REP. 729-30 (2013), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm>.

²⁶ Letter from Nat'l Assoc. Attys General, *supra* note 3.

²⁷ Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (codified, in relevant part, at 21 U.S.C.A. § 301 *et seq.* (2009) (preserving local and state authority to regulate the sale of tobacco products)).

²⁸ See Tobacco Control Legal Consortium, *Restricting Tobacco Advertising – Tips and Tools* (2011), available at <http://publichealthlawcenter.org/sites/default/files/resources/tclc-guide-restricttobadvert-2011.pdf>.

²⁹ Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (2009) (codified as amended in relevant part at 21 U.S.C. §§ 301 *et seq.*); 21 C.F.R. § 1140.16(d)(1).

³⁰ See, e.g., Tobacco Control Legal Consortium, *Tobacco Coupon Regulations and Sampling Restrictions* (2011), available at <http://publichealthlawcenter.org/sites/default/files/resources/tclc-guide-tobcouponregsandsampling-2011.pdf>.

³¹ Proponents claim that e-cigarettes emit an odorless vapor made of water and harmless chemicals rather than the hazardous secondhand smoke of combustible cigarettes. See, e.g., Ecigsavings.com, <http://www.ecigsavings.com/electronic-cigarettes/about-electronic-cigarettes> (last visited Nov. 6, 2013).

³² Matt Richtel, *The E-Cigarette Industry, Waiting to Exhale*, N.Y. TIMES, Oct. 26, 2013, available at <http://www.nytimes.com/2013/10/27/business/the-e-cigarette-industry-waiting-to-exhale.html?pagewanted=all&r=0>.

³³ U.S. Food & Drug Admin, FDA 101: Smoking Cessation Products, <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm198176.htm> (last visited Oct. 8, 2013). These FDA-approved cessation devices include products such as nicotine gum, patch, nasal spray and inhalers.

³⁴ As just one indication of enforcement challenges, some e-cigarettes sold as non-nicotine products have cartridges that can be replaced with nicotine cartridges or vials of liquid nicotine purchased locally or online. See, e.g., the following e-cigarette websites: Prime Vapor, <http://www.primevapor.com/flavor-e-cigarette-cartridges-1/zero-nicotine-10> and CloudNine, <http://cloudnine.hillarymilesproductions.com/e-cigarette-reviews/electronic-cigarette-filter-styles-replaceable-flavor-cartridges-compared-to-e-liquid-refillable-cartridges> (last visited Nov. 6, 2013).

³⁵ *Sottera, Inc. v. Food & Drug Admin.*, 627 F.3d 891 (D.C. Cir. 2010).

³⁶ Generally, the nicotine in electronic cigarettes is “derived from natural tobacco plants.” However, it is not entirely clear whether that is true of all electronic cigarettes currently on the market, or whether it will be true of future products. Moreover, not all electronic cigarettes contain nicotine; some contain other

chemicals such as lobelia. Letter from Michael M. Levy, Jr., Director, Division of New Drugs and Labeling Compliance, Food & Drug Administration, to William P. Bartkowski, President, Ruyan American, Inc. (Sept. 8, 2010), *available at* <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm225181.htm>.

³⁷ See U.S. Food & Drug Admin., Electronic Cigarettes, *supra* note 6.

³⁸ See Tobacco Control Legal Consortium publications on Commercial Speech and Commerce Clause issues in the regulation of tobacco products on its website section, Federal Regulation of Tobacco Products, at <http://publichealthlawcenter.org/topics/special-collections/federal-regulation-tobacco-collection>. See also Consortium resources on Preemption and Public Health, at <http://publichealthlawcenter.org/topics/other-public-health-law/preemption-public-health>.

³⁹ See Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence, No. 13-1053, --- F.3d ---, 2013 WL 5422308 (C.A.1 R.I. Sept. 30, 2013), *available at* <http://media.ca1.uscourts.gov/pdf/opinions/13-1053P-01A.pdf> (upholding two 2012 Providence ordinances that restrict sales of flavored non-cigarette tobacco products and prohibit the redemption of tobacco product coupons and other price discounting practices in retail stores and ruling that the laws serve the city's legitimate goal of reducing smoking and other tobacco use and that they do not violate the First Amendment and are not preempted by federal and state law).

⁴⁰ See Legal Resource Center for Maryland Public Health Law and Policy, *supra* note 4.

⁴¹ Several other states are considering legislation to regulate the sale and use of e-cigarettes and a growing number of countries, such as Australia, Canada, Brazil, Norway, Lebanon, Israel, Mexico, Hong Kong and Singapore, have imposed marketing restrictions on these products. *But see* Andrew Higgins & Matt Richtel, *European Lawmakers Reject Tight Restrictions on E-Cigarettes*, N.Y. TIMES, Oct. 8, 2013 (describing European Parliament's decision to scrap proposals by health officials that e-cigarettes be tightly regulated as medical devices, yet still imposing tight restrictions on advertising and sponsorship and prohibiting sales to young people), *available at* http://www.nytimes.com/2013/10/09/business/international/european-lawmakers-reject-tight-restrictions-on-e-cigarettes.html?pagewanted=all&_r=0&pagewanted=print. Also, back in 2008, the [World Health Organization](#) announced that it does not consider e-cigarettes an effective nicotine-replacement therapy and that these products need to undergo toxicity analyses and “operate within the proper regulatory framework.”

12-04

STATEMENT OF POLICY

Regulation of Electronic Cigarettes (“E-Cigarettes”)

Policy

The National Association of County and City Health Officials (NACCHO) urges the Food and Drug Administration (FDA) to enact strict regulations overseeing the sale, manufacture, distribution, and advertising of electronic cigarettes, or e-cigarettes, and to conduct research on their health impact. Until then, NACCHO encourages local health departments to support local legislation and regulations that include any or all of the following measures:^{1, 2}

- Use broadly-defined language to include e-cigarettes in new smoke-free legislation for indoor and outdoor environments.
- Make clear that e-cigarettes are covered by existing smoke-free laws through clarifying opinion or regulation/rule. (Opening up or amending the definitions of “smoke” and “smoking” to include e-cigarettes and e-cigarette vapor or aerosol may jeopardize existing laws.)
- Require tobacco retailer licenses to sell e-cigarettes, or add an additional fee for existing tobacco retailers to sell e-cigarettes.
- Limit the number of retailers or locations where e-cigarettes can be sold.
- Prohibit sales of e-cigarettes to minors.
- Ban sales of e-cigarette components that may appeal to minors, such as flavored cartridges. Raise excise tax on e-cigarettes to a level equivalent to cigarettes and other tobacco products.
- Require disclosure of the chemicals included in electronic cigarette cartridges.

NACCHO also encourages local health departments to support e-cigarette control policy efforts through any or all of the following:

- Oppose legislation at the local or state level that exempts e-cigarettes from current smoking ban policies and regulations.
- Advocate for state or federal regulation prohibiting sales of e-cigarettes on the Internet or through the mail, especially in the case of minors.
- Work with businesses and public institutions, such as malls, to voluntarily prohibit e-cigarette sales on premises.

Justification

In April 2011, the FDA announced that it intends to develop regulations for e-cigarettes.³ E-cigarettes are battery-operated products designed to deliver nicotine, flavor, or other chemicals through a vapor or aerosol inhaled by the user.⁴ Most e-cigarettes are manufactured to resemble



cigarettes, cigars, and pipes⁵ often with an LED light at the tip that mimics the glow of a conventional cigarette.⁶ Between 2010 and 2011, the proportion of e-cigarette ever-users doubled to 6.2% of all adults and 21.2% of current smokers.⁷

NACCHO recognizes the importance of finding additional tools to help smokers quit. Currently, little scientific evidence exists to show that e-cigarettes are effective cessation devices. Furthermore, in 2010, a federal court ruling blocked the FDA's attempts to broadly regulate e-cigarettes as drugs or drug delivery devices. However, the FDA can still regulate e-cigarettes, similar to regulations for nicotine replacement therapy, if therapeutic claims are made.⁸

Until further research shows that they are safe and effective as a cessation product, NACCHO suggests that e-cigarettes are regulated to the extent that the law allows for tobacco products. To that end, the FDA has the authority to regulate e-cigarettes as tobacco products under the Family Smoking Prevention and Tobacco Control Act even though the FDA has yet to exert that authority. According to the provisions of the Act, state and local governments can take additional steps to regulate the sale and use of tobacco products and enact measures that are more restrictive than federal law.⁹

Further research is needed on the health risks of e-cigarettes, but available evidence suggests harmful effects. A recent study published in the European Respiratory Journal found that e-cigarette users get as much nicotine from e-cigarettes as smokers usually get from tobacco cigarettes.¹⁰ The FDA warns users of the potential health risks posed by e-cigarettes.^{11, 12} In addition to nicotine, an FDA laboratory analysis found that e-cigarettes contain carcinogens and toxic chemicals such as diethylene glycol, an ingredient used in antifreeze. Because there is little control or regulation of e-cigarette products, the amount of nicotine inhaled with each "puff" may vary substantially, and testing of sample cartridges found that some labeled as nicotine-free in fact had low levels of nicotine.¹³ Users can refill their own cartridges with much higher doses of nicotine, and the devices can also be filled with other harmful substances. For example, instructions for filling cartridges with marijuana hash oil can be easily accessed on the Internet.¹⁴

The use of e-cigarettes makes it difficult for business owners and officials to enforce existing smoke-free air laws.¹⁵ Their close resemblance to conventional cigarettes may cause confusion and lead people to believe that it is legal to smoke in smoke-free environments. Additionally, some e-cigarettes designed to look like everyday items, such as pens and USB memory sticks¹⁶ make it easy for youth to disguise these products in schools and other settings. Prevalence of e-cigarettes in public places increases second-hand exposure to the harmful chemicals released from this product. Exhaled e-cigarette vapor or aerosol contains toxins and carcinogens, such as nicotine, formaldehyde, and acetaldehyde that are released into the air. The health impact of this exposure is a large concern and needs further investigation.¹⁷

Public health experts have expressed concern that e-cigarettes may increase nicotine addiction and tobacco use in young people.¹⁸ E-cigarettes may be particularly appealing to youth due to their high-tech design, wide array of available flavors, including candy- and fruit-flavored cartridges, and easy availability online and in shopping malls.¹⁹ Because in nearly all jurisdictions they are not taxed as tobacco products, e-cigarettes may be more easily obtained by price-sensitive youth. A 2013 Morbidity and Mortality Weekly Report released by the Centers for Disease Control and Prevention found that e-cigarette use more than doubled among U.S.

middle and high school students from 2011-2012.²⁰ The report also noted that 20% of middle school e-cigarette users reported never having smoked conventional cigarettes.²¹

There is strong public support for regulation of e-cigarettes, according to the University of Michigan C.S. Mott Children's Hospital National Poll on Children's Health. Among the findings, 85 percent of U.S. adults favored prohibiting the sale of e-cigarettes to minors, and 91 percent supported requiring manufacturers to test e-cigarettes for safety.²²

Various federal, state, and local regulations are in place or are being considered to restrict e-cigarette use and sales. Amtrak has banned the use of electronic smoking devices, such as e-cigarettes, on trains, in stations, and in any area where smoking is prohibited.²³ In a memorandum, the Air Force Surgeon General warned about safety concerns regarding electronic cigarettes and placed them in the same category as tobacco products.²⁴ Currently, the U.S. Department of Transportation is proposing a regulation that would ban the use of e-cigarettes on aircraft by clarifying that the use of e-cigarettes is prohibited in the same way that the use of tobacco products is prohibited.²⁵ Several state and local governments have taken steps to limit e-cigarette use in public places and prohibit the sale of e-cigarettes to minors.²⁶

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Record of Action

Submitted by Community Health Committee

Approved by NACCHO Board of Directors March 2012

Updated April 2014

Resources

Information about Electronic Cigarettes

The Facts

- [E-cigarettes](#): Basic information about e-cigarettes.
- [TFN Factsheet](#): Information on tobacco use in Nebraska.
- [TFN Infographic](#): A visual factsheet depicting tobacco's impact in Nebraska.

E-cigarette Policy Guidance Resources

- [Electronic Cigarettes](#): A position statement from the National Association of Local Boards of Health.
- [Policy Guidance Document](#): A guidance document developed by the American Cancer Society, the American Lung Association, Campaign for Tobacco Free Kids, and the American Heart Association.
- [Regulation of Electronic Cigarettes](#): The National Association of County & City Officials' statement of policy.

School Policy Language Covering E-cigarettes

- [Bellevue Public Schools Policy Language](#): Page 23 (K) - Engaging in the unlawful selling, use, possession or dispensing of tobacco, alcoholic beverages or liquor, inhalants, narcotics, drugs, synthetic drugs, or other controlled substances or an imitation controlled substance as defined in state statute, **a substance represented to be a controlled substance** as defined in state statute or being under the influence of a controlled substance or alcoholic liquor.
- [Lincoln Public Schools Letter to Parents](#): Information sent to parents on the school district's e-cigarette policy.
- [No E-cigarettes in School](#): A Lincoln Journal Star article on Lincoln Public Schools' e-cigarette policy.
- [Smoke-free College/University Policy](#): Model language from Americans for Nonsmokers' Rights.

Voluntary Indoor Policies Limiting E-cigarettes

- [Model Policy for a Smoke-free Workplace](#): Policy language from the Americans for Nonsmokers' Rights.
- **Sample Definition from Hawaii**: "Electronic smoking device" means any electronic product that can be used to simulate smoking in the delivery of nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.
- **Sample Definition from Colorado**: (#) (a) As used in this section, "tobacco product" means: (I) Any product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or (II) Any electronic device that can be used to deliver nicotine to the person inhaling from the device, including but not limited to an **electronic cigarette**, cigar, cigarillo, or pipe. (b) Notwithstanding any provision of paragraph (a) of this subsection (#) to the contrary, "tobacco product" does not mean any product that the food and drug administration of the United States department of health and human services has approved as a tobacco use cessation product.

Nebraska Clean Indoor Air Act and E-cigarettes

- In Nebraska, the [Smoke-Free Air Law](#) doesn't prohibit e-cigarettes since the product is not "lit." As a result, they could be used indoors; however, it may be in the best interest of a business (especially bars) to prohibit their use because their appearance is so similar to conventional cigarettes which could cause confusion about whether or not the business is following the law.
- Learn more about the Nebraska Clean Indoor Air Act on the Frequently Asked Questions webpage at SmokeFree.ne.gov.



www.dhhs.ne.gov/tfn

November 2013

Additional Resources



Smoking Cessation Leadership Center, toll-free 1-877-509-3786

<http://smokingcessationleadership.ucsf.edu>

The Smoking Cessation Leadership Center provides free technical assistance and the latest news and information on tobacco control, as well as links to online webinars and healthcare provider resources for helping patients quit smoking. A catalogue of tools is available (http://smokingcessationleadership.ucsf.edu/Downloads/cot_3rd_edition.pdf), provider tobacco cessation training modules including the Rx for Change curricula are available at (<http://rxforchange.ucsf.edu>).

Behavioral Health and Wellness Program, University of Colorado Denver

<http://www.bhwellness.org>

The Behavioral Health and Wellness Program provides training and technical assistance regarding organizational change, policy implementation, and integrating cessation services into behavioral health treatment. Free reports and literature for implementing tobacco-free policies are available. A tobacco cessation toolkit for mental health and addictions providers is available at no cost at (<http://www.bhwellness.org/resources-2/for-providers/toolkit>).

Become an Ex

www.becomeanEx.org

The EX Quit Plan is a comprehensive approach that comes at tobacco addiction from all sides: physical, behavioral, psychological and spiritual. The American Legacy Foundation created this online program in collaboration with the Mayo Clinic to provide a step-by-step personalized quit plan which includes a free EX Quit Plan book or a toll-free number that connects to state tobacco quit lines for free cessation information.

American Cancer Society

<http://www.cancer.org>

American Cancer Society provides a comprehensive Guide to Quitting Smoking, which reviews medications available and provides tips for successful quit attempts.

American Lung Association

<http://www.lungusa.org>

In addition to cessation information and education provided on the website, the American Lung Association hosts Freedom from Smoking Online, a web-based cessation program that provides an online support community and expert help.

Resources cont...

Americans for Non-Smokers' Rights

<http://www.no-smoke.org>

This website is a great resource for model tobacco-free policy language, and a comprehensive list of smoke-free businesses. Centers for Disease Control and Prevention
<http://www.cdc.gov/tobacco>

The Centers for Disease Control and Prevention offers comprehensive smoking cessation materials and links to state and community resources.

Partnership for Prevention

<http://www.prevent.org>

Resources are available for establishing smoke-free policies in indoor worksites and public places.

Public Health Law Center

Tobacco Control Legal Consortium.

<http://www.publichealthlawcenter.org/sites/default/files/resources/TCLC-Guide-Reg%20E-Cig-Devices-2013.pdf>

National Association of State Mental Health Program Directors

<http://www.nasmhpd.org>

NASMHPD has developed a series of policy and research reports including a toolkit for “Tobacco-Free Living in Psychiatric Settings.”

No Smoking.org

<http://no-smoke.org/pdf/modelordinance.pdf>

Smoke Free Nebraska

SmokeFree.ne.gov.

Learn more about the Nebraska Clean Indoor Air Act on the Frequently Asked Questions.

Tobacco Free Nebraska Dependence

<http://www.dhhs.ne.gov/tfn>

Tobacco Recovery Resource Exchange

<http://www.tobaccorecovery.org>

Developed for behavioral health and addiction treatment organizations, the Tobacco Recovery Resource Exchange provides online training, manuals, and toolkits for integrating tobacco treatment and implementing tobacco-free policies.

Appendix

Board of Health
South Heartland District Health Department

RESOLUTION NO. 2014-3

WHEREAS the South Heartland District Health Department (SHDHD) serving Adams, Clay, Nuckolls and Webster Counties, is directly concerned with the protection and promotion of health, safety, and welfare of community residents and visitors in our four-county District, particularly children and youth; and

WHEREAS, the SHDHD adopted in 2007 a Tobacco-Free Environment Policy prohibiting tobacco use of any kind on the SHDHD premises including office, vehicles, and grounds. The Board of Health for SHDHD also passed a resolution of support for the Nebraska Clean Indoor Air Act of 2008 which prohibits smoking in public places and places of employment; and

WHEREAS, other businesses, hospitals, schools, county and municipal governments in the four-county District have voluntarily adopted similar smoke-free or tobacco-free policies for their campuses, city/county parks and/or employer-owned vehicles; and

WHEREAS the use of electronic cigarettes models a behavior, smoking, that is contrary to the health and well-being of children and youth; and

WHEREAS nicotine-containing “e-liquids”, the key ingredients of electronic cigarettes, are known neurotoxins and even tiny amounts ingested or absorbed through the skin can cause vomiting and seizures, and can be lethal to small children; and

WHEREAS allowing the use of electronic cigarettes could communicate to members of the community that the use of electronic cigarettes is a safe alternative to more traditional forms of tobacco use; and

WHEREAS many electronic cigarettes and other similar devices look like traditional cigarettes and emit a vapor that has an appearance similar to cigarette smoke. The similarity in appearance of these products to combustible cigarettes, which are prohibited in publicly-owned buildings, facilities, tobacco-free parks, and vehicles, may create confusion for employees and visitors and present enforcement challenges for City and County departments, schools, businesses and others;

NOW THEREFORE be it resolved by the South Heartland District Health Department Board of Health that the Board recommends that the counties and municipalities within the health district including Adams, Clay, Nuckolls and Webster counties, as well as employers and schools within the health district, adopt a policy prohibiting the use of electronic cigarettes.

Passed and approved this 7th day of May, 2014.

Board of Health
South Heartland District Health Department

Ronald Kuehner, Board President



May 12, 2014

For Immediate Release

Contact: Michele Bever, Executive Director, SHDHD
1-877-238-7595 / michele.bever@shdhd.org

SHDHD Board of Health passes resolution on e-cigarettes

The Board of Health for South Heartland District Health Department (SHDHD) passed a resolution last week recommending policy change to prohibit the use of electronic cigarettes in public places.

“With this resolution, the Board is encouraging city and county governments in our four-county district to add electronic cigarettes to their policies that already prohibit tobacco use,” said Board President Ron Kuehner. “We also encourage others, such as schools and employers, to adopt policies that ban electronic cigarettes.”

SHDHD Executive Director Michele Bever said that the use of electronic cigarettes models the risky behavior of smoking and gives the message that such devices are safe. “The research on safety is lacking – we don’t know the long-term effects of inhaling nicotine nor do we know for sure what else is being emitted in the vapor. For example, some new reports are indicating that formaldehyde is being formed in the higher heat devices.”

According to Bever, e-cigarette use is increasing among youth nationally. She said that results from a local survey also showed that students in the South Heartland area (Adams, Clay, Nuckolls and Webster counties) are using electronic cigarettes. “Five percent of 12-14 year olds, 17% of 15-16 year olds, and 25% of 17-19 year olds indicated that they had smoked e-cigarettes in the last 30 days,” she said.

Dr. Phyllis Salyards, MD, who serves as the physician member on the Board of Health, said that she is highly concerned with the safety of children and warns parents to be aware of the dangers of liquid nicotine, a key ingredient of electronic cigarettes, as well as other toxic substances that can be used in the battery-operated vapor devices.

“Nicotine is a known neurotoxic poison and even tiny amounts ingested or absorbed through the skin can cause vomiting or seizures and can be lethal to small children,” Salyards said. “In fact, a recent report from the Centers for Disease Control and Prevention shows an alarming increase in the proportion of calls to poison centers for exposures to e-cigarettes.”

Bever said that the health department is creating a simple toolkit that can be used by organizations who are interested in revising their tobacco policies to include electronic cigarettes. These toolkits will contain sample policy language and will be available for city and county governments, schools, and others. Anyone interested in the toolkits may contact South Heartland District Health Department at 1-877-238-7595 or by e-mail: mail@shdhd.org.