

**Section IV:**

# **Model Tobacco Control Ordinances**

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The model ordinances in this section were developed based on Americans for Nonsmokers' Rights' (ANR) 20+ years of experience helping communities enact and implement local tobacco-control ordinances. The provisions and language have been adopted by literally hundreds of communities across the country and have proven themselves over the test of time and implementation. Carefully review the model ordinance(s) and determine what, if any, modifications to make based on the needs and practices of your community.

ANR strongly encourages you to contact them for assistance as you develop your draft ordinance; their staff can review drafts and provide extensive background materials. You can reach ANR at (510) 841-3032 or visit their web site at <http://www.no-smoke.org> for updated versions of these model ordinances, as well as other useful resources.

## **MODEL ORDINANCE ELIMINATING SMOKING IN WORKPLACES AND ENCLOSED PUBLIC PLACES (100% SMOKE-FREE)\***

*Revised May 14, 1999*

### **Sec. 1000. Title**

This article shall be known as the *Smoking Pollution Control Ordinance*.

### **Sec. 1001. Findings and Purpose**

The City Council [or Board of Supervisors] does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and bronchospasm.

Accordingly, the City Council [or Board of Supervisors] 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 smoke-free air, and to recognize that the need to breathe smoke-free 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:

1. "Bar" means an area which 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 such beverages. A "bar" for the purposes of this ordinance shall not include any area where full meals are served, but may include the service of appetizers and snacks.

2. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

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\* Developed by the American Nonsmokers' Rights Foundation: 2530 San Pablo Avenue, Suite J, Berkeley, California 94702, Phone (510) 841-3032 Fax (510) 841-3071.

3. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

4. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

5. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

6. "Place of Employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

7. "Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."

8. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Section 1002 (1).

9. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

10. "Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

11. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

12. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

**Sec. 1003. Application of Article to City-Owned [County-Owned] Facilities**

All enclosed facilities owned by the City [County] of \_\_\_\_\_ shall be subject to the provisions of this article.

**Sec. 1004. Prohibition of Smoking in Public Places**

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

1. Elevators.
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
3. Buses, taxicabs, and other means of public transit under the authority of the City [County] of \_\_\_\_\_, and ticket, boarding, and waiting areas of public transit depots.
4. Service lines.
5. Retail stores.
6. All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to, attorneys' offices and other offices, banks, Laundromats, hotels and motels.
7. Restaurants and restaurant bar areas.
8. Bars.
9. Public areas of aquariums, galleries, libraries, and museums when open to the public.
10. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a stage production.
11. Sports arenas and convention halls, including bowling facilities.
12. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City [County] or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City [County].
13. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
14. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

15. Polling places.

16. Bingo games.

B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

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

A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.

B. Within 90 days of the effective date of this article, each employer having an enclosed place of employment located within the City [County] shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes 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.

C. The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

**Sec. 1006. Reasonable Distance**

Smoking shall occur at a reasonable distance outside any enclosed area where smoking is prohibited to ensure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means.

**Sec. 1007. Where Smoking Not Regulated**

A. Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

1. Private residences, except when used as a child care, adult day care, or health care facility.
2. Twenty-five percent (25%) of hotel and motel rooms rented to guests.
3. Retail tobacco stores.

B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

**Sec. 1008. Posting of Signs**

A. "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) shall be clearly, sufficiently and conspicuously posted in every building or other area where smoking is prohibited by this article, by the owner, operator, manager or other person having control of such building or other area.

B. Every public place where smoking is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person having control of such area.

**Sec. 1009. Enforcement**

A. Enforcement of this article shall be implemented by the Department of Health [or City Manager], or his or her designee.

B. Notice of the provisions set forth in this article shall be given to all applicants for a business license in the City [County] of \_\_\_\_\_.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Department of Health [or City Manager].

D. The Health Department or the Fire Department shall require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager, operator, or other person having control of such establishment that all requirements of this article have been complied with.

E. Any owner, manager, operator, or employee of any establishment regulated by this article may inform persons violating this article of the appropriate provisions thereof.

F. Notwithstanding any other provision of this article, a private citizen may bring legal action to enforce this article.

**Sec. 1010. Nonretaliation**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment afforded by this article.

**Sec. 1011. Violations and Penalties**

A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.

C. Any person who violates any provision 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 of this article within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation of this article within one (1) year.

D. Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to enforce this article.

**Sec. 1012. Public Education**

The Department of Health [or City Manager] shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

**Sec. 1013. Other Applicable Laws**

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

**Sec. 1014. Severability**

If any provision, clause, sentence, or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such 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. 1015. Effective Date**

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

## **MODEL ORDINANCE ELIMINATING SMOKING IN CITY FACILITIES\***

*Revised October 15, 1998*

### **Sec. 1000. Title**

This article shall be known as the *Smoking Pollution Control Ordinance*.

### **Sec. 1001. Findings and Purpose**

The City Council does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and bronchospasm.

Accordingly, the City Council [or Board of Supervisors] finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in city [or county] facilities; and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free 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:

1. "Dining Area" means any enclosed area containing a counter or tables upon which food or snacks are served.
2. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.
3. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

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\* Developed by the American Nonsmokers' Rights Foundation: 2530 San Pablo Avenue, Suite J, Berkeley, California 94702, Phone (510) 841-3032 Fax (510) 841-3071.

4. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

**Sec. 1003. Prohibition of Smoking in Public Facilities**

A. Smoking shall be prohibited:

1. Within any structure owned by the City [or County] of \_\_\_\_\_, except private residences leased from the City [or County];
2. Within any structure leased by the City [or County] of \_\_\_\_\_, providing that this prohibition shall apply only to those areas of the structure actually being leased by the City [or County];
3. Within buses, taxicabs, and other means of public transit under the authority of the City [or County] of \_\_\_\_\_;
4. Within sports arenas and convention halls owned or leased by the City [or County] of \_\_\_\_\_;
5. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City [or County] or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City [or County]; and
6. Polling places.

B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

**Sec. 1004. Reasonable Distance**

Smoking shall occur at a reasonable distance outside any enclosed area where smoking is prohibited to ensure that tobacco smoke does not enter the area through entrances, windows ventilation systems, or any other means.

**Sec. 1005. Posting of Signs**

A. "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) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is regulated by this article, by the owner, operator, manager, or other person having control of such building or other place.

B. Every dining area within a facility owned or leased by the City [or County] of \_\_\_\_\_ shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person having control of the area.

**Sec. 1006. Enforcement**

A. Enforcement of this article shall be implemented by the Department of Health [or the City Manager].

B. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Department of Health [or the City Manager].

C. Any owner, manager, operator, or employee of any establishment regulated by this article may inform persons violating this article of the appropriate provisions thereof.

D. Notwithstanding any other provision of this article, a private citizen may bring legal action to enforce this article.

**Sec. 1007. Violations and Penalties**

A. It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.

C. Any person who violates any provision 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 of this article within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation of this article within one (1) year.

**Sec. 1008. Nonretaliation**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smoke-free environment afforded by this article.

**Sec. 1009. Other Applicable Laws**

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

**Sec. 1010. Severability**

If any provision, clause, sentence, or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such 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. 1011. Effective Date**

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

## **MODEL SALE OF TOBACCO TO MINORS ORDINANCE\***

*Revised April 29, 1996*

### **Section 1000. Title**

This ordinance shall be known as the *Sale of Tobacco to Minors Ordinance*.

### **Section 1001. Findings and Purpose**

The City Council [or Board of Supervisors] finds that youth addiction to tobacco products is a public health problem with grave health consequences. More than half of all smokers begin smoking before the age of 14, and 90% begin by the age of 19. The average age of first use of tobacco products is now 11 to 15 years of age. In recognition of the Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of minors to cigarettes and other tobacco products. Therefore, the purpose of this ordinance is to implement a strict and enforceable system to prevent the illegal sale of cigarettes and other tobacco products to minors.

### **Section 1002. Definitions**

1. "License" means a license issued by the City [or County] of \_\_\_\_\_ for the retail sale of tobacco products.
2. "Licensee" means the holder of a valid license for the retail sale of tobacco products.
3. "Minor" means any person under 18 years of age.
4. "Public Place" means any area to which the public is invited or in which the public is permitted, including, but not limited to, any right-of-way, mall or shopping center, park, playground, and any other property owned by the city, and any school district, or any park district.
5. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
6. "Self-Service Displays" means open displays of tobacco products and point-of-sale tobacco promotional products that the public has access to without the intervention of a store employee.
7. "Tobacco Product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, or any other form of tobacco or tobacco papers which may be utilized for smoking, chewing, inhalation, or other means of ingestion.

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\* Developed by the American Nonsmokers' Rights Foundation: 2530 San Pablo Avenue, Suite J, Berkeley, California 94702, Phone (510) 841-3032 Fax (510) 841-3071.

8. "Tobacco Vending Machine" means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade checks, or slugs.

9. "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until after it is purchased.

**Section 1003. Identification Required**

No retailer shall sell or permit to be sold cigarettes or other tobacco products to an individual without requesting and examining photographic identification establishing the purchaser's age as eighteen (18) years or greater.

**Section 1004. License Required**

After [specify date], it shall be unlawful for a retailer to sell cigarettes or other tobacco products unless that retailer holds and maintains a valid license from the City [or County] for each location in which tobacco products are sold. All such licenses shall be renewed annually.

**Section 1005. Fee**

The fee for the license shall be established by the City Manager [or Department of Health], and shall be sufficient to fund the administration, implementation, and enforcement of this ordinance. The fee for renewing tobacco licenses shall be determined by the City Manager [or Department of Health], and shall be sufficient to fund the administration, implementation, and enforcement of this ordinance.

**Section 1006. Non-transferability**

A tobacco retail license is non-transferable, except a new license will be issued to a tobacco retailer who changes location.

**Section 1007. Vending Machines**

After [specify date], tobacco vending machines or any other devices for the sale or distribution of tobacco products are prohibited.

**Section 1008. Out-of-Package Sales Prohibited**

It is unlawful to sell cigarettes out of the manufacturer's package with required health warnings. It is unlawful to sell cigarettes in packages of fewer than twenty (20) cigarettes per package.

**Section 1009. Tobacco Samples Prohibited**

No person shall knowingly distribute or furnish without charge or at nominal charge, or cause to be furnished or distributed without charge or at nominal charge, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, in any public place or at any event open to the public, except in retail tobacco stores.

**Section 1010. Vendor-Assisted Sales**

It shall be unlawful for any person, business, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service displays or any other means other than vendor-assisted sales.

**Section 1011. Revocation of License**

A. Any license holder who violates any provision of this ordinance shall have their license suspended after notice and opportunity to be heard as follows:

1. In the case of a first violation, the licensee shall be fined two hundred dollars (\$200) and shall be notified in writing of penalties levied for further violations.

2. In the case of a second violation in a two (2) year period, the licensee shall be fined five hundred dollars (\$500) and the license shall be suspended for not less than thirty (30) consecutive business days nor more than three (3) months. Tobacco retailers must remove all tobacco merchandise from all areas accessible to the public while the license is suspended.

3. In the case of three or more violations within a two (2) year period, the licensee shall be fined one thousand dollars (\$1,000) and the license shall be revoked not less than six (6) months nor more than eighteen (18) months from the date of revocation. Tobacco retailers must remove all tobacco merchandise from all areas accessible to the public while the license is suspended.

B. The City Manager [or City Attorney, or Health Department] shall initiate enforcement against license holders who violate any provision of this ordinance, and shall conduct hearings upon the license-holder's request. Rulings made by the City Manager [or City Attorney, or Health Department] regarding violations of this ordinance, after adequate hearing, shall be final.

**Section 1012. Enforcement**

Violations of Sections 1004, 1007, and 1009 of this ordinance are subject to a fine of \$1,000 per day for each violation. The City Attorney, City Manager [or Department of Health], and the Police Department shall have the authority to enforce this ordinance.

**Section 1013. Nonretaliation**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reported violations of any provisions of this ordinance.

**Section 1014. Severability**

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

**Section 1015. Effective Date**

This chapter shall take effect on [specify date].

## **MODEL ORDINANCE REGULATING TOBACCO ADVERTISING (WITH VARIATIONS)**

*Revised July 1998*

This model ordinance was produced by the Technical Assistance Legal Center (TALC)\*, a project of the Public Health Institute, to provide guidance to California cities and counties wishing to regulate the advertising of tobacco products.<sup>1</sup> Because the ordinance was drafted based on California law, communities in other states should seek legal advice prior to adoption.

Everyone, including the tobacco industry, agrees that children should not use tobacco products. This model ordinance is based on the assumption that a local movement has decided that it wishes to adopt advertising (and perhaps other) controls as a child-protection measure. Its focus is on the regulation of outdoor advertising placed on billboards, signs, building facades, store windows, and other locations likely to be seen regularly by children.<sup>2</sup>

This version of the ordinance contains only the suggested ordinance text, with alternate provisions offered at various points. Italicized text requires you to make a choice or insert information. Another version of the ordinance is available with extensive annotation for each provision of the model ordinance. We strongly recommend that you review the annotated version of the ordinance prior to drafting your own local ordinance. To receive a copy of the annotated version, please contact TALC at (510) 540-8585.

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\*Technical Assistance Legal Center, Public Health Institute, 2001 Addison St., 2nd Floor, Berkeley, CA 94704-1103, Phone: (510) 540-8585, Fax: (510) 649-7894, Email: talc@publichealth.org

The Technical Assistance Legal Center is a project of the Public Health Institute.

This ordinance was produced with funds received from the Tobacco Tax Health Protection Act of 1988–Proposition 99–under grant #94-20982 with the California Department of Health Services, Tobacco Control Section.

<sup>1</sup> This ordinance originally appeared as part of a larger publication: *Regulating Tobacco Advertising: A Guide for Cities and Counties*. For copies of this publication, or questions about the ordinance please contact TALC at (510) 540-8585 or by email: talc@publichealth.org

<sup>2</sup> This ordinance does not address the regulation of alcohol advertising. A model ordinance regulating alcohol is available from the Marin Institute for the Prevention of Alcohol and Other Drug Problems in San Rafael, CA (415) 456-5692.

## **MODEL ORDINANCE**

Ordinance Number \_\_\_\_\_

### **An Ordinance Restricting the Advertising and Promotion of Tobacco Products to Minors**

The City Council of the City of \_\_\_\_\_/The Board of Supervisors of the County of \_\_\_\_\_ does ordain as follows:

Section \_\_\_\_\_ of the \_\_\_\_\_ Code is amended by adding \_\_\_\_\_ to read as follows:

#### **RESTRICTING THE ADVERTISING AND PROMOTION OF TOBACCO PRODUCTS TO MINORS**

##### **1. Purpose**

The purpose of this ordinance is to promote the welfare of minors by discouraging the commercial exploitation of potential underage tobacco users and by discouraging actions that promote the unlawful sale of tobacco products to minors as well as the unlawful purchase or possession of tobacco products by minors.

##### **2. Findings**

[Insert findings here. A local ordinance based on “child protection “ goals should contain findings about the problem of youth smoking; the desirability of reducing youth smoking; the scope of tobacco advertising; the connection between advertising and youth smoking; and the likelihood that restricting the advertising of tobacco products will help contribute to the reduction of youth smoking. It will probably also help to have findings that relate to why the various exemptions are allowed—both those that tailor the restrictions to places where youths congregate and any other exemptions that are granted. Extensive suggested findings can be found in the annotated version of the model ordinance.]

##### **3. Definitions**

“Advertising” means printed matter that calls the public's attention to things for sale.

“Advertising display” means any sign, billboard, signboard, poster, placard, pennant, banner, graphic display, mural, or similar device that is used to advertise or promote a product.

“Area which minors frequent” means any public or private kindergarten, elementary, middle, junior high, or high school; licensed child-care facility or preschool, but not including family day-care; playground; youth center; recreational facility; arcade; park; or library.

“Person” means any individual, firm, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity.

“Promotion” means a display of any logo, brand name, character, graphic, artwork, colors, scenes, or designs that are a recognized image of a particular product brand that calls the public's attention to the product brand.

“Publicly visible location” means any outdoor location that is visible from any street, sidewalk, or other public thoroughfare, or any location inside a commercial establishment that is in or adjacent to a window or doorway and is visible from any street, sidewalk, or other public thoroughfare.

“Tobacco product” means any substance containing any tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco.

#### **4. Restrictions on Tobacco Advertising**

(a) Except as otherwise provided in this [chapter/section], no person shall place or maintain, or cause or allow to be placed or maintained, any advertising or promotion of tobacco products on any advertising display in a publicly visible location.

(b) No part of this ordinance shall be construed to permit any advertising display that is otherwise restricted or prohibited by law. Nor shall it be construed to permit an otherwise restricted or prohibited advertising display because it is combined with a permitted public service message.

(c) No part of this ordinance shall be construed to regulate messages that do not propose a commercial transaction.

#### **5. Exceptions**

This ordinance shall not apply to any advertising display:

(a) that is located in a nonresidential zone, provided it is more than \_\_\_\_\_ [insert number] feet in any direction (measured in a straight line from parcel boundary to parcel boundary) from any area which minors frequent; or

*[OPTIONAL EXCEPTIONS: The following italicized exceptions are optional. Exceptions (d) and (e) require you to choose which approach to take.]*

*(b) that is located within 660 feet from the edge of the right-of-way of, and the copy on which is visible from, an interstate highway; or*

*(c) that exists at the time of the introduction of this ordinance, contains the name or slogan of a business that sells tobacco products, and is on the premises of the business; or*

*(d)(1) that contains a generic description of tobacco products; or*

*(d)(2) that is located on the premises of a commercial establishment if the advertising display provides notice that the establishment sells tobacco products, as long as the display does not promote any brand of tobacco product or otherwise constitute a “promotion” as defined by this [chapter/section]; or*

*(d)(3) that is no larger than six square feet and contains only black text, in any*

language, not exceeding eight inches in height on a white background stating "Tobacco Products Sold Here" located within ten feet of an entrance to the premises where tobacco products are sold or offered for sale; or

(d)(4) that contains only black text, in any language, on a white background and states a tobacco product brand name, or a tobacco product brand name and its price, or indicates that tobacco products are sold on the premises, and is located within ten feet of an entrance to the premises where tobacco products are sold or offered for sale, provided that any such premises shall not have more than one such sign; or

(e)(1) that is located on a commercial vehicle used for transporting tobacco products, and/or

(e)(2) that is located on a taxicab, and/or

(e)(3) that is located on a municipal transit vehicle, or

(e)(4) that is located on any vehicle, except a vehicle that is used primarily to advertise or promote tobacco products; or

(f) that is located on tobacco product packaging; or

(g) that is located at (on, in) a (designated) sports facility; or

(h) that is worn as clothing by an individual.

## **6. Enforcement; Penalties; Civil Actions**

(a) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall constitute a violation. After notification, it shall be a separate offense for each day such violation shall continue.

[Choose one of four options provided in section (b), below]

(b) Violations of this ordinance shall be prosecuted

- (1) as infractions, pursuant to section \_\_\_\_\_ of this code; or
- (2) as misdemeanors, pursuant to section \_\_\_\_\_ of this code; or
- (3) as infractions, pursuant to section \_\_\_\_\_ of this code, for the first and second violations in a twelve (12) month period, and thereafter as misdemeanors, pursuant to section \_\_\_\_\_ of this code; or
- (4) as misdemeanors, pursuant to section \_\_\_\_\_ of this code [as long as there is a "wobbler" provision in the existing code].

(c) This ordinance shall be administered and enforced by the \_\_\_\_\_.

(d) Violations of this ordinance are hereby declared to be public nuisances.

(e) In addition to other remedies provided by this [chapter/section], any violation of this ordinance may be enforced by a civil action brought by the [City Attorney/County Counsel], including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this [chapter/section] are cumulative and in addition to any other remedies available at law or in equity.

(f) An action for injunction may be brought in a court of competent jurisdiction by any aggrieved person, or any person or entity that will fairly and adequately represent the interests of the protected class.

### **7. Effective Date and Legal Nonconforming Uses**

(a) The effective date of this ordinance shall be thirty (30) days from the date of its enactment.

(b) On the effective date of this ordinance, advertising displays that were in place at the time of the introduction of this ordinance may remain in place for no more than sixty (60) additional days, unless an extension of time is granted pursuant to this [chapter/section].

(c) Owners of advertising displays in place on \_\_\_\_\_ [the date the ordinance adopting this chapter/section was introduced] may, by \_\_\_\_\_ [the sixtieth day after the effective date of the ordinance adopting this chapter/section], apply for an extension of time for compliance and provide written documentation to the [Planning Director/Zoning Administrator] that demonstrates that the owner had a right or an obligation under a written lease or contract executed prior to \_\_\_\_\_ [the date the ordinance adopting this chapter/section was introduced] to maintain an advertising display in violation of this [chapter/section] for a period extending beyond \_\_\_\_\_ [the sixtieth day after the effective date of the ordinance adopting this chapter/section]. On timely receipt of sufficient documentation, the [Planning Director/Zoning Administrator] shall grant an extension of time to remove the advertising display for the period required or authorized by the lease or contract or for a period of one year, whichever is shorter. Renewal rights present in the lease or contract shall not affect the determination of the period required or authorized by the lease or contract.

(d) Owners of advertising displays in place on \_\_\_\_\_ [the date the ordinance adopting this chapter/section was introduced] may, by \_\_\_\_\_ [the sixtieth day after the effective date of the ordinance adopting this chapter/section], apply for an extension of time for compliance and provide written documentation to the [Planning Commission/Zoning Administrator] that demonstrates that timely compliance would cause unreasonable financial hardship and that granting the extension of time would not confer a special privilege on the owner. On timely receipt of sufficient documentation, the [Planning Commission/Zoning Administrator] shall conduct a hearing pursuant to section \_\_\_\_\_ of this code [the hearing provision of the zoning ordinance applicable to a variance or conditional use permit] and determine whether, and on what conditions, the extension of time ought to be granted.

(e) Whether or not an extension of time to remove a preexisting advertising display is granted pursuant to subdivision 7(c) or subdivision 7(d) of this [section/chapter], advertising displays that are prohibited by this ordinance shall not be legal nonconforming uses.

**8. Severability**

(a) If any provision of this ordinance or its application to any person or circumstance is declared invalid or unenforceable by a court of competent jurisdiction, this ordinance, to the extent it can be given effect, or the application of this ordinance to persons other than the person to whom it is held invalid, shall not be affected thereby, and to this end, the provisions of this ordinance are severable.