

Why Are Tobacco-Free Outdoor Areas Important?



Making your outdoor areas tobacco-free keeps them beautiful and free of pollution, protects children and animals from ingesting toxic cigarette butts, prevents secondhand smoke exposure, and maintains positive role-modeling for youth.

Preventing Litter and Pollution

Discarded cigarette butts constitute the majority of litter on beaches, parks, playgrounds, and sidewalks. The need to substantially reduce litter (and associated clean-up costs) is a major reason cited by supporters of tobacco-free outdoor area policies.¹

Cigarette filters are not 100 percent biodegradable. As filters break down, they leach toxic chemicals into the ground that can seep into waterways, polluting water sources and poisoning wildlife.²

Keeping Children Safe

As important as it is to prevent secondhand smoke exposure for everyone, the need to protect children from secondhand smoke is even more critical. Children exposed to even small amounts of secondhand smoke are at a heightened risk for adverse health effects.³

Discarded cigarette butts contain concentrated levels of carcinogens as well as nicotine which can be poisonous when ingested by children.⁴

¹ Elizabeth G. Klein et al., *Minnesota Tobacco-Free Park Policies: Attitudes of the General Public and Park Policies*, 9 NICOTINE & TOBACCO RES. S49, S49 (2007).

² Thomas E. Novotny et al., *Cigarette Butts and the Case for an Environmental Policy on Hazardous Cigarette Waste*, 6 INT'L J. OF ENVTL. RES. & PUB. HEALTH 1, 5 (2009).

³ Katriina Kallio et al., *Arterial Intima-Media Thickness, Endothelial Function, and Apolipoproteins in Adolescents Frequently Exposed to Tobacco Smoke*, 3 TOBACCO CONTROL 196, 200 (2010).

⁴ Centers for Disease Control & Prevention, *Ingestion of Cigarette Butts by Children – Rhode Island, January 1994–July 1996*, MORBIDITY & MORTALITY WKLY REP., Feb. 14, 1997, at 125.

Secondhand Smoke Outdoors

Many people erroneously believe that it is not possible to be exposed to dangerous concentrations of secondhand smoke in outdoor areas. The truth is that there is no safe level of secondhand smoke exposure,⁵ and there is growing evidence that secondhand smoke outdoors can reach concentrations found in indoor areas.⁶

Cigarette smoke contains over 4,000 identified chemicals, 250 of which are known to be toxic⁷ and over 50 that are known or reasonably anticipated human carcinogens.⁸ Exposure to secondhand smoke causes a wide range of serious and life-threatening health issues, including heart disease,⁹ cancer,¹⁰ asthma,¹¹ and other respiratory problems.¹²

Positive Role Modeling

Prohibiting tobacco use in outdoor places frequented by the public reduces the perception by young children that tobacco use is a common, acceptable, and desirable adult behavior.¹³

Public Support

At least 170 municipalities in the state of New York have adopted a tobacco-free outdoor areas policy or ordinance. A survey conducted for the New York State Department of Health showed that public support for prohibiting smoking in many outdoor areas is even stronger than support was in 2003 for prohibiting smoking in public indoor places, when the state's Clean Indoor Air Act was enacted.¹⁴

⁵ CENTERS FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVICES, THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL 65 (2006).

⁶ JAMES REPACE, MEASUREMENTS OF OUTDOOR AIR POLLUTION FROM SECOND-HAND SMOKE ON THE UMBC CAMPUS 2 (2005), available at <http://www.repace.com/pdf/outdoorair.pdf>; James Repace, *Banning Outdoor Smoking Is Scientifically Justifiable*, 9 TOBACCO CONTROL 98, 98 (2000).

⁷ NAT'L TOXICOLOGY PROGRAM, U.S. DEP'T OF HEALTH & HUMAN SERVICES, REPORT ON CARCINOGENS, ELEVENTH EDITION 255 (2005).

⁸ *Id.* at 256.

⁹ CENTERS FOR DISEASE CONTROL & PREVENTION, *supra* note 5, at 509.

¹⁰ *Id.* at 423.

¹¹ *Id.* at 555.

¹² *Id.*

¹³ ASS'N FOR NONSMOKERS-MINN., PLAYING TOBACCO FREE: MAKING YOUR COMMUNITIES OUTDOOR RECREATION FACILITIES TOBACCO FREE 2 (2010).

¹⁴ RTI INT'L, FIFTH ANNUAL INDEPENDENT EVALUATION OF NEW YORK'S TOBACCO CONTROL PROGRAM 17 (2009).

Frequently Asked Questions

Is there a state law in New York regarding tobacco use in parks and recreational areas?

No, there is currently no state law that regulates tobacco use in outdoor areas, but state law explicitly provides that local communities can “adopt and enforce additional local law[s], ordinances, or regulations [relating to smoking] which comply with at least the minimum applicable standards set forth” by the state law.¹⁵

Are local governments able to enact policies restricting tobacco use outdoors?

Yes, local communities are free to enact policies, resolutions, or laws relating to the “protection, order, conduct, safety, health and well-being of persons or property therein.”¹⁸ There is no legally protected right to use tobacco whenever or wherever one might wish to do so.¹⁹

Have tobacco-free outdoor area policies enacted elsewhere been effective?

Yes! According to a 2004 University of Minnesota survey of Minnesota park directors in cities with such policies, 88% of park directors reported no change in park usage, 71% reported less smoking in parks, and 58% reported cleaner park areas.¹⁶

California’s Clean Air Project (CCAP), which tracks local policies in California, reports that more than 90 municipalities have adopted smoke-free parks policies, and it is not aware of any serious issues with compliance. 70% of the park directors interviewed by CCAP reported that their tobacco-free parks policies have been well accepted by their communities.¹⁷

Do tobacco-free outdoor area policies bar tobacco users from parks and recreation areas?

No, tobacco-free policies do not restrict any person from using parks and recreation areas or attending events there. Rather, they only restrict the use of tobacco while there. Other behaviors (which may be legal in private settings) are already prohibited in such areas, including alcohol use, gambling, and public indecency.

How many municipalities in New York have adopted tobacco-free outdoor area policies?

Over 220 New York municipalities have adopted tobacco-free outdoor area policies. We have received documentation of over 170 policies and listed them on following pages.

¹⁵ N.Y. PUB. HEALTH LAW § 1399-r (McKinney 2010).

¹⁶ Elizabeth G. Klein, *Tobacco Free Parks and Recreation Study*, <http://www.tobaccofreeparks.org/research.html> (last visited Nov. 1, 2010).

¹⁷ California’s Clean Air Project, *Compilation of Information and Report of Community Smoke-Free Parks Survey*

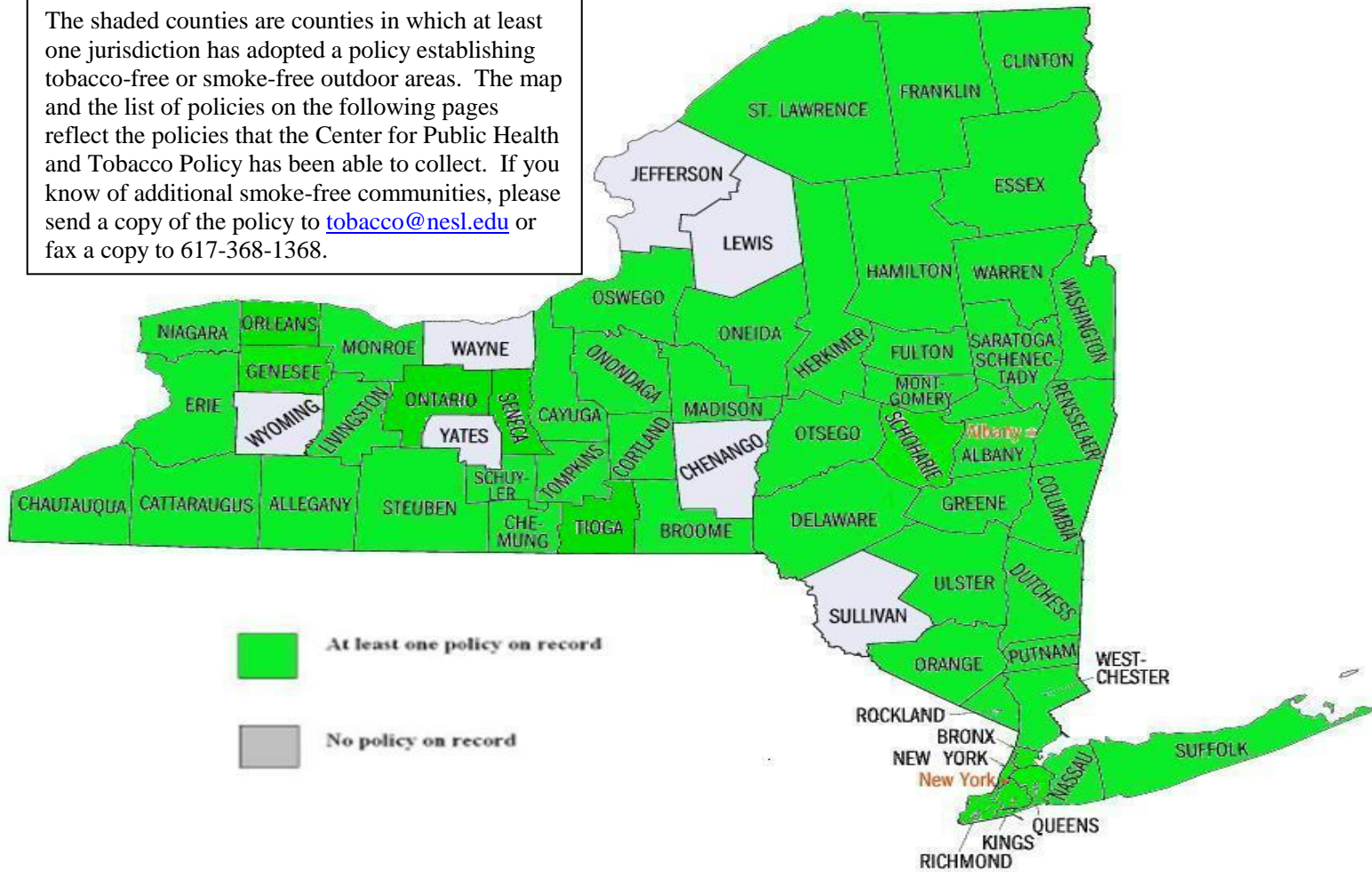
Conducted in 10 California Cities with Smoke-Free Parks Policies (May 2008) (on file with CPHTP).

¹⁸ N.Y. CONST. art. IX, § 2.

¹⁹ Samantha K. Graff, Tobacco Control Legal Consortium, *There is No Constitutional Right to Smoke: 2008* (2d ed., 2008).

New York State Tobacco-Free Outdoor Area Policies (last updated 11/7/11)

The shaded counties are counties in which at least one jurisdiction has adopted a policy establishing tobacco-free or smoke-free outdoor areas. The map and the list of policies on the following pages reflect the policies that the Center for Public Health and Tobacco Policy has been able to collect. If you know of additional smoke-free communities, please send a copy of the policy to tobacco@nesl.edu or fax a copy to 617-368-1368.



<p>Albany County:</p> <ul style="list-style-type: none"> -Town of Bethlehem (Tobacco-free parks, pool, tennis and basketball courts) -City of Cohoes (Tobacco-free areas of parks where children are present) -Village of Green Island (Smoke-free public areas of parks/playgrounds) -Village of Voorheesville (Smoke-free parks) -City of Watervliet (Tobacco-free parks, playing fields, recreational facilities) <p>Allegany County:</p> <ul style="list-style-type: none"> -Town of Almond (Tobacco-free park and playground) -Town of Genesee (Tobacco-free park and playground) -Village of Wellsville (Tobacco-free playground) <p>Broome County:</p> <ul style="list-style-type: none"> -City of Binghamton (Smoke-free parks) -Broome County (Tobacco-free play areas, athletic fields, and spectator areas of parks) -Town of Maine (Tobacco-free parks) <p>Cattaraugus County:</p> <ul style="list-style-type: none"> -Town of Carrollton (Tobacco-free playgrounds) -Town of East Otto (Tobacco-free playgrounds) -Village of Gowanda (Tobacco-free parks, playgrounds) -Town of Machias (Tobacco-free playgrounds) -Town of Napoli (Tobacco-free playgrounds) -City of Olean (Tobacco-free playgrounds) -Town of Yorkshire (Tobacco-free playgrounds) <p>Cayuga County:</p> <ul style="list-style-type: none"> -Village of Weedsport (Tobacco-free parks) 	<p>Chautauqua County:</p> <ul style="list-style-type: none"> -Village of Brocton (Tobacco-free park, playground) -Village of Cassadaga (Tobacco-free park, playground, beach) -Town of Carroll (Tobacco-free playgrounds) -City of Dunkirk (Tobacco-free parks, playgrounds) -Town of Ellery (Tobacco-free park, playground) -Town of Ellicott (Tobacco-free park) -Town of Falconer (Tobacco-free park, playground) -Village of Forestville (Tobacco-free park, playground) -Town of Gerry (Tobacco-free playgrounds) -Jamestown (Tobacco-free park) -Village of Mayville (Tobacco-free playground) -Village of Panama (Tobacco-free park, playground) -Town of Poland (Tobacco-free park, playground) -Town of Pomfret (Tobacco-free parks, playgrounds) -Town of Villenova (Tobacco-free parks, playgrounds) -Village of Westfield (Tobacco-free playgrounds) <p>Chemung County:</p> <ul style="list-style-type: none"> -Chemung County (Smoke-free parks, except designated areas) -City of Elmira (Smoke-free entryways) -Village of Elmira Heights (Tobacco-free parks, playing field) -Village of Horseheads (Smoke-free municipal facilities, parks, ball fields) <p>Clinton County:</p> <ul style="list-style-type: none"> -Town of Beekmantown (Smoke-free parks and playgrounds) -Town of Plattsburgh (Tobacco-free recreational facilities, parks, beaches) -City of Plattsburgh (Tobacco-free parks, recreation trails, beaches) -Village of Rouses Point (Smoke-free village facilities and surrounding areas with children present) 	<p>Columbia County:</p> <ul style="list-style-type: none"> -Town of Ancram (Tobacco-free playgrounds, playing fields, pools, beaches) -Town of Austerlitz (Tobacco-free park areas where children play) -Town of Chatham (Tobacco-free parks) -Town of Claverack (Tobacco-free playgrounds, ball fields, beaches) -Town of Copake (Tobacco-free park) -Town of Germantown (Tobacco-free areas of parks where children play, playgrounds, ball fields, beaches) -Town of Ghent (Tobacco-free Ghent and West Ghent Recreation Centers) -City of Hudson (Smoke-free park) -Town of Kinderhook (Tobacco-free parks and playgrounds) -Town of Livingston (Tobacco-free park areas where children play, playgrounds, ball fields, beaches) -Town of Stockport (Tobacco-free playgrounds, ball fields, beaches) <p>Cortland County:</p> <ul style="list-style-type: none"> -Town of Cincinnatus (Tobacco-free parks, facilities, open space) -Cortland County (Smoke-free grounds of County-owned buildings) -City of Cortland (Tobacco-free city-owned parks, open space and school district properties) -Cortlandville (Tobacco-free parks, facilities, open space) -Town of Harford (Tobacco-free recreational facilities) -Village of McGraw (Tobacco-free parks, facilities, open space) <p>Delaware County:</p> <ul style="list-style-type: none"> -Village of Delhi (Tobacco-free parks, playgrounds) -Village of Franklin (Tobacco-free parks) -Town of Poughkeepsie (Tobacco-free parks and playgrounds) -Village of Walton (Tobacco-free parks) 	<p>Dutchess County:</p> <ul style="list-style-type: none"> -Town of Hyde Park (Tobacco-free areas of parks used by children) -Town of Pawling (Tobacco-free parks, playgrounds and town-owned property) -City of Poughkeepsie (Smoke-free parks) -Town of Wappinger (Tobacco-free parks and playgrounds) -Village of Wappingers Falls (Tobacco-free Village parks, playgrounds and recreational areas) <p>Erie County:</p> <ul style="list-style-type: none"> -Town of Alden (Smoke-free parks and recreation areas) -Village of Alden (Smoke-free park and recreation areas) -Town of Clarence (Smoke-free sports fields) -Town of Colden (Smoke-free sports fields) -Village of East Aurora (Smoke-free bldgs., pavilions, parks, playgrounds and vehicles) -Village of Hamburg (Smoke-free parks and playgrounds) -City of Lackawanna (Smoke-free parks, recreation areas) -Town of Lancaster (Smoke-free parks and recreation areas) -Village of Kenmore (Tobacco-free swimming pool areas, playgrounds, ball diamonds and playing fields) -Town of Orchard Park (Tobacco-free parks, beaches, recreation areas) -Village of Springville (Tobacco-free parks) -Town of Tonawanda (Tobacco-free swimming pool areas, playgrounds, ball diamonds, playing fields) -Village of Williamsville (Smoke-free within 100 feet of Village playgrounds, playing fields, pools, park events)
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<p>Essex County:</p> <ul style="list-style-type: none"> -Town of Jay (Smoke-free parks) -Town of Lewis (Tobacco-free parks and recreation facilities) -Town of Moriah (Tobacco-free beach swimming area at Bulwagga Bay Campsite) -Town of North Elba (Tobacco-free parks and beaches) -Town of Ticonderoga (Tobacco-free Town Beach) <p>Franklin County:</p> <ul style="list-style-type: none"> -Town of Brighton (Tobacco-free Town Park) -Town of Chateaugay (Tobacco-free Recreation Park) -Town of Constable (Tobacco-free Constable Recreation Park) -Village of Saranac Lake (Smoke-free parks, beach) -Town of Tupper Lake (Tobacco-free beach and playground) <p>Fulton County:</p> <ul style="list-style-type: none"> -Village of Broadalbin (Smoke-free recreation fields) -Town of Ehrhatah (Tobacco-free recreation center grounds) -City of Gloversville (Tobacco-free parks, playgrounds, athletic fields, hiking and biking trails) <p>Genesee County:</p> <ul style="list-style-type: none"> -City of Batavia (Tobacco-free city-owned and operated grounds, cars, recreational facilities, parks, playgrounds and athletic areas) -Town of LeRoy (Smoke-free Bunnell Park) -Town of Oakfield (Tobacco-free outdoor recreational facility, inc. Little League Park) <p>Greene County:</p> <ul style="list-style-type: none"> -Village of Athens (Tobacco-free playground, dog park and little league field (at certain times)) -Town of Catskill (Tobacco-free park areas where children play) 	<ul style="list-style-type: none"> -Village of Coxsackie (Smoke-free ball fields and playgrounds) -Town of Greenville (Tobacco-free playgrounds) -Village of Hunter (Tobacco-free playground, ball fields and beaches at Dolan’s Lake Park) -Village of Tannersville (Tobacco-free playgrounds, ball fields, beaches) <p>Hamilton County:</p> <ul style="list-style-type: none"> -Village of Speculator (Tobacco-free playgrounds) <p>Herkimer County:</p> <ul style="list-style-type: none"> -Village of Frankfort (Tobacco-free playgrounds, park) -Village of Herkimer (Smoke-free parks and playgrounds) <p>Livingston County:</p> <ul style="list-style-type: none"> -Livingston County (Smoke-free county-owned or leased property) <p>Madison County:</p> <ul style="list-style-type: none"> -Village of Cazenovia (Tobacco-free parks and facilities) -Village of Chittenango (Tobacco-free village-owned park land, facilities, open space) -Town of Madison (Smoke-free Lake Park beach and pavilions) <p>Monroe County:</p> <ul style="list-style-type: none"> -Village of Scottsville (Smoke-free playground, playing field, pavilion) <p>Montgomery County:</p> <ul style="list-style-type: none"> -Village of Fonda (Tobacco-free parks, playgrounds, athletic fields, trails) -Village of Fultonville (Tobacco-free parks, playgrounds, athletic fields, trails) -Village of St. Johnsville (Tobacco-free parks, playgrounds, athletic fields, trails, little league games) 	<p>Nassau County:</p> <ul style="list-style-type: none"> -Village of Farmingdale (Smoke-free entryways at Village Hall and Fire Dept.) -City of Glen Cove (Tobacco-free playgrounds and Danis Park) -Village of Great Neck (Smoke-free park, 50 feet from entryways of village buildings) -Town of Hempstead (Smoke-free parks) -Village of Hempstead (Smoke-free parks) -Oyster Bay (Smoke-free beaches) -Village of Valley Stream (Smoke-free park) -Village of Westbury (Smoke-free parks, village property) <p>New York City:</p> <ul style="list-style-type: none"> -New York City (Smoke-free parks, playgrounds, pedestrian plazas, pools, boardwalks and beaches) <p>Niagara County:</p> <ul style="list-style-type: none"> -Town of Royalton (Smoke-free parks, playgrounds) -Village of Wilson (Smoke-free parks) <p>Oneida County:</p> <ul style="list-style-type: none"> -Village of Barneveld (Tobacco-free park) -Town of Kirkland (Smoke-free town-owned public spaces) -Oneida County (Smoke-free county property) -Village of Oriskany (Tobacco-free areas of parks near children) -Village of Vernon (Tobacco free parks and open space) <p>Onondaga County:</p> <ul style="list-style-type: none"> -Baldwinsville (Tobacco-free park, playground, little league parks) -Town of Clay (Tobacco-free parks) -Village of East Syracuse (Tobacco-free pool, ball field) 	<ul style="list-style-type: none"> -Village of Elbridge (Tobacco-free village property, parks, playgrounds) -Village of Fayetteville (Tobacco-free parks, playgrounds, little league fields) -Town of Geddes (Smoke-free parks) -Village of Jordan (Tobacco-free park, playground) -Town of Lafayette (Tobacco-free parks) -Village of Liverpool (Tobacco-free parks with playgrounds) -Village of Minoa (Tobacco-free playground, playing fields) -Village of North Syracuse (Tobacco-free parks, playgrounds) -Town of Onondaga (Tobacco-free parks, playgrounds) -Town of Salina (Tobacco-free parks) -Village of Skaneateles (Tobacco-free parks) -Town of Spafford (Tobacco-free park, playground) -Town of Van Buren (Tobacco-free playground, pool) <p>Ontario County:</p> <ul style="list-style-type: none"> -County of Ontario (Tobacco-free County property and playgrounds) <p>Orange County:</p> <ul style="list-style-type: none"> -City of Port Jervis (Tobacco-free areas of parks and beach near children) -City of Middletown (Smoke-free parks, playgrounds and facilities) <p>Orleans County:</p> <ul style="list-style-type: none"> -Village of Albion (Tobacco-free parks, beaches and recreation areas) -Town of Carlton (Tobacco-free parks, playgrounds, playing fields, beaches and recreation areas) <p>Oswego County:</p> <ul style="list-style-type: none"> -Village of Hannibal (Tobacco-free grounds of Municipal Bldg) -City of Syracuse (Tobacco-free parks, playgrounds, community centers, pools, sports fields)
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<p>Otsego County:</p> <ul style="list-style-type: none"> -Town of Oneonta (Tobacco-free parks, playgrounds, pool area) -Village of Unadilla (Tobacco-free parks, playgrounds, open space and school properties) <p>Putnam County:</p> <ul style="list-style-type: none"> -Town of Carmel (Smoke-free parks, facilities, beaches) -Town of Patterson (Smoke-free Veteran’s Memorial Park beach) -Town of Kent (Smoke-free beaches at Park District No. 1) -Putnam County (Smoke-free entryways, public beaches, open fields) <p>Rockland County:</p> <ul style="list-style-type: none"> -Town of Ramapo (Smoke-free entryways) <p>Rensselaer County:</p> <ul style="list-style-type: none"> -Town of East Greenbush (Smoke-free areas of parks with children) -Village of Nassau (Tobacco-free parks, entryways of municipal buildings) -Town of Sand Lake (Smoke-free parks and beach) <p>Saratoga County:</p> <ul style="list-style-type: none"> -Town of Greenfield (Tobacco-free entryways, parks, recreation fields) -Town of Moreau (Tobacco-free recreation areas and beach) <p>Schenectady County:</p> <ul style="list-style-type: none"> -Town of Glenville (Smoke-free parks) -Town of Niskayuna (Smoke-free parks) -Town of Rotterdam (Tobacco-free areas of parks with children) -City of Schenectady (Smoke-free park pavilions, fields, playgrounds) 	<p>Schoharie County:</p> <ul style="list-style-type: none"> -Village of Esperance (Tobacco-free playground and park facilities) -Richmondville (Tobacco-free little league games) <p>Schuyler County:</p> <ul style="list-style-type: none"> -Schuyler County (Smoke-free entryways for county-owned buildings) <p>St. Lawrence County:</p> <ul style="list-style-type: none"> -Village of Canton (Tobacco-free beach, playground, athletic field) -Cranberry Lake (Smoke-free beach) -Town of Fowler (Tobacco-free beach, playground, picnic area) -Village of Norwood (Smoke-free village property, including parks and playgrounds, excluding streets and sidewalks) -Village of Potsdam (Smoke-free park, beach) <p>Seneca County:</p> <ul style="list-style-type: none"> -County of Seneca (Smoke-free real property) <p>Steuben County:</p> <ul style="list-style-type: none"> -City of Hornell (Tobacco-free parks) <p>Suffolk County:</p> <ul style="list-style-type: none"> -Town of Babylon (Smoke-free entryways for all town-owned buildings) -Town of Brookhaven (Smoke-free within 50 ft. of Town buildings) -Village of East Hampton (Smoke-free playground and Main Beach Pavilion) -Town of Huntington (Smoke-free playgrounds) -City of Mount Vernon (Smoke-free playgrounds) -Village of Port Jefferson (Smoke-free parks) 	<ul style="list-style-type: none"> -Village of Southampton (Smoke-free parks, grounds of Village buildings and facilities) -Suffolk County (Smoke-free entryways for all county –owned facilities and buildings) <p>Tioga County:</p> <ul style="list-style-type: none"> -Town of Tioga (Smoke-free playgrounds and athletic fields in Ransom Park) <p>Tompkins County:</p> <ul style="list-style-type: none"> -City of Ithaca (Smoke-free public areas) <p>Ulster County:</p> <ul style="list-style-type: none"> -Village of Ellenville (Smoke-free parks, playgrounds) -Town of Esopus (Tobacco-free parks, playgrounds and sports fields) -Town of Gardiner (Smoke-free park) -City of Kingston (Tobacco-free parks and municipal facilities) -Town of Lloyd (Smoke-free parks, recreation areas, outdoor public areas) -Town of Marbletown (Tobacco-free beach, playground, pavilion) -Town of Marlborough (Tobacco-free parks) -Town of New Paltz (Tobacco free parks, playgrounds, recreational facilities) -Town of Olive (Smoke-free pavilions, playgrounds, athletic fields) -Town of Rochester (Tobacco-free park) -Town of Rosendale (Smoke-free playground, town hall, 50 feet from youth center) -Town of Saugerties (Smoke-free parks and recreational areas) -Village of Saugerties (Tobacco-free Lions Club recreational area, beach, playground at Seamon Park) -Town of Shandaken (Tobacco-free parks) -Town of Shawangunk (Tobacco-free recreation areas, parks, outdoor public areas owned by Town) 	<ul style="list-style-type: none"> -Ulster County (Smoke-free city-owned property) -Town of Wawarsing (Tobacco-free parks) <p>Warren County:</p> <ul style="list-style-type: none"> -City of Glens Falls (Tobacco-free recreational facilities, parks, playgrounds, beaches and pools) -Village of Lake George (Smoke-free parks, beaches, recreational facilities) -Town of Queensbury (Smoke-free town property, including parks) <p>Washington County:</p> <ul style="list-style-type: none"> -Village of Fort Edward (Tobacco-free outdoor recreational areas) -Village of Granville (Smoke-free parks, outdoor dining, outdoor events requiring permit) -Village of Hudson Falls (Tobacco-free parks) -Village of Whitehall (Tobacco-free park) <p>Westchester County:</p> <ul style="list-style-type: none"> -Town of Bedford (Smoke-free parks, playgrounds, picnic areas, athletic areas) -Village of Elmsford (Smoke-free parks, playgrounds, sports fields) -City of Mount Vernon (Smoke-free playgrounds, parks and street parks) -Village of Scarsdale (Smoke-free playgrounds, playfields, swimming pool, Village building entrances) -Westchester County (Smoke-free trails, playgrounds, pools) -City of White Plains (Tobacco-free parks, playgrounds, playing fields, plazas, greenway, other outdoor recreational areas)
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Steps to Build Support for a Tobacco-Free Outdoor Areas Policy (for New York State Tobacco Control Program Contractors)

Adapted with permission from the Association for Nonsmokers-Minnesota²⁰

Step 1: Assess Community Readiness

Before you start, assess your tobacco prevention partnership's readiness to work on this policy initiative. Involve as many tobacco prevention partners as possible in this policy initiative, since a larger coalition will increase your likelihood of success. Potential partners include community health coalitions, nonprofit organizations, school personnel, parent organizations, health care professionals, and youth groups.

Step 2: Find Out Who Makes the Decisions

Making your city's outdoor areas tobacco-free will likely require passage of a park policy or a city ordinance.²¹ The city's parks & recreation board typically adopts park policies, whereas a city ordinance is passed by the city council. In either case, it is important to gain the support of your parks & recreation board since the city council relies on the parks & recreation board to make policy recommendations relating to the city's recreational facilities. First, contact the city's parks & recreation department to find out if an ordinance will be required or if the local parks & recreation board has the authority to pass its own park policy. If your city does not have a parks & recreation board, you can still follow the steps in this toolkit by working directly with the city administration and council.

Step 3: Find Out the Facts

Work with your local tobacco prevention partnerships to determine your current situation and to find the key facts that will help establish the need for a tobacco-free outdoor areas policy. First, find out what rules are already in place relating to tobacco use in outdoor areas. If a tobacco-free outdoor areas policy is already in place, then you may need to help support efforts to post signage and inform the community about the existing policy. If the policy is a strong one, there may not be any need for additional legislative efforts. If there is no existing policy, continue by gauging community support for a tobacco-free outdoor areas policy.

Step 4: Develop Policy Recommendations

Once you've collected the information required in Steps 2 & 3, begin to formalize a policy recommendation. A comprehensive policy proposal will help ensure that the decision makers are considering a strong policy that will help change community norms relating to smoking in public places. Your policy recommendations should include the rationale behind the policy, facilities you would like included, and ideas for enforcing the policy.

²⁰ See ASS'N FOR NONSMOKERS-MINN., PLAYING TOBACCO FREE: MAKING YOUR COMMUNITIES OUTDOOR RECREATION FACILITIES TOBACCO FREE 4-6 (2010).

²¹ For simplicity, these "steps" assume that you are advocating for a tobacco-free outdoor areas policy in a city. The same general principles apply to advocacy in other local jurisdictions (counties, towns, and villages).

Step 5: Ask Community Members to Support the Policy Recommendations

Once you've developed your policy recommendations, encourage the members of your coalition and other allies to express their support. Local sports teams and recreational clubs, school officials, faith groups, coaches, parents, and youth are just a few groups you will want to contact. Involving youth in this policy initiative is key since they often bring a different perspective that can help decision makers understand the necessity of tobacco-free outdoor areas. Be certain to educate supporters on the issues and explain why this policy would benefit the community. Ask all supportive organizations and individuals to sign a commitment of support form to show their support for your policy recommendations.

Step 6: Utilize the Media

Working with the local media (newspapers, radio, TV stations) can assist in building community support for your policy recommendations. If you have an existing relationship with a reporter or editor, meet with him or her to discuss the issue. If you do not, find out who covers the health or community beat and set up a meeting. Be sure to plan ahead and bring a few pertinent handouts and ideas for storylines. If a reporter or editor does not have time to write an article, ask if you can submit an article about the harms of tobacco use and the benefits of a tobacco-free outdoor areas policy. You can also utilize the media by submitting letters to the editor to educate the public about the importance of having tobacco-free outdoor areas. Other media-related activities include hosting an event and inviting the media to cover it, placing ads in the local newspaper, and asking local TV or radio stations to play Public Service Announcements about tobacco-free outdoor areas.

Step 7: Find a Champion

If your community has a parks & recreation board, building support with staff or board members is a great way to move a policy request forward. If you or other supporters already know a staff or board member, begin by conducting an informal discussion with that person about your policy proposal. If there are no existing relationships, then a good starting point is to contact the city's parks & recreation director or the youth recreation programmer. Try to line up his or her support and get advice on how to best approach the issue. Find out who on the parks & recreation board may be supportive of this type of policy and how informed the board's members are on the issues.

Step 8: Hold Informal Discussions with Decision Makers

Assess the members of the local government body with the ability to adopt a tobacco-free outdoor areas policy to determine who would be most appropriate to approach first. Bring along just one or two supporters to such meetings, including someone who knows the person you are meeting with, if possible. At your meetings, be as informal and educational as possible. Explain what you are trying to do, why it is important, and how they can play a part in helping to reduce youth tobacco use in their community. You can mention that the Center for Public Health and Tobacco Policy is available to provide technical assistance for policy development. Based on initial feedback from your meetings, determine whether further education is needed before proceeding.

Step 9: Get on the Agenda

The next step is to get a member of your coalition on the agenda of a meeting of the local government body. Contact your champion or a member of the government body to indicate your interest in making a presentation about tobacco-free outdoor areas policies at an upcoming meeting. Determine when and where the meetings are held and how much time you will have at the meeting to make your presentation. Ask for the deadline to include materials in the meeting packets.

Step 10: Plan Your Presentation

Determine who will be speaking on behalf of your coalition. Short testimonials from local youth, concerned parents, recreational leaders, and other supportive organizations will help demonstrate that tobacco use is a concern that stretches across the community, affecting people of all ages. Anticipate questions relating to the necessity of a policy and how a policy would be enforced.

Step 11: Make the Presentation Count

At the meeting, have a broad cross section of people, including youth, parents, citizens, and supportive organizations in attendance during the presentation. Be certain to introduce the groups in attendance and present the list of organizations that have signed the commitment of support form to show community support for this policy. Anticipate arguments and questions that might be asked during the presentation and be ready to respond.

Step 12: Assist in Policy Development

After your presentation, the government body will often decide to study the issue to determine what specific provisions should be included in a policy. If this is the case, provide them with any requested information or materials. The Center for Public Health and Tobacco Policy is available to technical assistance and guidance to help ensure the adoption of a strong policy.

Step 13: Continue Building Support

While the decision makers are developing a draft policy, continue efforts to help secure backing for a strong tobacco-free outdoor areas policy. During this time you can encourage community members to send letters expressing their support for a comprehensive tobacco-free outdoor areas policy.

Step 14: Attend Remaining Public Hearings

Determine when the local government body will be ready to vote on its draft policy. Attend the meeting with your coalition members to answer any final questions. Find out ahead of time if the council will hear testimony and, if permitted, a member of your coalition can make a brief presentation.

Step 15: Education and Signage Assistance

If a tobacco-free outdoor areas policy is adopted, start by publicly recognizing the decision makers for their efforts. Offer to provide education about tobacco-free policies to staff in charge of implementing the policy, and if your budget allows, help to provide signage as well.

Step 16: Look for Opportunities to Promote the Tobacco-Free Message

Look to community events as opportunities to educate the community on the importance of having tobacco-free environments. Provide recreational leaders and staff with materials so they can explain the policy to youth, helping them better understand why they should be tobacco-free. By offering prevention posters, pledges, banners, and other resources you can also help reinforce the tobacco-free message.

Lobbying

As with all activities implemented by TCP contractors, all lobbying is **expressly prohibited**. The term “lobbying” or “lobbying activities” includes any attempt to influence the passage or defeat of any local law, ordinance, resolution, or regulation by any municipality or subdivision thereof; and the adoption or rejection of any rule, regulation, or resolution having the force and effect of a local law, ordinance, resolution, or regulation. It is the responsibility of TCP contractors to ensure that all staff supported by TCP funds are familiar with and adhere to NYS Commission on Public Integrity restrictions and guidelines which are available at this web address:

<http://www.nyintegrity.org/>.

Example of lobbying: “Protect youth from tobacco industry marketing by voting in favor of X.” State or federal dollars may never be used to convey this type of message. Lobbying does not include educating the public and decision makers about public health problems and solutions. **Educating the public and decision makers is a vital part of the work that we do.**

*Policy?
Ordinance?
Whazzit?*

Evaluating Legal Options

What is important?

an effective local law or regulation that creates tobacco-free outdoor areas

What are the key points?

“legal, binding, enforceable”

Legal: originating from a local government body that has power over the outdoor area

Binding: permanent and able to regulate those who enter the outdoor area

Enforceable: clear enforcement responsibility for controlling tobacco use in outdoor areas & clear ramifications such as monetary fines (penalties)

What is in a name?

do not get tangled in the name maze—concentrate on the important points

Local law, ordinance, rule, regulation, policy . . . Terminology can get confusing, so it is important to concentrate on the substantive factors—a “local government policy” that is legal, binding, and enforceable.

Toolkit: Policy versus Ordinance?

Policy

This toolkit uses “policy” as a general term for a local government policy that is legal, binding, and enforceable.

Ordinance

A good example of such a local government policy is an “ordinance” passed by an act of local legislation. Therefore this toolkit provides a model policy in an ordinance format for illustrative purposes and also sometimes uses “ordinance” as a descriptive term.

Great! . . . but what are some of the names?

Policy:

“Policy” is a generic term that can have quite different meanings depending on the context. A legislative body’s “policy” could range from an unenforceable declaration to a law with enforcement “teeth.” For example, a state or local legislative body could issue a policy as a general statement or declaration of purpose opining that tobacco-free outdoor areas is a desirable goal for its community—or, the same legislature could pass a policy restricting tobacco use in local public playgrounds with fines of \$20 per violation. Parks and recreation agencies can pass policies or rules about tobacco use on the property they are charged with overseeing. Sometimes as part of this process, the local legislative body, such as the city council, approves these park policies or rules.

Non-governmental entities have policies that state their own purpose, rules, or procedures. This toolkit does not address non-governmental entities.

Generally, for tobacco-free outdoor areas, municipalities enact “policies” to prohibit the use of tobacco in the outdoor area. However, penalties are not always attached, so that is a key point to look for when assessing whether a proposed “policy” fits your goals. Typically, signs are posted on the premises, and people who violate these policies are asked to stop using the tobacco product or leave the grounds.

Example of a policy: “No person shall use any form of tobacco at or on any [municipality]-owned parks or playgrounds.”

Resolution:

Similar to a policy, a resolution can express a general statement or declaration of purpose. Resolutions often are used by local legislative bodies for routine, administrative, or temporary matters. Resolutions can be helpful to draw attention to an act or a decision. However, the legal impact of a resolution may be minimal because it generally is not binding and not regulatory. A resolution also could lack “strength” as it typically does not include provisions for enforcement. While resolutions, as described, can be an effective means of changing tobacco use in outdoor areas when combined with effective signage and public education, this toolkit recommends aiming for something legal, binding, and enforceable. (As always, examine how resolutions function in your locality with the “legal, binding, enforceable” framework, as exceptions to the general definition of “resolution” can exist.)

Local Law or Ordinance:

For the most part, a local law or ordinance is passed by a local legislative body and typically contains enforcement provisions, such as penalties in the form of fines. There are technical differences between different types of local laws and ordinances that are beyond the scope of this toolkit. Laws and ordinances, once passed, are ongoing and permanent. Legislative bodies include common councils, commissions, boards of supervisors, boards of aldermen, and town boards. For example, a city’s common council could enact a local law, signed by the mayor, regulating tobacco use on city property.

Generally, for tobacco-free outdoor areas, an ordinance prohibit the use of tobacco in specified outdoor areas and enforce the law with penalties, usually in the form of fines.

Example of an ordinance: “No person shall use any form of tobacco at or on any [municipality]-owned parks or playgrounds. Any person who violates this provision shall be liable for a fine of \$20.”

Policy, Rule, Regulation, Procedure . . .

Government agencies can issue policies, rules, regulations, and procedures.

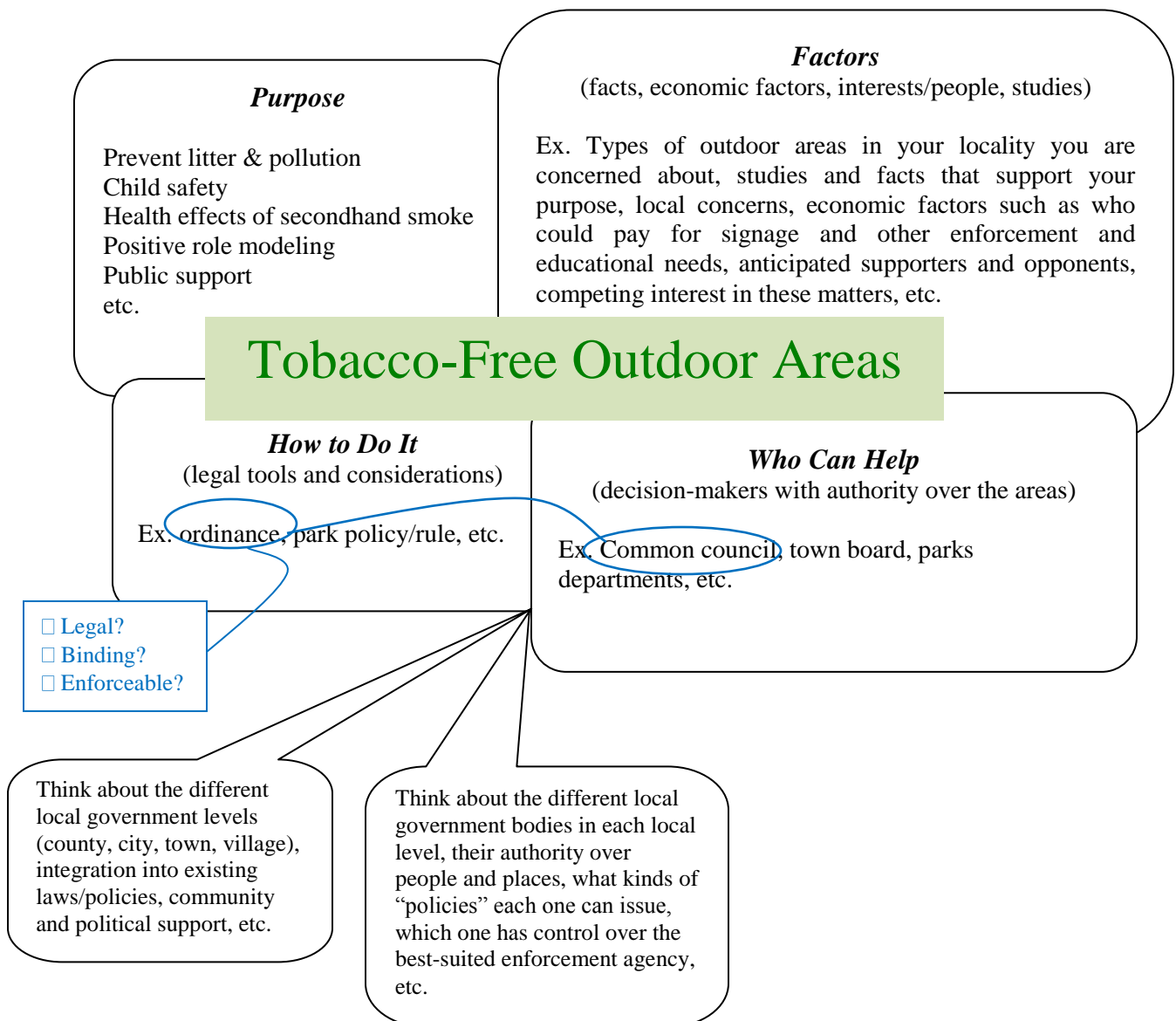
Remember, do not focus on the terms—instead, assess whether it is a local government entity issuing something that is legal, binding, and enforceable for the outdoor area it has authority over.

Well, that’s all fine, but how does that help me?

We recommend that you review this toolkit in its entirety and then assess your particular locality and the relevant facts, considerations, interests, and goals. That will help you decide what legal tools are best suited for your community’s needs.

When doing so, try brainstorming and listing everything you can that is related to achieving an effective local government policy that is legal, binding, and enforceable. Then try to identify and arrange that list into themed groups and pinpoint other key issues and considerations from there. This will help you decide how to best educate your community about how to achieve tobacco-free outdoor areas and what key decision makers to approach in your efforts.

Here is a brief example:



Publicizing Your Tobacco-Free Outdoor Areas Policy

Adapted with permission from the Association for Nonsmokers-Minnesota²²

The vast majority of the time, tobacco-free outdoor areas policies are self-enforcing. The single most important step to ensure compliance with a new tobacco-free outdoor areas policy is alerting all members of the community about the new policy.

Post Signs

The following locations are suggested places for posting tobacco-free signs:

- Fencing around playgrounds and fields
- Restrooms
- Parking lot entrances
- Lifeguard stands
- Picnic shelters
- Concession stands
- Beach entrances
- Hiking trail entrances

Let Community Members Know About the Policy

Local governments have used a variety of means to educate citizens about their tobacco-free policies:

- Staff notification of the new policy and written procedures for handling violations
- Articles in a local or regional newspaper, as the result of a news release or reporters' coverage of local government council meetings
- Recreation department and city newsletters, program brochures, catalogs, and announcements
- Rulebooks or policy statements that are distributed to sports league administrators, coaches, officials, parents, and participants
- Other fact sheets or educational articles about tobacco and secondhand smoke distributed at coaches' meetings, in mailings, or through newsletters
- Postings on the recreation department's or local government's website
- Public announcements at recreational events, on local radio stations, or on public access TV
- Kick-off celebration or community event with tobacco-free pledges, activities, etc.

Ask for Assistance

For suggestions or to connect with communities that have implemented tobacco-free outdoor areas policies, contact the Center for Public Health & Tobacco Policy at (617) 368-1465 or tobacco@nesl.edu.

²² See ASS'N FOR NONSMOKERS-MINN., A POLICY MAKER'S GUIDE TO TOBACCO-FREE POLICIES FOR COMMUNITY PARK SYSTEMS 13 (2010).

Model Ordinance



Enacting a comprehensive and well-crafted tobacco-free outdoor areas ordinance will protect everyone who uses outdoor areas and avoid confusion about what the ordinance covers.

NEW YORK MODEL ORDINANCE TO PROHIBIT TOBACCO USE AND SMOKING IN SPECIFIED OUTDOOR AREAS

SECTION 1: FINDINGS.

The **[Common Council]** of **[City]** hereby finds and declares as follows:

Tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year;
- In New York State there are 25,500 deaths every year from causes attributable to smoking; and
- Tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;

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

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;
- Secondhand smoke exposure causes as many as 300,000 children in the United States to suffer from lower respiratory tract infections, such as pneumonia and bronchitis, exacerbates childhood asthma, and increases the risk of acute, chronic, middle ear infection in children;
- Secondhand smoke has been designated as a known human carcinogen by the Environmental Protection Agency and the Public Health Service's National Toxicology Report;
- The 2006 U.S. Surgeon General's Report on Involuntary Exposure to Secondhand Smoke concludes that even brief exposures to secondhand smoke may increase the severity of asthma attacks and lower respiratory tract infections, especially in children, and have adverse effects on the heart; and
- Secondhand smoke is responsible for approximately 47,400 deaths among nonsmokers each year in the United States;

Smokeless tobacco is not a safe alternative to smoking and also causes death and disease, as evidenced by the following:

- Smokeless tobacco use causes leukoplakia, a disease causing white patches to form in the user's mouth that can become cancerous;
- Smokeless tobacco products are known to cause lung, larynx, esophageal, and oral cancer; and
- The regular use of snuff doubles the user's risk of cardiovascular disease and death;

This model ordinance addresses tobacco use in outdoor areas such as recreational areas and beaches. Section 3(B) additionally prohibits smoking in other outdoor areas, including multi-unit housing common areas and the immediate vicinity of building entrances. These related topics are not directly discussed in this toolkit.

This model should be further crafted to best suit your locality's needs. For example, a local government may wish to convert the model ordinance into another format. Please consider contacting our center to discuss such modifications to the model ordinance.

This model ordinance is based on models developed by Public Health Law & Policy (www.phlpnet.org) for the California Tobacco Control Program.

Adapted for use with the permission of the California Department of Public Health, California Tobacco Control Program.

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

- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from a burning cigarette;
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two lane road; and
- A 2006 study by the California Air Resources Board found that at typical outdoor locations, persons may be exposed to tobacco smoke levels as high as indoor secondhand smoke concentrations;

Cigarette butts are a major and persistent source of litter, as evidenced by the following:

- Over two billion cigarette butts are discarded every day worldwide, and Americans alone discard more than 175 million pounds of cigarette butts every year;
- Cigarette filters have been found in the stomachs of fish, birds, and other animals that mistake them for food, thus swallowing harmful plastic and toxic chemicals; and
- Cigarette filters and plastic wraps from cigarette packages are not biodegradable and tobacco-related waste discarded in parks, along sidewalks, and in street gutters makes its way through storm drains into creeks and rivers, leaking dangerous chemicals into our watershed;

Cigarette butts pose a health threat to young children, as evidenced by the following:

- In 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarettes, cigarette butts, and other tobacco products; and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;

Children are currently unprotected from tobacco smoke in outdoor areas where they are likely to be present, such as our **[City]**'s playgrounds;

Each day more than 4,000 youth nationwide try smoking for the first time, and another 2,000 youth become regular daily smokers;

Creating smoke free zones in certain public spaces where children and adults are likely to congregate and/or where persons cannot readily escape from exposure to tobacco smoke will protect the health, safety and welfare of the residents of our community;

Consider adding findings specific to your local municipality in order to better demonstrate the need for a tobacco-free outdoor areas ordinance in your community.

NOW THEREFORE, it is the intent of **[Common Council]**, in enacting this ordinance, to provide for the public health, safety, and welfare by protecting the public and the environment from tobacco-related litter; by discouraging the inherently dangerous behavior of smoking around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where people play, exercise, and relax; by reducing the potential for children to wrongly associate tobacco use with a healthy lifestyle; and by affirming and promoting a healthy environment in and around the **[City]**'s recreational areas.

SECTION 2: DEFINITIONS

As used in this Chapter, the following terms shall have the meanings indicated:

(A) **Beach** means any outdoor area along a shoreline of an ocean or lake and extending **[one thousand (1,000) feet]** from the shoreline that is owned or operated by the **[City]** **[or that is open to the general public, regardless of any fee or age requirement].**

(B) **Entrances and Exits** means the passageways by which persons may enter a building, typically consisting of a door or doorway. For the purposes of this chapter, this includes the stoop, steps, or ramp leading from the sidewalk or pavement to such a door or doorway.

(C) **Food Service Establishment** means any business establishment, including outdoor seating areas thereof, in which the business includes the sale of food or beverages for on-premises consumption.

(D) **Multi-Unit Common Area** means any indoor or outdoor area at a multi-unit residential property containing three or more units (including rental properties and condominiums) that is accessible to and usable by the occupant of more than one unit, including but not limited to halls, walkways, lobbies, laundry rooms, common cooking areas, outdoor dining areas, patios, play areas, swimming pools, gardens, and parking lots.

(E) **Person** means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity except the **[City]**.

(F) **Playing Field** means that portion of an outdoor Recreational Area that is set up and marked in some way for the playing of one or more specific games or sports (such as baseball, football, or soccer), and that is **[owned or operated by the City and]** open to the general public. For the purposes of this chapter, a playing field that is fenced or the outside perimeter of which is otherwise physically demarcated shall be deemed to include all of

§ 2(A) COMMENT: The definition of and references to “Beach” may be omitted if unnecessary. The definition of “Beach” is designed to be measurable in all situations and can be adapted to your community (e.g., the number of feet listed in brackets can be changed). A less precise definition may be more appropriate for communities that have beaches with obvious boundaries. One option is to list the names of the specific beaches where the ordinance would apply (for example: “Beach” means Baker Beach and Walden Beach).

If a community wants to prohibit tobacco product use on private beaches open to the public, then include the “open to the general public” language provided in brackets at the end of the definition.

§ 2(B) COMMENT: The model ordinance prohibits smoking near entrances and exits. The model could be modified to address smoking near operable windows as well.

§ 2(D) COMMENT: If it is an issue in your community, contact our center to discuss how to address college dormitories.

the area inside such fence or demarcation, together with any bleachers or other designated viewing area; a playing field that is not fenced or otherwise demarcated (as to its outside perimeter) shall be deemed to include all of the area customarily required for playing the game for which it is being used, together with any bleachers or other designated viewing area.

(G) **Reasonable Distance** means a distance that ensures that people located within an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of **[twenty (20 feet)]** in any direction.

(H) **Recreational Area** means any outdoor area that is **[owned or operated by the City and]** open to the general public for recreational purposes, regardless of any fee or age requirement. The term “Recreational Area” includes but is not limited to Playing Fields, playgrounds, parks, picnic areas, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, and amusement parks. The term “Recreational Area” is not intended to include streets and sidewalks unless they are located within a demarcated Recreational Area such as a park.

(I) **Service Area** means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not such service includes the exchange of money. Service Areas include, but are not limited to, bus stops and other mass transit shelters, ATMs, public telephones, ticket lines, bus stops, cab stands, concert lines, sporting event lines, and food vendor lines.

(J) **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.

(K) **Tobacco Product** means any manufactured product containing tobacco or nicotine, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, dissolvable tobacco products, and electronic cigarette cartridges. However, “Tobacco Product” does not include any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco use cessation product or for other medical purposes and is being marketed and sold solely for that approved purpose.

§ 2(E) COMMENT: The municipal code likely contains a definition of Person and, if so, the definition provided here can be deleted. The city is excluded from the definition so that it does not make itself potentially liable for not fully enforcing the ordinance due to practical limitations.

§ 2(G) COMMENT: The minimum Reasonable Distance amount should be set to a distance that best fits the community and its needs.

§ 2(H) COMMENT: The definition of “Recreational Area” can apply to all recreational areas that are open to the general public, whether on public or private land. If the community wants to limit the reach of the ordinance to only include publicly owned or operated recreational facilities, then insert the phrase “*owned or operated by the City.*”

§ 2(K) COMMENT: The definition of “Tobacco Product” is written broadly to include cigarettes, other smoked tobacco products, smokeless tobacco, and nontraditional tobacco products such as electronic cigarettes and dissolvable tobacco products. The definition does not include FDA-approved smoking cessation aids.

SECTION 3: PROHIBITION OF TOBACCO PRODUCT USE IN OUTDOOR AREAS AND COMMON AREAS OF MULTI-UNIT HOUSING

(A) The use of Tobacco Products is prohibited in all of the following places within the **[City]**:

- (1) Beaches;
- (2) Recreational Areas;
- (3) Food Service Establishments; and
- (4) All outdoor areas of property owned or leased by the **[City]** for official government use.

(B) Smoking is further prohibited in the following places within the **[City]**:

- (1) Within a reasonable distance of Entrances and Exits to buildings within which smoking is prohibited by Article 13-E of the New York Public Health Law;
- (2) Within a reasonable distance of Food Service Establishments, including the outdoor areas thereof;
- (3) Outdoor Service Areas and within a reasonable distance thereof; and
- (4) Multi-Unit Common Areas.

(C) The prohibitions in Section 3(B) shall not apply to outdoor areas of private residential properties that are not Multi-Unit Common Areas.

(D) Nothing in this Chapter prohibits any Person with legal control over any property from prohibiting Smoking and Tobacco Product use on any part of such property, even if Smoking or the use of Tobacco Products is not otherwise prohibited in that area.

[(E) The Director of _____ or his/her designee shall engage in an ongoing educational program to explain and clarify the purposes and requirements of this Chapter. However, lack of such education shall not be a defense to a violation of this Chapter.]

§§ 3(A) & (B) COMMENT:

The restrictions in § 3(A) apply to all tobacco use, including the use of smokeless tobacco. The provisions of § 3(B) are focused on reducing exposure to secondhand smoke and apply only to smoking.

§ 3(B)(4) COMMENT:

We can work with you to create an exception for a designated smoking area that is outdoors and away from residential units and recreational areas.

§ 3(E) COMMENT:

This optional provision would require that the city or county provide education to those affected by this ordinance. You should identify which government official should be in charge of this program.

SECTION 4: OTHER REQUIREMENTS AND PROHIBITIONS

(A) No ash can, ashtray, or other Smoking waste receptacle shall be placed in any area in which Smoking is prohibited by this Chapter.

(B) No Person shall permit Smoking or the use of Tobacco Products in an area under the Person's control in which Smoking or the use of Tobacco Products is prohibited by this Chapter;

(C) The Department of _____ shall issue requirements about the content and placement of signage advising the public of the restriction of Tobacco Products usage and/or Smoking in the designated areas.

(D) The presence of Smoking waste receptacles in violation of subsection (A) above and the absence of signs required by subsection (C) above shall not be a defense to a violation of any provision of this Chapter.

(E) No Person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Chapter or reports or attempts to report a violation of this Chapter.

SECTION 5: PENALTIES AND ENFORCEMENT

(A) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

(B) Each instance of Smoking or Tobacco Product use in violation of this Chapter shall constitute a separate violation. For violations other than Smoking or Tobacco Product use, each day of a continuing violation of this Chapter shall constitute a separate violation.

(C) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.

(D) Each violation of this Chapter constitutes an infraction subject to a **[one hundred dollar (\$100)]** fine.

(E) Enforcement of this Chapter shall be the responsibility of [_____]. In addition, any peace officer or code enforcement official may enforce this Chapter.

(F) Any violation of this Chapter is hereby declared to be a nuisance.

(G) In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action

§ 4(C) COMMENT: Signage requirements can be more detailed. In this model ordinance, because of the diversity of outdoor areas covered, a department is charged with and given the flexibility to create and adjust appropriate signage requirements.

§ 5(D) COMMENT: The penalty for all violations is \$100 per incident. The fine amount can be modified. This enforcement provision allows law enforcement officers to simply write a ticket for illegal Smoking and Tobacco Product use or for the actions described in § 5(C).

§ 5(E) COMMENT: This provision designates a primary enforcement agency, but remains flexible by permitting any enforcement agency to enforce the law.

§ 5(F) COMMENT: By expressly declaring that a violation of this ordinance is a nuisance, this provision allows enforcement of the ordinance by the City via the administrative nuisance abatement procedures commonly found in municipal codes.

brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, code enforcement proceedings, and suits for injunctive relief.

[(H) Nothing in this Chapter shall create a right of action in any Person against the [City] or its agents to compel public enforcement of this Chapter against private parties.]

(I) Any Person may bring a civil action to enjoin a violation of this Chapter by a business or to enjoin repeat violations of this Chapter by an individual.

SECTION 6: STATUTORY CONSTRUCTION & SEVERABILITY

The provisions of this Chapter are declared to be severable, and if any section of this Chapter is held to be invalid, such invalidity shall not affect the other provisions of this Chapter that can be given effect without the invalidated provision.

SECTION 7: EFFECTIVE DATE

The effective date of this ordinance shall be sixty (60) days from the date of its enactment.

§ 5(H) COMMENT: This is an optional provision, which makes clear that the City cannot be liable to any Person for failure to enforce the restrictions in this ordinance.

§ 5(I) COMMENT: This provision enables private citizens to go to court to seek compliance with the ordinance by an individual or business through an injunction (a court order to do or not do something).

Note that while a civil action may be brought against a business for one violation of this ordinance, an action can be brought against an individual only for repeat violations. This limitation is intended to address concerns about the potential for abusive lawsuits.

The Center for Public Health & Tobacco Policy
at New England Law | Boston
www.tobaccopolicycenter.org

NEW ENGLAND LAW  BOSTON
154 Stuart St.
Boston, MA 02116

Contact:
Phone: 617-368-1465
Fax: 617-368-1368
tobacco@nesl.edu

The Center for Public Health & Tobacco Policy is a resource for the New York tobacco control community. It is funded by the New York State Department of Health and works with the New York State Tobacco Control Program and its contractors to develop and support policy initiatives that will reduce tobacco-related morbidity and mortality in New York.

The Center's work provides educational materials and research support for policy initiatives and does not constitute and cannot be relied upon as legal advice.

Additional Resources

Center for Public Health & Tobacco Policy

- <http://www.tobaccopolicycenter.org>

New York State Tobacco Control Program

- http://www.health.state.ny.us/prevention/tobacco_control/

Tobacco Free NYS

- <http://tobaccofreenys.org/>

Tobacco Free Broome and Tioga

- <http://www.tobaccofreebt.org/outside>

Tobacco Free Tompkins

- <http://www.tompkins-co.org/wellness/tobaccofree/zone/outdoorspaces.htm>

Smoking & Health Action Coalition of Monroe County

- <http://www.smokefreemonroe.com/Initiatives/Smokefree-Outdoor-Air.html>

Southern Adirondack Tobacco-Free Coalition

- <http://www.tobaccofreadirondacks.org/clean-outdoor-air/index.asp>

Erie-Niagara Tobacco-Free Coalition

- <http://www.tobaccofreewny.com/category/air/>

Tobacco-Free Youth Recreation (Association for Nonsmokers-Minnesota)

- <http://www.tobaccofreeparks.org/>

Public Health Law & Policy (California)

- <http://www.phlpnet.org/tobacco-control>