

[County/City]-Owned Outdoor Recreational Areas

Tobacco-Free Policy [generic model]

SECTION I. FINDINGS

WHEREAS, in order to preserve the public health, safety and welfare of the citizens of the [County/City of _____], Michigan; and

WHEREAS, the State of Michigan has granted and declared to [counties/cities] the power to legislate in the protection of the public health and for the safety of persons and property; and

WHEREAS, it is in the purview of the authority of the [County Commission/City Council of _____] to restrict smoking and the use of tobacco products on [County/City] property; and

WHEREAS, 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,¹ accounting for about 443,000 deaths each year;² and
- Tobacco use causes chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;³ and
- Some of the most common types of cancers – including stomach, liver, uterine, cervix, and kidney cancer – are related to tobacco use;⁴ and

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

- The U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke;⁵ and
- Secondhand smoke is responsible for as many as 3,000 deaths from lung cancer

¹ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: The Nation's Leading Killer*. 2011, p. 2. Available at:

www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

² US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at:

www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

³ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: The Nation's Leading Killer*. 2011, p. 2. Available at:

www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

⁴ Leistikow B, Zubair K, Connolly GN, et al. "Male Tobacco Smoke Load and Non-Lung Cancer Mortality Associations in Massachusetts." *BMC Cancer*, 8:341, 2008. Available at: www.biomedcentral.com/1471-2407/8/341.

⁵ US Department of Health and Human Services, Office of the Surgeon General. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*. 2010, p. 9. Report highlights available at: www.surgeongeneral.gov/library/tobaccosmoke/factsheet.html.

and 46,000 deaths from heart disease among nonsmokers each year in the United States;⁶ and

- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately 30 percent;⁷ and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis, in as many as 300,000 children in the United States under the age of 18 months each year;⁸ and exacerbates childhood asthma;⁹ and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does, contrary to a common misconception, occur at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on the direction and amount of wind and number and proximity of smokers;¹⁰ and
- 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 the burning cigarette;¹¹ and
- Smoking cigarettes near building entryways can increase air pollution levels by more than two times as compared to background levels, with maximum levels reaching the “hazardous” range on the US EPA’s Air Quality Index.¹²

⁶ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation’s Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

⁷ Barnoya J and Glantz S. “Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking.” *Circulation*, 111: 2684-2698, 2005. Available at: www.circ.ahajournals.org/cgi/content/full/111/20/2684.

⁸ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation’s Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

⁹ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation’s Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

¹⁰ Klepeis NE, Ott WR, and Switzer P. *Real-Time Monitoring of Outdoor Environmental Tobacco Smoke Concentrations: A Pilot Study*. San Francisco: University of California, San Francisco and Stanford University, 2004, p. 80, 87. Available at: http://exposurescience.org/pub/reports/Outdoor_ETS_Final.pdf; see also Klepeis NE, Ott WR and Switzer P. “Real-Time Measurement of Outdoor Tobacco Smoke Particles.” *Journal of the Air & Waste Management Association*, 57: 522-534, 2007. Available at: www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf.

¹¹ Junker MH, Danuser B, Monn C, et al. “Acute Sensory Responses of Nonsmokers at Very Low Environmental Tobacco Smoke Concentrations in Controlled Laboratory Settings.” *Environmental Health Perspectives*, 109(10): 1045-1052, p. 1049-51, 2001. Available at: www.pubmedcentral.nih.gov/picrender.fcgi?artid=1242082&blobtype=pdf; Repace JL. “Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles.” *William Mitchell Law Review*, 34(4): 1621-1638, p. 1626, 2008. Available at: www.repace.com/pdf/Repace_Ch_15_Outdoor_Smoke.pdf.

¹² Kaufman P, Zhang, B, Bondy S, et al. “Not just ‘a few wisps’: real-time measurement of tobacco smoke at entrances to office buildings.” *Tobacco Control*. Published Online First: 21 December 2010.

- Studies on a cruise ship have found that even while cruising at 20 knots and with unlimited air volume, outdoor smoking areas contained carcinogens in nearly the same amounts as inside the ship's casino where smoking was allowed;¹³ and
- 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;¹⁴ and

WHEREAS, smokeless tobacco is not a safe alternative to smoking and causes significant 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;¹⁵ smokeless tobacco products are known to cause lung, larynx, esophageal, and oral cancer;¹⁶ and the regular use of snuff doubles the user's risk of cardiovascular disease and death;¹⁷ and
- Prolonged use of snus, a form of smokeless tobacco, contributes to high blood pressure and to a higher likelihood of suffering a fatal stroke;¹⁸ and

WHEREAS, children who attend or participate in athletic and recreational events can be affected by secondhand smoke and the use of other tobacco products; and

WHEREAS, smoking and the use of other tobacco products at such events sends a deleterious health message to youth and student athletes; and

doi:10.1136/tc.2010.041277. Abstract available at:

<http://tobaccocontrol.bmj.com/content/early/2010/12/21/tc.2010.041277.abstract>

¹³ Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, p. 1626, 2008. Available at: www.repace.com/pdf/Repace_Ch_15_Outdoor_Smoke.pdf.

¹⁴ Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review*, 34(4): 1621-1638, p. 1626, 2008. Available at: www.repace.com/pdf/Repace_Ch_15_Outdoor_Smoke.pdf.

¹⁵ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Smokeless Tobacco Facts*, www.cdc.gov/tobacco/data_statistics/fact_sheets/smokeless/smokeless_facts/index.htm#chewing (last updated January 28, 2011).

¹⁶ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

¹⁷ Hatsukami DK and Severson HH. "Oral Spit Tobacco: Addiction, Prevention, and Treatment." *Nicotine and Tobacco Research*, 1(1): 21-44, 1999. Abstract available at: <http://ntr.oxfordjournals.org/content/1/1/21.abstract>.

¹⁸ "Prolonged Use of Swedish Moist Snuff Increases Risk of Fatal Cardiovascular Disease and Stroke." *Medical News Today*, November 15, 2007, www.medicalnewstoday.com/articles/88868.php.

WHEREAS, cigarette butts are the most littered item in the United States and a dangerous nuisance, as evidenced by the following:

- Americans discard more than an estimated 175 million pounds of cigarette butts every year;¹⁹ and
- Cigarette butts are frequently discarded onto sidewalks, streets, beaches, and nature trails, and in parks, gardens and other public places, ending up in storm drains that flow into the water supply;²⁰ and
- Cigarette filters, made of plastic cellulose acetate, are not biodegradable and take approximately 15 years to decompose;²¹ and

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

- In 2009, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarettes, cigarette butts, and other tobacco products;²² and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;²³ and

WHEREAS, smoking outside in natural areas, where there are trees, shrubs and grasses, poses a significant risk of fire damage to those natural areas, and cigarette-caused fires unnecessarily jeopardize firefighters and result in avoidable emergency response costs; and

WHEREAS, laws restricting the use of tobacco products have clear benefits to public health and medical costs, as evidenced by the following:

- Cities with smokefree laws see an appreciable reduction in hospital admittances for heart attacks in the months and years after such laws are passed;²⁴ and

¹⁹ Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, www.surfridersd.org/hotyb.php. (last visited March 10, 2011).

²⁰ Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, www.surfridersd.org/hotyb.php. (last visited March 10, 2011).

²¹ Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, www.surfridersd.org/hotyb.php. (last visited March 10, 2011).

²² Bronstein AC, Spyker DA, Cantilena LR, et al. American Association of Poison Control Centers. "2009 Annual Report of the American Association of Poison Control Centers' Centers' National Poison Data System (NPDS): 27th Annual Report" *Clinical Toxicology*, 48(10): 979–1178, p. 1124, 2010. Available at: www.aapcc.org/dnn/Portals/0/correctedannualreport.pdf.

²³ US Department of Health and Human Services, Centers for Disease Control and Prevention. "Ingestion of Cigarettes and Cigarette Butts by Children – Rhode Island, January 1994 -July 1996." *Morbidity and Mortality Weekly Report*, 46(06): 125-128, 1997. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm.

²⁴ US Department of Health and Human Services, Centers for Disease Control and Prevention. "Reduced Hospitalizations for Acute Myocardial Infarction After Implementation of a Smoke-Free Ordinance – City of

- Smoking bans help people reduce the number of cigarettes they smoke or quit altogether;²⁵ and
- Strong smoking regulations for restaurants decrease the number of children who transition from experimenting with smoking to becoming actual smokers;²⁶ and

WHEREAS, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or “e-cigarettes,” closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA’s testing also suggested that “quality control processes used to manufacture these products are inconsistent or non-existent.”²⁷ and

WHEREAS, electronic cigarettes are known to have caused serious injury from explosion of their rechargeable lithium batteries;²⁸

WHEREAS, creating smoke-free areas helps protect the health of our children and the 80 percent of adults who do not smoke;²⁹ and

WHEREAS, a large number of citizens and visitors to the [County/City of _____] find smoking and the use of tobacco products a serious health concern in both indoor and outdoor environments, particularly where a large number of people are gathered together in close proximity; and

Pueblo, Colorado, 2002 – 2006.” *Morbidity and Mortality Weekly Report*, 57(51&52): 1373-1377, 2009. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5751a1.htm; Glantz SA. “Meta-Analysis of the Effects of Smokefree Laws on Acute Myocardial Infarction: An Update.” *Preventive Medicine*, 47(4): 452-453, 2008. Abstract available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC2927851/?tool=pubmed.

²⁵ Neighmond P. “Smoking Bans Help People Quit, Research Shows.” *National Public Radio*, October 25, 2007, www.npr.org/templates/story/story.php?storyId=15610995.

²⁶ Siegel M, Albers AB, Cheng DM, et al. “Local Restaurant Smoking Regulations and the Adolescent Smoking Initiation Process: Results of a Multilevel Contextual Analysis Among Massachusetts Youth.” *Archives of Pediatrics and Adolescent Medicine*, 162(5): 477-483, 2008. Available at: <http://archpedi.ama-assn.org/cgi/reprint/162/5/477.pdf>.

²⁷ Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*. July 22, 2009, <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>; Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. July 22, 2009. Available at: www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm.

²⁸ CBS News. “Electronic Cigarette Explodes in Man’s Mouth, Causes Serious Injuries.” *CBS News*, February 16, 2012, http://www.cbsnews.com/8301-504763_162-57379260-10391704/electronic-cigarette-explodes-in-mans-mouth-causes-serious-injuries.

²⁹ California Department of Public Health, *News Release, State’s Latest Tobacco Ads Debut*. December 20, 2010. Available at: www.cdph.ca.gov/Pages/NR10-099.aspx.

WHEREAS, there is no Constitutional right to smoke or use other tobacco products;³⁰

SECTION II. DEFINITIONS

The following words and phrases shall be construed as defined in this Section:

A. “Playground” means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on [City or County] grounds.

B. “Public Place” means an area to which the public is invited or in which the public is permitted.

C. “Recreational Area” means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, streets, sidewalks, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, zoos.

D. “Tobacco product” means a preparation of tobacco to be inhaled, chewed, sucked or placed in a person’s mouth, and also includes electronic cigarettes.

K. “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe or electronic cigarette in any manner or in any form.

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

NOW, THEREFORE, [the County/City of _____] ordains that [ordinance or regulation designation] is hereby added and shall read as follows:

SECTION III. RESTRICTING SMOKING AND THE USE OF TOBACCO PRODUCTS, INCLUDING “ELECTRONIC CIGARETTES,” IN OUTDOOR RECREATIONAL AREAS

In order to provide for the public health, safety and welfare by discouraging the inherently dangerous behavior of smoking and other tobacco use around non-tobacco users, especially children, by protecting the public from exposure where members of the community live, work, and play; by reducing the potential for children to wrongly associate smoking and other tobacco

³⁰ Public Health Law & Policy, Technical Assistance Legal Center. *There Is No Constitutional Right to Smoke*. 2005. Available at www.phlpnet.org/tobacco-control/products/there-no-constitutional-right-smoke.

use with a healthy lifestyle; and by affirming and promoting a healthy environment in the [County/City of _____], tobacco use is not permitted in any outdoor Recreational Area.

SECTION IV. REQUIREMENTS AND PROHIBITIONS

1. The owner, operator, manager, or other person in control of an outdoor public place where smoking is prohibited shall clearly and conspicuously post “No Use of Tobacco Products” signs or “Tobacco Free” signs shall be posted in a quantity and manner reasonably likely to inform individuals occupying the area that tobacco product use is prohibited within the area. The signs shall have letters of no less than one inch in height and shall include the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar).
2. No ash can, ashtray, or other tobacco product waste receptacle shall be placed in any area in which tobacco use is prohibited.
3. No person shall dispose of used tobacco product waste within the boundaries of an area in which tobacco product use is prohibited.
4. No person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this policy.
5. The presence of tobacco product waste receptacles or the absence of signs required by this Section shall not be a defense to a violation of any provision of this [policy].

SECTION V. PENALTIES AND ENFORCEMENT

1. A person who violates or fails to comply with this policy shall be subject to one or more of the following:
 - a. asked to stop smoking or using the tobacco product;
 - b. asked to leave the premises;
 - c. liable for a [e.g., civil infraction, and subject to the civil fines set forth in _____ and any other relief that may be imposed by the Court].
2. Each instance of tobacco product use in violation of this [policy] shall constitute a separate violation. For violations other than tobacco use, each day of a continuing violation of this [policy] shall constitute a separate violation.
3. Any violation of this [policy] is hereby declared to be a nuisance.
4. Except as otherwise provided, enforcement of this [policy] is at the sole discretion of the [County/City]. Nothing in this [policy] shall create a right of action in any person against the [County/City] or its agents to compel public enforcement of this [policy] against private parties.
5. Any person may bring a civil action to enjoin a violation of this [policy].

SECTION VI. EFFECTIVE DATE

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

[County/City Official]

Date