

**Smoke-free Policies in
Nebraska City and Village Government Properties**



for a great state of health

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM



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Smoke-free Workplaces, Nebraska City and Village Government Properties 2005

Introduction

Cigarette smoking is the leading preventable cause of death resulting from smoking attributable illnesses in the United States of America.¹ Environmental tobacco smoke (ETS) is also a cause of death and diseases -- including lung cancer and heart disease -- in healthy non-smokers.² ETS has been classified as a known Group A carcinogen and nonsmokers subjected to ETS are exposed to nicotine, carbon monoxide, and other cancer causing agents.^{3,4} There is no safe level of secondhand smoke and simple separation of smokers and nonsmokers within the same airspace does not eliminate the risks of nonsmokers to ETS.⁵ Consequently, the National Institute of Occupational Safety and Health has concluded that all workplaces should be smoke-free.⁶

Local governments can play a leadership role in promoting optimal health in their communities. This can be accomplished by setting a community standard and adopting a smoke free policy in all local government-owned buildings and vehicles. The State of Nebraska Statutes (Section 71-5707) already prohibits smoking in all state government owned or leased buildings and vehicles with a few exceptions such as veterans' homes. However, even these exceptions have limitations of spaces that should be used as smoking areas.⁷

¹ Centers for Disease Control and Prevention, 1990

² U.S. Department of Health and Human Services, 1985

³ U.S. Environmental Protection Agency, 1993

⁴ Pirkle JL, Fegal KM, Bernert JT et al., 1996

⁵ U.S. Department of Health and Human Services, 1985

⁶ Brazin, Gothard, Smith & Remington, 1995

⁷ State of Nebraska, 2006

This report presents the results of a survey conducted in Nebraska regarding smoke-free policies among local governments. In fall, 2005, all village and city local governments in Nebraska were surveyed regarding smoke-free policies in local government properties.

Methodology

A survey was sent to each village and city clerk, administrator or treasurer in Nebraska during the fall, 2005. A total of 510 surveys were mailed out to the villages and cities in Nebraska and a total of 323 completed surveys were returned for a response rate of 63.3%. The mailing addresses for local government officials were obtained from the League of Nebraska Municipalities.

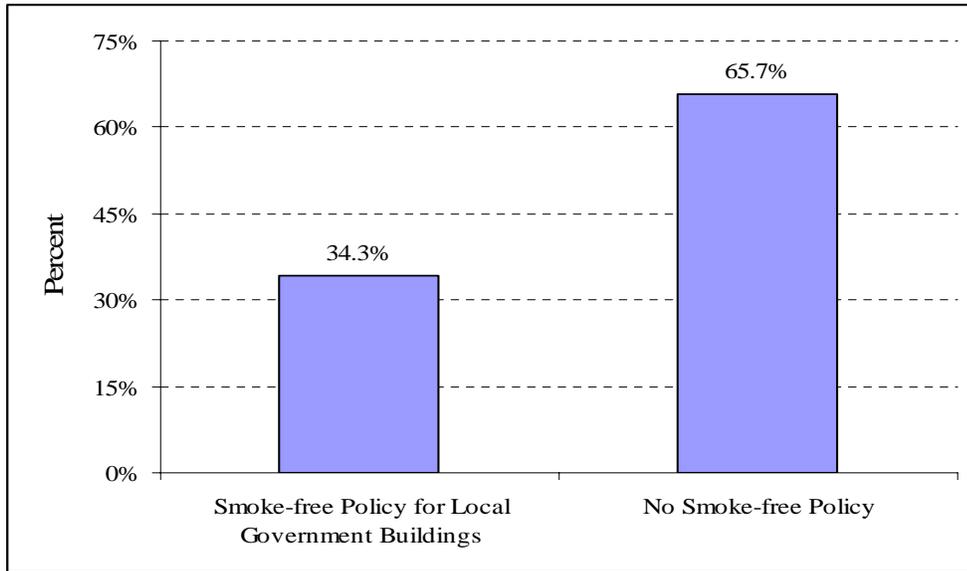
The survey asked village and town clerks, administrators or treasurers about smoke-free policies in local government properties. The survey had questions on smoke-free policies, types of policy, enactment, enforcement and consequences addition, the village and city officials were asked to share any smoke-free regulations, policies or codes that had been passed covering their areas.

Results

Smoking Policies in Local Government Buildings

From a total of 510 surveys sent out to local government officials, 323 (63.3%) completed surveys were returned. Nine in ten (90.7%) of the responding local governments own or lease property/properties. Among the city and village governments that own or lease building/s, only about a third (34.3%) have policies that restrict smoking in city or village government buildings compared to about two-thirds (65.7%) that have none. Figure 1 shows the percentages of city/village governments with smoke-free policies for local government buildings.

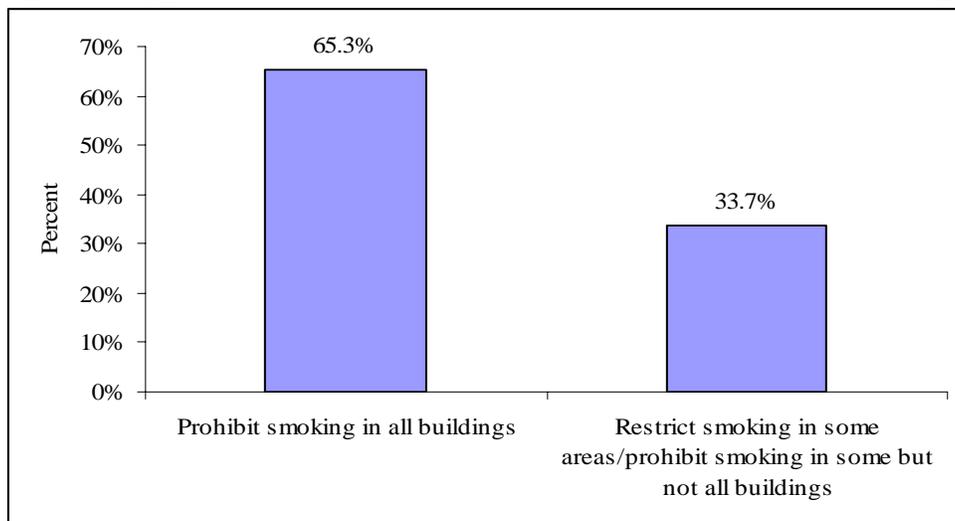
Figure 1. Local Governments with Smoke-free Policy for their Buildings (N = 286)



Types of Smoke-free Policies

Among local governments that have smoke-free policies, two-thirds (65.3%) have adopted policies that prohibit smoking in all city buildings while 33.7% have either policies that restrict smoking in certain areas only or prohibit smoking in some but not all city/village government buildings (Figure 2).

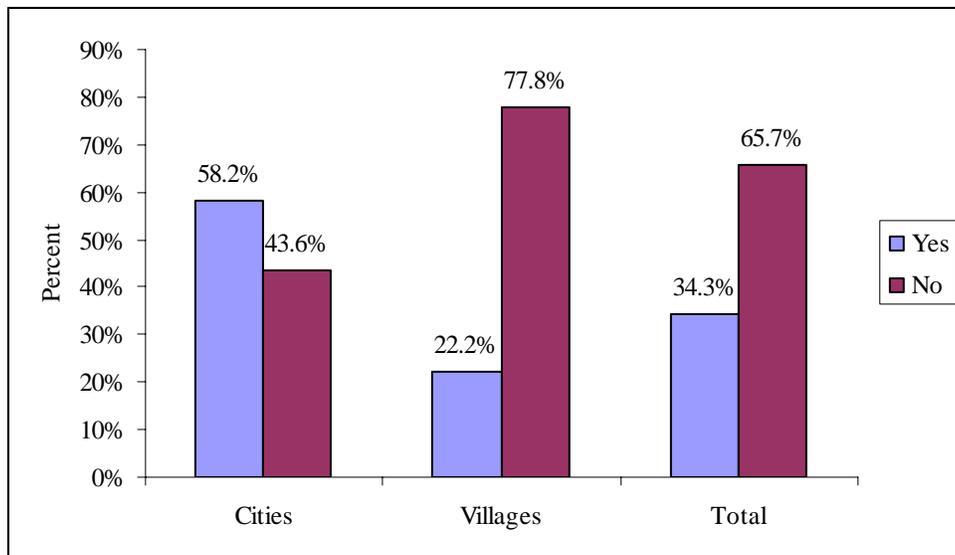
Figure 2. Types of Smoke-free Policies for Local Government Buildings (N= 98)



City and Village Smoke-free Policies

Cities are more likely to have a smoke-free policy for the buildings they own or lease as compared to village local governments. About six in ten (58.2%) of city governments have adopted smoke-free policies, regulations or codes for local government buildings while less than a quarter (22.2%) of village local governments have a smoke-free policy. Figure 3 shows the proportions of city and village governments with smoke-free policies.

Figure 3. Cities and Village Government have Smoke-free Policies (N = 286)



Smoking Policies in Local Government Vehicles

Only 12.8% of the city and village local governments indicated having policies that prohibited people from smoking in official government vehicles at all times. However, over three-quarters (79.9%) have policies that prohibit smoking in some city or village vehicles and 7.3% had no policies on smoking in official vehicles. Approximately 1% of city and village local governments reported having no vehicle.

Enacting Body

The most common enacting body for local government smoke-free policies in Nebraska cities and villages was an elected body. In three-quarters (74.3%) of the cases the elected body pass the local government smoke-free policies covering local government properties. The remaining policies or ordinances were enacted or put in place by different local government officials.

Discussion

In 2005, Lincoln became the first city in the State of Nebraska to implement a smoke-free law that protects workers at workplaces. However, the trend towards providing smoke-free workplaces seems to be on the increase, particularly in other cities. The results of this survey show that over half (58.2%) of Nebraska's city governments have adopted policies that protect employees and patrons from secondhand smoke in local government buildings. The villages, on the other hand, still lag behind with only about one quarter (22.2%) of village governments having policies that prohibit smoking in local government buildings.

Extending smoke-free policies to local government vehicles is also important in ensuring protection for workers from secondhand smoke. Although most local governments restrict smoking in their vehicles, the restriction is not comprehensive for some local governments. For example some policies prohibit smoking only in certain vehicles. A comprehensive protection against secondhand smoke in both vehicles and buildings is a better approach as there is no safe level of secondhand smoke.

Smoke-free government buildings and vehicles help create a safe and healthy community. Local health departments, local Tobacco Free Coalitions and other partners working to eliminate the exposure to secondhand smoke in Nebraska need to work with local governments and

communities, particularly the rural communities to implement smoke-free policies for local government properties. Local governments can lead their communities in eliminating the risks of exposure to secondhand smoke by providing employees and patrons with 100% smoke-free buildings, vehicles and other properties.

It is important to indicate that some local governments have no written rules, ordinance or any such legal documentation to indicate that smoking is not allowed in their buildings or vehicles. However, some of the local governments do not allow smoking in their buildings and properties despite having no written rules, policies, ordinances or any other legal document on the issue. For example, some local government officials indicated that no one smokes in their building(s) despite having no written smoke-free policy. In some cases local governments only have some “No Smoking” signs posted. In another case, one local government official indicated that a new city office was built and smoking was prohibited in the city office, police department and library. However, there was no written policy. Thus, some local governments may be considered as having no smoke-free policy although smoking is not permitted. In such a case, it may sometimes be difficult to uphold such a law. For example, two local government officials indicated that they have unwritten smoke-free policies, which however, do not apply when their buildings such as the town hall are rented out to private parties. Lack of a written policy may thus create such ambiguity.

There are some limitations with this study that readers have to take into consideration. The study may not be representative of all local governments in Nebraska due to non-response from some clerks, treasurers or administrators, as the study was designed as a census. The survey instrument used may not have accurately presented what we wanted to find out. For example, it

would have been useful to clarify the term “policy”. Some respondents indicated that they have no policy but have codes.

Acknowledgments

This study uses the Wisconsin State study approach on local government smoke-free policy. In addition, the participation of the local government clerks, treasurers and administrators in Nebraska was important to completion of the study.

We also acknowledge Hastings, Papillion, Scottsbluff, Seward and Wahoo for providing the samples of their codes and personnel manuals, which are included in Appendix I. In addition, American Non-smokers Rights Association whose “Model Ordinance Eliminating Smoking in All Municipal Facilities (100% Smoke-free)” sample is provided in appendix II.

References

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6. Brazin, S., Gothard, M, Smith BA, Remington PL. (1996). Local tobacco control ordinances in Wisconsin, *Wisconsin Medical Journal*, November; 95(11):773-4.
7. *State of Nebraska Statutes. Section 71-5707: Smoking; Designated areas; Exceptions*. Accessed 06/22/2006 from <http://srvwww.unicam.state.ne.us/legislature/legaldocs/Statutes?CHP71/s7157007000.xml>
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8. The Gallup Organization Inc. (1992). *Survey of the public's attitudes toward smoking*. Princeton, NJ: The Gallup Organization, Inc.

Appendix I Sample Ordinances, Policies, Manuals, Codes and Laws

Wahoo – General Regulations

§ 91.37 Smoking in Public Places

It shall be unlawful for any person to ignite a lighter, strike a match, or indulge in the smoking of tobacco on or in any building or structure where public gatherings take place within the corporate limits while any entertainment, program show, amusement, game, exhibition, or other spectacle to which the general public invited is in progress, or while patrons thereof are finding or leaving seats and standing room; provided the foregoing shall not be construed to apply to banquets, dinners, or entertainments held in any of the aforesaid buildings or structures where food is served and the entertainment takes place incidental thereto or in connection therewith.

(Code, § 7-215) Penalty, see § 10.99

City of Seward - Personnel Manual

1.9 (1) Smoke Free Policy (New Section added 11-01)

Smoking by the public and city employees shall be prohibited in all municipal buildings and vehicles except in the Civic Center and the Seward Volunteer Fire Department as those are governed by separate Boards.

Scottsbluff – Smoking-free Policy

To respond to the increasing evidence that tobacco smoke creates a danger to the health of persons, who are present in a smoke-filled environment, the city had established a policy to regulate the use of smoking materials by city employees while on duty. Every attempt will be made to obtain to the greatest extent possible, freedom for the nonsmoker from the harmful effects of smoking materials, while preserving a reasonable degree of freedom for those who choose to smoke.

“Smoke” or “smoking” as used in this policy shall mean and include the smoking or carrying of any kind of lighted pipe, cigar, or cigarette.

In order to reduce the effects of “secondhand smoke” on non-smoking city employees and citizens using city facilities, smoking is permitted only in designated areas outside of city buildings. Smoking or using smokeless tobacco in city-owned vehicles is also prohibited.

The first incident of non-compliance with the smoking policy will result in an oral warning. Further instances of non-compliance will result in disciplinary action up to and including termination. LAST REVISED: 11/21/00

City of Hastings Ordinance No. 3901

AN ORDINANCE OF THE CITY OF HASTINGS, NEBRASKA, PROHIBITING USE OF TOBACCO IN CERTAIN PUBLIC PLACES; ESTABLISHING AN EFFECTIVE DATE; AND REPEALING ANY ORDINANCES OR OTHER PROVISIONS IN CONFLICT HEREWITH.

BE IT ORDANED BY THE MAYOR AND COUNCIL OF THE CITY OF HASTINGS, NEBRASKA:

SECTION 1. The Hastings City Code Section 18-147 be created to read as follows:

18-147. Use of tobacco products in public areas prohibited.

(1) It shall be unlawful for any person to smoke in all city-owned buildings, in or upon vehicles owned by the City of Hastings, within the perimeter fencing of public swimming pools, within the perimeter fencing of public ball fields as well as bleachers and grandstands within public parks.

(2) For purposes of this ordinance, smoking shall mean inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe, smoking paraphernalia, tobacco, clover, weed, plant or substance.

(3) This ordinance shall not prohibit the carrying of a lighted candle or non-organic material that is being used for decoration, illumination or insect repellent.

SECTION 2. That all ordinances or provisions in conflict with this ordinance are hereby repealed.

SECTION 3. This ordinance shall take effect and be in full force from and after its passage, approval and publication or posting as required by law, in its entirety, or in pamphlet form, as the case may be, said effective date being June 12, 2003 and this ordinance shall thereafter be included in the Hastings City Code Book.

SECTION 4. The provisions of this ordinance are separable, and the invalidity of any phrase, clause or part of this ordinance shall not affect the validity or effectiveness of the remainder of this ordinance.

PASSED AND APPROVED this 27th day of May 2003

City of Papillion

Personnel Manual 503 Smoking

In keeping with Papillion's intent to provide a safe and healthful work environment, smoking is prohibited, except in those locations that have been specifically designated as smoking areas. In situations where the preferences of smokers and nonsmokers are in direct conflict, the preferences of the nonsmoker will prevail. Smoking may be allowed in the employee's private vehicle while parked on city property.

Smoking shall be prohibited in all city buildings, all job sites and in all city-owned vehicles and equipment.

This policy applies equally to all employees, customers, and visitors. All customers and visitors are expected to extinguish any tobacco product prior to entering any city facility or building.

DESIGNATION OF PERMITTED SMOKING AREAS:

CITY HALL

Smoking shall be allowed in the pump room

PUBLIC WORKS MAINTENANCE

Smoking shall be allowed in the north or south shed

GOLF COURSE MAINTENANCE

This facility is a smoke-free environment and no designated smoking area is established

PAPIO BAY AQUATIC CENTER

Smoking shall be allowed outside the main entrance of the facility

GOLF COURSE CLUB HOUSE

This facility is a smoke free environment. The outside deck area may be used for smoking

POLICE DEPARTMENT

This facility is a smoke-free environment and no designated smoking areas are established

SUMP MEMORIAL LIBRARY

This facility is a smoke-free environment and no designated smoking areas are established

Appendix II



ANR Model Ordinance Eliminating Smoking in All Municipal Facilities

(100% Smokefree)

[PDF Format](#)

Revised April 2006

Sec. 1000. Title

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

Sec. 1001. Findings and Intent

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

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*, August 1999.)

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," *U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP, 2000*; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.)

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death. (Appendix II Findings of the Scientific Review Panel: Findings of the Scientific Review Panel on Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant as adopted at the Panel's June 24, 2005 Meeting," *California Air Resources Board (ARB)*, September 12, 2005.)

There is no safe level of exposure to secondhand smoke. (Environmental Protection Agency (EPA), "Respiratory health effects of passive smoking: lung cancer and other disorders, the report of the U.S. Environmental Protection Agency. Smoking and Tobacco Control Monograph 4," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*; Environmental Protection Agency (EPA), August 1993; California Environmental Protection Agency, "Health Effects of Exposure to Environmental Tobacco Smoke," 1997; California Air Resources Board, "Proposed identification of environmental tobacco smoke as a toxic air

contaminant," *Sacramento: California Environmental Protection Agency (Cal-EPA), Air Resources Board, Stationary Source Division, Air Quality Measures Branch, Office of Environmental Health Hazard Assessment (OEHHA), September 29, 2005.*)

A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smokefree workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.)

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.) The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*. Public Health Service, Centers for Disease Control, 1986.)

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 24, 2004.)

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coultas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A., "ASHRAE position document on environmental tobacco smoke," *American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 2005.*)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled offices suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure, and \$4.6 billion in

lost productivity. (Behan, D.F.; Eriksen, M.P.; Lin, Y., "Economic Effects of Environmental Tobacco Smoke," *Society of Actuaries*, March 31, 2005.)

Hundreds of communities in the U.S., plus numerous states, including California, Delaware, Florida, Massachusetts, Montana, New Jersey, New York, and Washington, have enacted laws requiring public places to be smokefree, as have numerous countries, including Ireland, New Zealand, Norway, Scotland, Sweden, Uganda, and Uruguay.

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

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

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

Sec. 1002. Definitions

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

- A. "Dining Area" means any enclosed area containing a counter or tables upon which food or snacks are served.
- B. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- C. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- D. "Enclosed" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- E. "Health Care Facility" means an institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, nursing homes, homes for the aging or chronically ill, and laboratories. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- F. "Place of Employment" means an area under the control of a public employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles.

- G. "Public Facility" means a building, including a part of a building, or vehicle owned, leased, or operated by the _____ [City *or* County] of _____.
- H. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- I. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.
- J. "Sports Arena" means sports pavilions, stadiums, 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 or other events.

Sec. 1003. Prohibition on Smoking in Public Facilities

Smoking shall be prohibited in all enclosed public facilities in the _____ [City *or* County] of _____. This prohibition shall apply to all areas in those facilities, whether used as a place of employment or as a place for the conduct of public business, and shall include, without limitation, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Child care and adult day care facilities.
- C. Convention facilities.
- D. Dining areas.
- E. Educational facilities.
- F. Elevators.
- G. Health care facilities.
- H. Polling places.
- I. Public transportation facilities, including buses and taxicabs, under the authority of the _____ [City *or* County] of _____, and ticket, boarding, and waiting areas of public transit depots.
- J. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- K. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the _____ [City *or* County] or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the _____ [City *or* County].

- L. Service lines.
- M. Sports arenas, including enclosed places in outdoor arenas.
- N. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 1004. Reasonable Distance

Smoking is prohibited within a reasonable distance of _____ [*recommended 10-20*] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

Sec. 1005. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Section 1003:

- A. Private residences.
- B. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.

C.

Sec. 1006. Posting of Signs

- D. "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 and conspicuously posted in every public facility where smoking is prohibited by this Article, by the owner, operator, manager or other person in control of that facility.
- E. Every public facility where smoking is prohibited by this Article, including every dining area within such a facility, shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- F. All ashtrays 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. 1007. Nonretaliation; Nonwaiver of Rights

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.

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

Sec. 1008. Enforcement

- A. This Article shall be enforced by the _____ [Department of Health *or* City Manager *or* County Administrator] or an authorized designee.
- B. Any citizen who desires to register a complaint under this Article may initiate enforcement with the _____ [Department of Health *or* City Manager *or* County Administrator].
- C. An owner, manager, operator, or employee of a public facility regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
- D. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.

Sec. 1009. Violations and Penalties

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. A person who owns, manages, operates, or otherwise controls a public facility and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the _____ [Department of Health *or* City Manager *or* County Administrator] by restraining order, preliminary and permanent injunction, or other means provided for by law, and the _____ [City *or* County] may take action to recover the costs of the nuisance abatement.
- D. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 1010. Public Education

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

Sec. 1011. Governmental Agency Cooperation

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

Sec. 1012. Other Applicable Laws

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

Sec. 1013. Liberal Construction

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

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, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Sec. 1015. Effective Date

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

Americans for Nonsmokers' Rights

Source: <http://www.no-smoke.org/document.php?id=332>

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