



COMPREHENSIVE OUTDOOR SECONDHAND SMOKE ORDINANCES

July 2009

Many cities and counties in California are working to protect their residents from secondhand smoke exposure by passing ordinances that restrict smoking in outdoor areas, especially recreation areas and other places where people congregate. These ordinances ban smoking in areas ranging from city parks to building entryways to ATM lines. When these ordinances were first passed they usually prohibited smoking in just a few selected outdoor areas. However, many cities and counties have moved past those limited policies and are now passing ordinances that are far more comprehensive in scope. This document examines the most wide-ranging of these ordinances to provide a clear picture of comprehensive outdoor smoking bans in California and to assist local advocates in their efforts to get more communities to adopt such policies.

THE NEED FOR COMPREHENSIVE OUTDOOR SECONDHAND SMOKE ORDINANCES

There is no question that secondhand smoke is harmful to individuals. The California Air Resources Board declared secondhand smoke a toxic air contaminant in January 2006 and the U.S. Surgeon General stated that there is no safe level of exposure to secondhand smoke in June 2006. A recent study conducted by researchers with Stanford University further shows the public health need for restricting smoking in outdoor areas.* This research measured air pollution levels at outdoor places, such as dining areas and parks, where people were smoking and found that levels of exposure to secondhand smoke outdoors can be comparable to secondhand smoke exposure indoors. In addition, when an individual is near a smoker outdoors, they are exposed to air pollution levels significantly higher than normal background air pollution levels. Finally, the study indicates that there is a compelling health basis for outdoor smoking bans in commercial and non-commercial settings.

In addition to the health risks associated with outdoor smoking, there are other reasons to restrict smoking in certain outdoor areas. Cigarette butts are the number one litter item found along beaches. Cigarette litter damages the environment and poses a hazard to children, pets and wildlife that may pick up or swallow these cigarette butts. Outdoor parks suffer from cigarette trash but also from the risk of fire. In May 2007, a fire started by a discarded cigarette butt in Griffith Park in Los Angeles burned over 800 acres.

*Klepeis NE, Ott WR, Switzer P (2007) Real-time measurement of outdoor tobacco smoke particles. Journal of the Air and Waste Management Association, 57:522-534.

WHAT MAKES A COMPREHENSIVE ORDINANCE?

Smoking can be restricted in any outdoor area, but there are seven outdoor areas that comprehensive ordinances most commonly target. To be classified in this document as a comprehensive outdoor secondhand smoke ordinance, the ordinance must include smoking prohibitions in at least five of the seven major outdoor areas. These areas are:

1. **Dining Areas** – defined as outdoor seating at restaurants, bars, etc.
2. **Entryways** – defined as within a certain distance of doors, windows, and other openings into enclosed areas (many entryways restrictions prohibit smoking within a certain distance of all areas where smoking is prohibited, not just openings into buildings)
3. **Public Events** – defined as farmer’s markets, fairs, concerts, etc.
4. **Recreation Areas** – defined as parks, beaches, trails, sports fields, etc.
5. **Service Areas** – defined as bus stops, ATM lines, ticket lines, taxi stands, etc.
6. **Sidewalks** – defined as public sidewalks, such as sidewalks around downtown shopping and business areas
7. **Worksites** – defined as any outdoor working area, such as construction areas

Twenty-five cities and counties have passed comprehensive outdoor secondhand smoke ordinances. They are Calabasas, Santa Rosa, Mammoth Lakes, Santa Monica, Contra Costa County, Marin County, Laguna Woods, Emeryville, Baldwin Park, Burbank, Temecula, El Cajon, Belmont, Ross, Berkeley, Novato, Hayward, Albany, Loma Linda, Thousand Oaks, Dublin, Glendale, Pasadena, Martinez and Richmond. All these communities are listed in a table on page 4 that outlines the different areas where each ordinance restricts smoking.

COMPREHENSIVE ORDINANCES: TWO APPROACHES FOR SUCCESS

There are two approaches for a comprehensive outdoor secondhand smoke ordinance. The first approach, or **inclusive approach**, is an ordinance that bans smoking in all public places in the community. Calabasas, El Cajon and Loma Linda have adopted this type of ordinance. The second approach, the **listing approach**, specifies the outdoor places where smoking is prohibited. Twenty-two other communities follow the listing approach.

The ordinances adopted in Calabasas, El Cajon and Loma Linda stand out from the other ordinances because they are more far-reaching and use the inclusive approach to restrict smoking in all outdoor public places rather than just listing specific places where smoking is banned. In these three cities, smoking is prohibited in all public places, which is defined as any public or private place that is open to the general public. All seven of the major outdoor areas (dining areas, entryways, public events, recreation areas, service areas, sidewalks, and worksites) are covered by these ordinances, as are other public places such as parking lots. These three cities set the standard for comprehensive smokefree outdoor areas by providing their residents protection from secondhand smoke exposure in all outdoor public places.

Twenty-two other cities and counties have comprehensive outdoor secondhand smoke ordinances that also provide much needed protection from secondhand smoke exposure to their residents. These communities use the listing approach to provide this protection. Instead of prohibiting smoking in all public places, these ordinances follow the approach that specifically lists the places where smoking is prohibited. This model provides the same type of protection from secondhand smoke as the inclusive approach, but just in fewer locations.

A benefit of the listing approach is that it allows for more flexibility in terms of where smoking can be prohibited. If there is not the political will to ban smoking in all public places, the listing approach offers a way to draft a comprehensive ordinance that provides an opportunity to reach compromises that may be necessary to pass the ordinance. Conversely, if a community is only working on restricting smoking in one type of outdoor area, this approach provides an easy way to expand the policy into a comprehensive ordinance if an opportunity presents itself.

PUBLIC SUPPORT FOR COMPREHENSIVE ORDINANCES

The Center commissioned two public opinion surveys that featured questions about comprehensive ordinances and both show strong public support for these laws. In November 2008, the Center commissioned a survey of California voters about secondhand smoke policies and found that 73% of California voters support a comprehensive law that prohibits smoking in all outdoor areas accessible to the public, except for designated smoking areas. In March 2007, the Center commissioned a survey of Calabasas voters one year after the city’s comprehensive ordinance went into effect. The results show that 80% of Calabasas voters approve of the law and 74% think the law is an appropriate way to protect people from secondhand smoke. Both surveys were conducted by Goodwin Simon Victoria Research and survey results and summary documents are available at www.Center4TobaccoPolicy.org/polling.

ENFORCEMENT

Comprehensive outdoor smoking ordinances are designed to be self-enforcing. When communities pass these types of policies, they do not intend for police officers to spend their time searching for people smoking in public places. Rather, the expectation is that through education and signage, residents will become aware of the smoking restrictions and most individuals who smoke will obey the law. If someone does smoke in a restricted area, other people are likely to ask that individual to stop and inform him/her of the smoking restrictions.

Despite the reliance on self-enforcement, all of these ordinances have some provisions that allow the city to enforce the ordinance if needed. For example, all the ordinances detail how violators of the ordinance can be punished. Cities and counties have made violations of their outdoor smoking ban punishable as a misdemeanor, infraction or both. Some ordinances even specify the amount that violators can be fined, often several hundred dollars. In Baldwin Park and Santa Rosa, first violations are punishable by a fine of \$100, and multiple violations within one year are punishable by increasing amounts up to \$500.

Another enforcement element found in most of these ordinances is the designation of an enforcement agency for the smoking prohibitions. Examples of the individuals and departments that have been designated as enforcement agencies in one or more of the ordinances outlined above include police officers, code enforcement officers, city attorneys, city prosecutors, city managers, the fire department, health and human services department, environmental health department and parks department. An innovative way to report violations to the enforcement agency has been set up in Pasadena. The city has a website where individuals can report violations of tobacco control laws through an online form and reports will be investigated within one business day.

A final enforcement provision found only in a few of the ordinances is private enforcement. This enforcement option empowers an individual to enforce the non-smoking prohibition by bringing a civil action in court against a violator and suing for damages that were caused by violations of the ordinance.

SIGNAGE AND EDUCATION

Because these ordinances are designed to be self-enforcing, it is important for the city or county to mount an education campaign and post signs to make the public aware of the locations where smoking is prohibited. Some examples are listed below.

Baldwin Park conducted a public education campaign after it adopted an ordinance. The city produced pamphlets in both English and Spanish that contain information on where smoking is prohibited and answer other frequently asked questions about the secondhand smoke ordinance. Business owners in the city can purchase no-smoking signs to display for \$10.

The City of Belmont has set up two web pages to educate residents about the secondhand smoke ordinance. One site provides the background and history of the ordinance, with links to relevant staff reports and city council agendas. The other site provides information for smokers, such as cessation resources and information about the harm caused by using tobacco. In addition, the city has set up an information kiosk outside city offices with information on the ordinance and how to quit smoking.

In Burbank, the city distributed “No Smoking within 20 Feet” signs to most businesses, installed “No Smoking” signs where appropriate around the city and hired a smoking ambassador. This smoking ambassador has visited business owners and appropriate staff to provide education and serve as a resource for the secondhand smoke ordinance.

Calabasas also undertook a broad public awareness campaign to publicize and explain the provisions of its ordinance. The city designed a logo and identity for the campaign, which was themed “Clean Air Calabasas” and sent a brochure explaining the ordinance to residents and business owners. The city produced signs that businesses may purchase to identify smoking and non-smoking areas, stickers for windows, business cards explaining the ordinance and sugar free breath mints to hand out to patrons.

OTHER RESOURCES

The Center has other resources on comprehensive outdoor secondhand smoke ordinances available on our website at www.Center4TobaccoPolicy.org/localpolicies-outdoorareas, including *Becoming a Policy Wonk on Comprehensive Outdoor Secondhand Smoke Ordinances: Answers to Tough Questions from Opponents and Elected Officials*. For sample language on drafting a comprehensive outdoor smoking ordinance, please visit the Technical Assistance Legal Center’s (TALC) website at <http://www.phlpnet.org>. To view the actual language of the ordinances, visit California’s Clean Air Project’s (CCAP) secondhand smoke policy database at <http://ccap.etr.org/index.cfm?fuseaction=policydb.home>.

TABLE OF COMPREHENSIVE OUTDOOR SECONDHAND SMOKE ORDINANCES

The twenty-five cities and counties with comprehensive ordinances are listed on the table below, which details each outdoor area where a community prohibits smoking in its ordinance. When there are limitations or exceptions to the full definition of the seven possible outdoor areas, it is noted with an asterisk.

CITY / COUNTY	OUTDOOR AREA WHERE SMOKING IS PROHIBITED						
	Dining Areas	Entryways	Public Events	Recreation Areas	Service Areas	Sidewalks	Worksites
Richmond June 2009	X	X	X	X	X		
Martinez April 2009	X	X	X	X	X		X
Pasadena October 2008	X	X	X	X	X		
Glendale October 2008	X*	X	X	X	X		X
Dublin October 2008	X	X	X	X*	X		
Thousand Oaks July 2008	X*	X	X	X*	X		
Loma Linda June 2008	X	X	X	X	X	X	X
Albany May 2008	X*	X	X	X	X	X*	X
Hayward May 2008	X	X	X	X	X	X	
Novato April 2008	X*	X	X	X	X		X
Berkeley December 2007	X	X		X	X	X*	X
Ross December 2007	X	X	X	X	X		
Belmont October 2007	X	X	X	X	X		X
El Cajon August 2007	X	X	X	X	X	X	X
Temecula May 2007	X	X	X	X	X		X
Burbank April 2007	X*	X	X	X	X*	X*	
Baldwin Park February 2007	X	X	X*	X	X		
Emeryville December 2006	X	X	X	X	X		
Laguna Woods November 2006	X*	X	X	X	X		
Marin County November 2006	X*	X	X	X	X		X
Contra Costa County October 2006	X	X	X	X	X		
Santa Monica October 2006	X	X	X*	X	X	X*	
Mammoth Lakes June 2006	X	X	X	X	X		X
Santa Rosa June 2006	X	X	X	X	X*	X*	
Calabasas February 2006	X	X	X	X	X	X	X

*Glendale - allows for creation of designated smoking section in outdoor dining

*Dublin - recreation areas does not include community parks

*Thousand Oaks - allows restaurants to apply for a permit for a designated outdoor smoking section if certain conditions are met

*Thousand Oaks - smoking prohibitions only apply to recreational areas under the city's authority; city parks are under a separate jurisdiction

*Albany - allows exceptions for permitting smoking in outdoor areas at stand-alone bars if certain conditions are met

*Albany - only prohibits smoking on sidewalks adjacent to school property and sidewalks on Solano Avenue between San Pablo Avenue and the City of Berkeley jurisdictional border

*Novato - allows exceptions for permitting smoking in outdoor areas at stand-alone bars if certain conditions are met

*Berkeley - only prohibits smoking on sidewalks in commercial areas

*Burbank - allows restaurants to apply for a designated outdoor smoking section that can cover up to 40% of dining area

*Burbank - service areas prohibition does not include individual bus stops in public rights-of-way

*Burbank - only prohibits smoking on sidewalks in downtown Burbank

*Baldwin Park - only prohibits smoking at farmer's markets

*Laguna Woods - only applies to restaurants, not bars

*Marin County - allows exceptions for permitting smoking at outdoor dining at bars if certain conditions are met

*Santa Monica - only prohibits smoking at farmer's markets

*Santa Monica - only applies to sidewalks at the Third Street Promenade

*Santa Rosa - service areas prohibition only includes downtown transit mall

*Santa Rosa - only applies to sidewalks at Comstock mall and Jeju Way

This material was made possible by funds received from the California Department of Public Health, under contract #09-11173.