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**TO:** The Honorable Detroit City Council

**FROM:** David Whitaker, Director Legislative Policy Division 

**DATE:** April 8, 2026

**RE:** Report Concerning Vape Use on City Property

The Legislative Policy Division has been requested by Council Member Angela Whitfield-Calloway to determine whether the City of Detroit can regulate the use of vape products on city property. This report is in response to a memo provided to our office in October of 2025, but was delayed due to a clerical error. We sincerely apologize for the delay.

The 2019 Detroit City Code currently contains very limited regulation of vape products, and generally treats them differently from smoking tobacco. The Code currently defines tobacco products as “any cigarette, cigar, non-cigarette smoking tobacco, or smokeless tobacco as defined in Section 2 of the Michigan Tobacco Products Tax Acts, being MCL 205.422.”<sup>1</sup> “Smokeless tobacco” under the Michigan Tobacco Products Tax Acts “means snuff, snus, chewing tobacco, moist snuff, and any other tobacco that is intended to be used or consumed, whether chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested, by any means other than smoking or combustion.”<sup>2</sup>

Since nicotine vapes do not contain tobacco, they do not appear to fit within the definition of a tobacco product under the ordinance. When City Council passed an ordinance in March of 2025 banning marijuana and vaping advertisements near City schools and playgrounds, it added a definition for “electronic nicotine delivery system[s],” which are defined as “products which are designed to deliver

<sup>1</sup> 2019 Detroit City Code, Chapter 4, Article I, Section 4-1-1.

<sup>2</sup> MCL 205.422.

nicotine, flavorings and other additives to the use via an inhaled aerosol including but not limited to vapes, vaporizers, vape pens, hookah pens, electronic cigarettes, electronic pipes, hookahs, and pipes.”<sup>3</sup> The term “electronic nicotine delivery system” does not appear within the various provisions of the Code regulating tobacco products.<sup>4</sup> The Code prohibits individuals from smoking any substance, including an “e-cigarette” on streetcars or at streetcar stations.<sup>5</sup> Smoking on City busses is prohibited, however the Code provision does not include e-cigarettes.<sup>6</sup>

Other provisions of the Detroit City Code regulating tobacco products do not include vapor products and the Code does not prohibit the use of vape products on city-owned property generally. In general, Michigan law does not regulate smoking and tobacco use outdoors and Michigan’s Smoke-Free Indoor Air Law, which prohibits smoking in certain public places, has not been updated to include vape products.<sup>7</sup> This may be because the Smoke-Free Indoor Air Law was intended to protect members of the public against secondhand smoke, which has been proven to have harmful effects on health. While some studies have found that there may be a correlation between exposure to secondhand aerosol vapor and certain negative health effects, there do not appear to be the same broad consensus among researchers.<sup>8</sup>

However, vapor products are broadly known to contain heavy metals and a variety of chemicals known to be carcinogens. Additionally, these products produce toxic waste, especially when not disposed of properly as they often contain lithium-ion batteries which can leach metals like mercury, lead, and bromines, as well as battery acid, into the ground and the water supply. This poses a serious threat to both humans and wildlife.

Recognizing this threat, other Michigan municipalities have enacted local ordinances prohibiting the use of smoking and vapor products in outdoor public areas such as parks, beaches, and recreation areas. For example, Ann Arbor enacted an ordinance prohibiting smoking in “smokefree outdoor public places,” which includes e-cigarettes.<sup>9</sup> The Ann Arbor ordinance prohibits smoking near public buildings, near bus stops, and in city parks where there are signs prohibiting smoking. Canton Charter Township has also prohibited “smoking of tobacco or any other substance, or smoking, consumption or use of marijuana products or derivatives, or use of vapor products or nicotine alternatives” in the township’s “leisure services facility properties,” which are listed under the township’s code and include a theater, a youth and teen center, a sports center, golf clubs, parks, trails, historical sites, cemeteries, etc. Other entities, like the Detroit-Wayne Joint Building Authority (DWJBA), prohibit smoking in certain outdoor areas by regulation. For example, the DWJBA prohibits smoking within 15 feet from entrances/exits.<sup>10</sup>

The City of Detroit may pass an ordinance or ordinances that prohibit the use of “electronic nicotine delivery systems” and other forms of smoking in various public outdoor areas and near public facilities. The Michigan Department of Health & Human Services has produced generic model ordinance language for cities to use as a template to create tobacco-free outdoor spaces. This model language is

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<sup>3</sup> 2019 Detroit City Code, Chapter 4, Article I, Section 4-1-1.

<sup>4</sup> See for example Chapter 29, Article III, Division 4; Chapter 11, Article I; Chapter 19, Article III, Division 4; Chapter 47, Article II, Division 1, Section 47-2-2; Chapter 47, Article IV, Section 47-4-7.

<sup>5</sup> 2019 Detroit City Code, Section 47-8-24.

<sup>6</sup> *Id.* Section 47-2-2.

<sup>7</sup> MCL 333.12601 *et seq.*

<sup>8</sup> Islam T, Braymiller J, Eckel SP, Liu F, Tackett AP, Rebuli ME, Barrington-Trimis J, McConnell R. Secondhand nicotine vaping at home and respiratory symptoms in young adults. *Thorax*. 2022 Jul;77(7):663-668. doi: 10.1136/thoraxjnl-2021-217041. Epub 2022 Jan 10. PMID: 35013000; PMCID: PMC9203939.

<sup>9</sup> Ann Arbor City Code, Sec. 6.1-6.5.

<sup>10</sup> [https://www.caymc.com/pdf/Tenant\\_Info\\_Manual\\_120121.pdf](https://www.caymc.com/pdf/Tenant_Info_Manual_120121.pdf)

attached below. The ordinance should specify the various areas where smoking and vaping are prohibited and should be accompanied by a plan to educate the public and to ensure that signs are installed to clearly inform the public that smoking in certain areas is unlawful.

Please reach out to our office if you require any further assistance.

# [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**, the [County Commission/City Council of \_\_\_\_\_ ] possesses the authority to regulate the use of tobacco products, including electronic smoking devices, as set forth in this [ordinance/regulation], as prescribed by Section 916(a)(1) of the Federal Food, Drug, and Cosmetic Act - Preservation of State and Local Authority; 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,<sup>11</sup> accounting for about 480,000 deaths each year;<sup>12</sup> and
- Tobacco use causes chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;<sup>13</sup> and
- Some of the most common types of cancers – including stomach, liver, uterine, cervix, and kidney cancer – are related to tobacco use;<sup>14</sup> 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;<sup>15</sup> and

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<sup>11</sup>U.S. Department of Health and Human Services. [The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General](#). Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

<sup>12</sup>[The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General](#), 2014.

<sup>13</sup>[The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General](#), 2014.

<sup>14</sup>[The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General](#), 2014.

<sup>15</sup> 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](http://www.surgeongeneral.gov/library/tobaccosmoke/factsheet.html).

- Secondhand smoke is responsible for as many as 3,000 deaths from lung cancer and 46,000 deaths from heart disease among nonsmokers each year in the United States;<sup>16</sup> and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately 30 percent;<sup>17</sup> 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;<sup>18</sup> and exacerbates childhood asthma;<sup>19</sup> 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;<sup>20</sup> 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;<sup>21</sup> 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.<sup>22</sup>
- 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

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<sup>16</sup> [The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General](#), 2014.

<sup>17</sup> 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](http://www.circ.ahajournals.org/cgi/content/full/111/20/2684).

<sup>18</sup> [The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General](#), 2014.

<sup>19</sup> [The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General](#), 2014.

<sup>20</sup> 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](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](http://www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf).

<sup>21</sup> 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: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1242082/>; 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.repaca.com/pdf/Repaca\\_Ch\\_15\\_Outdoor\\_Smoke.pdf](http://www.repaca.com/pdf/Repaca_Ch_15_Outdoor_Smoke.pdf).

<sup>22</sup> 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. doi:10.1136/tc.2010.041277. Abstract available at: <http://tobaccocontrol.bmj.com/content/20/3/212>

inside the ship's casino where smoking was allowed;<sup>23</sup> 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;<sup>24</sup> and

**WHEREAS**, smokeless tobacco products, which are not burned, are not safe and can cause serious illnesses, 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;<sup>25</sup> smokeless tobacco products are known to cause lung, larynx, esophageal, and oral cancer;<sup>26</sup> and the regular use of snuff increases the user's risk of death from cardiovascular disease and stroke;<sup>27</sup>

**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

**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 99.8 million pounds of cigarette butts every year;<sup>28</sup> 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;<sup>29</sup> and
- Cigarette filters, made of plastic cellulose acetate, are not biodegradable and take

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<sup>23</sup> 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](http://www.repace.com/pdf/Repace_Ch_15_Outdoor_Smoke.pdf).

<sup>24</sup> 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](http://www.repace.com/pdf/Repace_Ch_15_Outdoor_Smoke.pdf).

<sup>25</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Smokeless Tobacco: Health Facts*, [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/smokeless/health\\_effects/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/smokeless/health_effects/index.htm) (last updated December 1, 2016).

<sup>26</sup> [The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General](#), 2014.

<sup>27</sup> World Health Organization. [IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Volume 89: Smokeless Tobacco and Some Tobacco-Specific N-Nitrosamines](#). Lyon (France): World Health Organization, International Agency for Research on Cancer, 2007.

<sup>28</sup> Drope J et al., *The Tobacco Atlas*, 6th ed. (Atlanta, GA: American Cancer Society and Vital Strategies, 2018), chap. Environment.

<sup>29</sup> Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, [www.surfridersd.org/hotyb.php](http://www.surfridersd.org/hotyb.php). (last visited March 10, 2011).

approximately 15 years to decompose;<sup>30</sup> and

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

- From 2010 to 2014, American poison control centers received nearly 6,000 reports of children poisoned by the ingestion of electronic cigarettes and 21,000 reports of children being poisoned by the ingestion of tobacco cigarettes;<sup>31</sup> and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;<sup>32</sup> 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;<sup>33</sup> and
- Smoking bans help people reduce the number of cigarettes they smoke or quit altogether;<sup>34</sup> and
- Strong smoking regulations for restaurants decrease the number of children who transition from experimenting with smoking to becoming actual smokers;<sup>35</sup> and

**WHEREAS**, electronic cigarettes are known to have caused serious injury and death from explosion of their rechargeable lithium batteries;<sup>36</sup>

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<sup>30</sup> Surfrider Foundation, San Diego Chapter, Hold on to Your Butt, [www.surfridersd.org/hotyb.php](http://www.surfridersd.org/hotyb.php). (last visited March 10, 2011).

<sup>31</sup> Chatham-Stephens K, Law R, Taylor E, Kieszak S, Melstrom P, Bunnell K, Wang B et al. "Exposure Calls to U. S. Poison Centers Involving Electronic Cigarettes and Conventional Cigarettes—September 2010–December 2014." *Journal of Medical Toxicology* 12, no. 4 (December 2016): 350–57. <https://doi.org/10.1007/s13181-016-0563-7>.

<sup>32</sup> 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](http://www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm).

<sup>33</sup> Glantz SA. "Meta-Analysis of the Effects of Smokefree Laws on Acute Myocardial Infarction: An Update." *Preventive Medicine*, 47(4): 452-453, 2008. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2927851/>

<sup>34</sup> Neighmond P. "Smoking Bans Help People Quit, Research Shows." *National Public Radio*, October 25, 2007, [www.npr.org/templates/story/story.php?storyId=15610995](http://www.npr.org/templates/story/story.php?storyId=15610995).

<sup>35</sup> 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>.

<sup>36</sup> Howard J and Burnside T, "Man Dies in E-Cigarette Explosion, Police Say," CNN, May 15, 2018, <https://cnn.it/2J63fBh>; Kumetz EA et al., "Electronic Cigarette Explosion Injuries," *The American Journal of Emergency Medicine* 34, no. 11 (November 1, 2016): 2252.e1-2252.e3, <https://doi.org/10.1016/j.ajem.2016.04.010>.

**WHEREAS**, laws restricting electronic smoking devices use also have benefits to the public as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, and toluene;<sup>37</sup> and
- More than one study has concluded that exposure to aerosol/vapor from electronic smoking devices may cause passive or secondhand vaping;<sup>38</sup> and
- The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment;<sup>39</sup> and

**WHEREAS**, creating smoke-free areas helps protect the health of our children and the 80 percent of adults who do not smoke;<sup>40</sup> 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

**WHEREAS**, there is no Constitutional right to smoke or use tobacco products;<sup>41</sup>

## 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.

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<sup>37</sup> *Chemicals known to the state to cause cancer or reproductive toxicity*. State of California Environmental Agency Office of Health Hazard Assessment Safe Drinking Water and Toxic Enforcement Act of 1986. 2015. Available at: [www.oehha.ca.gov/prop65/prop65\\_list/files/P65single012315.pdf](http://www.oehha.ca.gov/prop65/prop65_list/files/P65single012315.pdf). Goniewicz ML, Knysak J, Gawron M, et al. Levels of selected carcinogens and toxicants in vapour from electronic cigarettes. *Tob Control*. 2013;1:1–8. doi:10.1136/tobaccocontrol-2012-050859.

<sup>38</sup> German Cancer Research Center. "Electronic Cigarettes - An Overview" Red Series Tobacco Prevention and Control. Heidelberg; 2013. Available at: [www.dkfz.de/de/tabakkontrolle/download/Publikationen/RoteReihe/Band\\_19\\_e-cigarettes\\_an\\_overview.pdf](http://www.dkfz.de/de/tabakkontrolle/download/Publikationen/RoteReihe/Band_19_e-cigarettes_an_overview.pdf); Schripp T, Markewitz D, Uhde E, Salthammer T. Does e-cigarette consumption cause passive vaping? *Indoor Air*. 2013;23(1):25–31. <https://doi.org/10.1111/j.1600-0668.2012.00792.x>; Schober W, Szendrei K, Matzen W, et al. Use of electronic cigarettes (e-cigarettes) impairs indoor air quality and increases FeNO levels of e-cigarette consumers. *Int J Hyg Environ Health*. 2013. <https://doi.org/10.1016/j.ijheh.2013.11.003>.

<sup>39</sup> Wilson N et al., "Should E-Cigarette Use Be Included in Indoor Smoking Bans?," *Bulletin of the World Health Organization* 95, no. 7 (July 1, 2017): 540–41, <https://doi.org/10.2471/BLT.16.186536>.

<sup>40</sup> 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](http://www.cdph.ca.gov/Pages/NR10-099.aspx).

<sup>41</sup> 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](http://www.phlpnet.org/tobacco-control/products/there-no-constitutional-right-smoke).

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 any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" also means electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

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

L. "Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

**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 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.

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[County/City Official]

Date