

# **Model Outdoor Recreational Areas Commercial Tobacco-Free Ordinance<sup>1</sup>**

## **Section 1: Purpose**

**1.1.** The [City/County] is committed to providing safe and healthy environments.

**1.2.** Commercial tobacco use is the leading cause of preventable death and disease in the U.S.

**1.3.** Exposure to secondhand smoke has negative health impacts and the U.S. Surgeon General has determined there is no risk-free level of exposure to secondhand smoke.

**1.4.** Electronic smoking devices, more commonly referred to as electronic cigarettes or e-cigarettes, typically contain nicotine, which is highly addictive, and their use (1) often closely resembles and purposefully mimics the act of smoking, (2) produces an aerosol or vapor of undetermined and potentially harmful substances, (3) is increasing among both adults and youth, (4) is especially concerning among youth because of the negative impacts of nicotine on the developing adolescent brain, (5) threatens to re-normalize smoking, potentially jeopardizing tobacco control efforts of the past and present, and (6) creates confusion and leads to difficulties enforcing smoking prohibitions.

**1.5.** Tobacco products, including electronic smoking devices, consumed in outdoor public places are often discarded on the ground as an environmental blight, diminishing the beauty of recreational areas, requiring additional maintenance expenses to clean up, and posing a fire risk as well as risk to human and animal health through potential ingestion and contamination of water sources.

**1.6.** The tobacco industry advertises at and sponsors recreational events to foster a connection between tobacco use and recreation.

**1.7.** The [City/County] believes parents, coaches, leaders, and officials involved in recreation are role models for youth and can have a positive effect on the lifestyle choices they make.

**1.8.** The [City/County] believes commercial tobacco use is detrimental to the public's health and has determined that prohibiting the use of tobacco products including electronic smoking devices, in all [City/County] recreational areas serves to protect the public's health, safety and welfare.

## **Section 2: Definitions**

**2.1. All times** means 24 hours a day, seven days a week.

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<sup>1</sup> [Wis. Stat. §101.123 \(4m\)](#) provides authority of local jurisdictions to enact more stringent smoke-free laws than state law. However, the statute requires that any ordinance that limits smoking in outdoor areas must only regulate "public property" and must permit any person in charge of a restaurant, tavern, private club, or retail establishment in an area covered by the ordinance to designate a smoking area that is a "reasonable distance" from the entrance of the establishment. (See § 3.2 of this ordinance for the required exception.) The circumstances for this exception may include a restaurant that leases the space in a park owned by the jurisdiction.

**2.2. Electronic smoking device** means any device that may be used to deliver any aerosolized or vaporized 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.

**2.3. Recreational area** means all facilities, parks, trails, open space, and other property owned, leased, rented, contracted, used, or controlled by [City/County] for parks and recreational purposes, including parking areas, streets, and sidewalks located within a park or recreational area. The term includes, but is not limited to, restrooms, spectator and concession areas, playgrounds, athletic fields, beaches, picnic areas, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, roller and ice-skating rinks, skateboard parks, amusement parks, zoos, and aquatic areas.

**2.4. Smoking** means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco, nicotine, or plant product intended for inhalation, including hookah and marijuana, whether natural or synthetic. “Smoking” also includes the use of an electronic smoking device.

**2.5. Tobacco product** means:

1. any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, or snus;
2. any electronic smoking device as defined in this policy and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or,
3. any component, part, or accessory of 1) or 2), whether or not any of these contains tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.

“Tobacco product” does not mean 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.

**2.6. Tobacco use** means the act of smoking or the use of any other tobacco product in any form.

### **Section 3: Policy**

**3.1.** Tobacco use is prohibited at all times in or on all recreational areas.

**3.2.** In accordance with Wis. Stat. §101.123 (4m), the person in charge of a restaurant, tavern, private club, or retail establishment located in an area subject to this ordinance may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club, or retail establishment where customers, employees, or persons associated with the restaurant, tavern, private club, or retail establishment may smoke.

**3.3** It is not a violation of this policy to use sacred tobacco in or on recreational areas as part of a Native American religious, spiritual, or cultural ceremony or practice.

#### **Section 4: Enforcement**

**4.1.** Signage will be posted at strategic locations to inform the community and recreational area users about the policy and ash receptacles for the disposal of tobacco products, including, but not limited to, ashtrays or ashcans, will not be permitted where smoking and tobacco use is prohibited.

**4.2** [City/County] staff and volunteers will be notified about this policy through the employee manual.

**4.3** The success of this policy depends on the consideration and cooperation of all. Enforcement of the policy is a shared responsibility of [City/County] staff and recreational area users. [City/County] staff will communicate the policy to event organizers. [City/County] staff will also make periodic observations of recreational areas to monitor for compliance.

**4.4** Any individual found violating this policy will be reminded and asked to comply before being subject to ejection from the recreational area. [City/County] staff found violating this policy may be subject to disciplinary action.

**4.5** An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking or using tobacco products in violation of this Article to extinguish the product being smoked or stop using the tobacco product. If the person does not stop smoking or using the tobacco product, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee may contact a law enforcement agency.

#### **Section 5: Violations and Penalties**

**5.1** A person age 21 and older who smokes or uses tobacco products in an area where smoking and using tobacco products is prohibited by the provisions of this Article may be cited for an administrative violation, punishable by a fine not exceeding fifty dollars (\$50) or other non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the [City/County] determines to be appropriate.

**5.2** A person who owns, manages, operates, or otherwise controls an area regulated under this Article who fails to comply with the provisions of this Article shall be cited for an administrative violation, 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.

**5.3** In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls an area regulated under this Article may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

**5.4** 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/County] may take action to recover the costs of the nuisance abatement.

**5.5** Each day on which a violation of this Article occurs shall be considered a separate and distinct violation

### **Section 6: Severability**

If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision of this ordinance that can be given effect without the invalid provision or application. Each invalid provision or application of this ordinance is severable.

### **Section 7: Effective Date**

This policy is effective on [effective date].  
Appropriate [City/County] Official Date