

Smoke-Free Cities: Framework for Smoke-Free Legal Measures

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Notes on Terminology

MUNICIPALITY. Municipalities can take various forms, including cities, towns, and villages. In many cases, this is the third level of government, under the national (first) and state/provincial/regional (second) levels. Throughout this resource, **the term “municipality” is used to refer to the local government (provinces, regions, towns, villages) that is responsible for providing services and enacting laws within its territory.**

ORDINANCE. Municipalities around the world enact legal instruments with different name — bylaws, laws, decrees, ordinances, regulations, etc. Moreover, some legal measures reviewed in conjunction with this project may be in draft form or may already be in effect. Throughout this resource, **the term “ordinance” is used to refer to the legal instrument that is to be developed or is under review.**

E-CIGARETTES. To date, there are thousands of different types of electronic nicotine delivery systems (ENDS) on the market globally, including e-cigarettes, e-hookahs, and more. These products share many characteristics in that they allow a user to inhale a substance containing nicotine, but also widely differ in their appearance and internal components for heating the liquid solution. Moreover, other products may look identical in appearance but they either do not contain nicotine or are labeled or marketed as being “nicotine-free.” These products are commonly known as electronic non-nicotine delivery systems (ENNDS). Throughout this resource, **the term “e-cigarette” is used to refer to all of these products (both ENDS and ENNDS).**

SMOKE, SMOKER, AND SMOKE-FREE.

With the introduction of products such as e-cigarettes and heated tobacco products (HTPs), which heat tobacco sticks or cigarettes for inhalation generally through an electronic device, regulators and public health advocates have recognized the need to protect people from exposure to emissions from all of these products, in addition to emissions from smoked conventional tobacco products, in indoor workplaces, public places, and on public transport. From a legal drafting standpoint, one way to accomplish this is to define “smoke” to encompass both the act of smoking conventional tobacco products (e.g., cigarettes, cigars, waterpipe tobacco) and the use of e-cigarettes and HTPs. Therefore, throughout this resource, **the term “smoke” is used to refer to the use of all inhalable products regulated by the ordinance. Similarly, “smoker” refers to those consuming inhalable products and “smoke-free” means free from tobacco smoke and emissions from e-cigarettes and HTPs.**

INTRODUCTION

This resource provides a framework for assessing your smoke-free legal measures to ensure that they reflect legal obligations and global best practices consistent with the WHO Framework Convention on Tobacco Control (WHO FCTC), its Guidelines for implementation, and decisions adopted by the Convention’s governing body, the Conference of the Parties (COP). This resource should be read in conjunction with *Smoke-Free Cities: Gap Analysis*.

Smoke-free laws are critical for the protection of public health because:

- According to the WHO, tobacco is one of the leading causes of preventable death — with almost nine million people dying from tobacco related diseases every year.¹
- Exposure to tobacco smoke causes the death of 1.3 million non-smokers every year.²
- Comprehensive smoke-free laws protect the public from exposure to deadly tobacco-related diseases, help smokers quit, and discourage non-smokers from beginning to smoke.

Parties to the WHO FCTC recognize that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease, and disability.^{3,4} Accordingly, in meeting their treaty obligations under WHO FCTC Article 8, Parties are required to:

- Adopt and implement effective measures to provide protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, and as appropriate, other public places.
- Actively promote the adoption and implementation of such measures sub-nationally, including for example, in municipalities.

The Guidelines for implementation of Article 8, which were adopted by consensus by the Parties to the WHO FCTC, contain principles, definitions, and key legislative elements which the Parties agree are necessary to afford *effective* protection from exposure to tobacco smoke, as required by the WHO FCTC.⁵

Further, the COP has adopted decisions to assist Parties in regulating emerging tobacco and nicotine products such as heated tobacco products (HTPs)⁶ and e-cigarettes.⁷ To protect people from exposure to their emissions, Parties are reminded to prohibit the use of these products in indoor spaces. Even where the commercialization of these products is prohibited, it is important to prohibit their use in at least the same places where smoking conventional tobacco products is prohibited.

REQUIREMENTS FOR EFFECTIVE SMOKE-FREE MEASURES

Overview

Taking into account the above obligations and recommendations, there are several key elements to consider in developing legal measures that will most effectively protect all people from the risks and harms of exposure to tobacco smoke and other emissions and help to denormalize the use of these tobacco and nicotine products in society. Effective smoke-free measures should:

1. State the purpose/objectives of the ordinance;
2. Define key terms broadly enough to encompass not only smoking conventional tobacco products but also the use of HTPs and e-cigarettes;
3. Apply a ban on smoking in all indoor public places and workplaces, on all public transport, and in specified outdoor spaces where health hazards exist due to exposure to tobacco smoke and other emissions;
4. Impose legal duties of compliance on persons in charge of those premises and public transport and on smokers;
5. Specify the powers and duties of inspection and enforcement authorities;
6. Provide a range of deterrent penalties that are proportionate to the seriousness of the violation and the degree of responsibility of the violator;
7. Empower and enable civil society to make complaints and take legal action to compel compliance with the law;
8. Educate the public about the purpose and requirements of the law;
9. Require the appropriate authority to evaluate the effectiveness of the ordinance and its enforcement and make this information publicly available; and
10. Provide the appropriate authority with broad regulatory power to address implementing details and any other matters necessary or appropriate for the effective implementation of the ordinance.

1 State the Purpose/Objectives

The purpose/objectives section of an ordinance is important because it provides the municipality’s reasoning and evidence base for adopting the provisions of the ordinance. (Depending on the jurisdiction, this may take the form of preambular language, “Purpose and Findings,” “Objectives,” or other similar form as is customary in the jurisdiction.) In the event of a legal challenge, courts often seek to determine whether and how the ordinance’s provisions are likely to accomplish the ordinance’s purpose to protect the public health.

In drafting this section, consideration might be given to articulating aims and findings that include, among others:

- Those expressed in WHO FCTC Article 3 (Objective) and in WHO FCTC Article 5.2(b) (General obligations);

- Fulfilling the government’s obligations under WHO FCTC Article 8 to provide for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, and, as appropriate, other public places;
- Preventing tobacco and nicotine product initiation and addiction, with special regard to young persons and other vulnerable population groups, by denormalizing smoking;
- Protecting people from the adverse health effects of tobacco use and exposure to tobacco smoke; and
- Reducing the environmental impacts from the cultivation, production, and waste treatment and disposal of tobacco products (e.g., cigarette filters) and related electronic devices, including e-cigarettes.

2 Define Key Terms

Legal definitions impact the scope of the policy and the products that will be covered under the legal measures. While the exact terms to be defined in each ordinance will vary based on the terms used in the substantive provisions and in any legal measures at the national level, there are key definitional elements to consider when evaluating the comprehensiveness of your municipality’s smoke-free measures. These elements are derived from the definitions contained in the WHO FCTC, its Guidelines for implementation, and COP decisions. In addition, we have incorporated suggestions based on what we have observed in our work ensuring that HTPs and e-cigarettes are covered in smoke-free legal measures.

As the tobacco industry continues to develop and market emerging tobacco and nicotine products, capturing the use of these products in the ordinance will be important to prevent health risks or harms and to assist in effective enforcement efforts. Special care should be taken to evaluate gaps in your existing measures with a particular focus on whether product definitions are broad enough to future-proof your legal measures. For example, at present, does the use of e-cigarettes and HTPs fall within the definition of “smoke” or “smoking” so that their use is prohibited where smoking conventional tobacco products is prohibited?

3 Apply Smoke-Free Provisions

To provide effective protection from public and workplace exposure to tobacco smoke and other emissions, it is essential that the ordinance comprehensively prohibits smoking:

- In all parts of all indoor public places;
- In all parts of all indoor workplaces;
- On all means of public transportation; and
- In specified outdoor or quasi-outdoor spaces where health hazards exist due to exposure to tobacco smoke and other emissions.

Legal measures that do not require completely smoke-free indoor environments, for example, by allowing separate smoking areas or rooms (even those required to meet the most rigorous ventilation standards), have repeatedly been shown to be *ineffective* in protecting against exposure to tobacco smoke. Therefore, as stated in the Guidelines for implementation of Article 8,

“[e]ffective measures to provide protection from exposure to tobacco smoke, as envisioned by Article 8 of the WHO FCTC, require the total elimination of smoking and tobacco smoke in a particular space or environment in order to create a 100% smoke free environment” (emphasis added).⁸

Generally, we recommend against providing a list of places where smoking is prohibited as this runs the risk of inadvertently failing to list a type of place. However, if it is necessary or customary in your municipal legislation to provide examples of places where smoking is prohibited, then the ordinance should clearly state that any such list is provided for illustrative purposes only and is in no way meant to be exhaustive.*

Multi-unit residences. Because apartment and condominium buildings and other types of multi-unit residences or facilities (e.g., residential care facilities) have aspects

of private dwellings, workplaces, and common public spaces, and because smoke and other harmful emissions drift out of individual dwelling units or areas, it may be advisable to specify the scope of smoking prohibitions with regard to both common areas and individual dwelling units or areas.

Private residences that are also workplaces. Similarly, it may be further advisable to clarify the scope of smoking prohibitions with regard to a private residence that is also a workplace (e.g., in cases where child care to non-residents is provided, in cases where a non-resident provides domestic services in the dwelling, and in cases where a person operates a business out of his/her home and the dwelling is used as a workplace for employees of the business).

Outdoor smoking areas. Many jurisdictions around the world include in their smoke-free laws a prohibition on smoking within a specified distance of doorways, operable windows, and air intake mechanisms of enclosed workplaces and public places and/or within a specified distance of outdoor smoke-free areas. The required distance should be determined taking into consideration the distance needed for effective protection, the boundaries of the premises, the proximity of the street to the enclosed structure(s) on the property, and other factors. Globally, prescribed distances typically range from five meters to 10 meters, for example. Increasingly, beaches, parks, and other outdoor recreational areas are also becoming smoke-free. Creating smoke-free outdoor spaces not only protects people from exposure to tobacco smoke and other emissions but also reduces tobacco and nicotine product litter and prevents the further normalization of smoking.

*This can be done by using language such as “including but in no way limited to . . .” or other language in conjunction with the list that prevents the list from having a limiting effect.

4 **Impose Legal Duties of Compliance**

An enforceable smoke-free ordinance will not only impose a legal duty on individuals to refrain from smoking where it is prohibited but will also place primary responsibility for compliance on the person in charge of the premises or means of public transport. The ordinance should also specify the obligations of those persons, including an ongoing duty to:

- Post signs notifying persons on the premises that smoking is prohibited. The ordinance should specify the content (text, language, and images); size; and location of required signage. Signage should cover both smoking conventional tobacco products and the use of emerging

tobacco and nicotine products including HTPs and e-cigarettes. Signage should also include a number, website, or application where members of the public can report violations of the law.

- Remove ashtrays from all indoor areas and from any outdoor areas where smoking is prohibited.
- Take reasonable steps to discourage and stop smoking where it is prohibited, including: asking any person who is smoking to stop; discontinuing service and asking the person to leave if s/he refuses; and, if necessary, contacting law enforcement authorities for assistance.

5 **Specify Inspection and Enforcement Authorities, Powers, and Duties**

To establish a comprehensive and coordinated inspection and enforcement system, it is essential for the ordinance to specify:

- Which authority or authorities have inspection powers and duties, and the places falling within each authority's area of responsibility when more than one entity has inspection responsibilities;
- Which authority or authorities have the power and duty to undertake legal action to enforce the ordinance;
- The powers of inspectors, including the right to enter the premises subject to the ordinance and to gather relevant evidence;
- The mechanisms for coordination if more than one authority or level of government is involved; and

- That an investigator, acting competently and in good faith, cannot be held liable for fulfilling their enforcement functions.

When specifying which authority or authorities are responsible for inspections, it is advisable to consider what inspection systems already exist and whether inspections under the smoke-free ordinance could be added to an existing mechanism. These might include inspection systems for hygiene and sanitation, occupational health and safety, fire safety, business licensure, and other relevant systems. However, it is essential to consider whether those existing inspection systems are well-functioning, whether the inspection agencies are well-resourced, and how strong the commitment is within the agencies to carry out inspection duties.

6 **Provide a Range of Penalties**

The ordinance should include a range of penalties for violations. These may include:

- Fines;
- Business or operating licensure sanction, especially for flagrant or repeated violations;
- Criminal penalties, where appropriate; and
- Public notification of violations, with the associated costs levied against the violator(s).

The following principles should guide decisions about the level and nature of the penalties imposed in the ordinance. Penalties should:

- Be commensurate with the nature and seriousness of the offense and the degree of responsibility of the violator. In addition, they should be consistent with a country's treatment of other equally serious offenses.
- Be sufficiently large to deter violations. Larger penalties are required to deter business violators than to deter violations by individuals, who typically have fewer resources. In addition, this means imposing different levels of fines or other sanctions for the different provisions in the ordinance.
- Increase for repeated violations.

- Apply to the conduct of corporate entities as well as individuals. Sanctions should be applied to the conduct of managers, directors, officers, and legal representatives that are responsible for corporate conduct.

While it may be customary in some jurisdictions to apply criminal penalties against individuals for smoking where prohibited, it is important to recognize that smoke-free policies work best to create societal behavior change when there is public support and 'buy-in' for the policy.

Penalties placed on individual smokers should be proportionate, while keeping in mind that individuals who smoke may have fewer resources and be members of vulnerable populations. As has been mentioned above, to promote public health, enforcement measures should concentrate on ensuring that businesses comply with smoke-free requirements, promote the values of social equity and justice by upholding human rights, protect all vulnerable populations, and as drafted, not patently threaten the safety and security of individuals, particularly in the application of criminal penalties.

Where possible, fines collected from violations, or a portion of them, could be allocated for the administration of the ordinance.

7 **Empower and Enable Civil Society**

The ordinance should provide members of the public and civil society organizations with the authority to initiate complaints and legal action to compel compliance with the law. This would include, as appropriate, action against the government if it fails to fulfill its inspection or enforcement duties.

8 **Require Effective Evaluation**

It is important to monitor and evaluate smoke-free measures to ensure effective protection from exposure to tobacco smoke. Imposing a duty on the responsible authority or authorities to track compliance rates and evaluate the overall effectiveness of the inspection and enforcement program will help ensure these activities are undertaken and sustained.

Evaluation data can then be used to identify any barriers to compliance and/or enforcement and any areas where the law and the inspection and enforcement system may need strengthening. Inspection and enforcement reports and monitoring and evaluation results should be made readily available to the public.

9 **Educate the Public**

Public education is an important component of a successful smoke-free environments campaign and can help generate support for the adoption of a smoke-free ordinance. Public education does not end once the ordinance is adopted, however. Instead, the government plays an important ongoing role in educating the public about the purpose and requirements of the ordinance. Thus, drafters may want to consider including a requirement for the government to engage in continuing public education. Government messages may include:

- Benefits of 100% smoke-free places;
- Risks of exposure to secondhand smoke;
- The fact that 100% smoke-free indoor places is the only science-based solution to ensure effective protection from secondhand smoke and emissions; and
- Information for business owners, managers, and others in charge of the premises outlining the law and their responsibilities.

10 **Grant the Appropriate Authority Sufficiently Broad Regulatory Power**

As is appropriate at the municipal level, the appropriate authority should be granted power to address a broad range of matters in rules regulations, including, but not limited to:

- Adding any outdoor public places and workplaces where smoking is banned;
- If the ordinance provides lists of examples of indoor public places and workplaces or forms of public transport where smoking is banned, adding examples to any such lists;
- Specifying additional aspects of signage

requirements and elaborating any other duties imposed on persons responsible for the premises and means of public transport; and

- Addressing any other matter necessary or appropriate for implementing the ordinance.

Care should be taken to avoid implying limitations on regulatory power, such as by explicitly granting only some powers or by presenting such powers in an exhaustive manner.

References

1. WHO report on the global tobacco epidemic, 2023: protect people from tobacco smoke. Geneva: World Health Organization; 2023. License: CC BY-NC-SA 3.0 IGO.

2. *Id.*

3. WHO Framework Convention on Tobacco Control. Article 8(1). <https://iris.who.int/bitstream/handle/10665/42811/9241591013.pdf>

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5. WHO FCTC. Guidelines for implementation of Article 8. <https://fctc.who.int/resources/publications/m/item/protection-from-exposure-to-tobacco-smoke>

6. FCTC/COP8(22) on Novel and emerging

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7. FCTC/COP7(9) on Electronic nicotine delivery systems and electronic non-nicotine delivery systems. [https://fctc.who.int/news-and-resources/publications/m/item/fctc-cop7\(9\)-electronic-nicotine-delivery-systems-and-electronic-nonnictotine-delivery-systems](https://fctc.who.int/news-and-resources/publications/m/item/fctc-cop7(9)-electronic-nicotine-delivery-systems-and-electronic-nonnictotine-delivery-systems)

8. WHO FCTC. Guidelines for implementation of Article 8. Principle 1. <https://fctc.who.int/resources/publications/m/item/protection-from-exposure-to-tobacco-smoke>