

Smoke-Free Cities: Gap Analysis

International Legal Consortium, Campaign for Tobacco-Free Kids



This resource is designed to assist a reviewer in evaluating 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 Convention's governing body, the Conference of the Parties (COP). This resource should be read in conjunction with *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 names — 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.**

Purpose and Findings

The section is meant to provide the municipality’s reasoning and evidence base for adopting the provisions of the ordinance. The form, title, and contents of this section will likely vary by jurisdiction.

	Yes/No	Comments
Does your law contain a statement of purpose and findings (or similar section)?		

Key Terms

This section is meant to have you evaluate elements contained in your definitions, rather than simply match the definition verbatim. It is okay if existing measures use different terms since any definitions must be read together with the substantive provisions of the ordinance.

These definitions are meant to work together. Thus, changes to or the omission of a definition in your ordinance may necessitate other changes.

Key Term	Definitional Elements and Explanation	Sample Definition	Gap Analysis Identify any gaps in the definitions of these key terms.
Smoke or smoking	This definition should: - Cover the use of all inhalable products regulated in the ordinance that emit substances. This includes both the act of smoking conventional tobacco products (e.g., cigarettes, cigars, waterpipe tobacco) and the use of e-cigarettes and HTPs (see also Notes on Terminology). - Include being in possession of the regulated product regardless of whether the product is being actively used through inhalation or exhalation. It may not be necessary to define both “smoke” and “smoking.” It depends on whether each of these terms is used in the ordinance.	“Smoking” or “smoke” means being in possession or control of a lit or activated tobacco product, heated tobacco product, an electronic nicotine delivery system, electronic non-nicotine delivery system, or related product regardless of whether the emissions are being actively inhaled or exhaled.	

Key Term	Definitional Elements and Explanation	Sample Definition	Gap Analysis Identify any gaps in the definitions of these key terms.
Public place	This definition should include places: - Accessible to the general public - For collective use - Regardless of ownership or right of access Generally, this definition does not include a list of places that qualify as public places. Using a list runs the risk of, perhaps inadvertently, failing to list a type of place which is intended to be covered.	“Public place” means any place accessible to the general public and any place for collective use, regardless of ownership or right to access.	
Workplace	This definition should include places: - Used by people during their paid or unpaid work - All associated or attached areas commonly used during the course of work, including as work vehicles Generally, this definition does not include a list of places that qualify as workplaces. Using a list runs the risk of, perhaps inadvertently, failing to list a type of place which is intended to be covered.	“Workplace” means any place used by people during their paid or unpaid employment or work, including all associated or attached areas commonly used in or incidental to the course of work, as well as work vehicles.	
Public transport	This definition should include: - Forms for the carriage of the members of the public - Usually for reward or commercial gain This definition is intended to capture all parts of all forms of public transport, including taxis, buses, trains, ferries, airplanes and more. Generally, this definition does not include a list of places that qualify as means of public transport. Using a list runs the risk of, perhaps inadvertently, failing to list a type of public transport.	“Public transport” means all vehicles used for carriage of members of the public, usually for reward or commercial gain.	

Key Term	Definitional Elements and Explanation	Sample Definition	Gap Analysis Identify any gaps in the definitions of these key terms.
Enclosed (or indoor)	This definition should include: • Spaces covered by a roof or having one or more walls • Permanent and temporary structures This definition is intended to comprehensively capture all indoor spaces and partially indoor places. A partially indoor place would include, for example, a covered space extending from a restaurant that could be interpreted to be outside.	“Enclosed” means any space covered by a roof or having one or more walls or sides, regardless of the type of material used for the roof, walls, or sides, and regardless of whether the structure is permanent or temporary.	
Outdoor space	This definition is intended to capture outdoor spaces where smoking may be prohibited or restricted such as beaches, playgrounds, outdoor patios of bars or restaurants, outside of entrances and exits to buildings, for example.	“Outdoor space” means any space that is not “enclosed”, as that term is defined in this Ordinance.	
Tobacco product	This definition should include: • Products made entirely or partly from any part of the tobacco plant • For consumption by any means This definition is meant to capture all tobacco products, including cigarettes, bidis, cigars, and waterpipe tobacco. With regard to tobacco products that require a device for consumption (e.g., HTPs), the definition may not cover the device.	“Tobacco product” means a product made entirely or partly from any part of a tobacco plant as raw material manufactured to be used for consumption by any means.	
Heated tobacco product	While the tobacco sticks or inserts of a heated tobacco product may be captured under the definition of “tobacco product” as defined above, the devices required for use would not be captured under the definition of “tobacco product.” Therefore, a separate definition is necessary. The following definition would cover devices required for use of a heated tobacco product stick or insert.	“Heated tobacco product” means: a. an electronic device manufactured for consuming a tobacco product by producing an emission for inhalation; and b. a tobacco product for use with the device in subsection (a).	

Key Term	Definitional Elements and Explanation	Sample Definition	Gap Analysis Identify any gaps in the definitions of these key terms.
Electronic nicotine delivery system	This definition is meant to be as broad as possible and capture e-cigarettes that use all forms of nicotine, including synthetic nicotine or nicotine analogs.	“Electronic nicotine delivery system” means: a. an electronic device that heats a substance to produce an emission for inhalation; and b. a substance that contains nicotine in any form, whether synthetically or naturally derived, or a nicotine analog but does not contain tobacco, and is for use with the device in subsection (a).	
Electronic non-nicotine delivery system	This definition is aimed at capturing all e-cigarettes that do not contain nicotine in any form.	“Electronic non-nicotine delivery system” means an electronic nicotine delivery system, as that term is defined in this Ordinance, that does not contain any form or derivation of nicotine.	
Related product	This definition is intended to capture any product that may emit substances into the air and which may not fall under the definitions of “heated tobacco product”, “electronic nicotine delivery system”, or “electronic non-nicotine delivery system.” For example, tobacco companies have launched heated tobacco products made with tea leaves and also heated tobacco products without nicotine. Further, this definition could encompass the use of inhalable cannabis in places where those products are available for legal sale.	“Related product” means any inhalable product that resembles a heated tobacco product, electronic nicotine delivery system, or electronic non-nicotine delivery system.	

Indoor Places: Smoke-Free Status of Public Places, Workplaces, and Public Transport

It is important that smoking is prohibited in all indoor public places, indoor workplaces, and means of public transport without exception. In the chart below, please indicate whether your smoke-free measures prohibit or restrict smoking in the following categories of places.

Indoor Place	Comments Identify any gaps in the smoke-free coverage of each place.
1. Government facilities	
2. Private offices	
3. Hospitals	
4. Residential healthcare facilities —public areas	
5. Non-residential healthcare facilities	
6. Childcare facilities/ preschools	
7. Primary and secondary schools	
8. Universities/ vocational facilities	
9. Shops	
10. Cultural facilities	
11. Indoor stadiums/ Arenas	

Indoor Place	Comments Identify any gaps in the smoke-free coverage of each place.
12. Restaurants	
13. Bars/pubs/ nightclubs	
14. Casinos	
15. Hotels/lodging — public areas	
16. Hotels/lodging — guest rooms	
17. Prisons/detention facilities — public areas	
18. Trains, buses, and other shared ground transportation (other than taxis)	
19. Taxis (for-hire vehicles)	
20. Commercial aircraft	
21. Commercial watercraft	
22. Public transport facilities	
List any other indoor places addressed in the ordinance.	

Outdoor Spaces: Smoke-Free Status of Public Places, Workplaces, and Public Transport

In the chart below, please indicate whether your smoke-free measures prohibit or restrict smoking in any outdoor or quasi-outdoor spaces. Examples of such places include within a specified distance of doorways, outdoor patios of bars or restaurants, playgrounds, parks/beaches, outdoor stadiums, and outdoor markets.

Outdoor Place List any outdoor place where smoking is prohibited or restricted.	Comments Identify any gaps in the smoke-free coverage of each place.

Duties and Penalties

In the chart below, please indicate whether a duty exists in the ordinance and the applicable penalties for violations of those duties.

Duties and Penalties	Yes/No	Comments
Signs in smoke-free premises		
Does the ordinance impose a duty on business owners/employers/supervisors to post signs in smoke-free premises?		
Does the ordinance impose the following penalties for failure to post signs?		
Warning		
Fine		
Licensure suspension/cancellation		
Imprisonment (if appropriate)		
Are the penalties consistent with the following principles?		
Sufficiently large to deter violations		
Increase for repeat violations		
Ashtrays		
Does the ordinance impose a duty on business owners/employers/supervisors to remove ashtrays?		

Duties and Penalties	Yes/No	Comments
Does the ordinance impose the following penalties for failure to remove ashtrays?		
Warning		
Fine		
Licensure suspension/cancellation		
Imprisonment (if appropriate)		
Are the penalties consistent with the following principles?		
Sufficiently large to deter violations		
Increase for repeat violations		
Steps to require a person to stop smoking		
Does the ordinance impose a duty upon business owners/employers/supervisors to take steps to require a person to stop smoking (e.g., warn, discontinue service, call authorities)?		
Does the ordinance impose the following penalties for failure to take such steps?		
Warning		
Fine		
Licensure suspension/cancellation		
Imprisonment (if appropriate)		

Duties and Penalties	Yes/No	Comments
Are the penalties consistent with the following principles?		
Sufficiently large to deter violations		
Increase for repeat violations		
Not to smoke where prohibited		
Does the ordinance impose a duty upon smokers not to smoke where prohibited?		
Does the ordinance impose the following penalties for smoking where prohibited?		
Warning		
Fine		
Licensure suspension/cancellation		
Are the penalties consistent with the following principles?		
Sufficiently large to deter violations		
Increase for repeat violations		

Enforcement Authorities

In the chart below, please identify which government authority/authorities are responsible for inspections and enforcement and the place(s) over which such authorities have jurisdiction.

Authorized Agency	Jurisdiction Place(s) over which the agency has authority.	Is a Duty to Enforce Placed on the Agency?	Comments Describe any further details, as needed.

Additional Considerations

	Yes/No	Comments Describe any further details, as needed.
Does the ordinance enable civil society to make complaints and take legal action to compel compliance with the law?		
Does the ordinance require the government to engage in ongoing public education?		
Does the ordinance require the appropriate authority to evaluate the effectiveness of the ordinance?		
Does the ordinance provide the appropriate authority with broad regulatory power to implement the law?		