#

**Tobacco Litter Control Ordinance**

**A Model California Ordinance**

**Regulating Tobacco Waste**

with Annotations

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Developed by ChangeLab Solutions

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### **Introduction**

ChangeLab Solutions developed this Model California Ordinance Regulating Tobacco Waste to assist California cities and counties that are interested in addressing the problem of tobacco waste littered in public spaces. Littered cigarette butts and filters from other tobacco products account for a substantial portion of the litter found on streets, in parks, and in other public places. Cigarette and tobacco litter can be poisonous to children, pets, and wildlife, and can pollute water supplies. This Model Ordinance makes it illegal for any brand of filtered tobacco products, including cigarettes, to be sold in a city or county, unless the manufacturer or distributor of a brand creates a government-approved Tobacco Litter Control Program to collect and dispose of tobacco waste. The Model Ordinance also provides an alternative: The manufacturer or distributor pays an appropriate fee to the city or county if it does not wish to create its own collection and disposal Program.

Localities have taken several different approaches to reducing the impact of tobacco waste, such as enforcing existing littering laws, posting signage discouraging littering, providing ash cans, imposing a fee on cigarettes to offset cleanup costs, and conducting periodic cleanups. Yet tobacco waste remains a pervasive problem, marring parks, beaches, sidewalks, and other public places. Additionally, Proposition 26 of 2010 restricted localities’ ability to impose a litter mitigation fee on cigarette sales to offset cleanup costs. Proposition 26 amended the California Constitution to reclassify most regulatory fees as “taxes” that must be submitted to the electorate and approved by either a majority or supermajority of voters. Moreover, California state law preempts local taxes on tobacco products. This means that a per-unit tax on filtered tobacco products—such as San Francisco’s Cigarette Litter Abatement Fee of 20 cents per pack, adopted before Proposition 26—is no longer an option. If you have questions about Proposition 26, please contact ChangeLab Solutions for more information.

This Model Ordinance takes a different approach. It allows a city or county to shift the burden of tobacco waste cleanup to the tobacco manufacturers or distributors that sell filtered tobacco products within city or county limits. The Ordinance requires manufacturers or distributors of filtered tobacco products to take responsibility for the collection and disposal of cigarette butts and other tobacco waste, or, alternatively, to pay an in-lieu fee to the local jurisdiction to cover the reasonable costs of litter mitigation.

Under the Model Ordinance, the manufacturer or distributor of a filtered tobacco product—filtered cigarettes and other products with a single-use filter—must develop a Tobacco Litter Control Program for collecting and disposing of tobacco waste. The only brands of filtered tobacco products that may be sold in the city or county are those covered by a Program that has been approved by the local government. Manufacturers and distributors may submit individual Programs, collaborate with other manufacturers and distributors to submit group Programs, or hire a third-party waste organization to prepare and submit a Program.

A manufacturer or distributor is required to address several factors as part of its Program. It must include a description of how tobacco waste will be collected in the city or county, how the Program will reduce the amount of tobacco waste being littered, and how the manufacturer or distributor will transport and dispose of tobacco waste. Manufacturers and distributors are also responsible for undertaking education and outreach efforts to inform the public about opportunities to dispose of tobacco waste properly. The Model Ordinance allows cities and counties to set performance measures for manufacturers and distributors based on the amount of tobacco waste collected. On an annual basis, the manufacturer or distributor must submit a report summarizing their collection and disposal activities as well as their progress in meeting performance standards.

The Model Ordinance provides that manufacturers and distributors of filtered tobacco products are responsible for covering all costs associated with collecting, transporting, and disposing of tobacco waste. Further, the Model Ordinance provides that the manufacturer or distributor must pay all costs incurred by the city or county in implementing and enforcing the manufacturer’s or distributor’s Program.

A manufacturer or distributor must submit its Tobacco Litter Control Program to the city or county for approval. If a manufacturer or distributor does not want to prepare and submit a Program, the Model Ordinance provides an alternative compliance option. Manufacturers and distributors may instead pay an in-lieu fee to the city or county to cover the reasonable costs to the government for cleaning up, collecting, and disposing of tobacco waste. The jurisdiction must calculate the amount of the fee for each manufacturer or distributor that chooses this option. This process involves considering both the total costs incurred by the government to mitigate tobacco waste and the percentage of filtered tobacco product sales in the jurisdiction that is attributable to that particular manufacturer or distributor.

The Model Ordinance offers a variety of options and is intended to be customized based on local conditions. In some instances, blank spaces (e.g., [ \_\_\_\_ ] ) prompt you to customize the language of the Model Ordinance to fit your community’s needs. In other cases, the Ordinance provides options (e.g., [ choice one / choice two ] ). Some options are followed by comments that describe the legal provisions in more detail. Some degree of customization is always necessary to ensure that the Ordinance is consistent with a community’s existing laws. Your city attorney or county counsel will likely be the best person to check this for you.

### **Questions?**

If you have questions about the Model Ordinance, please contact ChangeLab Solutions at *www.changelabsolutions.org/tobaccoquestions*.

**AN ORDINANCE OF THE [ CITY / COUNTY ] OF [ \_\_\_\_ ] REQUIRING**

**ANY PERSON WHO PRODUCES A TOBACCO PRODUCT OFFERED FOR SALE IN THE [ CITY / COUNTY ] OF [ \_\_\_\_ ] TO PARTICIPATE IN A TOBACCO LITTER CONTROL PROGRAM FOR THE COLLECTION AND DISPOSAL OF TOBACCO WASTE AND AMENDING THE [ \_\_\_\_ ] MUNICIPAL CODE**

The [ City Council of the City / Board of Supervisors of the County ] of [ \_\_\_\_ ] does ordain as follows:

**comment:** This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

**SECTION I. FINDINGS.** The [ City Council of the City / Board of Supervisors of the County ] of [ \_\_\_\_ ] hereby finds and declares as follows:

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

* In 2011 alone, Americans consumed an estimated 292.8 billion cigarettes;1 and
* The estimated weight of discarded waste from U.S. cigarette consumption in 2011 alone was approximately 49.8 million kilograms, or 110 million pounds;2 and
* 74 percent of smokers admit to littering cigarettes at least once in their life, and approximately 56 percent of smokers admit to doing so in the last month;3 and
* In an observational study of nearly 10,000 individuals, after cigarettes were smoked, 65 percent of cigarettes ended up as litter;4 and
* Keep America Beautiful, a national nonprofit that has received funding from the tobacco industry, estimates that the overall littering rate for cigarette butts is 65 percent;5 and
* In 2010, 31 percent of all debris collected from beaches and coastal areas in the United States was cigarettes or cigarette filters;6 and
* Cigarette butts are often discarded onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons, and ultimately the ocean;6,7 and

WHEREAS, cigarette butt litter causes harm to the environment, as evidenced by the following:

* Studies indicate that chemicals leached from cigarette butts in salt and fresh water are toxic to aquatic organisms;2,8,9 and
* One study found that placing one cigarette butt in one liter of water would make the water toxic enough to kill half of the fish exposed to it,8 and another study found that it takes only one cigarette butt to contaminate 1,000 liters of water above the level where there are no adverse effects of exposure in an ecosystem;10,11 and
* Discarded cigarette butts have been found to adversely affect the health of pets and wildlife;8,12 and
* Cigarette filters are made of cellulose acetate, which is a non-biodegradable plastic,13 and although UV ray exposure can cause cigarette butts to break into smaller pieces, the plastic particles and their toxicants can continue leaching chemicals for up to ten years;2 and
* [ insert local data on tobacco litter, if available] [ ; and ]

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

* In 2012, American poison control centers received 8,648 reports of poisoning by the ingestion of cigarettes, cigarette butts, and other tobacco products, and 84.5 percent of these poisonings were in children age five and younger;14 and
* Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;15 and

WHEREAS, tobacco industry documents show that tobacco companies are aware of the impact of tobacco waste, yet they have not engaged in efforts to effectively address its cleanup and disposal;3,13,16 and

WHEREAS, scientific evidence indicates that cigarette filters do not protect smokers from the health consequences of smoking,17–19 and instead make it easier for young people to start smoking and discourage people who smoke from quitting;7,18,20 and

NOW THEREFORE, it is the intent of the [ City Council / Board of Supervisors ], in enacting this Ordinance, to require all Producers who elect to sell their filtered tobacco products within [ City / County ] to develop a local Tobacco Litter Control Program for the safe collection and disposal of Tobacco Waste, regardless of where the Producers are based or where the product originates.

**comment:** These findings lay out the policy rationale for the Ordinance. It is not necessary to include all of the findings in your jurisdiction’s policy, but policymakers may find it helpful to state the Ordinance’s rationale. The findings should be tailored to the needs of your community.

**SECTION II.** [ Article / Section ] of the [ \_\_\_\_ ] Municipal Code is hereby [ amended to read / added ] as follows:

**Sec. [ \_\_\_\_ (\*1) ]. DEFINITIONS.** The following words and phrases, whenever used in this [ article / chapter ], shall have the meanings defined in this Section unless the context clearly requires otherwise:

(a) “Brand” means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the Brand.

(b) “Collection Rate” means the percentage of Tobacco Waste, by weight, that is collected during a calendar year by a Producer, group of Producers, or Waste Organization, as compared with the weight of all Tobacco Waste that is estimated to be generated in [ City / County ] annually.

(c) “Department” means [ \_\_\_\_ ], and any agency or Person designated by the Department to enforce or administer the provisions of this [ article / chapter ].

**comment:** This term is used in the Ordinance to refer to the city or county agency charged with enforcing the Ordinance. The primary enforcing agency may designate additional agencies to assist in administering and/or enforcing the Ordinance. When choosing the primary enforcing agency, it may be helpful to consider that departments focused on diverting waste from landfills—for example, a public works department—may find it hard to prioritize pollution prevention for products that do not weigh much, such as cigarette butts. On the other hand, departments focused on watershed health and sustainability, such as an environmental health department, may be able to justify focusing on products that are small and lightweight because they can cite the disproportionate impacts to the environment.

(d) “Disposer” means a resident of this [ City / County ], any Person engaged in business in [ City / County ], or a government agency with offices in this [ City / County ]. “Disposer” does not include Tobacco Retailers.

**comment:** This term is used in the Ordinance to refer to individuals or entities who have Tobacco Waste to dispose of. This includes individual smokers as well as businesses and organizations that collect Tobacco Waste in ash cans or other receptacles for disposal. To identify people or companies that are engaged in business in your jurisdiction, you may wish to reference your locality’s business licensing laws.

(e) “Filtered Tobacco Product” means any Tobacco Product incorporating a single-use filter made of any material, including, but not limited to, cellulose acetate or other fibrous plastic material, or any organic or biodegradable material. “Filtered Tobacco Product” includes, but is not limited to, Tobacco Products known or labeled as filtered cigarettes, filtered little cigars, and filtered cigars. “Filtered Tobacco Product” does not include electronic smoking devices.

**comment:** This definition determines which kinds of Tobacco Waste a Tobacco Litter Control Program must collect. The definition includes filtered cigarettes and filtered cigars, but excludes disposable electronic smoking devices. While single-use electronic cigarettes may harm the environment and human health if disposed of improperly, they are a relatively new technology, and at the time of publication of this Model Ordinance, there is insufficient evidence on how these devices are being disposed of, and the impacts of that disposal. As more information on electronic cigarette disposal becomes available, this Model Ordinance may be updated to include an option for regulating electronic cigarettes under Tobacco Litter Control Programs. If your jurisdiction is interested in this option, please contact ChangeLab Solutions for more information.

(f) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

**comment:** The city or county code likely contains a definition of “Person” and, if so, the definition provided here can be omitted.

 (g) “Producer” means, with regard to each Brand of Filtered Tobacco Product that is sold, offered for sale, or distributed in [ City / County ], one of the following:

(1) The manufacturer of a Filtered Tobacco Product in [ City / County ].

(2) If no Person is a Producer of a Filtered Tobacco Product under paragraph (1), the Producer is the Importer of a Filtered Tobacco Product manufactured outside of the United States, that sells, offers for sale, or distributes that Filtered Tobacco Product in [ City / County ]. “Importer” means any purchaser for resale in the [ City / County ] of cigarettes or Tobacco Products manufactured outside of the United States.

(3) If no Person is a Producer of a Filtered Tobacco Product under paragraphs (1) or (2), the Producer of a Filtered Tobacco Product is the Distributor of the Filtered Tobacco Product in [ City / County ]. “Distributor” means any Person that sells or transfers possession of untaxed (unstamped) Tobacco Products in [ City / County ] and any Person that places in [ City / County ] untaxed Tobacco Products in vending machines or in retail stock for the purpose of selling the Tobacco Products to consumers in [ City / County ].

(4) If no Person is a Producer of a Filtered Tobacco Product under paragraphs (1) through (3), the Producer of a Filtered Tobacco Product is the Wholesaler of a Filtered Tobacco Product in [ City / County ]. “Wholesaler” means any Person, other than a Distributor, that sells or transfers possession of a Filtered Tobacco Product for resale, in a package to which is affixed a tax stamp or meter impression, or a Filtered Tobacco Product on which the tax imposed in Sections 20123 and 30131.2 of the California Revenue and Taxation Code has been paid.

(5) If no Person is a Producer of a Filtered Tobacco Product under paragraphs (1) through (4), the Producer of a Filtered Tobacco Product is the Tobacco Retailer of the Filtered Tobacco Product in [ City / County ].

**comment:** This definition identifies the businesses that will be required to comply with this Ordinance, either by implementing a Tobacco Litter Control Program or by paying an in-lieu fee. This definition is intended to identify the legal entity responsible for selling each Brand of Filtered Tobacco Product within a city or county. Because a city or county only has authority to regulate entities that are engaged in business within its geographic jurisdiction, it is important to identify the business that is responsible for the sale of tobacco products within the city or county (and therefore subject to local jurisdiction).

This tiered definition begins at the top of the tobacco supply chain, and then moves down the supply chain. Following the tiers, it is possible to identify the most appropriate Producer: a business responsible for the sale of a Brand of Filtered Tobacco Product that has sufficient ties to the city or county to subject it to local laws. The tiers are as follows:

* Tier 1: The manufacturer of a Filtered Tobacco Product, if the manufacturer is within city or county limits.
* Tier 2: An Importer, which is the company that buys Filtered Tobacco Products manufactured outside the United States for resale within the United States.
* Tier 3: A Distributor, which buys Filtered Tobacco Products from a manufacturer or Importer. The Distributor is the entity responsible for paying California tobacco taxes, so a Distributor may possess untaxed (unstamped) cigarettes and tobacco products, but must pay the tax and affix the tax stamp to products when they are sold or transferred.
* Tier 4: A Wholesaler, which is an intermediary between the Distributor and Retailer. A Wholesaler may possess only products on which state taxes have already been paid.
* Tier 5: A Tobacco Retailer, which sells Filtered Tobacco Products to consumers.

A city or county does not need to follow these tiers, but can instead choose the definition that meets community goals. In making this determination, however, it is important to understand how Tobacco Products are distributed and sold in your community.

(h) “Tobacco Product” means:

(1) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, dissolvables, snus, pipe tobacco, and snuff.

(2) Notwithstanding any provision of paragraph (1) to the contrary, “Tobacco Product” includes any component, part, or accessory of a Tobacco Product, whether or not sold separately.

(3) “Tobacco Product” does not include an electronic smoking device. For purposes of this definition, an “electronic smoking device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately.

**comment:** This definition of Tobacco Product differs from the definition in ChangeLab Solutions’ [*California Tobacco Retailer Licensing Model Ordinance.*](http://changelabsolutions.org/publications/model-TRL-Ordinance) The definition in this Ordinance is narrower, and excludes electronic smoking devices, for the reasons detailed in the comment following paragraph (e) above.

(i) “Tobacco Retailer” means any Person who sells, offers for sale, possesses for sale, or does or offers to exchange for any form of consideration, tobacco or Tobacco Products to a consumer. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products sold, offered for sale, exchanged, or offered for exchange.

 (j) “Tobacco Waste” means any component of a Filtered Tobacco Product that has been abandoned or discarded in [ City / County ] or is intended to be discarded in [ City / County ] by any Person.

(k) “Waste Organization” means an organization designated by a Producer or group of Producers to operate a Tobacco Litter Control Program on the Producer’s or Producers’ behalf.

**Sec. [ \_\_\_\_ (\*2) ]. REQUIREMENT FOR SALE.**

(a) No Producer shall sell, offer for sale, or distribute a Filtered Tobacco Product in [ City / County ] unless the Department has approved a Tobacco Litter Control Program covering each Brand of Filtered Tobacco Product to be sold, offered for sale, or distributed by that Producer pursuant to Section [ \_\_\_\_ (\*4) ] of this Ordinance. The Tobacco Litter Control Program required by this Section may be implemented as follows:

(1) Individually or jointly with other Producers; or

(2) By a Waste Organization on the Producer’s or Producers’ behalf.

(b) Alternatively, a Producer may pay an in-lieu fee to cover the reasonable costs to [ City / County ] of mitigating the Tobacco Waste attributable to the Producer in the [ City / County ], pursuant to Section [ \_\_\_\_ (\*5) ] of this Ordinance. Payment of a fee in lieu of complying with paragraph (a) above is entirely at the option of the Producer, and each Producer shall have the right to comply with paragraph (a) rather than paying a fee in lieu of doing so.

### **Sec. [ \_\_\_\_ (\*3) ]. TOBACCO RETAILERS.** No Tobacco Retailer shall sell, possess for sale, or offer for sale any Filtered Tobacco Product in the [ City / County ] unless the Filtered Tobacco Product is covered by a Tobacco Litter Control Program pursuant to Section [ \_\_\_\_ (\*2) ] of this [ article / chapter ].

**comment:** Sections 2 and 3 make it illegal to distribute or sell a Brand of Filtered Tobacco Products in a city or county unless the Producer of that Brand has complied with this Ordinance. The Producer may comply by implementing a Tobacco Litter Control Program that collects and disposes of Tobacco Waste, as described in Section 4. A Retailer may not sell a specific Tobacco Product unless the specific product is covered by an approved Program. Alternatively, a Producer may choose to pay an in-lieu fee, described in Section 5, to the city or county to cover the city’s or county’s costs of cleaning up the Tobacco Waste attributable to the Producer.

### **Sec. [ \_\_\_\_ (\*4) ]. TOBACCO LITTER CONTROL PROGRAM.**

(a) TOBACCO LITTER CONTROL PROGRAM CONTENT. Each Tobacco Litter Control Program shall be fully described in a binding written document that will be submitted to the Department as provided in paragraph (c). Each Tobacco Litter Control Program shall include each of the following:

(1) COLLECTION METHODS. Each Tobacco Litter Control Program shall provide a description of the methods by which a Producer’s Tobacco Waste will be collected in [ City / County ], including a description of how the Tobacco Litter Control Program will provide for collection of Tobacco Waste from residential areas, commercial areas, and public spaces, and a description of any locations where the Producer, group of Producers, or Waste Organization will place Tobacco Waste receptacles, such as ash trays or ash cans. No Producer, group of Producers, or Waste Organization may comply with this Section by distributing hand-held ash receptacles. No Producer, group of Producers, or Waste Organization shall place Tobacco Waste receptacles within an area in which smoking is prohibited by law.

**comment:** Collection methods are not specifically defined in order to allow for a broad range of collection activities. For example, collection activities could include installing ash cans, collecting littered Tobacco Waste, and hosting collection events where individuals and businesses can drop off their collected Tobacco Waste.

Note that Producers may wish to install ash cans or other Tobacco Waste receptacles on city- or county-owned property, such as sidewalks. Your jurisdiction likely has specific regulations on placing objects, such as Tobacco Waste receptacles, on public property, and you should consult with your city attorney or county counsel to learn more. If specific procedures or approvals are required to place Tobacco Waste receptacles on public property, you may consider including these in the Department review and approval process, described below in paragraph (c). If Producers wish to place Tobacco Waste receptacles on private property, the Producers will have to obtain the necessary permissions from individual private property owners.

 (2) COLLECTION RATE. Each Tobacco Litter Control Program shall be designed to achieve a [ 30 ] percent Collection Rate five (5) years after the Program is implemented.

 (i) Each Tobacco Litter Control Program shall provide an estimate of the total quantity and percentage of Tobacco Waste that will be collected during each of the five years following approval of the Tobacco Litter Control Program.

(ii) Each Tobacco Litter Control Program shall provide a description of how data on the quantities of Tobacco Waste collected will be gathered and reported.

(iii) The Department shall publish annually an estimate of the weight of all Tobacco Waste generated in [ City / County ]. This estimate may be based on a reasonable pro rata calculation based on national and state data.

**comment:** The Collection Rate is a benchmark that can be adjusted to suit your jurisdiction’s needs and abilities. Based on collection rates achieved by similar programs for other types of toxic litter, this Model suggests a 30 percent Collection Rate as a minimum benchmark.

If you are concerned about Producers’ ability to meet your stated collection goal, you may wish to include a provision that allows Producers to apply to the Department for a revised minimum collection goal. Revisions to the collection goal should only be approved if the Producer submits the following: (1) an explanation of why the original collection goal is not feasible; (2) a proposed alternative collection goal; and (3) a demonstration of how the Producer’s Program will achieve significant and continuous improvement toward the original collection goal.

(3) DISPOSAL METHODS. Tobacco Waste shall be safely and securely handled and transported from collection through final disposition.

(i) Each Tobacco Litter Control Program shall dispose of Tobacco Waste according to generally accepted best practices in the waste disposal industry, including best management practices that prevent windblown litter and leaching of chemicals into groundwater or stormwater. At a minimum, Tobacco Waste shall be enclosed in two layers of impermeable material and disposed of in a landfill.

(ii) Each Tobacco Litter Control Program shall provide the names and locations of processing and disposal facilities that may be used by the Tobacco Litter Control Program.

(iii) Each Tobacco Litter Control Program shall comply with all local, state, and federal laws and regulations applicable to its operations.

**comment:** This Ordinance does not specify a particular method of waste disposal because there is not currently a robust body of scientific literature on the best way to dispose of Tobacco Waste. By requiring best practices, the Ordinance allows flexibility, so the requirements may change as disposal research emerges and technology develops. This Ordinance does not require disposal at a hazardous waste facility because these facilities are often located far away, and jurisdictions may be forced to take on additional responsibilities if Tobacco Waste is characterized as hazardous waste.

(4) EDUCATION AND OUTREACH. A Tobacco Litter Control Program shall provide outreach and education to Disposers for the purpose of promoting the appropriate disposal of Tobacco Waste and options available to Disposers for the disposal of Tobacco Waste, and to attain the goals of the Program.

(i) A Tobacco Litter Control Program’s outreach and education efforts may include information on the environmental impacts of Tobacco Waste, the public health impacts of Tobacco Waste, and the lack of health benefits of filters on Tobacco Products.

(ii) A Tobacco Litter Control Program shall develop, and update as necessary, educational and other outreach materials for Retailers of Filtered Tobacco Products. These materials may include, but are not limited to, one or both of the following:

(A) Signage that is prominently displayed and easily visible to the consumer.

(B) Written materials and templates of materials for reproduction by Retailers to be provided to the consumer at the time of purchase.

(iii) A Tobacco Litter Control Program shall prepare educational and outreach materials that publicize the location and operation of collection sites in [ City / County ] and disseminate the materials to Disposers. The Tobacco Litter Control Program also shall maintain a website publicizing collection sites and Program operations as well as a toll-free telephone number that Disposers can call to find nearby collection sites and learn how the Program works.

[ (iv) A Tobacco Litter Control Program shall develop measures to evaluate the effectiveness of the Program’s outreach and education methods. Such measures may include, but are not limited to, surveys and observational studies. ]

(5) ADDITIONAL INFORMATION REQUIRED. Each Tobacco Litter Control Program shall also provide the following information to the Department:

(i) Certification that the Tobacco Litter Control Program will accept all Tobacco Waste from Disposers.

(ii) Identification and contact information for the following:

(A) The individual or entity submitting the Tobacco Litter Control Program;

(B) All Producers participating in the Tobacco Litter Control Program;

(C) The Brands covered by the Tobacco Litter Control Program and the Producers of those Brands; and

(D) Any Waste Organization operating the Tobacco Litter Control Program, including a description of the organization and the tasks it will perform. The description shall include information on how the organization is organized, including administration and management of the organization.

(iii) A description of how the Tobacco Litter Control Program will be designed to reduce the quantities of Tobacco Waste being littered.

(iv) A description of how the scope and extent of the Tobacco Litter Control Program are reasonably related to the amount of Filtered Tobacco Products that are sold in the [ City / County ] by the Producer or group of Producers.

(v) A starting date when Tobacco Waste collection will begin.

(b) TOBACCO LITTER CONTROL PROGRAM COSTS.

(1) A Producer, group of Producers, or Waste Organization shall pay all administrative and operational fees associated with its Tobacco Litter Control Program, including the cost of collecting, transporting, and disposing of Tobacco Waste collected from Disposers and the recycling or disposal, or both, of Tobacco Product packaging collected with the Tobacco Waste.

(2) A Producer, group of Producers, or Waste Organization shall pay for all fees associated with obtaining compliance with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), if required, for its Tobacco Litter Control Program.

(3) A Producer, group of Producers, or Waste Organization shall pay all reasonable regulatory costs to the [ City / County ] for implementation of this [ article / chapter ]. Reasonable regulatory costs include, but are not limited to, costs for issuing approvals, performing investigations, inspections, and audits, and the administrative enforcement and adjudication thereof. Exclusive of fines and penalties, the [ City / County ] shall only recover these reasonable regulatory costs.

(4) If more than one Producer will be involved in a proposed Tobacco Litter Control Program, then the Tobacco Litter Control Program may include a fair and reasonable manner for allocating the costs of the Tobacco Litter Control Program among each participating Producer, such that the portion of costs paid by each Producer is reasonably related to the amount of Filtered Tobacco Products that each Producer sells in the [ City / County ].

(c) DEPARTMENT REVIEW AND APPROVAL.

(1) No Producer, group of Producers, or Waste Organization may begin collecting Tobacco Waste pursuant to this [ article / chapter ] until it has received written approval of its Tobacco Litter Control Program from the Department.

(2) A Tobacco Litter Control Program shall be submitted to the Department for approval. The initial Program shall be submitted by [ insert date one year after enactment ], or at a later date as approved in writing by the Department.

(3) Within one hundred eighty (180) days after receipt of a Tobacco Litter Control Program, the Department shall determine whether the Program complies with the requirements of this [ article / chapter ] and of any regulations adopted pursuant to this [ article / chapter ].

(i) As part of its approval, the Department may set reasonable performance goals for the Program.

(ii) If the Department approves a Program, it shall notify the applicant of its approval in writing.

(iii) If the Department rejects a Program, it shall notify the applicant in writing of its reasons for rejecting the Program. The Department may reject a Program without conducting a public hearing.

(iv) An applicant whose Program has been rejected by the Department may submit a revised Program to the Department within sixty (60) days after receiving notice of the rejection.

(4) At least once every three (3) years, a Producer, group of Producers, or Waste Organization operating a Tobacco Litter Control Program shall update its Tobacco Litter Control Program and submit the updated Program to the Department for review and approval as provided in subparagraph (3).

(5) A Producer who begins to offer a Filtered Tobacco Product for sale in the [ City / County ] after [ insert date one year after enactment ] shall submit a Tobacco Litter Control Program to the Department or provide evidence of having joined an existing approved Tobacco Litter Control Program before the Producer’s initial offer for sale of a Filtered Tobacco Product.

(6) Any proposed changes to a Tobacco Litter Control Program shall be submitted in writing to the Department and must be approved by the Department in writing prior to implementation of any change.

(7) A decision of the Department to approve, reject, or conditionally approve a Tobacco Litter Control Program shall not be subject to an internal administrative appeal, but shall be final as to the [ City / County ]. Such a final decision shall be subject to judicial review pursuant to California Code of Civil Procedure Section 1094.5.

**comment:** This provision allows a Producer to appeal a decision of the Department by bringing a civil suit. Your jurisdiction may prefer to provide for an internal administrative appeal (for example, to the city council, city manager, or a hearing officer). You should consult with your city attorney or county counsel to help make this decision.

(d) ANNUAL REPORT. By the first of March of every calendar year after the calendar year in which an approved Tobacco Litter Control Program is implemented, every Producer, group of Producers, or Waste Organization operating a Tobacco Litter Control Program shall prepare and submit to the Department a written report describing the Program’s activities during the previous calendar year. The report shall include the following:

(1) A list of Producers participating in the Tobacco Litter Control Program;

(2) The amount, by weight, of Tobacco Waste collected in the [ City / County ] by the Tobacco Litter Control Program;

(3) A description of the collection system, including the location of each collection site;

(4) The name and location of disposal facilities at which Tobacco Waste was disposed of and the weight of Tobacco Waste collected from Disposers disposed of at each facility;

(5) Whether policies and procedures for collecting, transporting, and disposing of Tobacco Waste, as established in the Program, were followed during the reporting period, and a description of any noncompliance;

(6) A description of public education and outreach activities implemented during the reporting period, [ including the methodology used to evaluate the outreach and education activities ]; and

(7) The degree to which Collection Rate goals established in the Tobacco Litter Control Program were achieved and, if the Program did not attain those Collection Rates, the proposed actions for future achievement of the Collection Rate goals.

### **Sec. [ \_\_\_\_ (\*5) ]. IN-LIEU FEES.**

**comment:** This section describes the in-lieu fee compliance option. Note that a mandatory litter mitigation fee imposed through an ordinance adopted by a city council or county board of supervisors would likely violate the California Constitution, as amended by Proposition 26. Proposition 26 prohibits local government from adopting some types of regulatory fees through local ordinance, and instead requires that those fees be approved by the electorate. This Model Ordinance, however, does not require a mandatory fee. Instead, the in-lieu fee is optional and voluntary for Producers. Because this is still a developing area of law, you should consult with your city attorney or county counsel on Proposition 26.

(a) The Department shall establish in-lieu fees annually to cover the reasonable costs of Tobacco Waste mitigation incurred by the [ City / County ] as provided in this Section.

(1) The in-lieu fee shall take the following into account:

(i) The total budgeted costs to be incurred by [ City / County ] in that year to mitigate Tobacco Waste attributable to Producers choosing to pay the in-lieu fee;

(iii) The amount of Filtered Tobacco Products that are sold in the [ City / County ] under a Producer’s Brand or Brands; and

(ii) The total amount of Filtered Tobacco Products sold in [ City / County ] by Producers choosing to pay the in-lieu fee.

(2) The Department shall calculate the in-lieu fee according to the following formula:

Total budgeted costs to be incurred by [ City / County ] in that year to mitigate Tobacco Waste attributable to Producers choosing to pay the in-lieu fee

×

Amount of Filtered Tobacco Products that are sold in the [ City / County ] under a Producer’s Brand or Brands

÷

Total amount of Filtered Tobacco Products sold in [ City / County ] by Producers choosing to pay the in-lieu fee

**comment:** This section specifies how the in-lieu fee must be calculated. The purpose of the in-lieu fee is to recover the costs incurred by the city or county to mitigate Tobacco Waste generated by Producers that choose not to operate a Tobacco Litter Control Program. Thus, for the purposes of calculating the in-lieu fee, the city or county should look only at the mitigation costs associated with the Producers choosing the in-lieu fee option.

For illustration, consider this example. A county budgets $100,000 to mitigate Tobacco Waste for five Producers that chose the in-lieu fee option. Producer A sells four units of Filtered Tobacco Products each year, but together, the five Producers sell a total of ten units. Producer A’s in-lieu fee would be $100,000 × (4 ÷ 10) = $40,000.

 (b) In-lieu fees shall be paid to the [ City / County ] [ insert date one year after enactment ] and annually thereafter until such time as a Producer is covered by an approved Tobacco Litter Control Program or the Producer ceases to sell a Filtered Tobacco Product in the [ City / County ].

(c) The [ City / County ] shall use the in-lieu fees to recover the costs of Tobacco Waste mitigation.

(d) There is hereby created the Tobacco Waste Mitigation Fund in the [ City / County ] Treasury. This Fund shall be accounted separate and apart from all other [ City / County ] funds.

(e) All monies collected as in-lieu fees pursuant to this Section shall be deposited to the credit of the Tobacco Waste Mitigation Fund.

**comment:** This provision specifies that the in-lieu fees will be placed in a new fund, the Tobacco Waste Mitigation Fund. Creating a new fund ensures that in-lieu fee funds are segregated from other government funds and that they are not appropriated for other purposes. Your jurisdiction may prefer to deposit fees in an existing fund, such as a General Fund, but state law and this Ordinance require that the money be spent only for Tobacco Waste mitigation, regardless of how the funds are accounted for.

### **Sec. [ \_\_\_\_ (\*6) ]. LIST OF PRODUCERS.** The Department shall maintain on its website a list of all Producers participating in Tobacco Litter Control Programs approved by the Department or paying in-lieu fees to the Department, and a list of all Producers the Department has identified as noncompliant with this [ article / chapter ] or any regulations adopted pursuant to this [ article / chapter ]. The Department shall also provide a list of each Producer’s Brand or Brands.

### **Sec. [ \_\_\_\_ (\*7) ]. REGULATIONS AND FEES.**

(a) The Department may adopt such rules and regulations as necessary to implement, administer, and enforce this [ article / chapter ]. The Department shall give notice of such regulations as is required for ordinances of the [ City / County ] and such regulations shall take effect when that notice is given or on such later date as the regulations themselves may specify. The Department shall maintain such regulations on its website and shall update them as they are amended from time to time.

(b) As soon as practicable, the Department shall submit to the [ City Council / Board of Supervisors ] a proposed schedule of fees. The schedule of fees shall include the following:

(1) A fee to cover the reasonable costs described in Section [ \_\_\_\_ (\*4) ](b)(3) of this [ article / chapter ]; and

(2) The in-lieu fee described in Section [ \_\_\_\_ (\*5) ] of this [ article / chapter ].

### **Sec. [ \_\_\_\_ (\*8) ]. ENFORCEMENT.**

**comment:** This section offers a menu of enforcement options, including civil, administrative, and criminal penalties. Your jurisdiction may wish to include all of these options or select a few among them. Your jurisdiction may already have enforcement provisions in the city or county code. If so, you should consult with your city attorney or county counsel to ensure that these enforcement provisions are consistent with local codes. Alternatively, you may choose to omit these enforcement provisions entirely and use your jurisdiction’s preexisting enforcement provisions. These penalties are intended to apply to Producers, but they are broad enough to apply to Tobacco Retailers who sell Filtered Tobacco Products that are not covered by a Tobacco Litter Control Program.

(a) The Department shall administer the penalty provisions of this [ article / chapter ]. The Department may delegate administration of these penalty provisions to the [ City / County ] code enforcement officers, the [ City Attorney / County Counsel ], the [ Police Department / Sheriff’s Department ], or any other law enforcement agency serving the [ City / County ]. For the purposes of this Section, references to “the Department” include any such delegate.

(b) Violation of this [ article / chapter ] shall constitute a violation of [ insert citation to local Tobacco Retailer Licensing regulations ], and such violation may be enforced by [ department responsible for enforcing local licensing requirements ].

**comment:** This provision is intended to streamline enforcement efforts in jurisdictions that are already enforcing a local Tobacco Retailer Licensing (TRL) ordinance. If your jurisdiction enforces a local TRL ordinance, we recommend incorporating this Chapter as a specific performance standard in your TRL ordinance. This provision allows the department responsible for inspecting retailers and enforcing TRL requirements to also enforce Tobacco Litter Control requirements for Tobacco Retailers. It also makes it a violation of the Tobacco Retailer’s license to sell Tobacco Products that are not in compliance with this Ordinance. Note that the department responsible for enforcing TRL requirements may be the same as the department responsible for enforcing this Tobacco Litter Control Ordinance. If your jurisdiction does not enforce a local Tobacco Retailer Licensing ordinance, this provision should be omitted.

(c) ADMINISTRATIVE PENALTIES.

(1) The Department may issue an administrative citation to a Person for violation of this [ article / chapter ] or any regulation adopted pursuant to this [ article / chapter ]. The Department shall first give a written warning to the Person as well as a copy of this [ article / chapter ] and any regulations adopted pursuant to this [ article / chapter ]. The Person shall have five (5) days after receipt of the warning to comply and correct any violations.

(2) If the Person fails to comply and correct any violations, the Department may impose administrative fines for violations of this [ article / chapter ] or of any regulations adopted pursuant to this [ article / chapter ]. Each day in which the violation exists or continues shall constitute a separate and distinct violation.

(3) In determining the appropriate penalties, the Department shall consider the extent of harm caused by the violation, the nature and persistence of the violation, the frequency of past violations, any action taken to mitigate the violation, and the financial burden to the violator.

(4) A decision of the Department to issue an administrative citation or fine is appealable to [ the name of appellate agency, panel, or person (e.g., police permit board, board of supervisors, city manager, or director of the health department) ] and any appeal must be filed in writing with [ the name of the agency, panel, or person to receive the notice (e.g., City Clerk or Clerk of the Board of Supervisors) ] within ten (10) days of mailing of the Department’s decision. If such an appeal is timely made, it shall stay enforcement of the appealed action.

**comment:** Some appeal right should be provided to ensure due process and to permit the city or county to correct errors that may occur in the administrative process. How many levels of appeal to permit, which officer or body should hear the appeal, which officer should receive the notice of appeal, the time limits to set, etc. are local policy questions. Local governments would do well to trigger the 90-day statute of limitations for legal challenges by complying with the notice requirements of California Code of Civil Procedure section 1094.6(f) when giving notice of determinations under this Ordinance.

(5) The Department may establish appropriate administrative rules for implementing this [ article / chapter ], conducting hearings, and rendering decisions pursuant to this Section.

(d) CIVIL PENALTIES.

1. Any Person in violation of this [ article / chapter ] or any regulation adopted pursuant to this [ article / chapter ] shall be liable to the [ City / County ] for a civil penalty in an amount not to exceed one thousand dollars ($1,000.00) per day per violation. Each day in which the violation exists or continues shall constitute a separate and distinct violation.

**comment:** This provision provides civil fines for violating the Model Ordinance. It requires that the city or county file a traditional civil suit. The fine amounts can be adjusted but cannot exceed $1,000 per violation, as provided in California Government Code section 36901. Note that a violation of this Model Ordinance may also be enforced as an unfair business practice under California Business and Professions Code section 17200 et seq.

(2) Upon the failure of any Person to comply with any requirement of this [ article / chapter ] and any rule or regulation adopted pursuant to this [ article / chapter ], the [ City Attorney / County Counsel ] may petition any court having jurisdiction for injunctive relief, payment of civil penalties, and any other appropriate remedy, including restraining such Person from continuing any prohibited activity and compelling compliance with lawful requirements.

(3) Violations of this [ article / chapter ] are hereby declared to be public nuisances.

**comment:** By expressly stating that violations are public nuisances, this provision allows enforcement of the Ordinance via the administrative nuisance abatement procedures commonly found in local codes. Such a declaration also facilitates injunctive relief (where a court orders that a defendant do certain things or refrain from doing certain things, such as selling Filtered Tobacco Products in the city or county).

(e) CRIMINAL PENALTIES. Any Person who knowingly and willfully violates the requirements of this [ article / chapter ] or any rule or regulation adopted pursuant to this [ article / chapter ] is guilty of a misdemeanor and may be prosecuted by the [ City Prosecutor / District Attorney ].

**comment:** This provision allows the city prosecutor or district attorney to bring criminal charges for violations of the Model Ordinance.

**SECTION III. SEVERABILITY.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any Person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other Person or circumstance. The [ City Council / Board of Supervisors ] of the [ City / County ] of [ \_\_\_\_ ] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsec­tions, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

**comment:** This is standard language. Often this “boilerplate” is found at the end of an ordinance, but its location is irrelevant. Your jurisdiction may have other boilerplate language that is included in local ordinances. You should consult with your city attorney or county counsel to determine whether this is the case.

**SECTION IV**. This Ordinance shall take effect and be in force from and after [ date of enactment ], except that Sections [ \_\_\_\_ (\*2) ] and [ \_\_\_\_ (\*3) ] shall not be enforced until [ one year and one hundred eighty days after date of enactment ].

**comment:** This enforcement timeline ensures that the provisions prohibiting Producers and Retailers from selling Filtered Tobacco Products not covered by a Tobacco Litter Control Program are not enforced until Producers have had the time provided by the Model Ordinance to develop and submit their Programs. As provided in Section 4(c), Producers have one year from the date of enactment to submit Tobacco Litter Control Programs, and the Department has 180 days to review those Programs.

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