

# Policy Options for Reducing Secondhand Smoke Exposure Among Contra Costa Residents and Workers And Improving Public Health

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## I. INTRODUCTION

Contra Costa County has a strong history of implementing policies and programs to change community norms around tobacco use and to protect residents from the effects of tobacco use and secondhand smoke (SHS). In 1984, Contra Costa became the first multi-jurisdictional region in the nation to adopt uniform legislation restricting smoking in the workplace and public spaces. In the mid-1990's, the Board of Supervisors and 15 City Councils pioneered workplace smoking restrictions which laid the foundation for California's smoke-free workplace law.

Contra Costa experienced a 31.1% decline in smoking between 1990 and 2002, the second greatest decline in the state during that period.<sup>1</sup> Eighty-eight percent of Contra Costa adult residents do not smoke.<sup>2</sup> Despite its progress, over 6500 people die each year in Contra Costa County from smoking related diseases. The cost of treating smoking related diseases in Contra Costa County is \$228 million annually.<sup>3</sup> This figure does not include illnesses associated with secondhand smoke.

This paper was originally disseminated in March 2006. It has been updated to reflect scientific studies published since then, and includes the policies that the Contra Costa Board of Supervisors adopted in its comprehensive Secondhand Smoke Protections Ordinance in October 2006 and strengthened in October 2009. A full description of the county's policy can be found at the end of this document.

## II. HEALTH EFFECTS OF SECONDHAND SMOKE

The negative health impacts of secondhand smoke have been clearly demonstrated over the past twenty years. In January 2006, the California Air Resources Board (CARB) designated SHS as a *toxic air contaminant* - putting SHS in the same category as the most toxic automotive and industrial air pollutants, for which there is no safe level of exposure.<sup>4</sup> In June 2006, the U.S. Surgeon General also concluded that scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.<sup>5</sup>

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<sup>1</sup> California Department of Health Services, California Tobacco Survey, 1990 – 2002.

<sup>2</sup> California Department of Health Services, California Tobacco Survey, 2005.

<sup>3</sup> Max W, Rice D, Zhang, X, Sung H, Miller L. "The Cost of Smoking in California, 1999", California Department of Health Services, 2002.

<sup>4</sup> "Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant", California Environmental Protection Agency, California Air Resource Board, 2005.

<sup>5</sup> "The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General", US Department of Health and Human Services, 2006.

**Secondhand smoke is a proven killer.** Secondhand smoke causes as many as 53,000 deaths each year in the United States, approximately 6,000 of which occur in California.<sup>6</sup> Health impacts of SHS in California each year include: over 400 lung cancer deaths; over 3,600 cardiac deaths; about 31,000 episodes of asthma; about 21 cases of SIDS; about 1,600 cases of low birth weight in newborns; over 4,700 cases of pre-term delivery.<sup>7</sup>

**Banning outdoor smoking is scientifically justifiable.** According to James Repace, a well-known researcher of secondhand smoke, “Failure to ban smoking in (outdoor venues) may expose non-smokers to levels of secondhand smoke as high or higher that received in indoor spaces where smoking is unrestricted”.<sup>8</sup> For example, a group of people smoking near a building entrance can saturate a local area with tobacco smoke. In May 2007, Stanford researchers published the results of a study on air pollution levels arising from outdoor tobacco smoking activity which concluded that exposure to secondhand smoke produced by a smoker are many times more concentrated than normal background air pollution levels. This means that in environments such as parks, sidewalk cafes and outdoor pubs where smoking is permitted, second hand smoke exposure poses significant health consequences.<sup>9</sup>

Many non-smokers exposed to outdoor tobacco smoke suffer immediate symptoms including breathing difficulties, eye irritation, headache, nausea, and asthma attacks. New research shows that heart attack rates drop after smoking bans and the decrease continues downward over time. One year after passing smoking bans, communities in North America and Europe had 17 percent fewer heart attacks compared to communities without smoking restrictions, and the number of heart attacks kept decreasing with time.<sup>10</sup>

**Smoke-free policies reduce smoking.** In addition to protecting public health by reducing exposure to harmful chemicals, other positive results of smoke-free policies include: changing community norms regarding tobacco use; encouraging smokers to become nonsmokers; reducing the number of cigarettes smoked by people who continue to smoke; and helping former smokers remain smoke-free.

**There is no constitutional right to smoke.** The US and California constitutions guarantee certain fundamental rights and protects certain classes from all but the most compelling government regulation. No court has ever recognized smoking as a protected fundamental right nor has any court ever found smokers to be a protected class. To the contrary, every court that has considered the issue has declared that no fundamental “right to smoke” exists.

### **III. KEY ELEMENTS OF A MODEL COMPREHENSIVE SHS POLICY**

Local ordinances limiting exposure to secondhand smoke are among the most direct and effective way to improve the public’s health and change community norms. The CARB designation of SHS as a toxic air contaminant and the U.S. Surgeon General’s declaration that there is no risk-free level of exposure to secondhand smoke provides a new impetus for reviewing and updating smoking policies. The following policy options were developed in consultation with several California tobacco prevention organizations including Resources and

<sup>6</sup> “Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant”, California Environmental Protection Agency, California Air Resource Board, 2005.

<sup>7</sup> “Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant”, California Environmental Protection Agency, California Air Resource Board, 2005.

<sup>8</sup> Repace, James. “ Banning Outdoor Smoking is Scientifically Justifiable, “ *Tobacco Control*, March 2000.

<sup>9</sup> Klepeis, N., OH, W., Switzer, P. “Real-time Measurements of Outdoor Tobacco Smoke Particles”. *Journal of the Air and Waste Management Association*, May 1, 2007

<sup>10</sup> [Circulation](#). 2006 Oct 3;114(14):1490-6. Epub 2006 Sep 25.

Education Supporting People Everywhere Controlling Tobacco (RESPECT), Technical Assistance Legal Center (TALC), American Lung Association of California, California's Clean Air Project (CCAP), and the Contra Costa County Tobacco Prevention Coalition.

### **A. Addressing Exemptions in California's Smokefree Workplace Law**

The State law, (Labor Code section 6404.5) prohibiting smoking in indoor workplaces contains exemptions for some types of businesses. Since the law was fully implemented in 1998, the Tobacco Prevention Project (TPP) has fielded hundreds of complaints about indoor smoking, including complaints about smoking in exempted workplaces such as tobacco shops, bingo halls, company vehicles and banquet rooms. Between 2002 and 2009, the TPP responded to 267 calls, 98 of which concerned indoor smoking (36% of total calls).

1. The redefinition of "workplaces" could include areas under control of an employer, business or non-profit entity that an employee or the general public may have cause to enter in the normal course of operations, including but not limited to tobacco shops, employee lounges, conference and banquet rooms, bingo and hookah bars.<sup>11</sup> The Board of Supervisors redefined "Workplace" in order to address exceptions to the state law and to extend workplace protections to all employees and customers.
2. In response to increased demand for smokefree rooms, and to further health protections, the Board of Supervisor's reduced the percentage of smoking-permitted motel and hotel rooms allowed by State law from 40% to no more than 20% per establishment.

### **B. Expanding Smokefree Zones Outdoors**

The successes of Contra Costa's Clean Air Ordinance and the State's Smoke-free Workplace Law, and the Legislature's adoption of AB 846 banning smoking within 20 feet of entrances, exits and operable windows of government buildings, have led residents to expect clean air both inside and outside of the workplace. Between 2002 and 2009, the TPP responded to 100 complaints about smoking in outdoor locales - 37% of the total complaints.

Reasons for limiting outdoor smoking include: protecting the public, including children, from a toxic air contaminant; protecting workers from SHS drifting into buildings; assuring access to residents with respiratory disabilities (ADA access); reducing tobacco related litter; reducing fire hazards; and reducing the potential for children to associate smoking and tobacco with a healthy lifestyle.

In order to extend SHS protections outdoors, and to meet the expectation of non-smoking residents to breathe clean air 100% of the time, the Board of Supervisors adopted the following policies as part of the County's comprehensive ordinance:

1. No smoking within (at least) 20 feet of doors, exits, operable windows and ventilation units of enclosed workplaces and buildings open to the public;
2. No smoking in outdoor dining areas, at bars and restaurants, (including outdoor dining areas at places of employment and in outdoor lounges);
3. No smoking on public trails;
4. No smoking in public parks;
5. No smoking in outdoor services areas such as bus stops, cabstands, ATM lines, ticket lines; and

<sup>11</sup> "Comprehensive Secondhand Smoke Model Ordinance for California Communities", Technical Assistance Legal Center, Oakland, CA, 2006.

6. No smoking in public event venues such as fairgrounds, stadiums, pavilions.

The law also requires that in every building or other place where smoking is regulated by the owner, operator or manager must not:

- allow ashtrays or other receptacles for disposing of smoking materials in non-smoking areas;
- knowingly allow smoking in non-smoking area. The owner, operator or manager must request that the person stop smoking and if the person fails to stop, ask them to leave the premises.

### **C. Expanding Smokefree Areas in Multi-Unit Residences**

Drifting SHS in multi-unit housing complexes, including condominiums and senior citizen housing, exposes non-smokers to a serious health hazard. Over the past eight years, the TPP has fielded an increasing number of complaints about smoke drifting through ventilation systems, bathroom fixtures and windows. Ten percent of total calls between 2002 and 2006 concerned secondhand smoke in multi-unit residents. Between January 2006 and December 2009, 49% of total calls to the project have been about drifting smoke in multi-unit residences.

Of particular concern are children and residents with respiratory conditions and disabilities whose health is seriously compromised by breathing SHS in the home. Low-income residents are at an acute disadvantage because they usually do not have the resources to move into a new apartment if SHS is a problem in their complex.

A recent survey of 600 apartment renters and 300 apartment owners and managers found that 69% of apartment renters favor laws requiring all apartment buildings to offer non-smoking units, and that 67% of owner/managers support such laws once they learn how they would protect tenants from secondhand smoke and would reduce their fire insurance premiums. The key finding from the survey is that Californians are ready for local ordinances encouraging apartment owners and managers to set aside smoke-free apartment units.<sup>12</sup>

The Board of Supervisor's adopted the following three policies for multi-unit housing residences of four or more units:<sup>13</sup>

1. No smoking in the common indoors and outdoors areas of multi-unit housing.
2. No smoking in all areas within 20 feet of doors, windows, air ducts and ventilation systems of multi-unit residences, except while passing on the way to another destination.
3. Landlords of multi-unit housing must:
  - designate and map smoking permitted and non-smoking areas, including individual units;
  - disclose location of smoking permitted and non-smoking areas, including individual units, to tenants at the time of lease signing;
  - disclose to tenants how smoking complaints are handled

<sup>12</sup> Goodwon, Paul, "Summary of Survey Research Findings on Attitudes about Smoke-free Apartments", 2006.

<sup>13</sup> Contra Costa County Comprehensive Secondhand Smoke Protections Ordinance (2006-66) Code Chapter 445-4, Adopted October 2006, modified October 2009.

Landlords may designate a portion of an outdoor common area of a multi-unit housing complex as a smoking area. A designated smoking area of an outdoor common area of a multi-unit residence must not overlap with any area where smoking is otherwise prohibited by local, state or federal laws; must be located at least 25 feet in all directions from non-smoking areas; must not include areas primarily used by children; must be no more than 25 percent of total outdoor common area; must have a clearly marked perimeter; and must be identified with conspicuous signage.

Additional options for protecting residents in multi-unit housing complexes are still evolving in the field. Options currently under consideration in some communities include:

- Making 75% of existing units nonsmoking;
- Making 100% of existing units nonsmoking;
- Making 100% of new units nonsmoking;
- Prohibiting smoking on balconies or in patios of nonsmoking units;
- Group nonsmoking units together (vertically/horizontal);
- Group Smoking units together (vertically/horizontally);
- Requiring landlords to disclose to prospective tenants which units are designated nonsmoking units and which are smoking units;
- Requiring landlords to disclose to prospective tenants how drifting smoke complaints are handled;
- Requiring every lease to include the following terms:
  - No Smoking in designated nonsmoking units.
  - No smoking in nonsmoking common areas.
  - Other tenants in the building are legally entitled to demand compliance with the nonsmoking terms.

#### **D. Declare SHS a public nuisance**

Secondhand smoke can be added onto the list of declared “public nuisances,” in order to provide abatement relief through current public nuisance statutes.

#### **E. Additional Measures**

The following two areas may also be considered to further protect residents from Secondhand smoke exposure.

- Tobacco use on **health care campuses** poses a contradiction to the mission and purpose of medical facilities as smoking is the main cause of preventable death in the United States. Increasingly, health care systems in Contra Costa, and in the country are banning tobacco use on their campuses. The Board of Supervisor’s adopted a policy requiring the County Regional Medical Center and all county healthcare campuses to become smoke free. Private healthcare campuses can adopt their own smokefree campus policies.
- Smoking in **licensed family childcare centers**. Current state regulations allow smoking in other parts of the home during childcare hours and in the childcare areas during non-working hours. Particulate matter remains on carpets, furniture, and bedding and walls indefinitely, exposing children to carcinogens and asthma triggers when they are present.

## **V. IMPLEMENTATION AND ENFORCEMENT**

The County's SHS ordinance expands secondhand smoke protections to prohibit smoking within 20 feet of doors, operable windows, air ducts and vents of any enclosed place of employment or enclosed places open to the public; outdoor restaurants, employee lounges and dining areas; public parks and on public trails; in service areas (such as ATM lines, ticket lines, and bus stops); at public events; and in common indoor and outdoor areas of multi-unit housing, and within 20 feet of doors, operable windows, vents and air intake units of multi-unit housing residences. Contra Costa Health Services has phased in implementation and enforcement of the County's Secondhand Smoke Protection Ordinance. (A copy of the County's Outreach and Education Plan is available upon request.)

Implementation and Enforcement Options include:

**A. Require workplaces and other affected areas to post “No Smoking Within 20” signs or “No Smoking” signs and remove ashtrays as appropriate.**

Many jurisdictions report that requiring “No Smoking” signage to be posted in the affected areas is the single most important component of implementation and enforcement.

**B. Make violations of the ordinance a violation of the jurisdiction’s Code and impose fines.**

The County’s clean air ordinances have historically been enforced on an educational complaint basis, and this continues. Smoking in areas with “No Smoking” signs is grounds for a complaint and action by Contra Costa Health Services and other enforcement entities designated by the law. Fines could be imposed through writing infraction citations or through an administrative process.

**C. Use the abatement process.** This would be an option if SHS were declared a public nuisance.

**D. Allow private citizens to enforce the ordinance in small claims court.**

The Board could facilitate enforcement further by adding an option for individuals and organizations to enforce provisions in small claims court. This option is being pursued by several jurisdictions around the State.

For more information, contact the Tobacco Prevention Project at 925-313-6214.

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