



**PRODUCER RESPONSIBILITY
POLICY OPTIONS
FOR TOBACCO WASTE**

JUNE 2019

Producer Responsibility Policy Options for Tobacco Waste

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The opinions expressed in this white paper are solely those of CPSC.

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I. Executive Summary

The California Product Stewardship Council (CPSC) was contracted by the California Department of Public Health (CDPH) to research and write a white paper on tobacco waste policy options for local jurisdictions, such as a city, county, tribe, or joint power authority to consider for reducing tobacco product waste (TPW). This project aligns with the CPSC mission to shift the costs for end-of-life (EOL) management to the producers with the ultimate goal being to redesign products to reduce EOL impacts. TPW has human and environmental health impacts that impose significant cost burdens to consumers and local jurisdictions. Producer responsibility policies shift the cost burden of protecting human communities impacted by hazards associated with specific products from consumers and local jurisdictions to the producers of such products. This white paper describes policy options available to regulate TPW given the evidence showing the negative impact on humans, animals and the environment, and the increasing cost to local jurisdictions of protecting its residents. Policy options discussed in this paper include:

- 1) Sales bans on single-use tobacco products, including filters, plastic tips, and disposable electronic smoking devices, including electronic smoking device components;
- 2) A stewardship program to collect and dispose TPW, funded and managed by producers;
- 3) Reimbursement to local jurisdictions for costs of TPW remediation and education.

Policies presented in this paper shift the cost burden from consumers and local jurisdictions to producers of TPW in order to maximize material collection and prevent damage to communities and their respective environments.

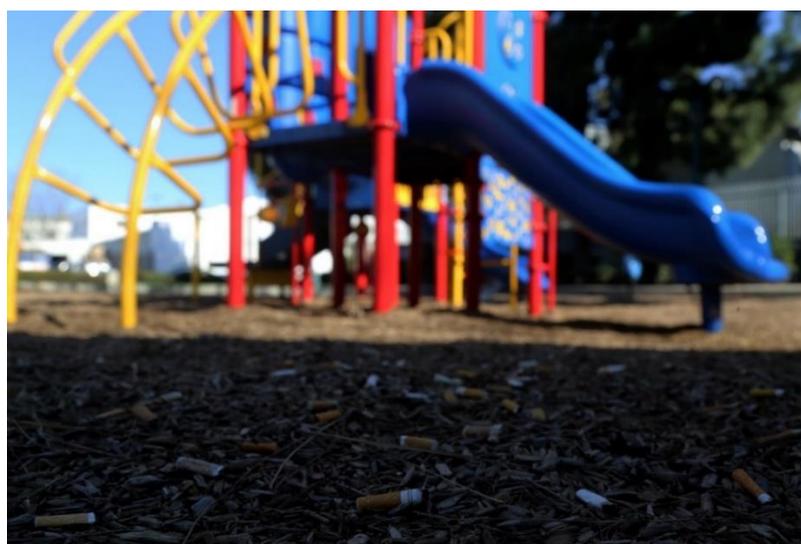
II. Issues to Resolve

Tobacco Product Waste (TPW) is the most common form of litter worldwide, containing both organic and inorganic waste (Lazarus, 2019). TPW includes cigarettes (including their single-use filters), cigars, cigarillos (including their single-use plastic tips), and electronic smoking devices, which typically include lithium ion batteries and cartridges holding the nicotine liquid. Cellulose acetate does decompose, taking up to 10 years and releasing micro-plastics and harmful chemicals in the environment (Nanowski, 2019). Peer-reviewed studies have found that TPW contains hazardous chemicals, such as acetate/rayon filters, pesticides, heavy metals, nicotine, ethyl phenol for flavoring, adhesives, and other additives found to be acutely toxic to aquatic organisms when tested at various exposures (Novotny, 2014; WHO, 2017). Scientific research shows increased rates of lung cancer, specifically adenocarcinomas, a form of cancer that occurs deep in the lungs, since introduction of acetate filters. The acetate filters do not necessarily make the cigarettes safer as over 3,284 citations found sufficient evidence to infer a causal relationship between smoking and colorectal adenomatous polyps and colorectal cancer (Song, 2017; General, 2014).

Humans are affected negatively by TPW even if they are not smoking cigarettes. The American Association of Poison Control Centers reported about 12,600 cases of children ingesting cigarettes or cigarette butts from 2006 to 2008 (Novotny, 2011). Electronic smoking devices pose an additional human health risk as explosions have been documented during use and disposal of the devices, some resulting in death (Molina, 2019). From 2015 to 2017 there were an estimated 2,035 electronic smoking device explosion and burn injuries presenting to US hospital emergency departments (Rossheim, 2018). California Poison Control System data show that 490 children ages 0 to 5 years old has reported electronic smoking device exposure since 2014. Electronic Smoking Device poisonings to young children in California were nine times higher in 2017 when compared to 2012 (Chapman, 2015).

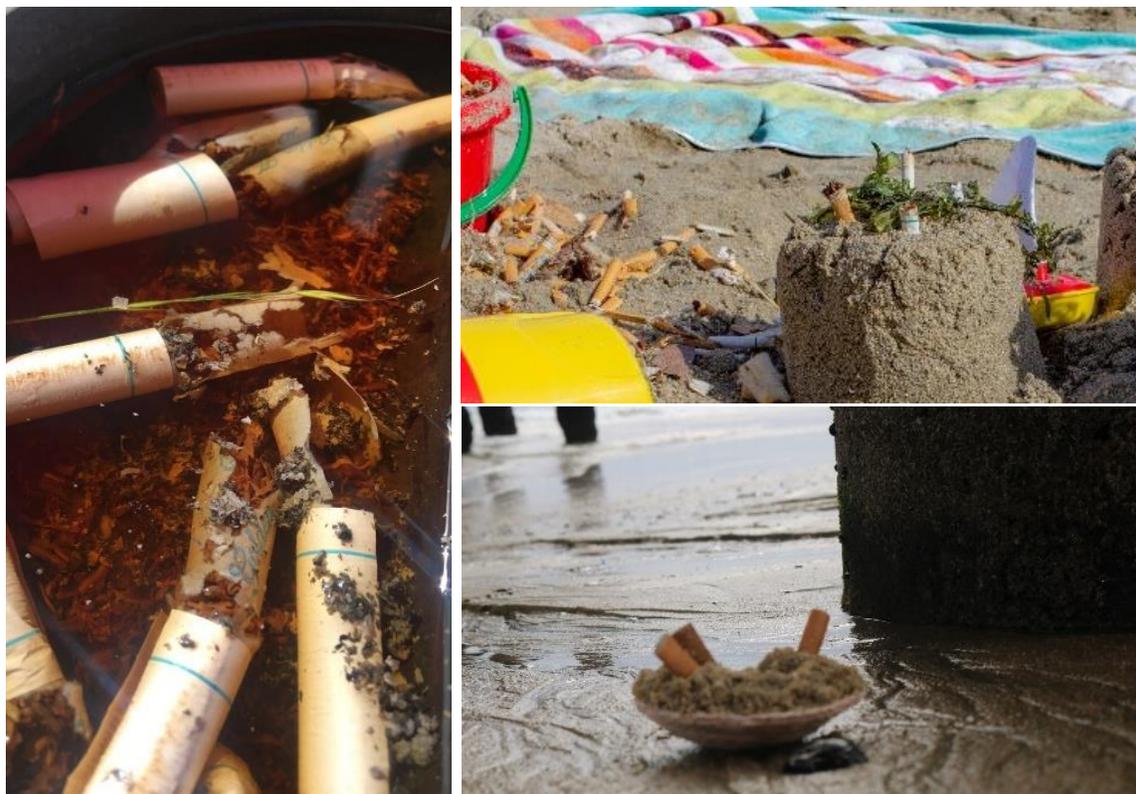
Table. Electronic smoking device exposures to children in California between 2012-2017 as reported to the California Poison Control System.

		Total
2012	All ages	19
	Age 0-5	7
2013	All ages	106
	Age 0-5	45
2014	All ages	243
	Age 0-5	154
2015	All ages	213
	Age 0-5	138
2016	All ages	137
	Age 0-5	83
2017	All ages	122
	Age 0-5	63



Picture: Picture from CDPH showing TPW exposure to children despite smoking bans and litter fines.

Prevalence of TPW in the environment endangers humans, animals, and water systems due to micro-fiber and chemical release. When TPW is discarded in the environment, it leaches thousands of chemicals, including 50 different carcinogenic toxins, and can take up to 10 years to decompose (Puls, 2011).



Picture: Photo from CDPH Photo Contest 2019 showing TPW in waterways despite common knowledge on toxicity.

Local jurisdictions have a legal obligation to take action to protect public health. Local jurisdictions spend millions of dollars to mitigate TPW in local urban, rural, and natural ecosystems. The costs paid by local and state agencies for TPW abatement is sizeable, with annual estimates in the tens of millions per large municipality. The California Department of Transportation estimates that it costs \$41 million annually to clean up cigarettes on roadways. The City and County of San Francisco calculates abatement costs for cigarette butts at over \$6 million annually and a street audit revealed that 24.6% by count of all littered items was TPW (Schneider, 2009). Alameda County did two street litter audits for TPW finding 11,400 cigarette butts in 22 hours in each supervisorial district and a second audit found over 1,000 butts in a 2-mile strip that is already cleaned three times a week (Tobacco Waste Audits, 2018 and 2019). Cities and counties cannot afford to continue status quo, especially as they are facing stricter water capture regulations from the California State Water Resources Control Board (CA Water Board). The Trash Provisions of the Water Quality Control Plan for CA Water Board establishes a water quality standard for trash that applies to all state waters and requires all stormwater permits to be modified or reissued to include a trash implementation

plan to reach zero trash within 10 years of the newly adopted permits, but no later than 2030 (State Water Resources Control Board, 2015).

III. Background

Tobacco is regulated by several federal, state and local agencies throughout the product lifecycle, including manufacturing standards, labeling/advertising laws, and strict retail regulations. Other examples of current policy discussions and proposals for tobacco include flavor bans and online underage sales restrictions. Strong laws and enforcement against cigarette litter have not been effective enough as TPW remains the single most littered item on our highways and the single most collected item of trash during park, river, and beach cleanup events. Currently, littering from a vehicle is punishable by a fine up to \$1,000 and a mandatory order to clean up litter, yet TPW remains prevalent in the environment.



This white paper will cover regulatory options for TPW that focus on producer responsibility. Tobacco waste policies that place the entire responsibility burden on consumers and local jurisdictions are not included in the scope of this paper. For example, litter fines or smoking bans are not covered as they do not address the upstream solutions to TPW or place fair responsibility for TPW on the producers.

Pictured: TPW litter on a smoke-free campus at UCI showing that regulating smoking is not enough and producers need to take fair responsibility for designing problematic products.

TPW Policies Prior to 2019

Tobacco Product Waste (TPW) has been a trending topic in the media, as consumer awareness has increased on marine debris and plastic pollution. Additionally, TPW has been a product addressed through previous state legislation. For example, Assemblymember Mark Stone (D-Monterey) introduced legislation in 2014 and 2018 to protect California's coast and waterways by banning the sale of cigarettes with single-use filters (Stone, 2018). A recent analysis for the California Senate Committee on Health (April 2019) includes a comprehensive list of prior legislation passed, failed, and vetoed found in attachment 1.

In October 2018, the European Union (EU) made tobacco companies responsible for funding awareness-raising campaigns, the provision of public ashtrays and waste collection. The companies will have to add labels to packages of filtered cigarettes, stating that they contain environment-damaging plastic (Lazarus, 2019). The European Parliament backed a radical proposal to oblige EU countries to remove 50% of plastic from cigarette filters by 2025, and 80% by 2030 (EU Parliament, 2018).

2019 TPW California Legislative Environment

Senator Hannah-Beth Jackson (D-Ventura) introduced **Senate Bill (SB) 424** and amended the bill on March 28, 2019, to address producer responsibility for TPW. This legislation is sponsored by the National Stewardship Action Council, a national affiliate of the California Product Stewardship Council. CPSC's approach, as reflected in SB 212, when negotiating with large industry, pre-emption is virtually the only thing to get the producers to the negotiating table and will never pre-empt existing ordinances, other those that have not already passed. Anything can happen in the legislative process, and authors can accept pre-emption against the sponsors will. SB 424 addresses TPW with a twofold strategy: first, it bans the sale of single-use tobacco products, including single-use filters, single-use plastic Tiparillos, and single-use electronic cigarettes. Second, this bill allows the sale of multi-use tobacco products, so long as those products are ordinarily recyclable, or are collected for take-back by the manufacturers of the product. Examples of multi-use tobacco product components include reusable filters and refillable electronic smoking devices. Product manufacturers may form a stewardship organization to administer the take-back of non-recyclable multi-use components. Senator Jackson successfully authored the first-in-the-nation Extended Producer Responsibility (EPR) law (**SB 212**) for medicine and sharps. EPR, as defined by CalRecycle is a strategy to place shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of the general public; while encouraging product design changes that minimize a negative impact on human health and the environment at every stage of the product's lifecycle, allowing the costs of treatment and disposal to be incorporated into the total cost of a product. SB 212 offered California residents a medicine and sharps disposal program fully funded and managed by a producer-funded



stewardship organization. SB 212 set new precedent for requiring a stewardship program to meet strict programmatic requirements and reimburse local jurisdictions for additional collection costs at their permanent waste facilities.

Pictured: Senator Jackson has authored and passed producer responsibility laws for medicine and sharps and now proposes a bill, SB 424 (2019), to address producer responsibility for tobacco waste.

This white paper does not include aspects of regulating tobacco product packaging because of strict federal preemptions for labeling. There are also current efforts at the state level to regulate packaging separately. Several proposed bills in the California legislature as of April 2019 could potentially impact TPW. Two single-use packaging bills, **SB 54 (Allen, Skinner, Stern, and Wiener)** and **AB 1080 (Gonzalez, Calderon, Friedman, and Ting)**, specifically aim to source reduce and recycle 75% of single-use packaging and products sold or distributed in California by 2030. **AB 1509 (Mullin and Berman)** would require, for a product with a non-removable rechargeable battery, including electronic smoking devices, the manufacturer of the product provide disassembly information to recyclers of rechargeable consumer products in the state for the purpose of ensuring the safe removal of the battery; and, the measure would also prohibit the sale or offer of sale of that product if the manufacturer does not provide that information. Additionally, there have been discussions of introducing local ordinances for batteries and tobacco, as expressed by California local jurisdictions, many of which passed EPR for pharmaceuticals and sharps leading to the passage of SB 212 at the state level.

IV. Proposed Solutions

A. Sales ban: Single-use filters, electronic smoking devices, and plastic tips.

According the federal Family Smoking Prevention and Tobacco Control Act of 2009, there are limitations on state and local jurisdictions regulatory authority regulating tobacco product standards, labeling, and manufacturing practices. However, there exist opportunities to restrict the sale of products without prohibiting the use of particular components in producing the product because state and local jurisdictions may regulate the time, place and manner of tobacco sales, but not the manufacturing standards. A sales ban could effectively influence product manufacturers to address the most frequently littered or improperly disposed product components - the plastic filters, Tiparillos, and electronic smoking devices without triggering federal preemption. There are strengths and weaknesses associated with this policy approach, as follows:

Strengths:

- Allows a reasonable time to implement the ban (i.e., two years) giving producers significant time to implement changes in their manufacturing processes.
- Is straightforward to define and enforce, especially since many cities and counties require tobacco retailers located in their communities to have a tobacco retailer's license and be available for regular compliance visits.
- Stops product components from entering the market thus reducing the amount of plastic in the environment.

Weaknesses:

- Does not address the toxicity of the product or abatement of TPW already in the environment.
- Would cause resistance and opposition from a recalcitrant industry.

B. Producer responsibility: Require industry to establish a collection program for TPW

Producer responsibility builds on the philosophy that if producers fund and manage their products at the product's end-of-life, those producers are more likely to design a cost-effective product and program to meet regulation requirements and still maintain profit margins. Currently, the externalized environmental costs for TPW are not included in the cost of tobacco products, as environmental abatement of TPW is often funded by local jurisdictions, volunteer clean-up groups, or not addressed at all.

Producer responsibility policies set programmatic requirements, including the submission process for the stewardship plan, which clearly defines how the program will operate, reporting requirement, metrics for minimum performance standards, and enforcement procedures. The Stewardship Organization must follow the Plan for the duration of approved time, and any Plan amendment required resubmission and review by the jurisdiction. For example, the policy will likely include stipulations describing the Stewardship Organization representing the producers, the Plan for meeting programmatic requirements, program promotion/outreach, and reporting requirements. The Stewardship Organization reports annually to the local jurisdictions information requested in the policy, such as:

1. A list of Producers participating in the Product Stewardship Program;
2. The amount, by type and by weight, of TPW collected from Consumers during the reporting period;
3. The name and location of facilities at which TPW products were recycled and/or disposed;
4. Whether policies and procedures for collecting, transporting, and disposing of TPW, as established in the Plan, were followed during the reporting period and a description of any noncompliance;
5. How the Product Stewardship Program complied with all other elements in the Product Stewardship Plan approved by the Jurisdiction, including its degree of success in meeting any performance goals set by the Jurisdiction as part of its approval of the Program; and
6. Any other information that the jurisdiction may reasonably require.

Producer responsibility at the local level needs to have a clear and evident nexus with public health and safety based on the *Pharmaceutical Research and Manufacturers of America v. County of Alameda* (768 F.3d 1037 (9th Cir. 2014)) case which was litigated

to the United States Supreme Court. TPW is very different across product types, it may not be feasible to include all TPW in a single producer responsibility program. For example, a producer responsibility program specifically for electronic smoking devices, made with metal, plastic, and aligns with the evident danger of improper battery disposal and accidental ingestion or environmental leaching of nicotine liquid. Extinguished cigarette butts have a different material composition and collection process and would not enter the same waste stream as electronic smoking devices. Sales Bans or reimbursement would be more impactful to address cigarette butts while still maintaining control over program public education. Littered cigarette butts are not usually a separate waste stream as the butts are mixed in with other litter when cleaned up via street sweeping, volunteer beach clean-ups, so to separate out the butts into a separate program could be time and cost intensive, so sales bans and reimbursement could have more impact. Additionally, if there is not a proven public hazard, such as the plastic Tiparillos, a sales ban or reimbursement would remove the waste from the environment. See Section V for CPSC policy recommendations.

Strengths:

- Shifts cost burden from local jurisdictions and consumers to producers, who are making the profit yet paying the least into end-of-life management.
- Directly addresses litter abatement and offers immediate relief for environmental exposure.
- Incentives green design and litter prevention to lower costs of the Stewardship Program as producers reduce the cost of handling and disposing of the product if they are required to fund and manage the program.
- Generates local data for TPW prevalence for establishing baseline and measuring programmatic effectiveness.
- Allows local jurisdictions to maintain authority over the Plan, education and outreach materials, and annual report.

Weaknesses:

- The process of establishing a stewardship organization and submitting a Plan will be new for producers and likely perpetuate recalcitrance. An approvable plan will address all the program requirements and be feasible by the Stewardship Organization, including addressing equitable and convenient access for consumers.
- In order to be successful, the program needs to have detailed oversight authority, a clearly set scope, procedures, and performance requirements to ensure no loopholes are exploited by producers.
- TPW contains many different products requiring various collection and disposal methods, so one stewardship program will not work for all products.

C. Reimbursement: Producers reimburse local jurisdictions for TPW costs

Reimbursement by producers involves direct payment from the tobacco manufacturers to the local jurisdictions for direct costs of TPW removal and prevention to be invoiced to the Stewardship Organization. Although there is no precedent for this as a stand-alone policy, this option has been included in producer responsibility policies, such as the medicine and sharps program in California: “Upon request, the program provides for reimbursement to local agencies for disposal costs related to home-generated sharps waste, unless the program operator provides for the removal of the home-generated sharps waste from the local household hazardous waste facility. Reimbursement costs shall be limited to the actual costs of transportation from the household hazardous waste facility and for the actual costs of disposal.” This policy option would help relieve cost burden to local jurisdictions, especially for costs associated with TPW litter, such as fines for water capture and/or clean-up costs for beach clean-ups.

Strengths:

- Relieves cost-burden from local jurisdictions to clean-up and dispose of TPW, which is a cost already paid by jurisdictions and expected to increase.
- Allows local jurisdictions to act on their own timeline and offers immediate relief for litter removal.
- Allows local jurisdictions to maintain control of TPW removal and prevention; removes potential unintended consequences from tobacco industry interference that may come with a policy that requires producers to run a Product Stewardship Program.

Weaknesses:

- Before the passage of SB 212, no precedent for direct payment from producers to jurisdictions without a stewardship program, so this option requires more research as a standalone policy.
- There is no way this policy will remove all waste and microplastic; prevention is the only way.

Table. Comparing how each policy option addresses common concerns with TPW.

	Sales ban	Producer responsibility	Reimbursement
Politically feasible	✓	✓	✓
Reduces plastic waste generation	✓	✓	✓
Supports smoking cessation	✓	✓	
Reduces hazardous chemicals in TPW	✓	✓	
Prevents TPW from entering the environment	✓	✓	
Removes TPW from the environment		✓	✓
Relieves cost burden from local jurisdictions		✓	✓
Provides local data		✓	

V. Recommendation(s)

The California Product Stewardship Council (CPSC) recommends state and local jurisdictions pursue all three policy options, but not for all TPW. All three policy options require producers take a significant part in the solution to TPW in the environment, but we recommend matching the appropriate policy for the product type. CPSC considers the following policy options best for each designated component of TPW:

1. Sales Ban on Single-use filters for cigarettes and cigars
2. Extended Producer Responsibility for Electronic Smoking Devices
3. Reimbursement of the following:
 - a) Water capture devices,
 - b) Costs for any water Trash TMDL fines
 - c) Costs beach clean-ups for all TPW
 - d) Costs for Schools to manage tobacco waste

The producer responsibility policy option would provide the most holistic and cost-effective approach to removing TPW from the environment and preventing future TPW in the environment, but will be hard to pass for cigarette butts. It allows opportunity to incorporate sales bans and reimbursement as part of the stewardship program requirements. Producer

responsibility models for TPW have been supported by other thought leaders including Dr. Novotny, as published in 2014 and 2018, and ChangeLab Solutions in a 2015 publication. A CPSC Associate wrote a model Tobacco EPR ordinance (Attachment 3) which has been reviewed by CPSC and others for feedback. It can serve as a starting point for local jurisdiction's Counsel to draft an ordinance customized for their jurisdiction.

CPSC will continue to lead in producer responsibility policies, especially with TPW. The CPSC national affiliate, the National Stewardship Action Council, is sponsoring SB 424, a state bill for tobacco product waste discussed in this white paper. Both organizations are available for technical assistance for any jurisdiction considering a TPW policy that engages producer responsibility.

VI. References

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Tobacco Waste Audits, Unincorporated Alameda County. (March 4-18, 2019). Primary data collected by Downtown Streets Team via 12 one-hour tobacco litter audits in Ashland.

VII. Attachments

1. List of legislation related to TPW as provided by the California Senate Committee on Health Analysis of SB 424
2. CPSC-NSAC Joint letter of support for SB 424
3. Draft model ordinance as written by a CPSC Associate and reviewed by the CPSC board-appointed Policy Education Advisory Committee (PEAC)

ATTACHMENT 1

CALIFORNIA SENATE COMMITTEE ON HEALTH

SB 424- Bill Analysis

April 9, 2019

List of legislation related to TPW:

1. AB 739 (McCarty and Wood) and SB 38 (Hill, Glazer, McGuire, and Portantino) prohibit a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale a flavored tobacco product. *AB 739 is pending in the Assembly Governmental Organization Committee. SB 38 passed out of this Committee on March 27, 2019, by a vote of 8-1.*
2. AB 1718 (Levine) and SB 8 (Glazer) make it an infraction punishable by a fine of up to \$25 for a person to smoke, as defined, on a state coastal beach or in a unit of the state park system, as defined, or to dispose of used cigar or cigarette waste on a state coastal beach or in a unit of the state park system unless the disposal is made in an appropriate waste receptacle. *AB 1718 is set to be heard in the Assembly Water, Parks, and Wildlife Committee on April 9, SB 8 passed out of the Senate Natural Resources and Water Committee on March 12, 2019, by a vote of 7-2.*
3. AB 1625 (Robert Rivas) would require the Attorney General to establish and maintain his list of tobacco product brand styles that lack a characterizing flavor, as defined. *AB 1625 is pending in the Assembly Governmental Organization Committee.*
4. SB 39 (Hill, Glazer, and Portantino) requires sellers, distributors, and nonsale distributors to deliver tobacco products only in conspicuously marked containers, as specified, and to obtain the signature of a person 21 years of age or older before delivering a tobacco product. *SB 39 passed out of this Committee on March 27, 2019, by a vote of 9-0.*
5. AB 2308 (Stone of 2018), AB 48 (Stone of 2015), and AB 1504 (Stone of 2014) would have prohibited the sale of cigarettes utilizing single-use filters. *AB 2308 failed passage in the Assembly Governmental Organization Committee. AB 48 was never heard in the Assembly Governmental Organization Committee. AB 1504 failed passage in the Assembly Governmental Organization Committee.*
6. SB 835 (Glazer of 2018) would have implemented a ban on smoking and disposing of tobacco products, as defined, at state parks and establishes an infraction punishable by a fine of up to \$25 for a violation. *SB 835 was vetoed by Governor Brown who stated that he had vetoed similar measures in each of the last two years, and the third time is not always a charm. Governor Brown stated his opinion on the matter had not changed, and we have many rules telling us what we can't do and these are wide open spaces.*
7. SB 836 (Glazer of 2018) would have prohibited smoking of cigarettes, cigars, pipes and other tobacco-products in state coastal beaches, as specified, and establish that a violation is an infraction with a fine of up to \$25. *SB 836 was vetoed by Governor Brown, who issued the same veto message as for SB 835.*

8. SCR 143 (Pan of 2018) would have encouraged major motion picture studios to give a Restricted (R) rating to any new film designed for viewing by children and adolescents that shows or implies smoking or tobacco use. *SCR 143 failed passage in the Assembly Health Committee.*
9. AB 1097 (Levine of 2018) was substantially similar to SB 835. *AB 1097 was vetoed by Governor Brown, who issued the same veto message as SB 835.*
10. SB 386 (Glazer of 2017) would have prohibited the smoking of cigarettes, cigars, pipes, and other tobacco products at state parks and state coastal beaches, as specified, and established that a violation is an infraction with a fine of up to \$100. *SB 386 was vetoed by Governor Brown who stated that such a far-reaching prohibition in every state park and on every state beach is too broad. In addition, the fine prescribed in SB 386 for lighting one cigarette is excessive. If people can't smoke even on a deserted beach, where can they? There must be some limit to the coercive power of government.*
11. AB 725 (Levine of 2017) would have prohibited smoking of tobacco products on state coastal beaches and at state parks, as specified, and established that a violation is an infraction with a fine of up to \$50. *AB 725 was vetoed by Governor Brown, who issued the same veto message as SB 386.*
12. SB 1333 (Block of 2016) would have prohibited the smoking of tobacco products on state coastal beaches and at state parks, as specified, and established that a violation is an infraction with a fine of up to \$250. *SB 1333 was vetoed by Governor Brown who stated the complete prohibition in all parks and beaches is too broad, and a more measured and less punitive approach might be warranted.*
13. SBX2 5 (Leno, Chapter 7, Statutes of 2016) recasts and broadens the definition of “tobacco product” to include ESDs, and extends current restrictions and prohibitions against the use of tobacco products to ESDs.
14. SBX2 7 (Hernandez, Chapter 8, Statutes of 2016) increases the minimum legal age to
15. purchase or consume tobacco from 18 to 21. Removes penalty provisions for those under 21 in possession of tobacco and exempts military personnel from the age increase.
16. ABX2 7 (Stone, Chapter 4, Statutes of 2016) extends the workplace-smoking ban and closes loopholes, among other things, to address secondhand smoke.
17. SB 977 (Pan, Chapter 537, Statutes of 2016) prohibits a person from smoking a tobacco product, as defined, within 250 feet of a youth sports event, as defined. Broadens the definition of “smoke or smoking” in existing law.
18. SB 591 (Pan of 2015) would have imposed an additional cigarette tax at a rate of \$2.00 per package of 20 cigarettes, and a corresponding rate for a cigarette tax stamp. *SB 591 was placed on the Senate Floor inactive file, and no further action was taken.*
19. AB 768 (Thurmond, Chapter 779, Statutes of 2015) prohibits, commencing December 1, 2016, the use or possession of smokeless tobacco products, as defined, on the playing field of a baseball stadium during a professional baseball game or practice.
20. SB 648 (Corbett of 2013) would have extended the restrictions and prohibitions against the

smoking of tobacco products to include restrictions or prohibitions against ESDs in various places, including, but not limited to, places of employment, school campuses, public buildings, day care facilities, retail food facilities, and health facilities. *SB 648 failed passage in the Assembly Appropriations Committee.*

21. SB 768 (De León of 2013) was substantially similar to SB 591. *SB 768 was held on the Senate Appropriations suspense file.*
22. AB 1142 (Bloom of 2013) would have prohibited smoking at state parks and beaches, as specified, and established that a violation is an infraction with a fine of up to \$250. *AB 1142 failed passage in the Assembly Governmental Organization Committee.*



May 17, 2019

Honorable Senator Hannah-Beth Jackson
State Capitol, Room 2032
Sacramento, CA 95814

RE: Support SB 424 (Jackson) – Tobacco Products: single-use and multi-use as amended

Dear Senator Jackson:

On behalf of the California Product Stewardship Council (CPSC) and its affiliate, the National Stewardship Action Council (NSAC), the hundreds of local government and private sector partners that the two organizations represent, and the undersigned organizations, we thank you for authoring SB 424 addressing tobacco product waste, a known human and environmental health hazard¹⁻³.

CPSC’s mission is to shift California’s product waste management system from one focused on government-funded and ratepayer financing to one that relies on producer responsibility in order to reduce public costs and drive improvements in product design. CPSC was so successful they created NSAC, a national organization in 2015, to Advocate to achieve a Circular Economy in the United States.

Tobacco waste is extremely costly to local government⁴ and those costs will dramatically increase as State water capture requirements are phased-in. We strongly support SB 424 to reduce tobacco waste at the source and prevent pollution. Pollution prevention is far less

expensive than end-of-life capture devices and clean-up, which never capture the all the chemicals and pollution from tobacco waste.

We, the undersigned, strongly **SUPPORT SB 424**.

Respectfully,



Doug Kobold, Executive Director
California Product Stewardship Council



Heidi Sanborn, Executive Director
National Stewardship Action Council

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Organizational Sign-on:



Nate Miley, County Supervisor District 4
Alameda County



Lauren Cullum, Policy Advocate
Sierra Club California



Nick Lapis, Director of Advocacy
Californians Against Waste



Emily Parker, Coastal and Marine Scientist
Heal the Bay



Stiv Wilson, Campaigns Director
The Story of Stuff Project



Angela T. Howe, Esq., Legal Director
Surfrider Foundation



Ruth Abbe, President
Zero Waste USA



Katherine O'Dea, Executive Director
Save Our Shores



Dianna Cohen, Chief Executive Officer
Plastic Pollution Coalition



Wendy Sommer, Executive Director
StopWaste



Anna Cummins, Co-Founder and Executive
Director
The 5 Gyres Institute



Leslie Mintz Tamminen, Director
Seventh Generation Advisors



Mati Waiya, Executive Director
Wishtoyo Chumash Foundation



Christopher Chin, Executive Director
The Center for Oceanic Awareness,
Research, and Education (COARE)



Miriam Gordon, Program Director
UPSTREAM



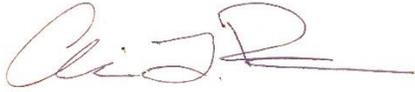
Beverly Hanstrom, CEO/Owner
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David Stitzhal, President
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Shell Cleave, Founder
Sea Hugger



Abbie Beane, Managing Director
The Offset Project



Thomas E. Novotny, MD MPH, CEO
Cigarette Butt Pollution Project



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Susan Klassen, Interim Executive Director
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Eric Zetz, Chair
SWANA California Chapter's Legislative Task Force

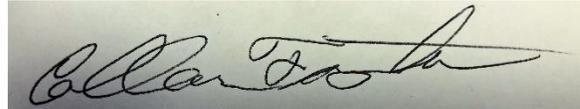


Rachel Kippen, Chair
Santa Cruz County Tobacco Education Coalition

Steve Devine, Program Manager
County of Marin, Public Works



Andria Ventura, Toxics Program Manager
Clean Water Action/Clean Water Fund



Colleen Foster, President
California Resource Recovery Association



Michael Gross, Director of Sustainability,
Zanker Recycling

DRAFT
City/County of _____
Tobacco Product Waste Reduction Model Ordinance

Findings and Intent

- 1) The purpose of this chapter is to protect the health, safety and welfare of the public and of the environment by ensuring the safe and proper disposal of tobacco product waste, reducing the use of tobacco by underage consumers, and encouraging product design that minimizes negative impacts on human health and the environment at every stage of the product's lifecycle.
- 2) It is the intent of the Jurisdiction to enact a Producer Responsibility Program for tobacco product waste as the most effective way of protecting public health and safety and the environment.
- 3) The Jurisdiction of _____ has an obligation to protect the environment, the economy, and public health.
- 4) Peer-reviewed evidence found that tobacco product waste contains hazardous chemicals, such as acetate/rayon filters, pesticides, heavy metals, nicotine, ethyl phenol for flavoring, adhesives, and other additives found acutely toxic to aquatic tested at various exposures (Novotny, 2014; WHO, 2017). Disposal of such substances into municipal landfills or incineration is generally recognized as unsafe.
- 5) Tobacco product waste can take hundreds of years to break down in the environment. It is not just the accumulation of plastics that harms the environment; it is also the fragments and toxins released during photo-decomposition that pollute our soil and water, including 50 different carcinogenic toxins, and can take up to 10 years to decompose (Puls, 2011).
- 6) Tobacco product waste, laced with chemicals and often ingested by animals, can injure or poison children, pets, and wildlife (Novotny, 2014; WHO, 2017).
- 7) Cigarette butts have consistently been the single most-recovered item since collections began among volunteer groups, including the Ocean Conservancy's International Coastal Cleanup event and California Coastal Commission's Coastal Cleanup Day events, which cleans litter in waterways, beaches, and parks in the State of California (Lazarus, 2019).
- 8) The California Department of Transportation estimates clean-up for cigarette butts at forty-one million dollars (\$41,000,000) annually (Stone, 2014).
- 9) The City and County of San Francisco calculates abatement costs for cigarette butts at over \$6 million annually and a street audit revealed that 24.6% by count of all littered items was TPW (Schneider, 2009).
- 10) The American Association of Poison Control Centers reported about 12,600 cases of children ingesting cigarettes or cigarette butts from 2006 to 2008 (Novotny, 2011).

- 11) California Poison Control System data show that 490 children ages 0 to 5 years old has reported electronic smoking device exposure since 2014. Electronic Smoking Device poisonings to young children in California were nine times higher in 2017 when compared to 2012 (Chapman, 2015).
- 12) As early as the mid-1960s, research showed cigarette filters to be useless in reducing harm to the average smoker. The acetate filters do not necessarily make the cigarettes safer as over 3,284 citations found sufficient evidence to infer a causal relationship between smoking and colorectal adenomatous polyps and colorectal cancer (General, 2014).
- 13) A 2017 review published in the Journal of the National Cancer Institute concluded that filter ventilation has contributed to the rise in lung adenocarcinomas among smokers and recommended that the United State Food and Drug Administration (FDA) consider regulating its use, up to and including a ban (Song, 2017).
- 14) Electronic smoking devices pose an additional human health risk as explosions have been documented during use and disposal of the devices, some resulting in death (Molina, 2019). From 2015 to 2017 there were an estimated 2,035 electronic smoking device explosion and burn injuries presenting to US hospital emergency departments (Rossheim, 2018).
- 15) Electronic smoking devices have plastics, lithium ion batteries and electronic circuit boards require disassembly, sorting and proper recycling and disposal. Their instructions are not required to say anything about disposal. Electronic waste (e-waste) already presents a daunting environmental quandary and is notoriously difficult to recycle. Broken devices can leach metals, battery acid and nicotine into the local environment and urban landscape.

Definitions

1) Tobacco Product means:

- a. 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, electronic smoking devices, snus, pipe tobacco, tobacco shisha or hookah, and snuff.
- b. Any electronic smoking device.
- c. 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. "Tobacco Product" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- 2) **Electronic Smoking Devices** also known as e-cigarettes, e-vaporizers, or electronic nicotine delivery systems, 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. “Electronic smoking device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
- 3) **Person** means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- 4) **Tobacco Retailers** are any Person who sells, offers for sale, possesses for sale, or exchanges or offers to exchange for any form of consideration, Tobacco Products to a consumer. “Tobacco Retailing” shall mean doing any of these things by any means, including but not limited to transactions made face-to-face, by means of a telephone or other method of voice transmission, the mail, the Internet or other online service, technology platforms, or the Tobacco Retailer is otherwise not in the physical presence of the consumer when the request for purchase or order is made. This definition is without regard to the quantity of Tobacco Products sold, offered for sale, exchanged, or offered for exchange.
- 5) **Plastic** refers to any synthetic material made from organic polymers such as polyethylene, PVC, nylon, acetate, etc., that can be molded into shape while soft and then set into a rigid or slightly elastic form. Includes all plastics #1-#7, as well as any new variants.
- 6) **Producer** shall be determined, with regard to Tobacco Products that are sold, offered for sale, or distributed in the Jurisdiction as meaning one of the following:
 - a. The Person who manufactures Tobacco Products and who sells, offers for sale, or distributes Tobacco Products in the Jurisdiction under that Person's own name or brand.
 - b. If there is no Person who sells, offers for sale, or distributes Tobacco Products in the Jurisdiction under the Person's own name or brand, the Producer of Tobacco Products is the owner or licensee of a trademark or brand under which the Tobacco Products are sold or distributed in the Jurisdiction, whether or not the trademark is registered.
 - c. If there is no Person who is a Producer of Tobacco Products for purposes of paragraphs (a) and (b), the Producer of Tobacco products is the Person who brings the tobacco products into the Jurisdiction for sale or distribution.
- 7) **Producer Responsibility** is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of the general public; while encouraging product design changes that minimize a negative impact on human health and the environment at every stage of the product's lifecycle. This allows the costs of treatment and disposal to be incorporated into the total cost of a product. It places primary responsibility on the producer, or brand owner, who makes design and marketing decisions. It also creates a setting for markets to emerge that truly reflect the environmental impacts of a product, and to which producers and consumers respond.

- 8) **Producer Responsibility Program (Program)** means a program financed and operated by Producers to collect, transport, and dispose of tobacco product waste.
- 9) **Stewardship Organization** means a 501(c)3 non-profit organization designated by a group of Producers to act as an agent on behalf of each Producer to operate a Producer Responsibility Program.
- 10) **Tobacco Product Waste** refers to any portion of a product intended for the use of tobacco, which is not consumed during use. This includes but is not limited to biodegradable and non-biodegradable filters, plastic tips, packaging made of any materials, electronic smoking devices and their constituent parts and batteries once they are discarded.

The Stewardship Organization

1. A Stewardship Organization may be designated to act as an agent on behalf of a Producer or Producers in operating and implementing the Producer Responsibility Program required under this chapter. Any Stewardship Organization that has obtained such designation must provide to the Jurisdiction a list of the manufacturers and brand names that the stewardship organization represents within sixty days of its designation by a Producer or Producers as its agent, or within sixty days of removal of such designation.
2. A designated Stewardship Organization shall be registered as a California 501(c)(3) organization (California Corporations Code Section 5000 et. seq.). Stewardship organization will follow all requirements of California law, including holding regular public meetings and providing public information as required. The Board of Directors for the Stewardship Organization must have a majority representing California-based companies.

Producer Responsibility Program

1. Requirement for Sale. This section shall apply only to Producers whose tobacco products are sold and/or distributed in the Jurisdiction and to Tobacco Retailers who sell tobacco smoking products in the Jurisdiction. Each Producer must:
 - a) Operate, individually or jointly with other Producers, a Producer Responsibility Program approved by the Jurisdiction: or
 - b) Enter into an agreement with a Stewardship Organization to operate, on the Producer's behalf, a Producer Responsibility Program approved by the Jurisdiction.
2. Producer Responsibility Program Costs.
 - a) A Producer, group of Producers, or Stewardship Organization must pay all administrative and operational fees associated with their Producer Responsibility Program, including, but not limited to, the cost of collecting, transporting, recycling and/or disposing of tobacco product waste collected from Consumers and from public areas of the Jurisdiction using the most environmentally preferable technology.

- b) No Person, Producer, group of Producers or Stewardship Organization may charge a specific point-of-sale fee to Consumers to recoup the costs of their Producer Responsibility Program, nor may they charge a specific point-of-collection fee at the time the tobacco product waste is collected from Consumers or delivered for disposal.
- c) A Producer, group of Producers, or Stewardship Organization must pay all costs incurred by the Jurisdiction in the administration and enforcement of their Producer Responsibility Program as submitted in quarterly invoices. Exclusive of fines and penalties, the Jurisdiction shall only recover its actual cost of administration and enforcement under this Ordinance and shall not charge any amounts under this Ordinance in excess of its actual cost.
- d) A Producer, group of Producers, or Stewardship Organization must pay all collection, transportation and disposal costs of tobacco product waste beginning no later than 180 days after the effective date of the Ordinance. If after 180 days of the effective date of the Ordinance, the Jurisdiction incurs any costs resulting from the collecting, transporting, and disposing of tobacco product waste due to delays in implementation of an approved Stewardship Plan, the Producer, Group of Producers, or Stewardship Organization must reimburse the Jurisdiction in full for such costs. Reimbursement shall be paid each month.

Product Stewardship Plan

1. Plan Content. Each Producer Responsibility Program shall have a Product Stewardship Plan

“Plan” that contains each of the following:

- a) Certification that the Producer Responsibility Program will accept all Tobacco Product Waste, regardless of who produced them, unless excused from this requirement by the Jurisdiction as part of the approval of the Plan;
- b) Contact information for the individual and the Entity submitting the Plan and for each of the Producers participating in the Producer Responsibility Program;
- c) A description of the tobacco product waste collection program, including collection, recycling and disposal plans using the most environmentally preferable technology for all tobacco product waste products. Plan must indicate a transportation strategy that meets compliance with other applicable regulations.
- d) Plans for collection of tobacco product waste from Jurisdiction Sanitation and Household Hazardous Waste facilities and local school districts.
- e) Plans for regular cleanup and disposal of tobacco product waste from County parks, beaches, streets, storm drains and other public spaces, or; plans to compensate Jurisdiction for costs of such cleanup programs and fines from Total Daily Maximum

Load (TMDL) Trash Amendments in Stormwater capture systems prorated by percentage of tobacco product waste established in local baseline methodologies.

- f) A starting date when collection of tobacco product waste will begin.

2. Jurisdiction Review and Approval

- a) No Producer, group of Producers, or Stewardship Organization may begin collecting tobacco product waste to comply with this Ordinance until it has received written approval of its Product Stewardship Plan from the Jurisdiction. The Jurisdiction will continue collection, transportation and disposal of tobacco product waste on an interim basis if there is any delay in establishing a Producer Responsibility Program as required and submit incurred costs for reimbursement from the approved Stewardship Organization.
- b) Product Stewardship Plans must be submitted to the Jurisdiction for approval. The initial Plan must be submitted within 90 days of the effective date of the Ordinance.
- c) Within 30 days after receipt and review of a Product Stewardship Plan, the Jurisdiction will determine whether the Plan complies with the requirements of this Ordinance and of any Ordinances previously adopted.
- d) As part of its approval, the Jurisdiction may set reasonable performance goals for the Program.
- e) If the Jurisdiction approves a Plan, it shall notify the applicant of its approval in writing.
- f) If the Jurisdiction rejects a Plan, it shall notify the applicant in writing of its reasons for rejecting the Plan.
- g) An applicant whose Plan has been rejected by the Jurisdiction must submit a revised Plan to the Jurisdiction within thirty (30) days after receiving notice of the rejection. The Jurisdiction may require the submission of a further revised Plan or, at its sole discretion, the Jurisdiction may develop, approve and impose its own Product Stewardship Plan or approve a Plan submitted by other Producer(s) pursuant to this chapter. Plan may be submitted no more than two times for approval.
- h) If the Jurisdiction rejects a revised Product Stewardship Plan or any other subsequently revised Plan, the Producer(s) at issue shall be out of compliance with this Ordinance and shall be subject to the enforcement provisions contained in this Ordinance.
- i) At least every three years, a Producer, group of Producers or Stewardship Organization operating a Producer Responsibility Program shall update its Product Stewardship Plan and submit the updated Plan to the Jurisdiction for review and approval.
- j) A Producer, who begins to offer tobacco products for sale in the Jurisdiction after the adoption of a Product Stewardship Plan, must submit a Product Stewardship Plan to the

Jurisdiction or provide evidence of having joined an existing approved Producer Responsibility Program within sixty (60) days following the Producer's initial offer for sale.

- k) Any proposed changes to a Producer Responsibility Plan must be submitted in writing to the Jurisdiction and approved by the Jurisdiction in writing prior to implementation of any change.

Promotion and Outreach

A Producer Responsibility Program must compensate the Jurisdiction for all education and outreach on tobacco product waste prevention and abatement. The educational material shall at a minimum include printed information with all products sold or distributed in the Jurisdiction, signage at businesses which sell covered products, a web site, as well as print, radio and television ads. Content, frequency and distribution shall all be conducted by the Jurisdiction and reimbursed by the Stewardship Organization. All advertising should identify the Stewardship Organization and include contact information. The Stewardship Organization is to provide quarterly reimbursement for incurred costs to the Jurisdiction.

Underage Use

Although state law already includes restriction on sale and distribution of tobacco products to minors, studies indicate that minors find easy access to tobacco products through a number of avenues, including online sales. Stewardship Plan shall include information on additional efforts Stewardship Organization will take to minimize underage use and sales of tobacco products in the Jurisdiction and include in their Plan and Annual Report.

Reporting

1. On or before May 1, or at a later date as approved in writing by the Jurisdiction) and in each subsequent year, every Producer, group of Producers, or Stewardship Organization operating a Producer Responsibility Program must prepare and submit to the Jurisdiction an annual written report describing the Program activities during the previous reporting period. The report must include, at minimum, the following:
 - a) A list of Producers participating in the Producer Responsibility Program;
 - b) The amount, by type and by weight, of tobacco product waste collected from Consumers during the reporting period;
 - c) The name and location of facilities at which tobacco product waste products were recycled and/or disposed;
 - d) Whether policies and procedures for collecting, transporting, and disposing of tobacco product waste, as established in the Plan, were followed during the reporting period and a description of any noncompliance;
 - e) How the Producer Responsibility Program complied with all other elements in the

Product Stewardship Plan approved by the Jurisdiction, including its degree of success in meeting any performance goals set by the Jurisdiction as part of its approval of the Program; and

- f) Any other information that the Jurisdiction may reasonably require.
2. For the purposes of this section, “reporting period” means the period beginning January 1 and ending December 31 of the same calendar year. The report will be made publicly available on the Jurisdiction’s website.

Enforcement

1. The Jurisdiction may enforce the provisions of this Ordinance through a civil action for civil penalties in the amounts established herein, and any other civil remedy, including prohibitory and mandatory injunctive relief, filed in the Superior Court for the Jurisdiction of _____ to compel and enforce the provisions herein against any Producer, group of Producers, or Stewardship Organization who violates this Ordinance. In addition to any relief available to Jurisdiction to enforce this Ordinance, the Jurisdiction shall also be entitled to recover its reasonable attorneys’ fees and costs incurred in enforcing this Ordinance.
2. For any violation of this Ordinance, the Jurisdiction may sue to recover civil penalties in the amount of \$10,000.00 per day for every day on which a violation exists. For purposes of calculating the civil penalties to be established hereunder, each day on which the Producer, group of Producers, or Stewardship Organization fails to comply with the requirements of this Ordinance, after having received a written notice of violation issued by the Jurisdiction, shall constitute a separate offense.
3. In addition to the civil relief available to the Jurisdiction set forth above, any violation of this Ordinance shall also constitute a misdemeanor punishable under the laws of the State of California. The District Attorney, the Jurisdiction Counsel, or any City Attorney shall be authorized to enforce the provisions of this Ordinance within their respective jurisdictions. In the event of such criminal enforcement, the following criminal penalties apply to violations of this Ordinance:
 - a) Violation as Misdemeanor. Violations of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor.
 - b) The Jurisdiction Sheriff and/or any other police or law enforcement agencies located within the Jurisdiction may issue a Notice to Appear Citation for any misdemeanor pursuant to California Penal Code Section 853.6 for any violation of this Ordinance.
 - c) Penalty for Misdemeanor. Any Producer, group of Producers, or Stewardship Organization found to be in violation of any provision of this Ordinance, or who fails to comply with any of its requirements, shall upon conviction thereof be punished by imprisonment in the county jail for not more than six months, or be fined not more than one thousand dollars (\$1,000.00), or by both. Each day such violation continues shall be considered a separate offense.

- d) To the extent that the Jurisdiction, the incorporated cities, and the districts within said Jurisdiction have adopted code enforcement ordinances applicable to their jurisdictions, this Ordinance shall be enforceable by said governmental entities under said ordinances as land-use or code-enforcement violations consistent with said ordinances.

Conflict with State or Federal law

This Ordinance shall be construed so as not to conflict with applicable federal or state laws, rules or regulations. Nothing in this Ordinance shall authorize the Jurisdiction to impose any duties or obligations in conflict with limitations on municipal authority established by state or federal law at the time such action is taken. The Jurisdiction shall suspend enforcement of this Ordinance to the extent that said enforcement would conflict with any state or federal legislation.

CEQA Findings

The Jurisdiction finds that this Ordinance falls within the activities described in Section 15061(b)(3) of the CEQA Guidelines which are deemed not to be “projects” for the purposes of CEQA, because it can be seen with certainty that the adoption of the Ordinance will not have a significant effect on the environment. The Jurisdiction Manager is directed to prepare and file an appropriate notice of exemption.

Severance Clause

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the Jurisdiction hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Effect of Headings in Ordinance

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

This Ordinance was introduced, and the title thereof read at the regular meeting of the Jurisdiction Board of Supervisors on _____ and further reading was waived by a majority vote of those Supervisors present.

This Ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Supervisors voting for and against the same, said publication to be made in a newspaper of general circulation published in the Jurisdiction.

Exemptions

- A) The Director of Public Works, or the director’s designee, may exempt an affected business or

person from the requirements set forth in this chapter for a one-year period upon the affected business or person showing, in writing, that this chapter would create an undue hardship or practical difficulty not generally applicable to other businesses or persons in similar circumstances. The decision to grant or deny an exemption shall be in writing, and the Director's or the director's designee's decision shall be final.

B) An exemption application shall include all information necessary for the Director of Public Works or the director's designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption.

C) The Director of Public Works or director's designee may approve the exemption application in whole or in part, with or without conditions.

D) The decision of the Director or Director's designee shall be final and may not be appealed to any other person or body.

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