



# City of Needles, California Request for City Council Action

CITY COUNCIL  NPUA

Regular  Special

**Meeting Date:** July 14, 2020

**Title:** No Smoking in the Parks Staff Report

**Background:**

As a result of the public testimony at the June 23 Council meeting it was revealed that current state law, Health & Safety Code Section 104495 attached, already prohibits smoking of any type near areas for children. As a result, there is no need for the ordinance as initially proposed.

**Fiscal Impact:** None

**Recommended Action:** Direct that signs be appropriately placed to inform park users that smoking is prohibited near children's play areas and other areas as prescribed by state law.

**Submitted By:**

**City Management Review:** Rick

**Date:** 7/9/20

Approved:

Not Approved:

Tabled:

Other:

Agenda Item: 9

**HEALTH AND SAFETY CODE - HSC**

**DIVISION 103. DISEASE PREVENTION AND HEALTH PROMOTION [104100 - 106036]** ( *Division 103 added by Stats. 1995, Ch. 415, Sec. 5.* )

**PART 3. RISK REDUCTION [104350 - 104895]** ( *Part 3 added by Stats. 1995, Ch. 415, Sec. 5.* )

**CHAPTER 1. Tobacco Control [104350 - 104559]** ( *Chapter 1 added by Stats. 1995, Ch. 415, Sec. 5.* )

**ARTICLE 1. Tobacco Use Prevention [104350 - 104495]** ( *Article 1 added by Stats. 1995, Ch. 415, Sec. 5.* )

**104495.** (a) For the purposes of this section, the following definitions shall govern:

- (1) "Playground" means any park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds, or on city, county, or state park grounds.
- (2) "Tot lot sandbox area" means a designated play area within a public park for the use by children under five years of age. Where the area is not contained by a fence, the boundary of a tot lot sandbox area shall be defined by the edge of the resilient surface of safety material, such as concrete or wood, or any other material surrounding the tot lot sandbox area.
- (3) "Public park" includes a park operated by a public agency.
- (4) "Youth sports event" means any practice, game, or related activity organized by any entity at which athletes up to 18 years of age are present.
- (5) "Smoke or smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.
- (6) "Cigarette" means the same as defined in Section 104556.
- (7) "Cigar" means the same as defined in Section 104550.
- (8) (A) "Tobacco product" means any of the following:
  - (i) A 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, pipe tobacco, or snuff.
  - (ii) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.
  - (iii) Any component, part, or accessory of a tobacco product, whether or not sold separately.
- (B) Notwithstanding subparagraph (A), "tobacco product" does not include a nicotine replacement product approved by the United States Food and Drug Administration.
- (b) A person shall not smoke a cigarette, cigar, or other tobacco product within 25 feet of any playground or tot lot sandbox area.
- (c) A person shall not dispose of cigarette butts, cigar butts, or any other tobacco-related waste within 25 feet of a playground or a tot lot sandbox area.
- (d) A person located in the same park or facility where a youth sports event is taking place shall not use a tobacco product within 250 feet of the youth sports event.
- (e) A person shall not intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this section.

(f) Any person who violates this section is guilty of an infraction and shall be punished by a fine of two hundred fifty dollars (\$250) for each violation of this section. Punishment under this section shall not preclude punishment pursuant to Section 13002, Section 374.4 of the Penal Code, or any other law proscribing the act of littering.

(g) The prohibitions contained in subdivisions (b) and (c) shall not apply to a public sidewalk located within 25 feet of a playground or a tot lot sandbox area.

(h) This section shall not preempt the authority of any county, city, or city and county to regulate smoking around playgrounds or tot lot sandbox areas. Any county, city, or city and county may enforce any ordinance adopted prior to January 1, 2002, or may adopt and enforce new regulations that are more restrictive than this section, on and after January 1, 2002.

(i) This section shall not preempt the authority of any county, city, or city and county to regulate the use of a tobacco product around a youth sports event. Any county, city, or city and county may enforce any ordinance adopted before January 1, 2017, or may adopt and enforce a new regulation that is more restrictive than this section, on and after January 1, 2017.

*(Amended (as amended by Stats. 2016, 2nd Ex. Sess., Ch. 7, Sec. 15) by Stats. 2016, Ch. 537, Sec. 1. (SB 977) Effective January 1, 2017.)*