


COMMERCIAL TOBACCO POLICIES

A Guide for Tribal Enforcement

 Tribal communities in California have a unique political and legal status as sovereign nations. The ability to develop laws and policies to address the specific needs of the community is one of the greatest assets that Tribal communities possess.

An integral part of any policy is its enforcement mechanism, which ensures compliance with the policy. This guide lays out different methods for enforcement of commercial tobacco-free policies, and their benefits and drawbacks. It is meant to serve as a companion to the Public Health Law Center's *Drafting Tribal Public Health Laws and Policies* resource, which is geared towards communities and Tribal governments that may consider adopting public health policies throughout Indian country. A policy's enforcement section typically identifies parties responsible for ensuring the policy is followed, outlines enforcement procedures, describes penalties or consequences for violating the policy, and



explains the appeal process. Enforcement should balance the goal of advancing public health for Tribal communities with the knowledge that punitive measures are unlikely to help those struggling with commercial tobacco addiction end their commercial tobacco use.¹ Enforcement language can also be a vehicle to promote the reclamation of a Tribal community's sacred or traditional tobacco practices.



Photo: Robert Slocum, courtesy of the Canli Coalition of the Cheyenne River Sioux Tribe

A Note about Community Engagement

Developing laws and policies that address commercial tobacco use in Indian country can be challenging because limiting commercial tobacco use can be seen as restricting cultural practices or ceremony. In addition, several Tribal communities sell commercial tobacco products as an important source of economic development and subsistence. One of the most important ways to ensure a policy's success is to engage the community from the start. Through community engagement, all community members, including youth, elders, parents, teachers, health staff, Tribal police, government staff, community leaders, policymakers, and others who have an interest in the problem or issue to be addressed can bring their perspectives and experience to the policy work. Community engagement processes also raise up community members who might not hold elected positions or formal titles, but who bring valuable life experience and perspectives. Authentic community engagement generally leads to clear and specific policies tailored to a Tribe's needs while deepening the community's support for the new policy, ultimately making them easier to enforce.

Benefits of Clear Enforcement Provisions

Tribal laws and policies often include written and unwritten laws, such as customary laws and traditions. While not all Tribal nations might view written laws and policies to be useful,

many Tribal communities have implemented systems of written laws and policies to varying degrees. Whether written or unwritten, all policies and their enforcement provisions should be clear, accessible, and supported by community members. In addition, written enforcement mechanisms can include the following features:

- Clarify what is expected of everyone — including who is responsible for implementing the policy, how it will be enforced, and the rights and responsibilities created by the policy.
- Provide consistency even when leadership or management changes.
- Facilitate consistent policy implementation and equitable enforcement.
- Help promote a sense of fairness by clearly laying out how the policy will be applied across a community, organization, or department.
- **General questions to consider when evaluating enforcement options for a Tribal community.** When planning a policy, consider enforcement strategies and mechanisms from the beginning. Some questions to consider are:
 - What kind of enforcement mechanisms does the Tribe use for similar policies?
 - Who would be responsible for enforcing the policy?
 - What enforcement mechanisms are appropriate, considering the community context and the nature of the offense?
 - What, if any, additional resources, or capacity would the Tribe need to enforce the policy appropriately?
 - What, if any, federal laws could assist in the efficacy of the Tribal policy?

Enforcement Options

Not all Tribal communities have the same resources, cultural practices, or preferences. For this reason, each community will want to tailor its enforcement mechanisms to best meet the specific needs of its community members. This guide includes a range of implementation and enforcement options from an equity perspective. Best practices and more equitable options are **green** ✓. Options that might require more caution or considerations are **yellow** ⚠. Options that are not recommended are **red** ✘. Regardless of the setting, careful planning and promotion of the policy goals and implementation will contribute to its success.

✓ Recommended, equitable practices

- Cultural education can serve to foster stronger bonds to the community and promote and nurture community traditions, and it is focused on growth and not punishment.
- Community service, such as clean ups or assistance in cessation efforts, offers an opportunity for community members to become more invested in the environmental and public health goals of a commercial tobacco-free policy without any punitive or monetary measures.
- Graduated enforcement involves a tiered system of enforcement measures that provide opportunities for compliance while avoiding immediate punitive or monetary measures.

⚠ Recommended with caution or considerations

- Ejection from community spaces for the duration of an event or other short period of time may serve as an additional tool to ensure compliance after policy reminders and warnings have been ignored.
- Nominal monetary penalties could provide a stronger measure for enforcement where necessary but should not be used as a first attempt to achieve compliance and should not become a frequent tool.

✗ Not recommended

- High monetary penalties can be burdensome for individual community members and may negatively impact the community by unnecessarily diverting resources.
- Criminal penalties fail to recognize the addictive nature of commercial tobacco and can have a lasting negative impact on various aspects of a person's life and community.

These are some basic, equitable principles to consider while thinking through enforcement of a policy. The rest of this resource focuses on specific policy areas and discusses enforcement options that exist in those types of policies. Any of these resources can be used individually or collectively. The specific policy areas are:

- [Enforcement Guide for Tribally Owned and Operated Housing Policies](#)
- [Enforcement Guide for Smoke-Free Tribal Parks, Recreation, and Outdoor Ceremonial Areas](#)
- [Enforcement Guide for Smoke-Free Tribal Government Buildings, Health Clinics, Etc.](#)

No matter which policy a Tribal community plans to pursue, the Public Health Law Center is happy to support Tribes through free legal technical assistance. The Center can be contacted at publichealthlawcenter@mitchellhamline.edu.

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Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.keepitsacred.itcmi.org>. When the word "tobacco" is used throughout this digest, a commercial context is implied and intended.

Enforcement Guide for Tribally Owned and Operated Housing Policies

Commercial tobacco-free¹ or smoke-free housing policies aim to protect people's health in their homes by eliminating exposure to harmful secondhand or thirdhand² smoke or aerosolized chemicals. For such a policy to be successful, advocates and policymakers must consider the nature of the housing setting, be in tune with cultural traditions that may be practiced in the home — such as smudging or using ceremonial tobacco — and draft the policy accordingly. In addition, creating widespread awareness of the policy and its purpose will significantly increase compliance. Educating residents about the dangers of commercial tobacco smoke and tobacco product waste is not only important prior to policy consideration, but also before any policy goes into effect. This education can include individual or group meetings with residents, celebrations of the policy, and signage. Signage can be particularly important to ensure both initial notice and ongoing compliance with the policy.

Signage should be tailored to the community and clearly represent the policy's goal. Depending on their readiness, communities can consider allowing for a limited designated smoking area, which should be located outdoors and at least 25 feet away from the Tribal housing development. For additional information, see the [Smoke Free Tribal Housing Policies](#) resource.

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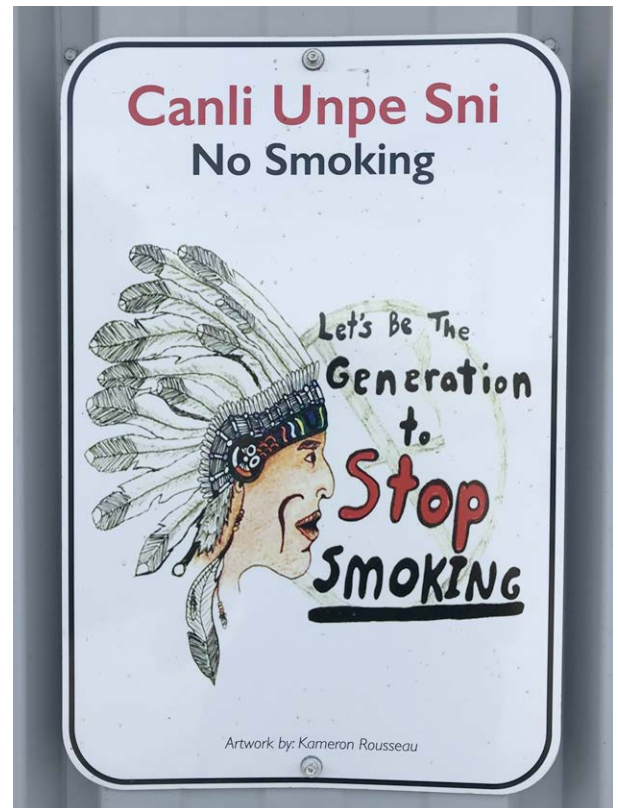


Photo: Rae O'Leary, Canli Coalition



✓ Graduated Enforcement by Tribal Housing Authority

Benefits

- Taking tiered steps to violations, such as providing verbal or written warnings to tenants, informal meetings, or requiring written acknowledgement of the policy, can improve widespread compliance.
- Providing culturally relevant cessation materials³ can help support commercial tobacco users in quitting and acknowledges the addictive nature of tobacco products.
- Using steps like “resetting the clock” (if there has been no violation for a certain period or if a tenant has completed cessation support counseling) can give residents second chances and incentivizes compliance.
- Can prohibit eviction as a penalty for policy violations.

Cautions

- In some limited instances, these tiered steps may not be sufficient to obtain compliance and a stronger penalty may be needed as a last resort.

Sample Graduated Penalties Policy

A policy of graduated penalties may look something like this:

- First Offense: verbal warning, cessation referral
- Second Offense: verbal warning, cessation referral, Tribal housing authority referral
- Third Offense: written warning, cessation referral, Tribal housing authority referral
- Fourth Offense: formal meeting with Tribal housing authority, cessation referral

Cessation Resources

Here are some resources for cessation, including culturally relevant materials:

- [Keep it Sacred](#)
- [American Indian Quitline](#)
- [Tobacco-Related Disease Research Program, Project SUN](#)
- [Northern California Indian Development Council](#)
- [Kick It California](#)

✓ Cultural Education or Community Service

Benefits

- Providing tenants who fail to comply with the policy with cultural education related to traditional practices could strengthen a tenant's connection to the community, ultimately leading to greater compliance. Include community specific traditional tobacco teachings, if applicable.
- Provides an opportunity for culturally appropriate cessation intervention.
- An alternative to civil fines, community service or cultural education can limit the financial hardship on residents.
- Providing education materials and resources on the environmental harms tobacco product waste and commercial tobacco and nicotine residue have on the land, water, and air can lead to greater voluntary compliance and help deter initiation into commercial tobacco use.

Cautions

- Requires existing or additional cultural education curriculum and resources.
- This intervention may not be sufficient to obtain compliance, so it may need to be coupled with other enforcement mechanisms.
- Community service or cultural education may still pose a financial hardship to some individuals if, for example, they are required to miss work.

✓ Enforcement through Lease

Benefits

- Including commercial tobacco-free requirements in the terms of the lease creates clear expectations for new and existing tenants.
- Empowers tenants to remind their neighbors of the policy if the neighbors are engaging in commercial tobacco use, particularly when tenants are being negatively impacted by it.

Cautions

- Consider drafting the terms in a manner that commercial tobacco use alone does not lead to evictions, which can impact health outcomes and worsen existing economic disparities for Tribal members.

⚠ Nominal Fines Against Tenants

Benefits

- Imposing a nominal civil fine could act as an effective deterrent in some circumstances. The fine could be withheld from Tribal per Capita payment, if applicable or appropriate.

Cautions

- Civil fines may cause financial hardship to tenants, particularly those with limited resources.
- May require additional infrastructure for administering fines for the Tribe.
- Overly punitive measures are often counterproductive to cessation efforts and may lead to resentment against the policy.

✗ Eviction

Benefits

- In limited circumstances, eviction could be used as a last resort for chronic violators of commercial tobacco policy to protect the health of other tenants in a multi-unit housing setting.

Cautions

- Can impact health outcomes, worsen existing economic disparities, and make it more difficult for individuals to obtain other housing.

- Elders or youth could lose housing because of a family member’s commercial tobacco use.
- It is a short-sighted measure that does not lessen the impact on the overall community. People who have difficulty quitting commercial tobacco use need more support to achieve cessation goals; removing housing stability is often counterproductive.

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- 2 Thirdhand smoke is the chemical residue that commercial tobacco smoke leaves behind and that sticks to and is absorbed by furniture, clothing, carpeting, walls, drywall, etc. Thirdhand smoke becomes more toxic over time, and it is difficult and costly to remove. Buildings with high concentration of thirdhand smoke may require extensive renovations and replacement of structural materials. <https://thirdhandsmoke.org>
- 3 For cessation resources, see <https://kickitca.org>. For information on Kick-It-California’s collaboration on the NATIVE Tobacco Project housed at the United Indian Health Services, see <https://unitedindianhealthservices.org/tribal-public-health/native-tobacco-project>.



/// Enforcement Guide for Smoke-Free Tribal Parks, Recreation, and Outdoor Ceremonial Areas

Enforcement of commercial tobacco-free¹ or smoke-free outdoor area policies is important because there is no risk-free amount of exposure to secondhand commercial tobacco smoke. Since most people will refrain from using commercial tobacco products if they see signage and know a commercial tobacco-free policy is in place, the best way to improve enforcement is to educate the Tribal community about the policy before and throughout the implementation process. This can be done through the Tribal newspaper, Tribal radio station, fliers, or community events. Messaging and signage in outdoor areas can reference the harm of commercial tobacco products while promoting the importance of cultural traditions and indigenous language. Greater community compliance will be achieved if the policy is easy to understand, the boundaries and areas covered under the policy are clearly identified, and the policy applies to everyone.

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✓ Cultural Education or Community Service

Benefits

- Providing noncompliant persons with cultural education related to traditional practices could strengthen an individual's connection to the community, ultimately leading to greater support for the policy.

- Provides an opportunity for culturally appropriate cessation intervention² and to learn about traditional tobacco teachings, if applicable to the community.
- An alternative to civil fines, community service or cultural education can limit the financial hardship on individuals.
- Community Service can be tailored to assist in commercial tobacco waste cleanup efforts.
- Providing education materials and resources on the environmental harms tobacco product waste and commercial tobacco and nicotine residue have on the land, water, and air can lead to greater voluntary compliance and help deter initiation into commercial tobacco use.

Cautions

- Requires existing or additional cultural education curriculum and resources.
- This intervention may not be sufficient to obtain compliance, so it may need to be coupled with other enforcement mechanisms.
- Community service or cultural education may still pose a financial hardship to some individuals if, for example, they are required to miss work.
- If Tribal police are tasked with enforcing commercial tobacco-free outdoor areas, depending on their relationship with the community, it may open the door for other harmful collateral consequences.

Cessation Resources

Here are some resources for cessation, including culturally relevant materials:

- [Keep it Sacred](#)
- [American Indian Quitline](#)
- [Tobacco-Related Disease Research Program, Project SUN](#)
- [Northern California Indian Development Council](#)
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◆ Nominal Fines Against Commercial Tobacco Users

Benefits

- Relying on Tribal departmental staff (e.g., recreation center staff) for enforcement allows for brief interventions of graduated enforcement, verbal reminders, written warnings, etc., while removing the potential unintended consequences from Tribal police enforcement.

Cautions

- May result in resistance from Tribal departmental staff unused to serving an enforcement role.
- May cause financial hardship, particularly for persons with limited resources.
- May require additional infrastructure for administering fines for the Tribe.
- Overly punitive measures are often counterproductive to cessation efforts and may lead to resentment against the policy.

◆ Ejection for a Limited Duration

Benefits

- Can be a strong motivator to comply, particularly in event settings such as a community Pow Wows.
- Can incorporate ejection as one of the last tiers of a graduated enforcement mechanism.

Cautions

- May limit an individual's ability to attend community and cultural gatherings.
- May lead to embarrassment and feelings of marginalization and thus create resentment towards the policy.
- May contribute to other health disparities if an individual is unable to access outdoor recreation areas. For this reason, the ejection should be limited in duration, generally not longer than a day.

Criminal Enforcement

Cautions

- Criminal enforcement can lead to collateral consequences, including triggering probation or parole violations, a summons leading to a criminal record or a warrant, or increased distrust in Tribal law enforcement.
- Use and possession penalties do not help those with nicotine dependence or addiction get on a path to recovery and can have lasting negative implications for employment and housing opportunities and lead to diminished access to support systems.
- Overly punitive measures are often counterproductive to cessation efforts and may lead to resentment against the policy.

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Enforcement Guide for Smoke-Free Tribal Government Buildings, Health Clinics, Etc.

Commercial tobacco-free¹ or smoke-free policies for governmental buildings in a Tribal community (e.g., administrative offices, health clinics) not only impact employees, but visitors as well. Employee compliance with a commercial tobacco-free rule sets a good example and creates a community norm for visitors who may not be familiar with the policy. Clear and culturally appropriate signage makes it easy for employees and visitors to understand. Engaging staff in the policy process can empower them to help protect themselves and the community from the dangers of commercial tobacco exposure. Enforcement mechanisms may vary between employees and visitors; however, cessation services should be offered to everyone. Many enforcement concepts from the Tribal parks, recreation and outdoor ceremonial areas section can be applied to visitors in these locations. Below are recommendations for employee compliance and enforcement.

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✓ Graduated Enforcement

Benefits

- Offers progressive discipline for violations in the workplace (e.g., verbal warning, written warning, second written warning, probationary period for chronic failure to comply, etc.) while giving the employee opportunities to comply. Should be offered with cessation referrals to assist in treating nicotine dependence.
- Can complement disciplinary measures already established by the Tribe.
- Can be built into a human resources handbook and required to be signed by employees annually.
- Using steps like “resetting the clock” (if there has been no violation for a certain period or if an employee has completed cessation support counseling) can give employees second chances and incentivizes compliance.

Cautions

- These tiered steps may not be sufficient to obtain compliance, so there may need to be a stronger penalty as a last resort.

✔ Cultural Education

Benefits

- May complement or be included into graduated enforcement.
- Providing Tribal employees with cultural education related to traditional practices could strengthen their connection to the community, ultimately leading to greater compliance. (include traditional tobacco teachings if applicable)
- Provides an opportunity for culturally appropriate cessation intervention² and traditional tobacco teachings, if applicable to the community.
- Providing education materials and resources on the environmental harms tobacco product waste and commercial tobacco and nicotine residue have on the land, water, and air can lead to greater voluntary compliance and help deter initiation into commercial tobacco use.

Cautions

- Requires existing or additional cultural education curriculum and resources.
- This intervention may not be sufficient to obtain compliance, so it may need to be coupled with other enforcement mechanisms.

Cessation Resources

Here are some resources for cessation, including culturally relevant materials:

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✕ Termination

Cautions

Terminating an employee for noncompliance with a commercial tobacco policy has the potential to worsen economic disparities and it should only be used as a last resort limited to situations of chronic noncompliance.

Fails to recognize the addictive nature of commercial tobacco and does not help an employee who may have an addiction to commercial tobacco products to quit.

Puts strain on various Tribal departments to replace and retain qualified staff.

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