

December 4, 2018

VIA EMAIL

Alexis.carter@mtsac.edu

Ms. Alexis M. Carter
Director, Human Resources Operations &
Employee Services
Mt. San Antonio College
1100 N. Grand Ave.
Walnut, CA 91789

Re: *Smoke and Tobacco-Free Policy*
Client-Matter: MO160/001

Dear Ms. Carter:

You asked us to review Mount San Antonio Community College District's ("the District") proposed updated smoking policy and provide the District with general advice regarding prohibiting e-cigarettes or "vaping" on campus. Below is a brief overview of the law.

I. Overview of the Law

California Government Code section 7597.1 allows for community college districts to create "smoking" enforcement standards for their campuses. Specifically, section 7597.1 states, in pertinent part,

(a) The governing bodies of the California State University, the University of California, and each community college district have the authority to:

(1) Set enforcement standards for their local campuses

(2) Impose a fine for a first, second, and third offense and for each subsequent offense. The amount of fines is to be determined by the local governing body. Funds shall be allocated to include, but not be limited to, the designated enforcement agency, education and promotion of the policy, and tobacco cessation treatment options. The civil penalty shall not exceed one hundred dollars (\$100).¹

Government section 7597.1 also provides that districts should post signs informing the public and employees about smoking restriction on campus.²

¹ Gov. Code, § 7597.1.

² *Id.*

California Health and Safety Code section 104495 defines “smoke” or “smoking” as, “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.*”³ Section 104495 also identifies electronic smoking devices as a form of a “tobacco product.”⁴

In July 2018, the Board of Governors of the California Community Colleges passed a resolution in support of implementing a 100 percent smoke and tobacco free policy for all California community college districts. Many community college districts were already tobacco and smoke free (including the use of e-cigarettes) before the Chancellor’s Office passed this resolution.

The District’s revised policy does not provide for a “smoke free” campus. However, California law permits and the State Chancellor’s office encourages a smoke free campus, if the District desires to implement such a policy. However, the District’s current policy meets California legal standards.

II. Review Administrative Procedure 3565, Smoking on Campus

We reviewed the District’s revised administrative procedure (AP) 3565, Smoking on Campus. The proposed changes designate an area for smoking but categorically prohibit the use of e-cigarettes or vapes. We recommend that the College treat both cigarettes and e-cigarettes the same (i.e., if the College has a designated area for one, that same area should be available for the other), as they are both considered “smoking” under the law.⁵ Prohibiting one and not the other may be interpreted to be either: (1) arbitrary; or (2) providing preferential treatment to smokers or cigarette manufactures. However, if the District seeks to adopt a policy prohibiting only vaping or e-cigarettes but not other tobacco products, the District will likely face questions about this decision and should be ready to explain its reason. For example, it may rely on research citing the dangers of vaping; however because vaping is relatively new, there are no long-term studies.

³ Health & Saf. Code, § 104495 (emphasis added).

⁴ *Id.*

⁵ As noted in this letter, California Government Code section 7597.1 includes use of e-cigarettes in its definition of “smoke” or “smoking.” Instead of defining “vapes” in AP 3565, we recommend defining “smoking” by using the definition found in section 7597.1, which is “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.” Note, using this definition would require that the College treat “smoking” and “vaping” the same (e.g., either categorically prohibit both or designate an area for both).

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The District's policy sets forth penalties for violating the smoking policy. Imposing a fine for violation of the policy is consistent with California Government Code section 7597.1. The policy also provides for "disciplinary action" for failure to pay a fine. According to the policy, failure to pay a citation may result in a hold on a student's account or a hold on employee's parking privileges.⁶

While both of these are probably permissible under the law,⁷ it is important that these enforcement mechanisms for failure to pay a citation are applied consistently throughout the District. We recommend that the District adopt monetary fines that apply to both students and employees and that they be enforced like any other fines instead of withholding parking privileges (employees) or placing a hold on a student's account. To the extent the District will seek to discipline students or employees, and go beyond fines, we recommend that the District use the disciplinary policies already in place. For example, the District can rely on BP 5500 Standards of Conduct for students which states,

"7. Willful or persistent smoking in any area where smoking has been prohibited by law or by regulation of the College."

...

18. Persistent, serious misconduct where other means of correction have failed to bring about proper conduct.

21. Violation of College rules and regulations including those concerning affiliate clubs and organizations, the use of College facilities, the posting and distribution of written materials, and College safety procedures."

Similarly, with regard to classified employees, AP 7365 Discipline and Dismissal, states in pertinent part:

"Willful violation of any of the provisions of the ordinances, resolutions, or any rules, regulations, or policies which may be prescribed by the College."

We are happy to assist the District in revising the policy based after it has reached its final decisions. For your convenience and review, we are attaching copies of the California Community College League's policies prepared by Liebert Cassidy Whitmore with language options.

⁶ We recommend that the District not label this as "Disciplinary Action." A more appropriate label would be "Enforcement of AP 3565."

⁷ Cal. Code Regs. section 59410 states, "The governing board of a community college district may provide by appropriate rules and regulations that grades, transcripts, diplomas and registration privileges, or any combination thereof, shall be withheld from any student or former student who has been provided with written notice that he or she has failed to pay a proper financial obligation due to the district or a college. Any item or items withheld shall be released when the student satisfactorily meets the financial obligation." With regard to employees, the College may need to meet and confer with the unions regarding the loss of parking privileges for failure to pay a citation.

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Please do not hesitate to contact me with question or concerns.

Very truly yours,

LIEBERT CASSIDY WHITMORE



Ryan L. Church

PGM/RLC:lt

Attachment: Community College League's Model Policy and Procedure on Smoking on Campus

BP 3570 Smoking on Campus

Reference:

Government Code Section 7597.1

Note: This policy is suggested as good practice (optional).

To enforce smoking and tobacco control regulations and procedures, the [CEO] is authorized to:

Set enforcement standards for all District sites and campuses;

Impose a fine for a first, second, and third offense and for each subsequent offense. The amount of fines is to be [determined by the Board, cannot exceed one hundred dollars (\$100)]. Funds shall be allocated to include, but not be limited to, the designated enforcement agency, education and promotion of the policy, and tobacco cessation treatment options.

Direct that the District post signs stating its tobacco use policy on campus, as follows:

the locations at which smoking or tobacco use is prohibited on campus

the locations at which smoking or tobacco use is permitted on campus

Inform employees and students of the tobacco use policy and enforcement measures

New 3/12

AP 3570 Smoking on Campus

References:

Government Code Sections 7596, 7597, 7597.1, and 7598;
Labor Code Section 6404.5;
Health and Safety Code Section 104495;
Title 8 Section 5148

NOTE: Local practice may be inserted so long as it is consistent with that provided in the example, which is the minimum required by law.

NOTE: Governing bodies of each community college district have the authority to enforce these requirements by citation and fine. If a campus adopts the enforcement and fine authority, it must post signs stating its tobacco use policy and inform employees and students of the policy (Government Code Section 7597.1)

OPTION 1 – For Districts that Permit Smoking

Smoking is prohibited within 20 feet of a main exit, entrance, or operable window of any campus building.

Smoking is prohibited inside any indoor area of any campus building, except for covered parking lots and residential space.

“Covered parking lot” means an area designated for the parking of vehicles that is enclosed or contains a roof or ceiling, but does not include lobbies, lounges, waiting areas, stairwells, and restrooms that are a structural part of the parking lot or a building to which it is attached.

“Residential space” means a private living area, but does not include common areas such as lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of a multi-complex building such as a dormitory.

Smoking is prohibited in any enclosed place of employment on campus, including lobbies, lounges, waiting areas, stairwells, and restrooms that are a structural part of any building that is a place of employment.

Tobacco products, including cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, and an electronic device that delivers nicotine or other vaporized liquids to a person inhaling from the device (e.g., e-cigarettes and vaporizers) may not be used within 250 feet of a youth sports event. A youth sports event is any practice, game, or related activity organized by any entity at which athletes up to 18 years of age are present.

NOTE: In May 2018, the Board of Governors of the California Community Colleges passed a Resolution urging California Community Colleges to adopt and implement a 100% smoke and tobacco-free policy. The Board of Governors also urged California Community Colleges to provide tobacco cessation services to students, faculty, and staff or refer them to free services offered by the California Smokers Helpline. The following is a sample policy for those Districts who want to implement a 100% smoke and tobacco-free policy.

OPTION 2 – For Districts that Prohibit Smoking

The [District] is a smoke and tobacco-free environment. Smoking, vaping, and the use of tobacco products is prohibited on all District property at all times. This administrative procedure applies to students, faculty, staff, administrators, visitors, and general members of the public.

This prohibition includes the use of all tobacco products, including but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, hookahs, and an electronic device that delivers nicotine or other vaporized liquids to a person inhaling from the device (e.g., e-cigarettes and vaporizers).

District property includes both indoor and outdoor areas of property that is owned, leased, or otherwise controlled by the District, including but not limited to: classrooms, offices, lobbies, lounges, waiting areas, stairwells, restrooms, walkways, sidewalks, lawns, athletic fields and viewing stands, parking lots, warehouses, storage yards, and District-owned or leased vehicles.

The District offers the following resources for students, faculty, and staff who are interested in quitting smoking or the use of tobacco. [Describe services offered and how students, faculty, and staff can access those services.] Additionally, students, faculty, and staff who are interested in smoking cessation are encouraged to explore the free services offered by the California Smokers Helpline at 1-800-NOBUTTS and www.nobutts.org.

New 2/04, Revised 2/07, 3/12, 4/17, 10/18