

ADMINISTRATIVE PROCEDURE 3570 SMOKING**I. Smoking: Definition**

"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, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

"Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

Delivery or nicotine delivery systems not approved by the FDA as a proven method for cessation are prohibited where smoking and tobacco use are prohibited.

II. Applicability

Smoking is prohibited in all indoor and outdoor Peralta Community College District's ("PCCD") campus locations and District Administrative Centers, except for the following areas:

- A. Berkeley City College: No exceptions designated.
- B. College of Alameda:
 - 1. The area immediately outside the southwest corner of parking lot B;
 - 2. The grass area immediately to the east of the southernmost parking lot which is near buildings A and L.
- C. Laney College: No exceptions designated.
- D. Merritt College: All parking lots, except parking lots adjacent to the child care center, between buildings A & D, and the faculty and staff parking lot behind the A Building.
- E. District Administrative Center Offices: 50 feet away from all buildings in the parking lot behind the main Administrative Office building.

III. Notices and Publications

- A. Notification of this Smoking Procedure will be published in appropriate District and College publications and in notices distributed to students, faculty, staff, administrators, and those renting District/College facilities.
- B. Appropriate signage will be placed throughout the college campuses and district office.

IV. Penalties

- A. Violations of the smoking procedures of PCCD are subject to a fine equal to the current fee for parking violations. However, smoking fines shall be limited to a maximum fine of \$100. Persistent offenders, 3 offenses or more, shall be fined \$100.

- B. If payment is not received within 21 calendar days the offenders will be notified of the consequences of failure to pay.
- C. Payment must be sent to: Parking Enforcement Center, PO Box 6010, Inglewood, CA 90312. *Check or money order shall be made payable to the "Peralta Community College District".*

V. Enforcement Procedure

A. Citation Enforcement

- 1. Peralta Police Services and other security entities (collectively, "Security Personnel") shall have authority to issue citations for violations of PCCD's smoking policy using the procedures established herein.
- 2. Citations shall be issued using the Peralta Police Services Notice of Parking Violations.
- 3. All Security Personnel who issue smoking citations shall complete all sections of the citation and shall include personally identifiable information, based on information required and available.
- 4. Security Personnel will leave a copy of the citation with the individual being cited.

B. Voiding Citations

- 1. A citation shall only be voided if it is determined that the citation was written in error, prior to the citation being issued. Once the citation has been issued, the citation may only be dismissed through the administrative review process.
- 2. Security Personnel voiding smoking citations shall:
 - a. Write void on all copies of the citation; and
 - b. Submit all voided copies to the Peralta Police Services office.
- 3. All copies of each voided citation will be filed and maintained for one year.

C. Citation Correction Notice

- 1. If an error was written on a smoking citation, but the citation is valid on its face, the Security Personnel who issued the citation shall complete a Citation Correction Notice.
- 2. If the error is discovered by a person other than the issuing Security Personnel, the citation will be returned to the issuing Security Personnel.
- 3. Once the error is confirmed, the issuing Security Personnel will complete a Notice of Correction and forward it to Peralta Police Services Administrative Sergeant for review.
- 4. Once the Notice of Correction has been reviewed, it will be mailed to the individual cited on the citation.
- 5. A copy of the Notice of Correction will be attached to the original citation and filed.

VI. Appeals (3 Levels)

A. Request for Citation Cancellation (Level 1)

1. An individual may request a Citation Cancellation **within 21 calendar days** of the citation issuance date.
2. Requests for cancellation must be done in writing, on the Citation Cancellation form. Forms are located at the Peralta Police Services Office, 333 E. 8th Street, Oakland, CA 94606.
3. Upon submittal of the Citation Cancellation form, the validity of the appeal shall be evaluated. Any decision made shall be based on the facts as represented on the face of the citation, the review request, and applicable laws and regulations.
 - a. For citations issued by Peralta Police Services, their Administrative Sergeant shall evaluate the validity of the appeal.
 - b. For citations issued by Security Personnel other than Peralta Police Services, the Vice Chancellor of General Services shall evaluate the validity of the appeal.
4. The evaluating officer can:
 - a. Dismiss the violation and request PCCD to remit any payment made;
 - b. Find no grounds for dismissal;
 - c. Determine that an individual is not a persistent offender; or
 - d. Reduce any late fees.
5. Decisions will be mailed to the individual who requested the Citation Cancellation. A copy of the decision will be kept on file until one year after the appeals process has been finalized.

B. Administrative Hearing (Level 2)

1. Individuals dissatisfied with the findings of the Level 1 hearing may request an "Administrative Hearing" (Level 2 hearing).
2. A request for an Administrative Hearing must be made to Peralta Police Services in writing **within 21 calendar days** from the date that the Level 1 hearing results were mailed.
3. The individual requesting a hearing may provide the information for his/her Administrative Hearing in writing. Forms are located at Peralta Police Services office, 333 E. 8th Street, Oakland, CA 94606.

At the time of his/her request, the individual must provide a check or money order made payable to the "*Peralta Community College District*" for the full amount of the smoking fine. At that time, a formal hearing will be scheduled.

4. The Vice President, Student Services at the appropriate campus and a Peralta Police Services' hearing Officer will conduct an Administrative Hearing with the contesting party. Once a decision has been reached, the decision will be mailed to the individual.

C. Superior Court (Level 3)

Within 20 days after service of the Level 2, Administrative Hearing decision, an individual may request review by filing an appeal to be heard by the superior court of competent jurisdiction.

VII. Allocation of Proceeds From Fines

Funds shall be allocated to the PCCD and its colleges. Allocation shall include, but not be limited to, enforcement, education and promotion of this policy, and tobacco cessation treatment options.

VIII. Initial Implementation

Upon the initial implementation of this policy, PCCD shall observe a six month grace period before any fine is distributed. Warnings shall be issued at the discretion of Security Personnel. During this grace period, PCCD shall inform employees and students of the tobacco use policy and of enforcement measures.

Reference:

California Government Code Section 7597
California Government Code Section 7597.1
California Government Code Section 53069.4
California Government Code Section 7598
California Labor Code 6404.5

Approved by the Chancellor: May 11, 2012

Revised and approved by the Chancellor: March 15, 2016