



**CALSTRATEGIC Q&A SERIES:**  
**CALIFORNIA'S NEW PROP. 65 HAZARDOUS CHEMICAL WARNINGS**

Starting August 30, 2018, businesses, including rental property owners in California with more than 10 employees will be required to replace their existing Prop. 65 hazardous chemical warning signs with new signs that are more specific about the hazardous chemical that may be present in specific areas. Specifically, the new regulations require new signs in *enclosed parking facilities* and *designated smoking areas*. This Q&A provides an overview of Proposition 65 and explains how rental property owners can comply with the new regulations.

**What is Proposition 65?**

Amid rising concerns about exposure to toxic chemicals, California voters in 1986 approved Proposition 65 (“Prop. 65”), which requires California to publish a list of known chemicals that cause cancer or reproductive problems, and for businesses to provide a “clear and reasonable” warning before exposing individuals in the state to any chemical listed by the state as toxic. There are currently 850 chemicals on California’s list. The Office of Environmental Health Hazard Assessment (OEHHA) administers the program. See the list at the Environmental Health Hazard Assessment (OEHHA) website, [oehha.ca.gov](http://oehha.ca.gov).


After Prop. 65 went into effect, business owners with 10 or more employees, including rental property owners, were required to post warning signs in and around their properties warning the public of possible exposure to harmful chemicals. The signs typically warn the public that they may be exposed to chemicals known to cause cancer or reproductive toxicity.

Failure to comply with Prop. 65 regulations exposes businesses (including property owners and managers) to potential liability, including penalties of up to \$2500 per day per violation. In addition, business owners may be subject to injunctive relief and attorney fees.

**What’s changing with the Prop. 65 law?**

New California regulations, adopted in 2016, and which go into effect on August 20, 2018, require businesses to replace their old signs with new signs that provide the public with more information. A typical **old sign** read: “WARNING: This Facility Contains Chemicals Known to The State OF California To Cause Cancer And Birth Defects Or Other Reproductive Harm”.

The **new signs**, however, significantly revise the required warning content and specify separate “safe harbor” warnings (described below) based on the type of business and/or product, the chemicals at issue, and the method of transmission. The new signs must contain the following:

- A statement that the area or facility “can expose you to” a particular chemical (this is a significant departure from current regulations);
- The name of at least one listed chemical, like carbon monoxide, that prompted the warning;
- Specify whether that chemical is known to cause birth defects or reproductive harm, cancer or both.
- If the warning for one chemical (such as lead) is both a carcinogen and a reproductive toxicant, the warning is to specify that chemical;
- The internet address for OEHHA’s new Proposition 65 warning website;
- A triangular yellow warning symbol , with the word “**WARNING**” in all caps.

The purpose of the change, in the words of Governor Jerry Brown, is to provide “more useful information to the public on what they are being exposed to and how they can protect themselves.”

### **What do rental property owners need to know about the new prop. 65 regulations?**

The new regulations directly impact rental property owners in California who have 10 or more employees. Such owners must replace their old warnings signs with new ones in two different areas of their buildings: 1) enclosed parking facilities, and 2) designated smoking areas. Owners can design their own warning signs as long as they comply with the new standards. Owners whose signs do not comply perfectly with the new regulations, however, are subject to liability for non-compliance.

Alternatively, an owner can use “safe harbor” signs, which contain the precise language expected by the state, and which if used, ensures that the owner cannot be sued for noncompliance. The term “safe harbor” is merely a term of art that refers to a provision of a regulation or statute that if complied with properly, ensures protections against liability.

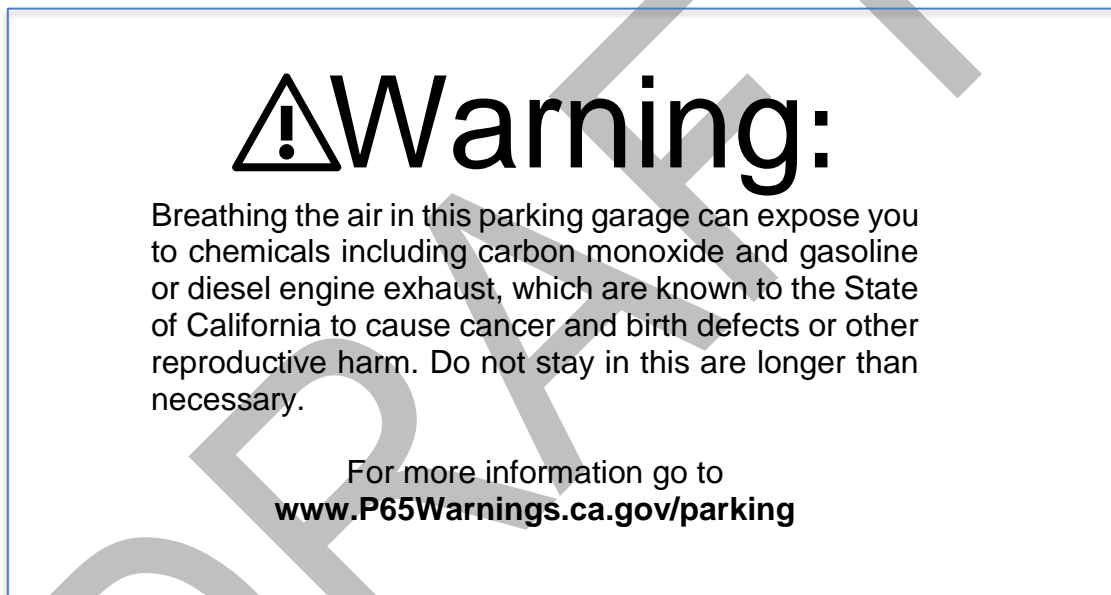
It is important to note that all signs must be “clearly visible under all lighting conditions normally encountered during business hours and under such conditions

as to make it likely to be seen, read, and understood by an ordinary person.” Title 27 California Code of Regulations Article 6 Clear and Reasonable Warnings § 25600.1. Definition of “Sign.”

### **What signs are needed for enclosed parking facilities?**

The term “enclosed parking facilities” simply means parking lots that are covered by ceilings and walls, like underground parking lots and above ground covered parking lots. Enclosed parking lots must have warning signs because they can contain harmful doses of carbon monoxide from the exhaust of motor vehicles.

Warning sign verbiage: the following is the safe harbor language that if used protects against liability:



### **Location and other requirements of enclosed parking lot warning signs:**

- Signs must be posted at all public entrances to the parking facilities. Entrances include those accessible by vehicle and pedestrian.
- Signs must be displayed so that they are readable and conspicuous to the public before they enter.
- Signs must be 20 x 20 inches with at least 72-point type.
- The sign must be in English and any other languages that are used on signage at the entrance.

### **What sign is needed for designated smoking areas?**

A designated smoking area is an area on the property specifically reserved for smoking. Any areas designated as a smoking area requires a Prop. 65 warning. Therefore, if smoking is generally allowed anywhere on the property, then the entire property is considered a designated smoking area, and warnings signs will be required to be posted all over the property. It is highly recommended that property owners who do allow smoking on the property designate a specific area or areas for smoking. Reducing the number of areas that people can smoke will limit the number of warning signs required. Nonsmoking tenants will also appreciate it.

If smoking is prohibited anywhere on the property, then *no warnings signs are required*.

Warning sign verbiage: the following is the safe harbor language that if used protects against liability:



Location and technical aspects of the smoking warning sign:

- Signs must be posted both at the entrance to and within the area in which exposure to smoking occurs.
- The sign must be on an 8 ½ by 11-inch sign, in no less than 22-point type, and be enclosed in a box.

**Are there more Prop. 65 regulations coming?**

Yes. Although not yet finalized, OEHHA is expected to adopt a regulation that allows rental property owners to provide Prop. 65 warnings, other than those for enclosed parking facilities and designated smoking areas, in their rental contracts. Thus, owners who store or use certain cleaning or pesticide products, that contain Prop. 65 chemicals, on their property will not have to post warning signs for exposure to those chemicals. Instead, owners will be able to simply add a lease provision into their rental contracts warning of the presence and exposure to those chemicals. Any warning provided within a lease contract will have to abide by OEHHA's rules and regulations. This new regulation is not expected to be effective until sometime in 2019.

### **What should owners do with the warning signs that are currently posted?**

For all Prop. 65 warning signs related to enclosed parking facilities and designated smoking areas, you must take those down and replace them with new "safe harbor" signs or warning signs that are consistent with the new regulation. All other Prop. 65 signs, like those warning about pesticides or cleaning chemicals, must remain up until next year when the new regulations allowing for lease contract warnings go into effect. Cal Strategic will provide the Association with updates when the new regulations are implemented.

**The information provided herein is intended to provide general guidance and awareness on recently passed state laws and regulations and shall not be construed in any way as a substitute for individual legal advice. Those that require specific advice should consult an attorney.**

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