

New Jersey and Federal Tobacco Control Laws and Regulations

**Presented by
New Jersey Global Advisors on Smokefree Policy
(NJ GASP)**

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NJ GASP Contact information:

- **Karen Blumenfeld, Esq. Executive Director**
- **Phone: 908-273-9368**
- **Email: info@njgasp.org**
- **Website: www.njgasp.org**
- **Address: NJ GASP**
7 Cedar Street, Suite A
Summit, New Jersey 07901
USA

NJ GASP Mission

- **Promote** tobacco-free and smokefree lives for all people, through public health initiatives.
- **Educate** the community, policymakers, and public health professionals on the benefits of tobacco-free and smokefree lives.
- **Provide technical assistance** to enforce New Jersey state and local laws on tobacco control.
- **Serve as a resource on emerging trends** and issues in tobacco control.

Second-hand Smoke Health Concerns

- **Secondhand smoke (SHS)** is smoke exhaled by smoker, and sidestream smoke (off the tip).
- There is **no known safe level of exposure to SHS** (2006 U.S. Surgeon General's Report).
- SHS is a **known Class A human carcinogen**. Same class as asbestos and benzene (U.S. Environmental Protection Agency).
- Smoking and SHS exposure are **#1 cause of preventable disease/death in world**.

U.S. Surgeon General's 2006 Report

- **Health effects of SHS on children:**

- sudden infant death syndrome
- preterm delivery
- low birth weight
- childhood cancer risks

(Ch. 5, pp. 242-243, U.S. Surgeon General's 2006 Report)

- **Studies show that SHS can lead to:**

- An increase in fetal mutation
- Increased risk of miscarriage

New Concerns with Third-hand Smoke

- Third-hand smoke is second-hand smoke that lingers long after the cigarette or cigar is extinguished.
- Embeds as residue on any surface: walls, in carpeting, furniture, on clothing, in hair, toys, etc.
- Carcinogens and toxins in third-hand smoke may affect brain development in babies and young children.
- Young children crawl on carpeting and suck on clothing, upholstery, skin, etc. that has third-hand smoke residue.

New Concerns with Exposing Pets to Secondhand Smoke

- Pets can develop respiratory infections, lung inflammation or asthma when breathing in SHS.
- Cats exposed to SHS were twice as likely to develop the feline lymphoma.
- Risk tripled with 5 years of SHS exposure.
- Two smokers in house, 4 times more likely.
- Tobacco, cigarette butts, chew and other tobacco products are attractive to pets. If eaten, these items could be also be toxic to pets.

SMOKEFREE and SO FREAKIN' HAPPY



Fluffy  **quits**.com

Important with any smokefree air law:

- With smokefree policies... **Only the behavior of smoking is prohibited, not the person....**

GASP tracks local NJ ordinances

Searchable database http://njgasp.org/d_search1.asp

Find what tobacco control laws are in your town and county...

- **Marketing** – Not display tobacco at kids' eye level.
- **Sales** – Ban self-service tobacco racks and vending machines, Suspend retail food license for violations.
- **Use** – Muni property (outdoors near muni buildings, muni parks and rec areas, smokefree zones by doors/windows avoid backdrafting into public places.

Local Laws Database

- **Go to handout** that lists local tobacco control ordinances in Camden County..... Is your town progressive or conservative?
- If conservative, contact towns with a strong local smokefree air law you're interested in, and find a mentor.
- Contact GASP for technical assistance – we have copies of all local ordinances in our database.

Trends in local tobacco control laws

- Smokefree outdoor perimeter around muni buildings, doors, windows, vent ducts.
- Smokefree rec areas – parks, playgrounds, pools, beaches, athletic fields.
- Smokefree outdoor dining areas – SHS wafts into restaurants, hazard for workers. Amend outdoor dining license.
- No smoking in cars when kids are present.
- Smokefree multi-unit housing.
- **Classify secondhand smoke as a nuisance.**

NJ state and local nuisance codes

General Nuisance codes **to protect general health and welfare of people, concerns with noxious fumes:**

- Outdoor secondhand smoke migrates/wafts inside a public place, workplace or **private place** or **creates outdoor nuisance.**
- Control spread of **infectious disease risks (TB, flu, etc).**

Emerging Trends / Hot Topics in Tobacco Control

Smokefree Multi-Unit Housing

- Needed in common areas, private units, outdoors.
- There is no Constitutional right to smoke.
- Smokers not a protected group under the disability laws.
- NJ SFAA requires common spaces to be smokefree:
 - Traditional: Inside shared space include hallways, foyers, stairwells, laundry rooms, etc.
 - Nontraditional: shared space can include ventilation systems and shared walls and floor/ceiling spaces between walls where smoke migrates.
- Cities are enacting ordinances that restrict or eliminate secondhand smoke exposure migrating into common areas and private units.

New Jersey is a leader in the United States, on tobacco control laws:

- Strong statewide smokefree air law (except casinos).
- First state to ban smoking in all college and university residential housing (on and off campus).
- First state to ban the use of electronic cigarettes in public places and workplaces.
- First state to ban the sale of electronic cigarettes to persons under age 19.
- First state to implement ban on flavored cigarettes (except menthol and clove).

New Jersey is a leader in the United States, on tobacco control laws:

- First state to ban smoking in foster homes and cars, for foster children who are wards of the State.
- One of first states to require fire safe cigarettes that self-extinguish.
- One of highest cigarette taxes in nation (rank 6th highest at \$2.70/pack. New York is #1 at \$4.35 + \$1.50 for New York City).
- One of first states to ban cigarettes as a prize in charitable games.
- Ban novelty lighters (look like toys, cartoons, that attract children).

More NJ state laws on tobacco control

- Ban smoking in public places, workplaces, with some exemptions (casinos, cigar lounges that existed as of 12/31/04 and meet other requirements)
- Ban smoking in private clubs, even if no workers, just volunteers.
- Ban smoking in hospitals, state psychiatric facilities, medical residential facilities such as nursing homes, substance abuse facilities, etc.).
- Ban smoking on public transport (buses, trains, etc.).
- Ban smoking in all schools and school property (K-12).

New Jersey Smoke-Free Air Act (NJSFAA)

- NJSFAA effective April 15, 2006.
- Rules enacted in May and October 2007, to help implement NJSFAA.
- **Amended to include electronic cigarettes, March 13, 2010.**
- **Covers almost all indoor public places and workplaces:**
 - **Offices, factories, commercial buildings and facilities, and government facilities.**
 - **Restaurants, bars, clubs, theatres.**
 - **Bowling alleys, sports facilities, race tracks, bingo sites.**
 - **Private clubs, whether social, recreational, civic, fraternal, religious, academic, military, etc.**
 - **Shopping malls, retail stores.**

- **Public and private elementary and secondary schools, including all outdoor grounds.**
- **Child care facilities.**
- **Places of worship.**
- **Health care facilities and offices, hospitals, nursing homes, addiction treatment facilities.**
- **Hotel common areas.**
- **Public transportation vehicles and stations and platforms, parking garages.**
- **Apartment building common areas (lobbies, stairwells).**
- **Covers some outdoor areas of public places and workplaces.**
- **Bans secondhand smoke migrating from outside, into an interior space that is required to be smokefree.**

New Jersey Smoke-Free Air Act (NJSFAA)

- Exemptions include:
 - Casino gaming floors.
 - Cigar lounges and bars in existence as of 12/31/04 that meet ventilation and separate enclosure requirements.
 - Tobacco retail establishments to sample a product.
- Exempted businesses need to file annual waiver applications and meet requirements each year.

Application of 2006 NJ Smokefree Air Act

- New Jersey Smokefree air Act (NJSFAA), took effect April 15, 2006. **“Smoking” definition includes “any matter that can be smoked”,** e.g. waterpipes.
- New Jersey Department of Health and Senior Services **adopted regulations in 2007** (NJRegs), to help implement the 2006 Act.
- **2007 regulations explicitly state that hookah smoking** is covered by 2006 Act.

NJSFAA: Cigar Bar exemption

NJSFAA definition of a “Cigar Bar” is not limited to cigars; can be any matter that can be smoked, like waterpipes.

➤ **Part 1 of Test: meet the exemption is date sensitive**

To operate a “cigar bar” with smoking in it, must have existed as of **December 31, 2004**. If operating before 12/31/04....

NJSFAA: Cigar Bar exemption

- **Part 2 of test: meet stringent revenue and construction requirements**
 - Application reviewed and approved/not by local health dept, thru initial registration process, and annual renewal registrations).
- **Part 3 of test: if existed as of 12/31/04, and meet requirements above, can't change location, expand in size.**

NJSFAA: Cigar Bar exemption

Result: Stringent requirements, so not that many indoor “cigar bars” (cigar, hookah, other smoking) qualify for the NJSFAA cigar bar exemption.

How about the NJSFAA’s ***“Tobacco Retail Establishment” exemption?.....***

NJSFAA: “Tobacco Retail Establishment” (TRE) exemption

To operate a TRE, NJSFAA requires:

- **At least 51%** of the tobacco retail establishment's business must be the sale of tobacco products (excluding cigarettes) and accessories (**application to be reviewed and approved/not by local health** dept thru initial registration, and annual renewal registrations).

NJSFAA: “Tobacco Retail Establishment” (TRE) exemption

To operate a TRE, NJSFAA also requires:

- **Sale of other products must be “merely incidental”** (NJ Regs define “merely incidental”)
- No date sensitive requirement.
- No ventilation or location requirements.

2007 NJ Regulations: “Tobacco Retail Establishment” (TRE) exemption

NJ Regulations also require that a TRE:

1. Be a **‘Cash and Carry’** business:
 - **Only allow smoking inside to sample** expensive product before purchasing (e.g. expensive cigars prior to large purchase).
 - **Intent is to use products off-premises.**

“Cash and Carry” Observation

- **Waterpipes are intended to be used inside the premises, not just sampled.**
- Evidence includes tables and chairs. Indicates that **‘cash and carry’ requirement NOT met.**
- Commonplace to purchase products prior to consuming off-premises: liquor store, supermarket, etc.

NJ Regs also require TRE to:

2. TRE can only sell products that are “merely incidental”:

- The 2007 NJ regs define “food and beverage” sales as NOT INCIDENTAL
- TRE cannot sell food, coffee, etc.

“Merely Incidental” Observation

- **Observation: If a hookah lounge sells coffee, desserts, or is in a room of a restaurant, that establishment is selling products that are more than “merely incidental”.**
- Cannot permit smoking indoors, under TRE definition of NJ smokefree air law.

Secondhand waterpipe smoke migrates

- NJSFAA, NJ Regs **not allow migration of secondhand smoke from outside**, into a public place or workplace.
- Outdoor waterpipe smoking, on sidewalk, deck, etc., is not permissible, if it migrates/wafts into indoor public places or workplaces.
- Includes migration into common areas of apartment buildings.

Bottom line in NJ

- Can't convert a room in a restaurant for hookah smoking.
- Can't open a new hookah lounge with smoking inside; can sell the waterpipe, tobacco, etc. but not to be wholly consumed in-store.
- Can't sell food or beverages in TRE.
- Can't move an approved hookah lounge that existed prior to 12/31/04, to another location, or expand it.

Enforcement and Fines

- Enforced by local and county health department and police departments, state health department.
- Fines: \$250 (1st offense), \$500 (2nd), \$1000 (3rd or more).
- GASP receives complaints and provides technical assistance to resolve complaints.

August 4, 2010 NJ Appellate Division Court Decision in favor of local Health Dept.

Ruled that a local health department (Township of Woodbridge) can enforce the 2006 New Jersey Smokefree Air Act against a hookah bar that allowed smoking to take place.

1. The 2006 New Jersey Smokefree Air Act's (Act) definition of smoking, "which includes any other matter that can be smoked", is not unconstitutionally overbroad nor vague.

2. The right to operate a particular kind of business that allows smoking on the premises, is not constitutionally protected as a fundamental right;

3. Selective enforcement of Act did not deprive a hookah bar owner of his right to equal protection under the New Jersey Constitution. The hookah bar owner argued that other hookah bars existed in New Jersey, so applying the Act his establishment was a violation of his right to equal protection.

4. Need to provide proper written notification to alleged violator.

Internet Resources on NJSFAA

- NJ Department of Health and Senior Services' website:
<http://www.state.nj.us/health/ctcp/smokefree/index.shtml>
- NJSFAA language found at:
<http://www.state.nj.us/health/ctcp/smokefree/act.shtml>
and <http://www.njleg.state.nj.us/2004/bills/PL05/383 .pdf>
- GASP website info on NJSFAA at:
http://www.njgasp.org/h_newact_intro.htm ; includes
table of contents for 2007 Rules.

Key pending NJ bills on tobacco control

- **To increase the licensing fees to sell cigarettes**, to fund the state's tobacco control program. Currently, fee is only \$50 per license/year. Retail liquor license costs up to \$2500/year.
- **To create licensing fee system for Other Tobacco Products** (cigars, little cigars, chew, etc). No state has a licensing fee system for OTPs. Need to mirror new licensing fee for cigarettes. Would fund state's tobacco control program.
- **To eliminate smoking ban exemption for casinos and simulcasting facilities.** Protect casino workers and patrons. Federal government and university studies show poor air quality in smoky casinos.
- **Ban smoking in all state, county and local outdoor recreational areas** accessible to the public. Many local towns have passed this law.
- **To create a motor vehicle offense if smoking in a motor vehicle with a child present.** Dedicates penalties to Smoking Cessation Fund.

Emerging Trends / Hot Topics in Tobacco Control

Alternate nicotine products:

- Electronic or E-cigarettes - vapor to deliver nicotine.
 - This month, the Federal Food and Drug Administration (FDA), classified the product as a drug delivery device.
 - FDA now requiring e-cigarette companies to file applications for their products to be classified as a drug, and seek FDA approval.
- More products not FDA-approved for cessation:
 - Nico-gel, a product to use for skin absorption.
 - Nico-water, contains nicotine.
 - Nico-strips, which melt on the tongue.
 - Tablets and gum containing nicotine.

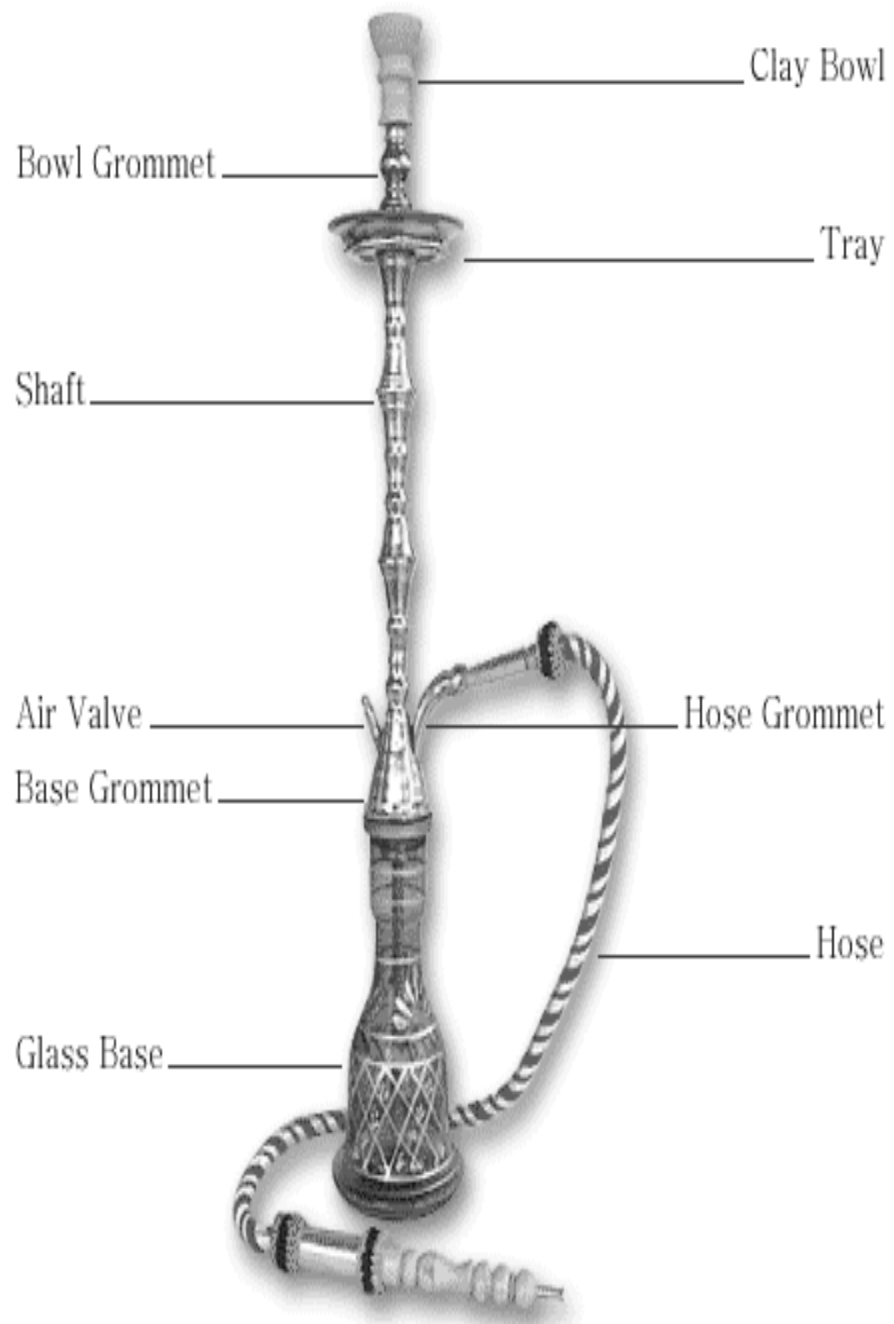
July 2009 FDA analysis of e-cigarettes

- **Health effects** of using electronic cigarettes or inhaling their vapors second-hand are **not known**.
- FDA analysis of 18 cartridges found **toxic chemicals and carcinogens**, including diethylene glycol, an ingredient found in **antifreeze**.
- Read GASP's paper on the health concerns with electronic cigarettes at <http://njgasp.org/E-Cigs%20White%20Paper.pdf>

Emerging Trends / Hot Topics in Tobacco Control

Hookah/Waterpipe Smoking:

- Thought to have originated at least 4 centuries ago in Africa or Asia.
- One account is invented by doctor from India: smoke filtering thru water would make it harmless. To date, this misperception that water cleans the smoke, is still strongly believed.
- Since 1990's, hookah smoking is gaining popularity in U.S. and Europe.



Appeal to Youth, College-age

- Fruit/candy flavorings mask tobacco flavor.
- Water cools smoke, creating false impression that smoke is safe.
- Some may not contain tobacco, so false impression that is safe to use.
- **Trend: hookah lounges/cafes opening in college towns** (unless prohibited smokefree air law).

Public Health Hazard: Infectious Disease

U.S. Centers for Disease Control, 2007:

- "Over recent years, there has been a resurgence of use around the world, most notably among youth....
Sharing a hookah may increase the risk of transmission of tuberculosis, viruses such as herpes or hepatitis, and other illnesses."

U.S. Centers for Disease Control: Fact sheet on hookahs, updated April 2007.

http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs.htm

Public Health Hazard: Infectious Disease

“...Sheesha pipes are *an ideal tool for users to catch the [H1N1] virus since they are often passed from person to person.*” The warning was recently added to the Bahrain Health Ministry's swine flu awareness campaign.

<http://www.tradearabia.com/news/newsdetails.asp?Sn=HEAL&artid=167292>

Public Health Hazard: Infectious Disease

“The World Health Organization regional office in Cairo estimates that **17 percent of TB cases in the eastern Mediterranean are attributable to the smoking of water pipes.**”

March 24, 2008 newsclip from IRIN, the humanitarian news and analysis service of the UN Office for the Coordination of Humanitarian Affairs.

<http://www.irinnews.org/report.aspx?ReportID=77426>

Smoking and Secondhand Smoke Concerns from Hookah Smoke

WHO's 2005 Advisory Note:

- Waterpipe smoke contains numerous toxicants known to **cause lung cancer, heart disease and other diseases**, adverse effects on pregnancy.
- **Same secondhand smoke disease risks caused by cigarette smoking.**

Smoking and Secondhand Smoke Concerns from Hookah Smoke

August 2009 study by Tobacco Control Collaborating Centre (UK):

- In one waterpipe smoking session, **waterpipe smoker may inhale up to equivalent of 100 cigarettes.**
- one session of smoking shisha resulted in **carbon monoxide levels at least four to five times higher than** the amount produced by **one cigarette.**
- High levels of carbon monoxide can lead to **brain damage and unconsciousness.**

Federal Legislation on Tobacco

NEW FEDERAL LEGISLATION ONLY COVERS CIGARETTES AND SMOKELESS TOBACCO. IT DOES NOT COVER “LITTLE CIGARS” AND OTHER SMOKED TOBACCO PRODUCTS.

- **Prevent All Cigarette Trafficking Act (PACT)** regulates cigarettes and smokeless tobacco product sales, through mail and internet:
 - Took effect on June 29, 2010.
 - Disallows cigarette and smokeless tobacco sales to children through the mail and internet.
 - Bans delivery of products through U.S. Postal Service.

Family Smoking Prevention and Tobacco Control Act

ONLY COVERS CIGARETTES AND SMOKELESS TOBACCO.

- Signed by U.S. President Obama on **June 22, 2009**.
- Amends the Federal Food, Drug, and Cosmetic Act (FFDCA), to grant authority to the FDA, to regulate the manufacturing, marketing and sale of cigarettes and smokeless tobacco products.
- The bill adds a new chapter to the FFDCA to regulate tobacco products, under a new standard of **"appropriate for the protection of the public health."**

Key Points of Family Smoking Prevention and Tobacco Control Act

- Restrictions on marketing and sales to youth.
- Bans flavorings in cigarettes (except for menthol).
 - **NJ already banned flavored cigarettes in 2008 (except clove and menthol).**
- Requires detailed disclosure of ingredients, nicotine and harmful smoke constituents.
- Allows FDA to require changes to tobacco products to protect the public health.
- Strictly regulates "reduced harm" products.
- Requires bigger, better health warnings.

<http://www.tobaccofreekids.org/reports/fda/summary.shtml>

Provisions took effect on June 22, 2010, :

- **Nationwide prohibition** on cigarette and smokeless tobacco sales to children under age 18.
 - **NJ bans the sale of any tobacco product, and electronic cigarettes to persons under age 19.**
- **Prohibits cigarette sales in packs of less than 20.** This will eliminate so-called "kiddie packs" and "loosies" that are more affordable and appealing to kids.
 - **NJ already requires sale of 20-pack for several years.**
- **Requires stores to place behind the counter,** cigarettes and smokeless tobacco products, out of reach of children.
 - **Many local NJ towns already require behind the counter.**

- **Restricts vending machines and self-service displays** to adult-only facilities.
 - **Many local NJ towns already ban the sale of cigarettes in vending machines and self-service display racks.**
 - **In NJ, minors are allowed to enter bars, just not served alcohol; so federal law bans machines in most NJ bars.**
 - **Clubs that host ‘teen nights’ are NOT adult-only facilities, machines banned in clubs that host teen nights.**
- **Ban all tobacco-brand sponsorships** of sports and entertainment events.
- **Ban virtually all free tobacco samples** and giveaways of non-tobacco items (hats, T-shirts), with the purchase of tobacco.

<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm216406.htm>

Conclusion

- ✓ Important to educate the public and policymakers on the need for 100% smokefree environments. This protects nonsmokers and provides nonsmoking environments for smokers to quit.
- ✓ **Keys to success are tobacco-free policy, prevention and cessation initiatives.**
- ✓ **Goal is to improve public health and quality of life, reduce health care costs, and maintain a well-funded, government-sponsored comprehensive tobacco control program.**