

HOT TOPICS IN TOBACCO CONTROL



***Sponsored by the City of Paterson,
Honorable Jeffrey Jones, Mayor
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For downloadable information on smokefree casinos, go to www.njgasp.org and click on *Smokefree Gaming*.

Important:

Please read Disclosures and Disclaimers that apply to this presentation (see end slides). This presentation is not to be construed as legal advice.

Overall Course Summary

To understand and learn how to apply the 2006 NJ Smokefree Air Act and other laws, when identifying and addressing public health threats in tobacco control, plus:

- Updates on new laws
- Handling violations of tobacco control laws
- Emerging concerns with tobacco use/exposure
- GASP's 2011 Smokefree Multi-Unit Housing Initiative

Specific Topics to be Addressed:

- **NJ data on smoking**
- **Second- and Third-hand Smoke: 101**
- **2009 Federal law: Family Smoking Prevention and Tobacco Control Act**
- **Taxes, licensing fees on OTPs**
- **E-cigarette use/sales ban effective March 13, 2010**
- **NJSFAA exemptions: cigar bars/lounges and tobacco retail establishments; issue with hookah lounges**
- **Outdoor smoking restrictions**
- **Smokefree private settings**
- **Secondhand smoke concerns in multi-unit housing**
- **New HUD smokefree policy memo**
- **Smoking in cars with kids**
- **How secondhand smoke affects pets**

NJ Data on Smoking

- **Deaths in NJ from smoking:**
 - **11,200 NJ adults die each year from own smoking.**
 - **1,010 adult nonsmokers die each year from exposure to secondhand smoke (SHS)**
 - **168,000 NJ minors will die prematurely from smoking.**
- **Smoking-caused monetary costs in NJ:**
 - **\$3.17 billion in annual health care costs directly caused by smoking.**
 - **\$967 million = portion covered by NJ's medicaid program.**
 - **\$2.6 billion in smoking-caused productivity losses.**

NJ Data on Smoking

- **Adult smoking rate is increasing in NJ for 1st time since 2003:**
 - > **In 2008, 14.8% of NJ adults smoked**
 - **In 2009, 15.8% of NJ adults smoked**
- **Of 15.8% adults in NJ who smoke (approx. 1 million persons), 70% want to quit.**

NJ Data on Smoking

- 15.8% of NJ high school students smoke (74,600).
- 9% of NJ high school students use smokeless or spit tobacco (cheaper than cigarettes).
- 9,000 NJ minors become new daily smokers each year.
- 17.1 million packs of cigarettes bought or smoked by NJ minors each year.
- 400,000 children affected by SHS in NJ homes/year.

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**.

Second-hand Smoke Health Concerns

- SHS aggravates and increases the risk of chronic diseases such as asthma, allergies, heart disease, lung cancer, pneumonia, emphysema, chronic bronchitis and diabetes (U.S. Centers for Disease Control).
- Chronic exposure to secondhand smoke is almost as deleterious to one's health (80%), as being a pack-a-day smoker (2005 University of California, San Francisco, study published in the peer-reviewed Journal, *Circulation*).

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)
- **December 2010 Surgeon General's Report reiterates secondhand smoke concerns.**
- **Peer-reviewed studies show that SHS can lead to:**
 - An increase in fetal mutation
 - Increased risk of miscarriage

New 2010 Study: SHS Exposure Increases A Child's Risk of Heart Disease

- Children exposed to SHS between ages 8 to 13 are more likely to show thickening of blood vessel walls, a precursor to hardening and clogging of arteries.
- Children exposed to the most SHS had higher levels of apolipoprotein B, which contributes to "bad" cholesterol, another heart disease risk factor.
- The findings suggest that children should not be exposed to SHS at any level; even small amounts of shs exposure may be harmful for blood vessels.
- The researchers concluded that children need to be provided with a smokefree environment, according to a recent 2010 study published in the journal, *Circulation: Cardiovascular Quality and Outcomes*.

New Concerns with Third-hand Smoke

- Third-hand smoke that SHS that lingers beyond the extinguishing of a cigarette, cigar, etc.
- 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.

Higher nicotine levels in babies, even if parent only smokes outside

- **Even if a parent who smokes outside the home, still subject their children to nicotine exposure:**
 - These children have up to eight times more nicotine in their bodies than the offspring of non-smokers.
 - Higher nicotine levels in babies who have family that smoke outside the home, vs. babies live with only non-smokers.
- **Although all smoking was outdoors, children had nicotine in their hair and urine.**
- **Mothers who smoked away from their children were found to have nearly as much nicotine on their hands as smokers who made no special effort.**

Federal Family Smoking Prevention and Tobacco Control Act

- On June 22, 2009, President Barack Obama signed into law the Family Smoking Prevention and Tobacco Control Act (FDA regulations HR 1256).
- Gives the U.S. Food and Drug Administration (FDA) comprehensive authority to regulate the manufacturing, marketing, and sale of tobacco products.

(Info on this Act, courtesy of
<http://tobaccolawcenter.org/documents/fda-5.pdf>)

Federal Family Smoking Prevention and Tobacco Control Act

- Restrictions on Sales of Tobacco Products.
- **Grants FDA authority to do age-of-sale inspections (NJ applying for federal grant, to implement in NJ).**
- Requires a number of restrictions on cigarette and/or smokeless tobacco product marketing and advertising.
- Grants the FDA authority to impose additional restrictions on the advertising, promotion and other marketing of tobacco products in order to promote overall public health.
- All such restrictions would be subject to the constraints of the First Amendment.

June 22, 2010: Implementation Date

- As of June 22, 2010, no vending machines sales or self-service displays of cigarettes or smokeless tobacco, except allowed in adult-only facilities.
 - KEY: Act does NOT preempt stronger local or state laws, which ban vending machines and/or self-service racks.
 - NJ has more than 100 local ordinances banning 100% cigarette vending machines, self-service displays; local and state laws will remain in effect, not preempted.

Federal ban on sales of cigarettes and smokeless tobacco, via vending machines and self-service displays, 6/22/10

- In NJ, minors allowed to enter bars, just not served alcohol; so NJ bars are NOT adult-only facilities, and ban should be in effect in these locations.
- Clubs that hold 'teen nights' are NOT adult-only facilities, so ban should be in effect in clubs holding teen nights
- Enact local ordinance that suspends retail food license for 3 days if sell tobacco to minor; 8 towns in Monmouth County done so!¹⁷

Federal ban on sale of loosies, 6/22/10

- Act bans sale of cigarettes in packages that contain fewer than 20 cigarettes.
 - New Jersey already bans the sale or giving away of single cigarettes (loosies), or in sealed packs of less than 20 cigarettes. Violation for a cigarette vending machine owner, and for each over-the-counter sale. NJSA 54:40A-1 and 2.

Federal ban on flavored cigarettes (except menthol), 9/20/09

- On 9/20/09, characterizing flavors, other than tobacco or menthol, banned from all cigarettes.
 - Since November 2008, NJ already bans sale or furnishing of cigarettes with characterizing flavors, other than tobacco, clove or menthol. NJSA 2A:170-51.5.
 - Federal Act is broader than NJ state law: clove flavor is banned under Federal Act.

Federal law requires sales of cigarettes and smokeless tobacco to 18+ years old

- Establishes 18 as a federal nationwide minimum age for legal cigarette and smokeless tobacco sales with strong federal penalties, e.g. loss of right to sell tobacco products for chronic, repeat offenders (with no preemption of existing state laws or penalties, preserving state authority to impose higher minimum-age laws).
 - NJ law already bans sale, furnish or giving of tobacco to those under age 19. NJSA 2A:170-51.4.

June 22, 2010: Implementation Date

- **Ban free samples of tobacco products**, except allow free samples of smokeless tobacco in adult-only facilities in restricted locations.
- **Ban free giveaways of any non-tobacco items** with the purchase of a product or in exchange for coupons or proof of purchase.
- **Ban outdoor advertising within 1,000 feet** of schools and playgrounds.
- **Ban brand sponsorships** of sports and entertainment events.

January 2010 court ruling

- January 2010, Federal judge in Kentucky struck down two provisions of the 2009 Fed Reg:
 - **Struck down provision to ban the use of color and imagery in tobacco advertising** in locations viewed by large numbers of youth. Provision originally limited advertising to black and white text.
 - **Struck down provision to prohibit claims implying that a tobacco product is safer because of FDA approval.**
- More info on FDA Reg at www.njgasp.org/d2b_det.htm

Concerns with Other Tobacco Products (OTPs)

- OTPs are taxed much less than cigarettes:
 - July 1, 2009, state tax on cigarettes increased to \$2.70 per pack (3rd highest in nation).
 - Cigars, little cigars, Chew, smoking tobacco: only 30% wholesale.
 - Snuff: 75 cents/oz.
- OTPs are inexpensive alternative to highly taxed cigarettes:
 - Sell little cigars can be sold loose or in small two-packs – appeal to poor, kids.

Licensing fees to sell cigarettes, OTPs

- Only \$50 licensing fee for selling cigarettes, per retailer (brings in only approx. \$500,000 to state Treasury, and 80% to TASE).
- New NY state law has minimum \$2,500 licensing fee, up to \$5,000, per retailer.
- No licensing fee system to track OTP retailers, distributors, etc.
- State bills pending to increase OTP taxes, issue licensing fees for OTPS at \$50; not moving.

Licensing fees to sell cigarettes, OTPs

- Since state law does not license OTP retailers, towns/counties can **explore the option of instituting local or county OTP retail license**, with funds earmarked to local or county health department.
- **Example: 10 OTP retailers per town @ \$1000 per annual license = \$10,000 to community/year.**
- Contact GASP for technical assistance.

Electronic Cigarettes (e-cigarettes)

EFFECTIVE MARCH 13, 2010:

- USE OF E-CIGS BANNED IN PUBLIC PLACES AND WORKPLACES COVERED BY THE 2006 NJ SMOKEFREE AIR ACT.
- SALE OF E-CIGS BANNED TO PERSONS UNDER AGE 19.

First state law of its kind, in nation!

January 2010, NJ Legislature voted unanimously in favor of this bill, Governor Corzine signed bill into law.

History of NJ state law on e-cigarettes

Local NJ Health Dept spots health issue in 2009:

- Paramus Health Officer, John Hopper witnessed e-cigarettes sampled at a Paramus mall kiosk; brought to attention of Paramus Board of Health.
- **Result:** 11/23/09, BOH ordinance banning the **use of e-cigarettes** in public places and workplaces (similar to 2006 NJ SFAA).
- Bergen County Board of Chosen Freeholders' **resolution banning e-cig use in county buildings and county parks**, in October 2009.
- **Local efforts in Bergen County garnered statewide attention: NJ state laws in 2010.**

E-cigarettes – what are they?

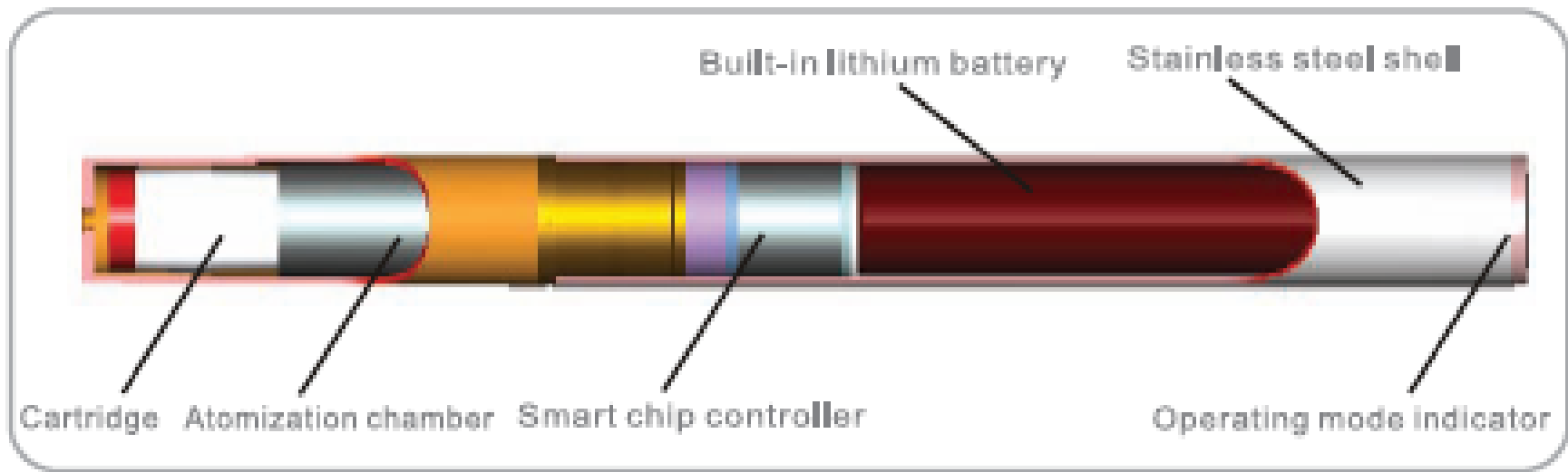
- Electronic cigarettes are battery-powered devices that contain a liquid solution.
- Solution in different concentrations of nicotine and in flavors, including mint, strawberry and chocolate (enticing to teens).
- When a user inhales, a sensor detects the air movement and triggers a heating element, which activates a chemical that vaporizes the liquid, delivering it to the user's lungs.
- The user exhales a vapor that looks like smoke, which contains substances that may be harmful.

E-cigarette component diagram (from FDA Analysis, May 4, 2009)

Nicotine and/or other flavorants are housed in the white cartridge shown at the left:

Cigarette body

The cigarette body is an integrated structure consisting of stainless steel shell, lithium ion battery assembly, smart chip and program controlled circuits, atomization chamber and cartridge and so on. In the front of it, there exists an operating mode indicator.



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**.
- See GASP white paper for more information at <http://njgasp.org/E-Cigs%20White%20Paper.pdf>

Water pipe/Hookah smoking 101

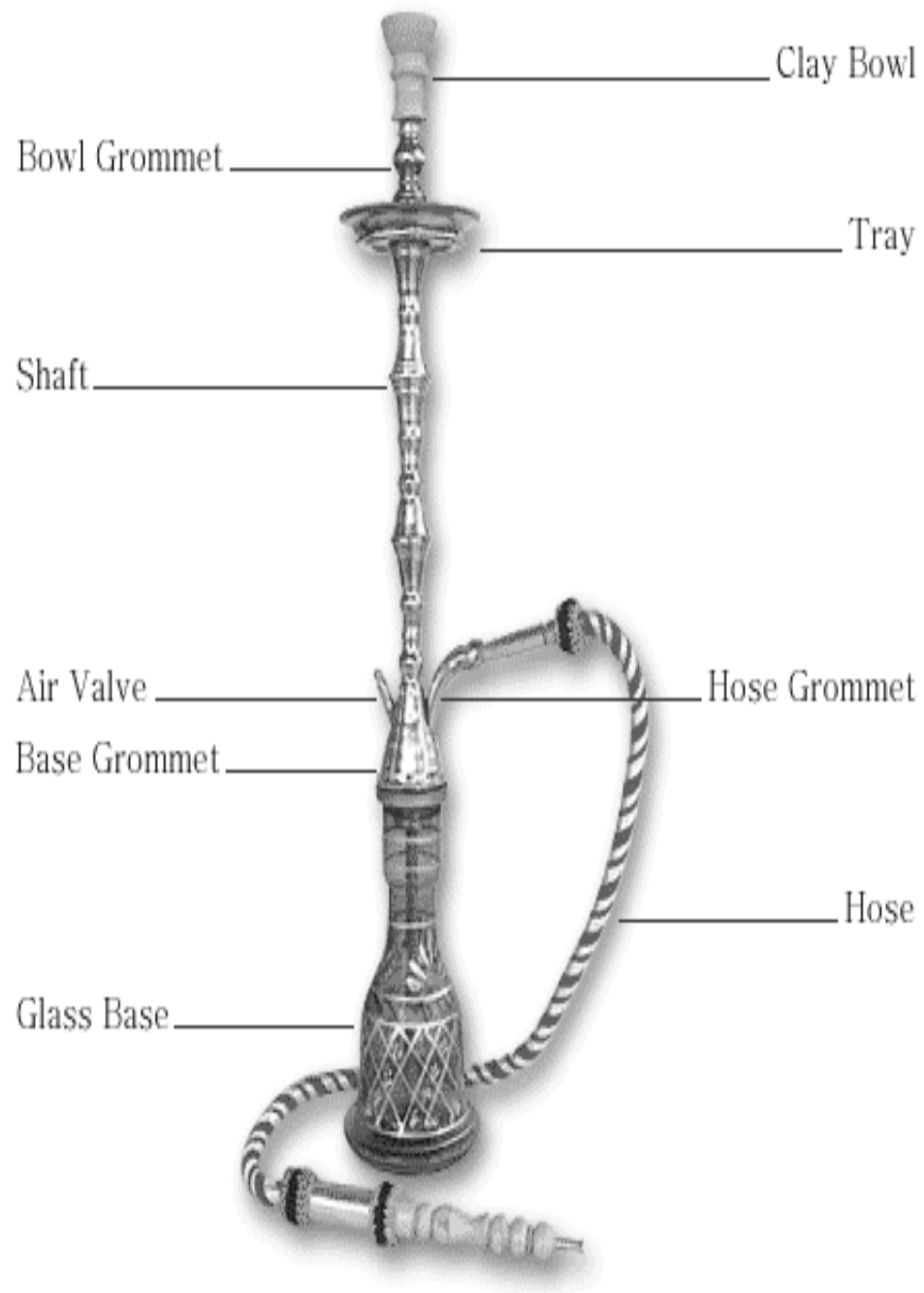
- Many health concerns: **infectious disease**, smoking causes cancer, chronic diseases.
- Originated four centuries ago in Africa or Asia.
- One account is invented by doctor from India: smoke filtering thru water would make it harmless. To date, this misperception that water cleans the smoke, is still strongly believed.
- Since 1990's, hookah smoking popular in U.S. and Europe.

2008 NJ Youth Tobacco Survey Results

- **NJ teen hookah smoking is at an *alarming* rate:**
 - In 2008, almost 1 out of 10 (9.7%) of NJ high school students reported smoking tobacco or flavored tobacco hookah. This % is expected to be much higher in the 2010 NJ Youth Tobacco Survey results.
 - 4.1% of NJ middle school students reported smoking tobacco or flavored tobacco hookah.
- Is a hookah lounge in your neighborhood serving persons under age 19?

Water pipes also known as:

- *Hookah* – India
- *Shisha or Goza* – Egypt, North Africa
- *Narghile* – Turkey, Syria, East Mediterranean
- Waterpipe tobacco also called *maassel*.



Apparatus Description

- **Head**: at top, holds lit charcoal, perforated aluminum foil, and moist sweet-flavored tobacco. Head has holes in bottom, to let smoke pass thru into body of hookah.
- **Body/Shaft**: smoke drawn down from head, into water bowl.
- **Water bowl**: half filled with water.
- **Hose w/ mouthpiece**: attached to top of bowl, hose not submersed into the water.

How a Water Pipe Works

- When breathe in through its mouthpiece, suction formed and vacuum draws outside air into the top of the head, then over lit charcoal and through tobacco, creating smoke.
- Smoke goes thru the body, causing the water to bubble in the bowl.
- The water cools the smoke, and the smoke rises from the water, and through the hose, into mouthpiece, and inhaled by smoker.
- Smoker then exhales, releasing secondhand smoke into air.

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

“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>

Public Health Hazard: Infectious Disease

- “...water pipe smoking (WPS) and the sharing of the pipe with someone with pulmonary TB led to a **great risk of TB transmission...**”
- “You still have **water in the container where the bacteria resides...**”

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

General Nuisance Code to Control the Spread of Infectious Disease

- Guarantee that complete waterpipe is sterilized?
Use Autoclave?
- Even with Disposable hoses, is rest of waterpipe apparatus sterilized?
- Consider applying General Nuisance code, to protect general health/welfare of people regarding:
 - Control spread of infectious disease risks (TB, flu, etc).
 - concerns with noxious fumes.

Hookah Smoking is Hazardous for Chronic Disease, etc.

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.**

Public Health Hazards

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

- 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**.

Public Health Hazards

- In one waterpipe smoking session, **waterpipe smoker may inhale up to equivalent of 100 cigarettes:**
 - Waterpipe session lasts 20-80 minutes, 50-200 puffs with each puff inhaling vs.
 - Cigarette smoker takes 8-12 puffs over 5-7 minutes.

Shisha smokers had 40-70 ppm of CO in their breath, affecting 8-12% of their blood:

CARBON MONOXIDE LEVELS, PARTS PER MILLION:

- Normal level: 3 ppm
- Light smoker: 10-20 ppm
- Heavy smoker 30-40 ppm
- **Faulty boiler/fire levels: Upwards of 100 ppm**
- Severe symptoms: 100 ppm
- Lethal levels: More than 300 ppm

<http://news.bbc.co.uk/2/hi/health/8214097.stm>

http://www.pmaresearch.co.uk/Tobacco_Control_Collaborating_Centre.html

Public Health Hazards

- Contains addictive **nicotine**, from tobacco.
- Some waterpipe herbal maassel does not contain nicotine, but still **produces tar and carbon monoxide**, when heated in waterpipe.

Source: Center for Substance Abuse Research,
University of Maryland, June 9, 2008.

<http://sdfs.ucps.k12.nc.us/sdfs/documents/HealthRisksofHookahSmoking.pdf>

Public Health Hazards

- "Using a water pipe to smoke tobacco **poses a serious potential health risk to smokers and others exposed to the smoke emitted....** [T]he **sweet smell and taste** of the smoke may explain why some people, particularly **young people** who would not otherwise use tobacco, **begin to use waterpipes.**"

http://www.who.int/tobacco/global_interaction/tobreg/Waterpipe%20recommendation_Final.pdf

SHS Levels in Hookah Lounges

- **SHS levels in hookah lounges were more than twice the SHS levels in smoky bars.**
 - Researchers measured air quality for 30 minutes, in 5 hookah lounges and 12 smoky bars located near colleges in North Carolina.
 - Conducted by Wake Forest University's School of Medicine, Roswell Park Cancer Institute.
 - Study to be presented at the American Public Health Association's Annual Meeting, November 2011.

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).

2007 American Legacy Foundation survey

- Surveyed 18-24 year olds:
 - **40%** of participants said that they had **smoked from a hookah**.
 - **42% said** that hookah smoking is **less dangerous** than cigarette smoking.
 - **32% said** that smoking from a hookah is **less addictive** than smoking cigarettes.

2008 Survey of 647 Students at University of Pittsburgh

- More students had smoked tobacco from a hookah (water pipe), than had smoked cigarettes.
- 40.5% reported smoking a hookah, and 88% said they smoke a hookah again.
- Among students surveyed who never had smoked a hookah, 20 percent said they intended to do so.
- "Over half of the sample (52.1%) perceived that tobacco smoking from a waterpipe was less addictive than cigarette smoking."

<http://www.springerlink.com/content/0478718411012xk4/?p=797c71a7c4dc455985f76f3af45256c&pi=1>

<http://www.jointogether.org/news/research/summaries/2008/hookahs-more-popular-than.html?print=t> 50

Free Quitline Information

- State has brochures on free quitline services to help people quit tobacco. 1-800-QUIT-NOW.
- Distribute to employees, human resources, members of public who visit your office, at local health fairs.
- QuitCenters in NJ offer quit services, some at reduced or no-cost based on income. Go to http://njgasp.org/quit_tobacco.htm
- Federal law that provide free quit services to persons on medicaid – watch for announcement from NJ Department of Health this month.

Smoking/Secondhand Smoke and Diabetes

- Nearly 26 million Americans are estimated to have diabetes.
- In 2009, the New Jersey State Department of Health and Human Services' Comprehensive Tobacco Control Program (CTCP) and its Chronic Disease Prevention and Control (CDPC), partnered to form the Centers for Disease Control's Tobacco-Diabetes Integration Project, under the CDC's Collaborative Chronic Disease, Health Promotion, and Surveillance Project. GASP is a Project Partner, providing resource information on tobacco prevention and diabetes, and offering advocacy training modules on tobacco control advocacy, to diabetes prevention partners.

Smoking/Secondhand Smoke and Diabetes

- If you are not diabetic, secondhand smoke can increase your risk of developing diabetes. Eliminate your secondhand smoke exposure at home, in workplaces and outdoors.
- Smoking raises your risk for diabetes complications.
 - **Smoking decreases oxygen in the tissues, which can lead to a heart attack or stroke.**
 - **Smoking increases bad (LDL) cholesterol and blood pressure, which raises your risk of heart attack.**
- Quitting tobacco (smoked and smokeless) will help lower your risk for heart attack, stroke, nerve, kidney and vascular diseases. Your cholesterol and blood pressure levels and blood circulation may improve when you quit smoking.
- Find partners in diabetes and tobacco at <http://njgasp.org/diabetes.htm>

Smoking in Hookah Lounges, Cigar Bars, Tobacco Retail Establishments

Local and county health departments:

- **Receive requests** to open up new cigar bar/lounges, hookah lounges and tobacco retail establishments that allow smoking.
- **Respond to possible violations** of cigar bars/lounges, hookah lounges and tobacco retail establishments with indoor smoking, that are not in compliance with the Act and Regulations.

NJ Lawsuits Rule in Favor of Towns

- NJ vs. Ahmed Badr, Appellate Division ruled in favor of State. August 5, 2010
 - Woodbridge health dept refused to issue TRE smoking waiver b/c business owner planned on having hookah smoking and serving food. Later, changed mind and said no smoking. Establishment opened with smoking and food.
 - Woodbridge issued citations for allowing smoking in a public place. Court held:
 - 1st citation not follow written requirements of notice, so not upheld. **Other citations were upheld.**
 - **No fundamental right to operate a business with smoking. Can still sell tobacco products, just can't smoke them inside the business.**

NJ Lawsuits Rule in Favor of Towns

- NJ vs. Kevin Lipka, Appellate Division ruled in favor of State, NJ Supreme Court denied defendant's petition, 2009
 - Go-go bar allowed smoking, after 2006 Smokefree Air Law took effect. Roxbury health department issued summons for violations on a regular basis.
 - Courts held that Roxbury summons were legal, and found in favor of Roxbury Township, awarding fines totaling more than \$36,000.
 - Defendant agreed to a payment plan to pay off fines.

2006 NJ Smokefree Air Act and 2007 Regulations

- New Jersey Smokefree air Act (“NJSFAA”) took effect April 15, 2006 (NJSA 26:3D-55 et.seq.). **“Smoking” definition includes “any matter that can be smoked...”**, e.g. cigars, water pipes (hookahs), etc.
- New Jersey Department of Health and Senior Services **adopted Regulations in May and October 2007** to help implement the NJSFAA (N.J.A.C. 8:6).
- **2007 NJ Regs explicitly state that hookah smoking** is covered by 2006 Act.
- IN 2010, the NJ Legislature amended NJSFAA’s definition of “smoking” to **include “electronic smoking devices”**.

NJSFAA: “Tobacco Retail Establishment” (TRE) exemption

To operate a TRE with smoking, 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 or denied by local/county health department via initial application and registration, and annual renewal registrations).

NJSFAA: “Tobacco Retail Establishment” (TRE) exemption

To operate a TRE with smoking, 2007 Regs require:

- **Sale of other products must be “merely incidental.”** According to NJAC 8:6-1.2b: “Incidental” is defined as **“minor and occasional. The sale of food or beverages for on-site consumption is a not an incidental sale of other products.”** Sale of coffee, desserts, even closed containers of food/drink for on-site consumption is more than incidental; TRE waiver denied.
- No date requirement (vs. cigar lounge 12/31/04).
- No ventilation or location requirements.

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

The NJDHSS intended the 2007 Regs to define TREs as:

A ‘Cash and Carry’ business: **only allows smoking inside to sample** expensive product before purchasing a larger quantity for off-premise consumption.

- “Rather, the Department believes **it is reasonable to infer that the purpose of the exemption for tobacco retail establishments was to permit retail consumers to sample cigars, which can be costly, exotic, and/or luxury items, prior to making larger purchases of multiple units.**”

(NJDHSS’ Response to comments #106/107, May 21, 2007 NJDHSS regulations. page 74)

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

Intent of ‘cash and carry’ is use products off-premises, like other retailers:

- “If a tobacco retail establishment were to determine not to claim the exemption, it would not preclude the establishment from continuing to operate and sell merchandise. It would only preclude customers from consuming on-site the retail merchandise they purchase. This may impede prepurchase sampling of products, but would otherwise be **consistent with the notion of retail stores being locations for “cash and carry” sales of goods directly to the ultimate consumers for consumption elsewhere.**” (NJDHSS’ Response to comment #1 in October 15, 2007 NJDHSS regulations, pg. 4)

“Cash and Carry” Observation

- Evidence of more than cash and carry includes:
 - Tables and chairs to encourage more than retail sales of product for off-site consumption.
 - Selling any type of beverage or food for onsite consumption, regardless of whether or not is sealed.
 - FYI, if food (even peanuts) is served, may need a food handlers' license.

Smoking in Tobacco Retail Establishments

- Local health departments are receiving more inquiries about applications for smoking waivers from businesses claiming to want to open as a tobacco retail establishment (TREs). **But for all intents and purposes, they will operate in part or full as a lounge**, e.g. hookah lounge or cigar lounge, and therefore do NOT qualify for a TRE waiver.
- **Some businesses “shop around”** to find a municipality that is not aware of the full 2007 Regulations and NJDHSS Responses to Comments that provide the intent of the 2007 Regulations.

Smoking in Tobacco Retail Establishments

- **May try to get a TRE smoking waiver**, even though the intent of their establishment is to be more than a “retailer” (retail is defined as a “cash and carry” business, with offsite consumption of sold product), and operate as a smoking lounge or nightclub:
 - Plan to provide chairs, tables to create a lounge feel that encourages more than just sampling a smoked product (TREs are only to sample for purchasing larger quantities for off-premise consumption).
 - Plan to sell drink or food for onsite consumption (TREs can’t sell these products if they want the smoking waiver).
 - Plan to have live or DJ music, cover charge.

Smoking in Tobacco Retail Establishments

- Need to enforce the 2006 NJ Smokefree Air Act.
- Need to enforce the two sets of 2007 NJ Department of Health Regulations that help clarify and implement the 2006 Act.
- Take into account the DOHSS' responses to public comments that show the intent of the 2007 Regulations, and serve as the regulatory record and history for the 2007 Regulations.
- Coordinate efforts with local zoning, business, police, fire departments.
- **All located on GASP website at**
http://njgasp.org/h_newact_intro.htm

New Hookah Lounges do NOT satisfy Smoking Waiver Requirements

- **New hookah lounges do not meet the requirements for the 2006 NJSFAA's smoking exemption for a cigar bar/lounge** (needed to exist as of 12/31/04 plus other requirements).
- **Hookah lounges do not meet the requirements of the smoking exemption for a tobacco retail establishment:** The intent of hookah lounge is not a 'cash and carry' business. The intent of the hookah lounge is to: (a) smoke the product on- premise, rather than off-premise; (b) smoke what is purchased on-premises, rather than to sample for buying larger quantities for off-premise use. **Analogy: Retail liquor store's intent is to sell for off-premise consumption.**

TREs cannot allow smoking in a separate smoking room.

- We hear of TRE applicants that want to allow for smoking in a separate room.
- This is NOT allowed under the TRE smoking waiver:
 - Waiver only for sampling product to buy more for off-premise consumption. No need for a separate smoking lounge to sample product.
 - Trying to open a cigar lounge using a TRE waiver. Violates the intent of the 2006 Act and 2007 Regs which provides for separate waiver requirements for cigar lounges/bars from TREs.

TREs may attempt to bypass local health departments or create internal conflicts

- **TRE applicants may try to bypass the local health department** by going directly to the zoning or building department to get approval of their plans, or to get conflicting approvals (zoning accepts the plan, but health dept denies the TRE smoking waiver application).
- **SUGGESTION:** Set up a meeting with your town's local zoning, building and other departments to review the strict requirements for issuing smoking waivers for TREs and cigar lounges/bars. **Coordinate with local departments to jointly review the various applications to open a new tobacco business that is applying for a smoking waiver.**

Create a Game Plan with local Zoning, Building, Fire, Police Departments

- If the applicant's plans show evidence of operating as a smoking lounge rather than a retailer, e.g. plans show seating, tables, chairs, food or beverage sales, can the departments agree to notify the establishment that their application (zoning, smoking, building) is, **for all intents and purposes, a smoking lounge which has different requirements for a smoking waiver, than a TRE.**
- If the applicant continues to file their application as a TRE without changes, it may be construed that their **application is being filed under false pretenses, to circumvent the smoking waiver requirements to operate a cigar lounge which are not available to new businesses.**

NJSFAA: Cigar Bar exemption

Requirements to be granted a cigar bar smoking exemption by a local/county health department:

➤ **Part 1 of Test. Date is time-sensitive:**

- To operate a “cigar bar” with smoking in it, must have existed as of **December 31, 2004.**

NJSFAA: Cigar Bar exemption

- **Part 2 of test: meet stringent revenue and construction requirements**
 - At least 15% of total gross revenues from sale of tobacco products (not cigarettes or vending sales), humidor rental sales.
 - Application reviewed, approved or denied by local health dept, via 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?.....***

Frequently Asked Questions....

Can I open up a new cigar bar or hookah lounge and have smoking inside? **No.**

- Don't meet 'cigar bar' exemption requirement of needing to be in operation as of 12/31/04.
- Don't meet 'tobacco retail establishment' exemption b/c TRE waiver is intended to only allow '**sampling**' of tobacco products, rather than consuming product on-premises. Intent of TRE is for '**cash and carry**', rather than consuming on-premises.
 - Evidence that TRE is unlawfully operating as a cigar bar or lounge, is witnessing furniture such as **chairs, tables, tv**, etc. for patrons to use while consuming the tobacco products indoors, shows intent to consume on-premise.

Questions asked....

My cigar lounge existed as of 12/31/04. Do I need a waiver from the local health dept to allow smoking? **Yes.**

- Need to file your waiver application with the local health dept, for their review to approve/deny, plus annual renewal application.
- Link to NJDHSS' application is on GASP website.

Can I move my existing cigar lounge (if it existed as of 12/31/04) to a new location, or expand its size? **No.**

- NJSFAA clearly states that the exemption is rescinded if the cigar bar/lounge moves or expands. 74

Questions asked....

I am applying for a TRE exemption, and will only allow sampling of tobacco products for customers to then buy more quantity for off-premise use, and I have no tables and chairs. Can I sell coffee, tea and dessert to be consumed on-premises? **No.**

- TREs that are granted a smoking waiver by a local health department are **only permitted to sell products that are “merely incidental”**.
- The 2007 NJRegs define **“food and beverage” sales as NOT INCIDENTAL.**

NJ state and local nuisance codes may apply to enforce smoking issues:

- **General Nuisance codes protect general health and welfare of people, including concerns with noxious fumes:**
 - Outdoor secondhand smoke migrates/wafts inside a public place, workplace or private place, or around an outdoor public place, creating a nuisance.
 - Control spread of infectious disease risks (TB, flu, etc).
 - Secondhand smoke issues in multi-unit housing, or neighbors with free-standing homes.

NJ state and local nuisance codes may apply to enforce smoking issues:

- **Talk with your local or county Board of Health:**
 - Add to your local nuisance code a provision that includes “smoking” and “secondhand smoke” in the definition of a private and public “nuisance”.
 - Removes the subjectivity when filing complaints in municipal court as to whether smoking or secondhand smoke is a nuisance.
 - By adding smoking and secondhand smoke to the definition of the local nuisance codes, a smoking or secondhand smoke complaint becomes a “nuisance per se”, and should be easier to enforce.

Outdoor smoking violations

- **Smoke cannot waft or migrate from outdoors, into a public place or workplace,** per 2007 NJDHSS Regulations (NJAC 8:6-2.3):
 - Exterior area of indoor public place or a workplace (a) ... smoking is prohibited at an exterior area if smoking in the exterior area **results in migration, seepage, or recirculation of smoke** to an indoor public place or a workplace at which smoking is prohibited.
- Violations can occur when secondhand smoke wafts from outside to inside:
 - **By entrances, exits, windows.**
 - **At outdoor area of restaurant/bar, into interior of restaurant/bar.**

Smoking in Tents

(event, restaurant, bar, country club)

Tents can be workplace and/or a public place that Act applies to. Can use a tent regularly, or host an event inside a tent (CIGAR DINNERS, HOOKAH EVENTS).

- **2007 NJDHSS Regs are explicit: can't smoke in open tent, so long as it has walls that can roll down.**
 - Even if roll up walls, smoking not permitted.
 - **Why?** Smoking-permitted vs. prohibited is not seasonally dependent; **if walls can be rolled down, no smoking anytime.**
- **Read local papers/online for advertising of smoking events in your town.**
- **Contact establishment** if smoking will/does take place indoors, under an outdoor tent; remind manager of law.

Outdoor Smoking Enters Residences

- Outdoor smoking areas of restaurants, bars, clubs, etc. can result in **SHS migrating into a nearby private residence:**
 - **Nuisance code may apply** (key: toxic fumes or substance).
 - **Create local/county ordinance** that specifically prohibits SHS wafting into private residences.

Sidewalk Café License Requiring 100% Outdoor Smokefree

- 2007 Regs prohibits outdoor secondhand smoke from migrating into an indoor public place or workplace.
- Outdoor café areas are usually within range of doors and windows to businesses.
- At least 23 foot smokefree buffer zone outdoors to reduce/eliminate outdoor secondhand smoke from migrating indoors.
- To ensure compliance with the 2007 Regs: **Add a requirement to the local application for a sidewalk café license that the outdoor premises be 100% smokefree.**

Voluntary Outdoor Smokefree Options

NJ owners of public places can impose a voluntary 100% smokefree property policy:

- Smoking or carrying lighted tobacco may be prohibited by the owner or person responsible for operating any public place, under NJSA 2C:33-13b and c.
- **Examples of application: Policy to create 100% smokefree property, 25-foot smokefree doorway perimeter, 100% smokefree parking lots, casino floors.**
- **NJ Smokefree Hospital Campus Collaborative led to more than 50 hospitals to go 100% smokefree campus-wide.**

TREND:

100% Smokefree Recreational Areas

2011 buzz:

- NYC's law takes effect May 2011 – requires all outdoor recreational areas under the city's dept of parks and recreation to be 100% smokefree.
- NJ state bill introduced for 100% smokefree rec areas. Senate Health Committee heard testimony on Sen. Buono's bill, February 2010 (not voted on).
- **Why attention for smokefree outdoor areas?**
- Concentrated levels of SHS outdoors, at a cafe, can equal levels inside smoking-permitted venue.
- Scientific studies conclude the need to be at least 23 feet from SHS, when outdoors.

Reasons for Smokefree Recreational Areas

- Smokefree outdoor environments promote healthy environments for adults and children, normalizing smokefree environments.
- Small children and pets ingest tobacco butts.
- Environmental concerns about tobacco litter:
 - Beaches: aquatic life harmed, pollutes waters.
 - Cigarette filters are NOT biodegradable, clogging sewer systems, etc.
 - #1 type of beach litter is cigarette butts, per Clean Water Council, #2 is tobacco litter (wrappers, lighters, etc).

Local Laws Restricting Outdoor Smoking

- More than 100 NJ municipalities ban smoking outdoors, in parks, playgrounds, beaches, etc. **Laws mostly self-enforced by public.**
- **Local outdoor ordinances by town, in Passaic County:**
 - 6 smokefree parks/ other recreational areas
 - 1 smokefree setback from city hall entrance
 - 1 smokefree municipal land
 - 5 towns in Passaic County banned smoking in government buildings, prior to 2006 state smokefree air act; extend to outdoor property by buildings? (Clifton, Paterson, Pompton Lakes, Wayne, West Milford)
- **If your Board of Health or city council is interested, GASP has an educational materials that provide technical assistance on outdoor smokefree air ordinances.**

GASP Smokefree Outdoors brochure

Smokefree Buffer Zones



- The NJSFAA bans smoking at any exterior area if smoking results in migration, seepage, or recirculation of smoke to an indoor public place or workplace where smoking is prohibited. (NJAC 8:6-2.3a and 2.3b) Smokefree buffer zones, where indoor and outdoor air are exchanged, may aid compliance with state law.
- The NJSFAA permits public and private property owners to establish stricter smokefree outdoors policies on any property they control. Many businesses have 100% smokefree campuses; others have smokefree perimeters some number of feet around all entrances or buildings.
- 29 NJ municipalities/counties require 100% smokefree perimeters around government buildings, entrances/exits, or require the entire property be smokefree.
- Smokefree perimeters around multi-unit housing can help protect residents from illness and air pollution. Learn more about smokefree multi-unit housing here: www.njgasp.org/housing.htm

Smokefree School Properties

- 100% smokefree outdoor school campuses provide safe, clean and attractive environments for students, and safe and healthful workplaces for faculty and staff.
- Six NJ colleges have 100% outdoor smokefree campus policies. Six more have smokefree policies, except private vehicles.
- Smoking is banned on all public and private K-12 school grounds, buildings and in vehicles. NJSFAA, N.J.A.C. 8:6-7.1 and 2.
- Smoking is banned in all public and private college and university buildings, including student housing. NJSFAA.



Global Advisors on Smokefree Policy (GASP) is a 35-year old nonprofit resource center, dedicated to promoting smokefree air and tobacco-free lives.

If you or someone you know wants to quit tobacco, visit njgasp.org/quit_tobacco.htm. You can also call the New Jersey Quitline for free help:

**NEW JERSEY
QUITLINE
1-866-NJ-STOPS**

Please note: The information in this brochure is not intended as, nor to be construed, or used, as legal advice, and should not be used to replace the advice of your legal counsel.

SMOKEFREE OUTDOORS



Learn about the Health Benefits of Smokefree Parks and Public Places



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Local Laws Restricting Smoking, Tobacco Sales/Marketing in Passaic County

37 tobacco control ordinances in 12 Passaic county towns:

- **6 smokefree parks/ other recreational areas** (Bloomingdale, Clifton includes e-cigarettes, Hawthorne, Ringwood, Wanaque, West Milford)
- **2 authorize recreational employees to enforce smokefree parks** (Bloomingdale, Wanaque)
- 0 require smokefree swimming pools; 0 ban smoking in cars when minors are present
- **1 bans smoking 35 ft. from city hall entrance** (Clifton)
- **1 ban smoking outdoors by muni buildings** (Ringwood)
- **5 ban smoking in gov't buildings** (Clifton, Paterson, Pompton Lakes, Wayne, West Milford)
- **2 restrict outdoor tobacco ads: 1000 ft. from schools** (Paterson), kids gather (Clifton)
- **1 bans tobacco ads on buses and taxis** (Clifton)
- **1 suspends the retail food license if sell tobacco to minors** (City of Passaic)
- **4 bans minors' public tobacco use/possession** (Bloomingdale, Pompton Lakes, Prospect Park)
- **2 ban self-service tobacco** (Clifton, Bloomingdale)
- **2 ban cigarette vending machines** (Bloomingdale, Haledon)
- **5 require locks on cigarette vending machines** (Clifton, Passaic, Paterson, Wanaque, Wayne)
- **4 restrict location of cigarette vending machines** (Clifton, Passaic, Paterson, Wayne)
- **3 require adult to sell tobacco** (Clifton, Passaic, Wayne)
- **1 requires adult to sell from vending machine** (Paterson)

0 tobacco control ordinances enacted by Passaic County Board of Chosen Freeholders

- Other counties require smokefree county recreational areas, setback from entrances to government buildings, outdoor county-sponsored events (2010 Union County ordinance).

Passaic county towns – Status on local key tobacco control ordinances

- Bloomingdale (borough) – smokefree parks
 - Macopin (community)
- Clifton (city): smokefree parks, 35 ft from city hall entrance
- Haledon (borough)
- Hawthorne (borough) – smokefree parks
- **Little Falls (township) – NONE to date**
- **North Haledon (borough) – NONE to date**
- Passaic (city) – suspends retail food license if sell tobacco to minors
- Paterson (city)
- Pompton Lakes (borough)
- **Prospect Park (borough) – NONE to date**
- Ringwood (borough) – smokefree parks
- **Totowa (borough) – NONE to date**
- Wanaque (borough) – smokefree parks
 - Haskell (community)
- Wayne (township)
 - Packenack Lake (community)
 - Pines Lake (community)
 - Preakness (community)
- West Milford (township) – smokefree parks
 - Hewitt (community)
 - Newfoundland (community)
 - Oak Ridge (community)
- **Woodland Park (formerly West Paterson) (borough) – NONE to date**

Private Settings 100% Smokefree, By Law

- 2006 NJ Smoke-free Air Act, 2007 NJ Regs, other state regs **require 100% smokefree private settings (they are workplaces)**:
 - All college dormitories, public and private.
 - Faculty housing, rectories, convents when open to public, students, or a workplace
 - Nursing homes, residential healthcare facilities
 - Drug Treatment Facilities
 - Correctional Facilities

NJ Law Requires 100% Smokefree Homes/Cars For Resource Family Children

- N.J.A.C. 10:122C-7.2(a)(3) Defines resource family homes as foster homes, adoptive homes, family friend homes and relative care homes. **NJ law requires to be smokefree:**
- Resource family **homes**
 - **Vehicles** transporting the resource family child
 - **Outdoors** when resource family child is present

<http://www.state.nj.us/dcf/divisions/licensing/RFmanual.pdf>

U.S. Surgeon General's 2006 Report on Smokefree Homes and Cars

- Concluded that smoke-free rules in homes and vehicles can reduce SHS exposure among children and nonsmoking adults (Section IV).
- **The home remains the most serious venue for secondhand smoke exposure, more so than workplaces.** In the U.S.:
 - Almost 60% of children ages 3-11 (approx. 22 million children) are exposed to SHS.
 - 25% of children ages 3-11 live with at least one smoker.

U.S. Surgeon General's 2006 Report

- Smokefree homes protect children, pregnant women, nonsmoking adults, esp. with health conditions, and sets a good example.

<http://surgeongeneral.gov/library/secondhandsmokereport> , chapters 5 and 10.

Smoking Complaints in Multi-unit Housing

- Types of multi-unit housing:
 - Apartments
 - Condominiums
 - Two-family homes
- There is no constitutional right to smoke.
- Overwhelming scientific evidence on dangerous health effects of SHS exposure.
- Our brochure, Smokefree Housing Initiatives, is available to you and tenants, property managers in hard copy, and online in English and Spanish at <http://njgasp.org/housing.htm>

Types of SHS Complaints

- **Tenant complaints that SHS migrates, wafts, seeps into common space and/or their unit**
 1. ETS drifts from private unit into an indoor common area, e.g. a shared hallway, foyer, laundry room.
 2. ETS drifts from an indoor common area, e.g. shared hallway, into a private unit.
 3. ETS drifts from one apartment/condominium to another (through floorboards, electrical outlets, shared ventilation/heating units).
 4. ETS drifts up from a private patio/balcony or window, into the private unit above.
 5. ETS drifts from an outdoor common area, into a private unit.

How is SHS entering a multi-housing unit?

- SHS migrates from indoor common area into unit:
 - Spaces around nonsmoking unit's front door
- SHS migrates from unit to unit, seeping through:
 - Floorboard spacing
 - Electrical outlets, light fixtures in ceiling/walls
 - Cracks in walls
 - Around plumbing/radiator seals
 - Shared ventilation systems (heat, air conditioning)
- SHS migrates from outdoors into unit (door, window):
 - Neighboring private balcony, patio, porch
 - Common outdoor areas around the unit

Common Areas of Multi-unit Housing Required to be 100% Smokefree

- **2006 NJ Smoke-free Air Act, 2007 NJ Regs require 100% smokefree common areas for multi-unit housing:**
 - NJSA 26:3D-57: “Indoor public place means...**apartment building lobby or other public area in an otherwise private building...**” (reiterated in NJDHSS Response to Comment #29 in 2007 Regs).
 - **Violators: Smoker** (tenant) **AND owner or person in control** (landlord, property manager, superintendent)
- **Traditional public areas:** Foyers, hallways, stairwells, laundry rooms, common rooms, elevators, etc.
- **Nontraditional shared areas** may be required to be 100% smokefree, e.g. spaces between floorboards, walls of neighboring units.

NJ SFAA Covers Workplaces: Units/Common Areas

- Private units or common areas can be places of employment.
- Workers work in common areas of multi-unit housing, e.g. **superintendent, contractors.**
- Workers work within units where smoking takes place, **social workers, contractors.**
- Enforce nonsmoking requirements under NJSFAA if workers present in common area or in unit (overseas – local laws in UK require no-smoking in units prior to, during social worker visits)

Private Units of Multi-unit Housing

- Interior of a unit is not referenced in NJSFAA.
- How else to help a nonsmoking tenant with SHS migrating into premises?
- **Be creative:** If complaint of SHS wafting into unit, good likelihood of SHS wafting into common area. **Inspect common areas, etc. for SHS.** If SHS is evident, issue notice of violation under NJSFAA for common area violation.
- Compliance with NJSFAA's restrictions in common areas may reduce smoking in smoker's unit, and help to alleviate migrating smoke into nonsmoking unit.

Nonsmoking Tenant's Role: Ask Tenant to....

- **Keep time/place log** on how often SHS enters their unit and common areas, the dates and time when noticeable, where SHS is seeping into their unit.
- **Share specific health effects** when exposed to SHS, e.g. wheeze, cough, headaches, sleep loss.
- **Share or get medical documentation** (doctor's note) that SHS exposure in their unit is causing new, or exacerbating existing health conditions.
- **Share behavioral limitations** due to SHS in unit, e.g. can't sleep in smoky bedroom.
- **Share damage to personal belongings**, e.g. clothing in closets smell of SHS, furniture, rugs.

Refer Tenant to GASP Re: Other Options

- All tenants entitled to implied covenants warranted by a landlord, with or w/o a lease:
 - **Implied warranty of habitability**
 - **Implied warranty of quiet enjoyment**
- Tenants with a lease: most leases contain express covenants warranted by a landlord:
 - **Express warranty of habitability**
 - **Express warranty of quiet enjoyment**
- When SHS migrates into unit, and causes limitations on use of rented space, landlord may be in breach of warranties.

- Condominium association regulations may contain provisions against nuisance and disturbance of neighbors.
- If lease contains a nonsmoking provision, tenant can enforce against landlord and/or tenant, depending on lease language.

- Additional common law (court cases) causes of action: trespass (SHS enters unit).
- Legal cases rule in favor of nonsmoking tenants and condominium owners, in New Jersey and in other jurisdictions.
- Contact GASP for more details.

- During inspection, find evidence that landlord/property manager in compliance with NJSFAA's requirement to post no-smoking signs at in hallways, common areas.
- Additional signs can be posted outside by entrances, to inform residents/visitors to refrain from smoking outdoors near entrances, exits, windows.

- Offer information on cessation programs to tenants who smoke and would like to quit. Health educator has materials, plus online info.
- The NJ State Department of Health offers free and low-cost quit services at nj.quitnet.com. Contact GASP for details.
- If landlord/property manager interested in creating a smokefree policy for the multi-unit building, contact GASP about our 2010 Smokefree Multi-Unit Housing Initiative (go to <http://njgasp.org/housing.htm>)

Limit Liability of Property Managers, PHA

Help avoid potential legal liability due to nonsmoking tenants' exposure to SHS:

- Complaints under the Fair Housing Act
- Laws against Discrimination:
 - Violations of NJ Law Against Discrimination
 - Violations of federal 2009 Americans with Disabilities Act Amendment Act

GASP Multi-Unit Housing brochure (English and Spanish)

Libre el humo de segunda mano

Segunda mano puede filtrarse a través de los conductos de la iluminación, a través de grietas en las paredes y alrededor de las tuberías y cañerías, debajo de las alfombras y a través de la ventilación compartida y puede penetrar por los materiales de construcción y ingresar por las viviendas adyacentes.

Existe un nivel seguro de exposición al humo de segunda mano en el ambiente (Informe de la Dirección General de los Estados Unidos, 2006).

El humo de segunda mano es un agente cancerígeno de clase A. (Agencia de protección ambiental de los Estados Unidos).

El humo de segunda mano empeora y aumenta el riesgo de sufrir enfermedades crónicas tales como asma,

Exposiciones al humo de segunda mano (SHS)

Para propietarios/condominios:

Pregunte al propietario o administrador de propiedades para instituir una política de libre humo de segunda mano.

Documente cómo a menudo el humo de segunda mano entra en su hogar, las fechas y el tiempo cuando es perceptible, dónde está el humo de segunda mano, y cómo afecta a usted y a su familia.

Identifique a los vecinos que también pueden estar expuestos.

Second- and Third-hand Smoke

- SHS enters adjoining units: seeps through lighting fixtures, wall cracks, shared ventilation, around plumbing and doors.
- There is no known safe level of exposure to SHS, a Class A human carcinogen. SHS aggravates and increases the risk of chronic diseases including asthma, allergies, heart disease, pneumonia, emphysema, lung cancer, chronic bronchitis and diabetes. (2006 U.S. Surgeon General's Report).
- Third-hand smoke is residual SHS that is embedded in upholstery, rugs, walls and other surfaces. New studies indicate that third-hand smoke may be more dangerous than second-hand smoke does not



INICIATIVA 2010 VIVIENDAS LIBRES DE HUMO

Para propietarios y administradores de viviendas

SMOKEFREE HOUSING



For Multi-unit Residential Property Managers, Owners and Developers, Housing Industry Professionals, Tenants and Policy Makers

Learn about Smokefree Policies for Multi-unit Housing

Policy (GASP) is

2009 Americans with Disabilities Act Amendment Act

- Amended in January 2009 to now allow for:
 - Perceived disabilities
 - Intermittent disabilities
- Person who is breathing disabled permanently, or temporarily brought on by SHS exposure, cannot be discriminated against.

Smokefree Public Housing Initiative

- In recent years, Public Housing Authorities (PHAs) across the nation have taken the initiatives to create smokefree housing policies (house rule or lease amendment).
- Behavior of smoking is restricted; not banning the person who smokes.
- As of January 2011, 230 PHAs in 27 States have a smokefree policy for some or all units in their buildings.
- **9 NJ PHAs have a smokefree policy:**
 - **2 are 100% smokefree (Highlands covers 95 senior housing units, 2 of 3 complexes in Madison)**
 - **9 are mostly smokefree (grandfathered in smoking tenants)**

High Market Demand for Smokefree Units

- Cliffside Park, Paterson, Summit and Woodbridge PHAs report approximately 90% of their units were nonsmoking by choice, prior to their smokefree policy (grandfathered smoking current tenants).
- **6 NJ affordable/senior housing complexes (not PHAs) have 100% smokefree policy.**
- **5 NJ market rate housing complexes have 100% smokefree policy; 2 includes grounds; 2 include smokefree footage perimeter around buildings.**
- 80+% of New Jerseyans are nonsmokers; 70% of smokers want to quit.
- Fewer units vacated in a smokefree building; no smoke seepage problems that cause tenants to move.

Why smokefree multi-unit housing?

- **HUD “Strongly encourages” housing authorities to create smokefree policies for private units and common areas.** U.S. Department of Housing and Urban Development (HUD), July 2009 Notice; reiterated and clarified in 2nd HUD Notice issued September 2010.
- **HUD Healthy Homes program**, supported by U.S. Surgeon General.
- **EPA/HHS Smokefree Homes and Cars Program for *Head Start Families*.**

On July 17, 2009, HUD issued a Notice:

- “***PHAs are permitted and strongly encouraged*** to implement a non-smoking policy at their discretion”
- “... in some or all of their public housing units”
- “... this notice will enhance the effectiveness of the Department’s efforts to ***provide increased public health protection for residents of public housing.***”
- “***Smoking is also an important source of fires*** and fire-related deaths and injuries.”(emphasis added)

July 2009 HUD Notice refers to U.S. Green Building Council, Indoor Air Quality (IAQ) requirements:

- “[Environmental Tobacco Smoke] ETS is known to be an indoor air pollutant; as a ***result it would be difficult for a PHA to achieve good IAQ in its buildings if residents are allowed to smoke,*** especially indoors. “
- “If a PHA does conduct renovations to improve IAQ ***without also implementing a non-smoking policy, the IAQ benefits of the renovation will not be fully realized.***”
- ***A non-smoking policy is an excellent approach*** for those PHAs that are trying ***to achieve improved IAQ without the retrofit costs.***

“Green” Incentives benefit local PHA

- **Educate local PHAs and MUH builders on funding incentives linked to smokefree housing policies:**

- HUD 2009 Notice of Funding Availability (NOFA) for Capital Fund Recovery Competition Grants under the American Recovery and Reinvestment Act of 2009. Awarded PHA applicant 1 point if agreed to **“enforce a ‘no-smoking’ policy in all common and individual living areas in all buildings”**.

<http://www.hud.gov/offices/pih/programs/ph/capfund/ocir/recoverynofa.pdf>,
Notice for "**Strategy for Green Communities**" pg. 79.

- Green Communities grant/loan criteria 7.17 awards up to 2 points if applicant has 100% smokefree policy.

http://www.greencommunitiesonline.org/tools/criteria/green_communities_criteria_2008.pdf

HUD Healthy Homes Program

- **Tobacco smoke is listed on HUD's website as a trigger for allergies and asthma.**

<http://www.hud.gov/offices/lead/healthyhomes/allergens.cfm>

<http://www.hud.gov/offices/lead/healthyhomes/asthma.cfm>

- **HUD's strategic plan for their *Healthy Homes program*, supports the Surgeon General's June 2009 *Call to Action to Promote Healthy Homes*:**

<http://www.surgeongeneral.gov/topics/healthyhomes/transcript.html>

<http://www.hud.gov/offices/lead/hhi/index.cfm>

<http://www.hud.gov/offices/lead/healthyhomes/index.cfm>

HUD Healthy Homes Program

- The fifth of HUD's *Seven Healthy Homes Principles* addresses secondhand smoke:

"Keep your home Contaminant-Free: Chemical exposures include lead, radon, pesticides, volatile organic compounds, and **environmental tobacco smoke. Exposures to** asbestos particles, radon gas, carbon monoxide, **and second-hand tobacco smoke are far higher indoors than outside."**

Reduced Fire Risk and Damage

- Smoking is lead cause of residential fires.
- Smoking near portable oxygen equipment has resulted in explosions and fires.
- National Fire Prevention Association recommends no smoking during home oxygen use in any portion of a residence.

Local/County Health Departments Promote Smokefree Multi-unit Homes

- **Educate your PHA on 2009/2010 HUD Notices:**
 - PHAs can create a 100% smokefree “**house rule**” or **model lease policy**:
 - GASP can provide models/samples
 - **Grandfathering** current smoking tenants only required for as long as the NJ state law requires.
 - **See GASP’s Smokefree Multi-unit housing brochure** for step-by-step process at <http://njgasp.org/HousingBrochure2009.pdf>
 - **Contact GASP to provide technical assistance to PHAs** about implementing a smokefree policy.

SMOKEFREE CARS FOR KIDS.....

9 Laws in U.S. that ban smoking in cars when children are present

- Arkansas – under age 6 or 60 pounds in weight
- California – under age 18, 2008
- Louisiana – under age 13, 2006
- Maine – under age 16, 2008
- Bangor, Maine – under age 18, 2007
- **Keyport, NJ – under age 18, 2007**
- Monroe County, Indiana, under age 14, 2009
- Rockland County, NY – under age 18, 2007
- **West Long Branch, NJ - under age 18, 2007**

- NJ State bills A1591/S475 would ban smoking in cars when children are present.
 - Pre-filed for 2010-11 legislative session, await posting for committee hearing/vote.

Protecting children from SHS in cars

- Legal/Ethical/Moral – Government obligation to ensure a child is in a safe and healthy environments, including private settings like cars.
- Small children cannot communicate, or fearful to talk.
- Consistent with what children are taught in school, that SHS is harmful, which may prevent a child from starting to smoke.

- Children exposed to SHS may have increased medical and healthcare costs covered by state or federal government.
- Judicial notice of the harm of SHS is applied in child custody and visitation matters (court considers data as an undisputed fact).
- Some smokefree car laws do not require a parent to quit smoking, just forego smoking in the car.

Public support for smokefree cars for children

Smokers and Nonsmokers support:

- Arkansas survey: 73% support (2008)
- Canadian Cancer Society survey: support of 82% nonsmokers, 69% of smokers (2008)
- Ontario survey: support of 81% nonsmokers, 66% of smokers (2007)
- Western Australia: support of 87% of nonsmokers, 80% smokers
- Queensland, Australia: 89% support (2008)

Air testing studies of vehicle interiors, when exposed to SHS

- *Nicotine and Tobacco Research* (Sendzik, Fong, Travers and Hyland), April 2009
- *European Respiratory Journal*, April 2009
- Harvard School of Public Health (2006)
- University of Waterloo / Roswell Park Cancer Institute
- Wellington School of Medicine, New Zealand
- Australia

**ALL CONCLUDED HIGH LEVELS OF SHS
MEASURED IN CARS TESTED**

Air testing studies of vehicle interiors, when exposed to SHS

- Ontario Medical Association concluded that SHS exposure in cars may be 23 times greater than in a home (2004).
- New Zealand study found that being in a car with a smoker was the equivalent to sitting in a smoky bar, even with the car window fully down (2006).
- Australian study found that exposing 14 year old asthmatics to SHS in cars doubled their risk of wheezing (2006).

2005 study shows high smoking rates in cars with kids

A 2005 study of 1,770 parents and guardians in NJ and NY:

- children were exposed to SHS in more than 50% of family cars and 40% of homes
- despite health warnings about the hazards of SHS.

(see Families, Systems & Health, Spring 2005, published by American Psychological Association).

Medical and public health community support for smokefree cars

- U.S. Surgeon General's Report; EPA
- CDC Recommendations
- World Health Organization
- Canadian Medical Association, 2007 meeting: recommend nationwide ban on smoking in cars

2007 U.S. Surgeon General's campaign for smokefree homes and cars

- Announced September 18, 2007.
- Goal: reduce SHS exposure to children younger than 7 years old, to 6% by 2010.
- Partner with parents and community groups.
- Pediatricians to screen children for parents who smoke, distribute cessation materials.
- Sabemos “We Know” toolkit for Hispanic community, on protecting children from SHS.
http://www.cdc.gov/tobacco/secondhand_smoke/sabemos/

2007 U.S. EPA Campaign: Smoke-free Homes and Cars Program

- Outreach to 1 million Head Start families:
 - Community events
 - Brochures, placemats, decals
 - Smokefree homes action kit CD-Rom
 - Pledge posters
 - Booklets on local programs promoting smokefree homes
- Local health depts can outreach to local Head Start agencies; put in touch with GASP.

<http://www.epa.gov/smokefree/>

<http://www.epa.gov/iaq/headstart/index.html>

<http://www.epa.gov/smokefree/publications.html>



Support from Global Health Experts

- UICC World Cancer Campaign 2007-2012:
 - Theme is “Today’s children, tomorrow’s world”
 - “To provide a smokefree environment for children (‘no smoking in homes’)”

<http://www.worldcancercampaign.org/>

WHO Policy Recommendation #4

May 2007

- Use public education to reduce smoking in the home: smokefree legislation increases the likelihood that people will make their homes smokefree. (p. 6)
- “Policies need to be developed to address this setting, if public health is to be adequately protected.” (p. 21)

Health Impact on Pets: Smokefree homes and cars

- 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.

2002 American Journal of Epidemiology

<http://news.bbc.co.uk/2/hi/health/2165722.stm>

www.livescience.com/animals/070831_pets_smoking.html

Smokefree homes and cars for pets

- Pets can develop respiratory infections, lung inflammation or asthma when breathing in SHS.
- Tobacco, cigarette butts, chew and other tobacco products are attractive to pets. If eaten, these items could be also be toxic to pets.

www.fluffyquits.com, Erie-Niagara Tobacco-Free Coalition, New York



I love you...



...but the smoke is *killing* me!

Remember, when you smoke
so does your pet!



WNY
Veterinary
Medical
Association



Erie-Niagara
Tobacco-Free
Coalition



For help call
1.800.QUIT.NOW

SMOKEFREE and SO FREAKIN' HAPPY



Fluffy  **Quits**
FluffyQuits.com

Smokefree Cars for Children: Resources

- New Jersey GASP (supporting studies, track list of jurisdictions that require smokefree cars, foster homes) www.njgasp.org
- New York: (Creating smokefree cars, list of action items, making pledges) www.smokefreehome.org/car2.htm
- California KISS program (Protecting Kids from Secondhand Smoke) www.kiss.org
- California's Clean Air Project www.ccap.etr.org
- California Department of Health
- California EPA Air Resources Board
- www.tobaccofreecatalog.com

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