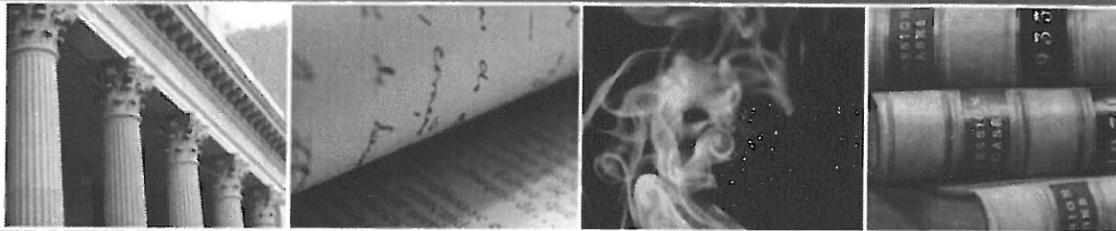




ATTACHMENT G
Tobacco Control Legal Consortium, "Regulating Hookah and Waterpipe Smoking"

AGENDA ITEM NO. 2



Regulating Hookah and Waterpipe Smoking

The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to provide a starting point for jurisdictions and organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures.¹ For more details about these policy considerations, please contact the Consortium.

Hookah and Waterpipe Smoking

In recent years, there has been an alarming rise in waterpipe smoking in the United States, especially among college students and other young adults.² Also known as hookahs or nargiles, these devices are used to heat and smoke a flavored tobacco product called shisha.³ Shisha is typically shredded tobacco leaf flavored with molasses, honey, or dried fruit. Shisha is heated, rather than burned, and the resulting smoke is cooled by water before it is inhaled.



Although hookah smoking is just as harmful as smoking cigars or cigarettes, the use of hookahs may not be adequately covered under existing smoke-free laws.⁴ This brief guide provides information for communities to consider when addressing the health concerns associated with hookah smoking.

Policy Benefits

Regulating public hookah smoking protects community health. Current science shows that hookah smoking carries the same or similar health risks as cigarette smoking and may, in fact, be even more damaging. Hookah smoke contains significant amounts of nicotine, tar, heavy metals, and carcinogens.⁵ The smoke may also contain charcoal or cinder elements that release chemicals, such as carbon monoxide and metals, when burned.

Further, unlike smoking a cigarette, which typically takes less than ten minutes, a hookah session may last an hour or more. Due to the longer, more sustained period of inhalation, hookah use may actually increase exposure to the

carcinogens in tobacco. In fact, a hookah smoker may inhale as much smoke during one hookah session as consuming 100 cigarettes.⁶ In addition, the social aspects of hookah use, including shared pipes and mouthpieces and warm, moist smoke, may place hookah users at risk for other types of infections and diseases, such as herpes, hepatitis, and tuberculosis.⁷ Creating or amending a law or ordinance to clearly limit the public use of hookahs helps to reduce these public health risks.

Policy Elements

A comprehensive smoke-free policy will be clear and unambiguous in its coverage of hookahs. Smoke-free policies generally address hookahs by either (1) specifically defining hookahs and explicitly prohibiting their use, or (2) creating broad definitions of “smoking” that encompass hookahs. Examples of each approach are included in the table below.

The preferred practice is to create a broad definition of “smoking” that describes the types of behavior or harms to be avoided, rather than focusing on the product. This prevents future business owners from attempting to circumvent the smoke-free law with technical changes to the product. For example, consider the following language, adapted from Hawaii’s smoke free law:

“Smoke” or “smoking” means inhaling or exhaling the fumes of any organic or synthetic material, including but not limited to plants, herbs, or tobacco, or possessing any product, device, or equipment producing smoke or vapors intended to be inhaled or exhaled.

A broad definition like this covers hookahs, whether or not the shisha contains tobacco, and also covers electronic cigarettes (“e-cigarettes”) and any future synthetic materials that might be developed to evade smoke-free laws. It focuses on the acts of inhaling and exhaling, rather than attempting to identify the myriad of ways and products used to create smoke.

Challenges

A key legal issue relating to regulation of hookah smoking is whether such activity is covered under a state clean indoor air statute or a local smoke-free ordinance. A significant challenge for enforcement of existing smoke-free laws is that hookah bars and lounges have often been able to evade compliance. Some hookah establishments have qualified for retail tobacco store or cigar bar exemptions. Other hookah establishments have argued that because shisha is heated, rather than lit or burned, it falls outside the applicable law’s definition of “smoking.” Lastly, some hookah bars have claimed to sell only non-tobacco shisha, which exempts them from regulation.

The strongest and most efficient solution to these problems is to craft a definition of “smoking” that includes shisha and is flexible enough to adapt to future products. Additionally, any exemptions for cigar bars or retail tobacco stores should be narrowly crafted to avoid allowing hookah bars to qualify.

Select Legislation and Policies

Below are examples of smoke-free policies from various state and local jurisdictions that have addressed hookah smoking. If you consider adapting any language from these policies, take care to ensure the provision in question is practical and legal in your jurisdiction. Please note that the Legal Consortium does not endorse or recommend any of the following policies. These examples are included simply to illustrate how various jurisdictions have approached similar issues.

Locality/State	Ordinance/Statute	Definition
Gainesville, Florida	Gainesville Ord. § 11.5-40	“Smoke” or “smoking” shall mean the intake and exhalation by a person of smoke from tobacco, a tobacco substitute or other weed or plant, and also possessing, carrying, holding or otherwise having control of a lighted pipe, cigar, cigarette or other lighted smoking equipment.
Hawaii	HAW. REV. STAT. § 328J-1	“Smoke” or “smoking” means inhaling or exhaling the fumes of tobacco or any other plant material, or burning or carrying any lighted smoking equipment for tobacco or any other plant material.
Illinois	410 ILL. COMP. STAT. § 82/10	“Smoke” or “smoking” means the carrying, smoking, burning, inhaling, or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted smoking equipment.
Massachusetts ^b	MASS. GEN. LAWS ch. 270 § 22	“Smoking” or “smoke,” means the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.
Medford, Massachusetts	Medford Ord. § 58-42	“Smoking” or “smoke” means the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted or inhaled. This includes all activities such as inhaling, exhaling, chewing, burning or carrying any lighted cigar, cigarette, weed or other plant in any manner or in any form.
New Hampshire	N.H. REV. STAT. § 155:65	“Smoking” means having in one's possession a lighted cigarette, cigar, or

New Jersey	N.J. REV. STAT. § 26:3D-57	pipe, or any device designed to produce the effect of smoking. “Smoking” means the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked.
Ohio	OH. REV. CODE § 3794.01(A)	“Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant. “Smoking” does not include the burning of incense in a religious ceremony.
Rhode Island	R.I. GEN. LAWS § 23-20.10-2(14)	“Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form; provided, however, that smoking shall not include burning during a religious ceremony.

Other Helpful Resources

The Consortium’s parent organization, the [Public Health Law Center](#), has a [webpage](#) containing information on waterpipe usage and associated health harms. [Americans for Nonsmokers’ Rights \(ANR\)](#) provides a [model smoke-free ordinance](#) with suggested language for addressing hookahs and other issues. ANR also has a [hookah bars webpage](#) with background information and recent news about hookahs, including new scientific studies. The [Mayo Clinic website](#) addresses some of the common and unfortunate misconceptions about hookah smoking, such as the notion that it is less harmful than cigarette smoking because the water filtration system and extended hose filter out harmful agents.

Contact Us

Please feel free to contact the Tobacco Control Legal Consortium at (651) 290-7506 or publichealthlaw@wmitchell.edu with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy.

- ¹ The information contained in this document is not intended to constitute or replace legal advice. We encourage anyone considering the implementation of any tobacco-related law or policy to seek out local legal counsel to obtain legal advice on these issues.
- ² Madonna Behen, *Hookahs an Unhealthy Hit Among Privileged Young Adults*, BUSINESSWEEK, May 10, 2010, available at <http://www.businessweek.com/lifestyle/content/healthday/638918.html>; Wendy

Koch, *Hookah Trend is Puffing Along*, USA TODAY, Dec. 28, 2005, available at http://www.usatoday.com/news/nation/2005-12-28-hookah-trend_x.htm.

³ Shisha usually contains tobacco, although some varieties claim to be tobacco-free.

⁴ James Romoser, *No Ban Here: Some Hookah Bars Are Simply Ignoring State's New No-Smoking Law*, WINSTON-SALEM JOURNAL, Jan. 11 2010, available at <http://www2.journalnow.com/content/2010/jan/11/no-ban-here-some-hookah-bars-are-simply-ignoring-s/news/>.

⁵ American Lung Ass'n, *An Emerging Deadly Trend: Waterpipe Tobacco Use* (Feb. 2007), available at http://slati.lungusa.org/reports/Trend%20Alert_Waterpipes.pdf; American Cancer Society, *Waterpipe (Hookah) Factsheet* (2005), available at http://www.worksmokefree.com/ResearchCenter_pdfs/2015%20waterpipe%20fact%20sheet%20%28acs%2004%2008%29.pdf.

⁶ World Health Org., *WHO Study Group on Tobacco Product Regulation, Advisory Note: Waterpipe Tobacco Smoking: Health Effects, Research Needs and Recommended Actions by Regulators* (2005), available at http://www.who.int/tobacco/global_interaction/tobreg/Waterpipe%20recommendation_Final.pdf.

⁷ American Lung Ass'n, *supra* note 4; U.S. Dep't of Health & Human Services, Centers for Disease Control & Prevention, *Hookahs Fact Sheet* (April 2007), available at http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs.htm.

⁸ While the Massachusetts law may be susceptible to challenges because of its use of the word "lighted," the state Department of Health has determined that the law's smoking definition includes hookahs. Mass. Dep't of Health, *Hookah Bars and the Massachusetts Smoke-free Workplace Law* (Oct. 2007), available at http://www.mass.gov/Eehhs2/docs/dph/tobacco_control/faq_hookah.rtf.

