



State of New Jersey

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OFFICE OF LOCAL PUBLIC HEALTH

ADMINISTRATIVE ADVISORY

2011-001

SUBJECT: Hookah Bars

EFFECTIVE DATE: Immediate

EXPIRATION DATE: None

AUTHORITY: *New Jersey Smoke-Free Air Act, N.J.S.A. 26:3D-55 et seq. and Smoke-Free Air, N.J.A.C. 8:6.*

BACKGROUND: The Office of Local Public Health has learned from various sources that some local health agencies (LHA) are allowing hookah bars to operate in their jurisdictions.

A "hookah," also known as *narghile*, *argileh*, *shisha*, *hubble-bubble*, and *goza*, is a water pipe with a smoke chamber, a bowl, a pipe and a hose. Specially made tobacco (known as *shisha*) is heated, and the smoke passes through water and is then drawn through a rubber hose to a mouthpiece. The smoking of a hookah is a practice begun over four centuries ago in India, the Middle East, and Northern Africa. Shisha is often flavored with molasses, fruit pulp, mint, or honey. This provides it with a sweeter smell and more appealing taste.

In many cities though, hookah lounges have been growing in popularity. From the year 2000 to 2004, over 200 new hookah cafés opened for business, most of them targeted at young adults and located near college campuses or cities with large Middle Eastern communities. This activity continues to gain popularity within the post-secondary student demographic. According to a 2011 study, 40.3 percent of college and university students surveyed had smoked tobacco from a hookah.

Insofar as the smoking of tobacco indoors is banned in New Jersey, the owners and/or operators of hookah bars are under the mistaken impression that using non-tobacco shisha is permissible. As such, customers are using such non-tobacco smoking products as *Hydro Herbal* which is made from pressed sugar cane and *Soex*, one of the first herbal brands.

Contrary to ancient lore and popular belief hookah smoking is not safer than cigarette smoking. Hookah smoking material (whether tobacco or non-tobacco) is very moist and usually sweetened with either molasses or fruit. Because it doesn't remain lit independently, smoking a hookah requires a piece of lit charcoal to be placed on top of the material, usually with a perforated piece of aluminum foil sandwiched between the two and the sustained burning of the

charcoal carries the risk of extended exposure to carbon monoxide (CO) and polyaromatic hydrocarbons (PAH). Even at low levels of exposure, both CO and PAH have corrosive and carcinogenic properties, just like most combustion by-products. Hookahs require smokers to inhale more deeply than cigarettes, thus exposing deeper tissues of the respiratory tract to a myriad of chemicals. Secondhand hookah smoke contains carcinogens and has been linked to heart attacks and cancer. Infectious disease can be spread if the hookah is not cleaned properly. The World Health Organization (WHO) estimates that 17 per cent of tuberculosis cases in the eastern Mediterranean are attributable to the smoking of water pipes.

NEEDED ACTION: Determine whether there are any hookah bars located within your jurisdiction. If any are identified, the person in charge (PIC) of the establishment must be informed that the use of hookahs for smoking – whether tobacco or non-tobacco products -- is strictly prohibited by the *New Jersey Smoke-Free Air Act, N.J.S.A. 26:3D-55 et seq.* Becoming effective on April 15, 2006, the Act ¹ defines “smoking” as “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.**” *N.J.S.A. 26:3D-57. (emphasis added).* Clearly, the Legislature did not limit the definition of smoking to tobacco products. The Act prohibits smoking “in any indoor public place or workplace, except as otherwise provided in the act.” *N.J.S.A. 26:3D-58a.* The only exceptions are: (1) casino floors, (2) cigar bars and lounges which make 15 per cent of their income from tobacco products, and (3) tobacco retail establishments whose primary sales are from tobacco products. “Primary sales” is defined as greater than or equal to 51 per cent. Clearly, the Legislature provided exemptions, but none of them are applicable to a hookah bar.

In *State v. Badr* [2 A.3d 436 (2010) 415 N.J. Super. 455] the defendant, the owner of a coffee shop and hookah bar in Woodbridge, argued that because the definition of “smoking” contained in the statute included “any other matter that can be smoked,” the statute is both overbroad and vague. The Court did not agree.

However, the Court did note that, pursuant to the Act, “fair warning” is required prior to written notification of prohibited conduct, *viz.*, “[u]pon written complaint or having reason to suspect that an indoor public place or workplace covered by the provisions of this act is or may be in violation of the provisions of this act, [the local board of health] **shall, by written notification,** advise the person in control of the place accordingly and order appropriate action to be taken. A person **receiving that notice who fails or refuses to comply with the order** is subject to [a fine and may be ordered by the court to comply immediately with provisions of the Act.]” *N.J.S.A. 36:3D-62(b) (emphasis added).*

ENFORCEMENT PROCEDURE: Before a person is subject to any fine, the enforcing agency must provide written notification that his or her conduct “is or may be” in violation of the Act. It is only after receiving that notice and failing to comply with the order that a penalty may be imposed.

If the person in charge fails or refuses to comply with the order only **after** having received written notice thereof, that person is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense, and \$1,000 for each subsequent offense. In addition to the penalty, the court of competent jurisdiction may order immediate compliance.

The proceedings shall be summary and in accordance with the *Penalty Enforcement Law of 1999, N.J.S.A. 2A:58 – 10 et seq.*

¹ The Act was amended effective July 10, 2010 to include the banning of the use of electronic smoking devices in indoor public places.