

Stony Brook University
University Senate
Campus Environment Committee
Smoking Policy Subcommittee
Final Report
May 1, 2008

Executive Summary

The committee's proposal is stated below and should be approved as written.

Effective Fall 2008 smoking will be prohibited within 20 feet of all building entrances throughout the University and in the academic mall except in clearly designated area(s). Individual campuses may enforce stricter smoking policies as indicated. In accordance with SUNY policy, smoking is prohibited in all indoor areas, including all residence halls and apartment complexes throughout the University, with the exception of the Long Island State Veterans home. This policy will must be reviewed after a five year period but may be reviewed at any time to assess the impact and effectiveness of the new rules Smoking cessation assistance is available through the New York State Smokers Quitline by calling 1-(866)-697-8487 or online at www.nysmokefree.com.

Note: All residents of the State of New York, including faculty, staff, students, patients and visitors to the Stony Brook University campus have access to the New York State Smokers Quitline. For many requests, the caller will be referred to local resources.

These more stringent guidelines on smoking at Stony Brook University are necessary updates to a smoking policy that has not been updated since 1997. Through this policy, Stony Brook University affirms its obligation to the health and safety of Stony Brook students, faculty, staff, and visitors. But, most of all the university must provide a clean and healthy environment for all members of the campus community. The key elements for a successful smoking policy are the placement of no smoking signs at building entrances and affixing cigarette receptacles to the ground or to other immovable objects so as to make the policy easier to enforce. The goal is to keep smoke away from areas where students tend to congregate.

Implementing the new policy will require the cooperation of the Facilities and Campus Residence staff in placing no smoking signs at building entrances and affixing cigarette receptacles to immovable objects. The implementation of this policy will result in the improvement of the quality of life, health, and safety of all members of the University community and our guests. It will also create further disincentives for smokers to smoke and increase awareness of smoking cessation programs available to smokers.

In 2006 the U.S. Surgeon General called nicotine addiction a serious public health problem based on irrefutable research. In particular, it was reported that secondhand smoke can negatively impact the health of nonsmokers. As tobacco users are not a protected class under the U.S. Constitution, local government does have the right to minimize the risk of second hand smoke through the restriction of cigarette use by its constituents. However, based on the severity of the

addiction, likelihood of relapse, and sizeable number of smokers, the development of a full media campaign for the benefit of all stakeholders should take place with the implantation of this more restrictive policy. This policy is seen as a balance that both increases public safety and allows for individual behavior.

Relevant History:

During the first quarter of 2007, a subcommittee of the Campus Environment Committee presented the University Senate with a proposal to ban smoking at Stony Brook University. The University Senate, after hearing arguments from the committee Chair, members of the undergraduate group Breaking Away from Tobacco, and a co-signer to the Minority Report of the committee, did not pass the proposal 16-17-2. The Smoking Policy Subcommittee began its work in the Fall of 2007 to develop a smoking policy that is fair to all stakeholders at the University.

The subcommittee was formed and intentionally included representation from campus administration, graduate and undergraduate students, the hospital, plus members of the greater Long Island community. Of the 27 members, 12 are students and three are not affiliated with the university. Besides the committee members, five campus administrators were identified as consultants in regard to their areas of expertise. Much of the committee research was carried out by Michael Cohen, a graduate student in the School of Social Welfare. (Details on the committee membership are provided in Attachment C). The subcommittee met eight times. These meetings were held on September 21, December 5, 2006; January 23, September 19, October 17, November 14, and December 12. The committee then met again on February 27, 2008, to finalize the products that resulted from the charges to the committee. These products are included in this report. During these meetings spanning four academic semesters, a number of reports and documents related to secondhand smoke were presented, which can be found in the attachments.

**CAMPUS ENVIRONMENT COMMITTEE
2006/2007**

Charge: This Committee shall examine all aspects of the campus environment, including but not limited to safety, security, facilities planning, state of facilities, and general appearance of the campus. It will consult with and advise the Assistant Vice President for Facilities and Services.

List of Attachments

<u>Attachment</u>	<u>Title</u>	<u>Page Number</u>
A	Draft Policy Statement	4
B	Media Campaign	7
C	Smoking Policy Subcommittee Roster	9
D	GSO Resolution 9/12/2006	12
E	GSO Resolution 10/10/2006	13
F	SUNY Student Assembly Resolution	14

G	SUNY Residence Hall Smoking Policy	15
H	2006-07 Smoking Ban Subcommittee Minority Report	17
I	Smoking Policy Subcommittee Resolution 11/14/2007	20
J	2006-07 Smoking Ban Subcommittee Final Report	21
K	NYS Clean Indoor Air Act	29
L	Suffolk County Sanitary Code	37

Draft Policy Statement

SMOKE -FREE UNIVERSITY P112

Issued by: (Pending)

Approved: (Pending)

The University recognizes the serious and substantial public health risk and productivity problems caused by smoking. In an effort to create a healthful, comfortable and productive environment for all students, faculty, staff and visitors, the University adopts this smoke-free policy. This policy applies to all students, faculty, staff and visitors at Stony Brook and all University buildings and facilities. The policy applies to all of Stony Brook University's campuses. Individual campuses may choose to enforce stricter policies through their respective governing bodies.

1. Smoking is prohibited in all indoor locations including but not limited to:

- classrooms, lecture halls, auditoriums and libraries;
- laboratories, shops, computer rooms and studios;
- offices, meeting rooms and lunch rooms;
- dining facilities, lounges and rest rooms;
- lobbies, foyers, and waiting rooms;
- hallways, stairwells and elevators;
- maintenance areas, mechanical and storage rooms;
- stadiums, gyms and physical activity centers;
- theaters and exhibit halls;
- residence halls and apartment complexes.

2. Smoking is prohibited in all enclosed areas including but not limited to:

- building entrances and covered walkways;
- loading docks and parking garages;
- courtyards and patios.

3. Smoking is prohibited in the following outdoor locations:

- at any outdoor event with seating;
- within 20' of any outdoor area with seating;
- within 20' of any building entrance or ventilation system;
- on the academic mall.

(see exceptions in section 8).

4. Smoking is prohibited in all University vehicles including buses, vans, cars and trucks.

6. The sale of cigarettes and other tobacco products is prohibited anywhere on University property.

7. Cigarette advertisements must not be publicly displayed at the University.

8. Exceptions: Smoking will be permitted in the following areas provided that all conditions are met.

A) Long Island State Veterans Home (LISVH) Residents' Smoking Lounge;

B) Clearly designated smoking area(s) on the academic mall.

DEFINITIONS:

Smoke-Free: The establishment of an environment that is free of smoke through the prohibition of smoking.

Smoking: The burning of a lighted cigar, cigarette, pipe or any other tobacco product.

Academic Mall: An area stretching between the Earth Sciences and Administration buildings & between The Staller Center and Computer Science buildings.

PROCEDURE:

1. The Physical Plant shall ensure that signs reading NO SMOKING WITHIN 20 FEET OF ENTRANCE are posted at all building entrances and at other strategic locations.

2. The Physical Plant shall provide and affix receptacles with signs reading HAVE YOU THOUGHT ABOUT QUITTING? for the extinguishing of tobacco products at a distance of twenty (20) feet from building entrances.

3. Environmental Health and Safety, Student Health Services and the Employee Assistance Program shall provide information on smoking and offer smoking cessation programs to the campus community.

4. Each year the President's Office will issue an email campus announcement about the Smoking Policy and smoking cessation programs that are available to smokers.

ENFORCEMENT:

1. It is the responsibility of all administrators, faculty, staff and students to enforce this smoking

policy.

2. Department Heads, Chairs and Directors shall ensure that all personnel within their areas comply with all of the requirements.
3. Employees or students who repeatedly violate the requirements of this policy may be disciplined through the Office of Human Resources or the Student Judiciary.
4. Any person who fails to comply with the requirements of this policy may be in violation of Article 13E of the New York State Public Health Law. Violations may be subject to the imposition of a civil fine in addition to University disciplinary action.

Smoking Cessation Assistance

Smoking cessation assistance is available through the New York State Smokers Quitline by calling 1-(866)-697-8487 or online at www.nysmokefree.com.

INQUIRIES/REQUESTS:

Environmental Health and Safety
State University of New York at Stony Brook
110 Suffolk Hall
Stony Brook, NY 11794-6200
Main Office: (631) 632-6410
Fax: (631) 632-9683

RELATED DOCUMENTS:

Article 13E-New York State Public Health Law
Regulation of Smoking in Certain Public Areas
Article 11-Suffolk County Sanitary Code (7/93)

Sunset Provision

This policy will expire five (5) years after implementation and will need to be reviewed and updated by a Smoking Policy Subcommittee of the Campus Environment Committee of the University Senate.

Media Campaign

The following list of elements to include in a media campaign will aid in reaching all campus stakeholders that will be impacted by approval of this proposal. These stakeholders include but are not limited to faculty, staff, volunteers, students, patients, visitors, contractors and subcontractors. It was recommended by the subcommittee that the media outreach efforts should begin immediately once the proposal has been approved. This media exposure will prepare all members of the multi-campus community for the formal date of policy implementation. Items with a cost element or involving specific time investment will require approval and cooperation from individual departments, groups, and organizations prior to implementation.

Media Campaign Action Items with Additional Cost:

- Statesman Ad
- Posters
- Flyers
- Postcards

Media Campaign Action Items without Additional Cost:

- Lotus Notes Announcements
- Email Announcement
- WUSB Radio – Public Service Announcements
- Staller Center slides shown during the Friday Night Film Series
- Hospital Intranet
- Hospital Announcements
- SB Web Site "In the News"
http://commcgi.cc.stonybrook.edu/artman/publish/cat_index_14.shtml
- Targetvision (SAC TV)
- SBU TV
- Campus bus signs
- 'Happenings' Article
- Campus Press Release
- Campus Newsletters (includes: HRS Newsletter, HSC Newsletter, Campus Recreation Newsletter, Community Relations Newsletter, VP Research Newsletter)
- Sinc Sites (Stony Brook Instructional Network Computing)
- Blackboard
- SOLAR

Other media outreach suggestions include:

- Facebook and Myspace advertisements
- The Stony Brook Press
- Earthday annual celebrations on campus, as held each year during the month of April.

- Signage for campus visitors
- Intake forms for hospital and outpatient clinic patients
- Online admission forms for prospective students
- Web content added to the Human Resources website for prospective employees.
- ‘Great American Smokeout’ annual celebrations in November
- New employee and new student orientation sessions.
- Student Health Service and Employee Assistance Program distribution of information.
- Information in Student Planners or “Success Books”
- Development of a dedicated website to feature this range of information.
- The university’s smoking policy should be featured:
 - At all Staller Center Events
 - At all athletic Events
 - At all concerts, conferences, and related-public events
 - On the event reservation form in the Conferences and Special Events department.
 - In all vendor contracts throughout the university.

**University Senate
CAMPUS ENVIRONMENT COMMITTEE
Smoking Policy Subcommittee**

Final Roster 2007-2008

Campus Environment Committee charge: It shall examine all aspects of the campus environment, including but not limited to safety, security, facilities planning, state of facilities, and general appearance of the campus. It will consult with and advise the Assistant Vice President for Facilities and Services.

Committee and Participant Roster

Joe Antonelli

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Carriere, Lori Journalism student; lor087@yahoo.com, (516) 547-4698.

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Jochum, Glenn; Staff Writer, Communications, GJochum@notes.cc.sunysb.edu.

Eric Kahn

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Schiller, Rebekah; GSO representative, schiller@grad.physics.sunysb.edu.

Nathan Shapiro

Shek, Annie; Breaking Away from Tobacco (BAT) student organization, annie.shek125@gmail.com

Eran Shor

Smith, Brenda; Employee Assistance Program representative, 140 Old Chemistry Bldg. z=3711, Brenda.smith@stonybrook.edu

Linda Tatem

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www.sbindependent.org.

Zacharia, Marianne, Community Resource Mngr., Tobacco Action Coalition of Long Island, 700 Veterans Memorial Highway, Hauppauge, NY 11788-2952, 265-3848 X 15. mzacharia@alanys.org

Consulting Role:

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Gail Habicht, Vice President for Research, Stony

Gil Hanson

Lynn Johnson, Director, Human Resource Services,

Gary Kaczmarczyk, Director, Environmental Health and Safety,
Joseph Lapietra, Deputy Executive Director, Long Island State Veterans Home, 4-8606,
Doug Little, Assistant Chief of Police, University Police,
Jonathan Spier, Director of Community Relations, Long Island State Veterans Home,
Rich Young, Chief, University Police, 2-6350

Attachment D

Whereas the State University of New York at Stony Brook is considering the implementation of a complete and total smoking ban on the SUNY at Stony Brook campus; and

Whereas the Graduate Student Organization (GSO), hereby endorsed by resolution of the Senate, has determined that this policy, if implemented, would invariably, unnecessarily, and perhaps illegally violate the rights and liberties of a substantial portion of students, faculty, and staff persons, who, in the course of their life, have for whatever reason begun smoking; and

Whereas in considering the irrefutable fact that smoking is a highly addictive activity, and in considering the geographical size of the SUNY at Stony Brook campus itself, the proposed ban may lead to a decrease in Stony Brook student research productivity and academic success, as well as a similar decrease in Stony Brook faculty/staff professional activities and work output, resulting from a newfound necessity to frequently depart the campus throughout the working day in order to smoke and, while on campus, consumed with planning a time to depart campus to smoke; and

Whereas the proposed ban will leave open the possibility that prospective students may feel alienated by said ban and could very well decide to attend another institution as a result; and

Whereas the proposed ban offers no viable enforcement provisions without an astronomical increase in SUNY tuition in order to afford a similar astronomical increase in the number of law enforcement officers on said campus in order to effectively and efficiently patrol smoking on campus and enforce said proposed ban;

Be it resolved that the GSO strongly opposes the proposed complete and total smoking ban on the SUNY at Stony Brook campus; and

Be it resolved further that in order to reduce the possibility of second-hand smoking on said campus, the University should allocate the necessary resources and take the necessary steps in enforcing the already-existing policy, which prohibits smoking within 15 (fifteen) feet from the entrance to the buildings.

Andrei Antonenko, President _____

Alton Frabetti, Vice-President _____

Louis Edgar Esparza, Secretary _____

Ryan Soule, Treasurer _____

Resolution on policies related to smoking

Whereas, some students, faculty, and staff have been grieved by both the behavior of smokers and the active presence of smoking on campus of the State University of New York and Stony Brook; and

Whereas, the rules regarding smoking that currently exist at the SUNY at Stony Brook campus are often unknown to most students, faculty, and staff that smoke, and hence their behavior does not reflect a disregard for such rules but, instead, an ignorance of them; therefore

Be it resolved, that in order to reduce the presence of second-hand smoking on the SUNY at Stony Brook campus, to educate students, faculty, and staff of the existing rules, and to implement the existing policies, the Graduate Student Organization endorses the following policies and projects:

1. The installation of signage indicating that smoking is not allowed within fifteen (15) feet of the building doorways; these signs will also indicate fines for littering since cigarette butts are heretofore considered litter;
2. Fines for the relocation of cigarette disposal trays/units directly on such units; signs on the same cigarette disposal trays/units informing smokers of the consequences of relocating the disposal units;
3. More initiative to educate the population to the existing rules;
4. Initiation of the tobacco cessation programs, available for free to students, faculty, and staff;
5. The continued ban on the sale of all tobacco products on campus;
6. Enforcement by the University Police of violation of said rules after the signage and education efforts have been completed; and further

Be it resolved, that twelve (12) months after the complete implementation of the above, the documented evidence of satisfaction and dissatisfaction of students, faculty, and staff should be obtained and the results of these policies will be assessed so as to properly gauge the situation of smoking on campus; if the results show that majority of students, faculty, and staff are dissatisfied with the results of fifteen (15) feet policy, then fifty (50) feet policy should be implemented before the introduction of total smoking ban.

Andrei Antonenko, President _____

Alton Frabetti, Vice-President _____

Louis Edgar Esparza, Secretary _____

Ryan Soule, Treasurer _____

Attachment F

To: The SUNY Student Assembly Executive Committee

From: President Daniel C. Curtis

Date: July 31, 2006

Re: Residence Hall Smoking Ban (Resolution EC0607-6)

I hereby offer for consideration of the State University of New York Student Assembly and the Executive Committee the following resolution:

Whereas, at the Spring 2005 Business Meeting of the State University of New York Student Assembly Resolution 11 of 2005 was passed concerning Smoking Policies in SUNY, and

Whereas, this legislation called for individual campuses to decide on smoking policies at each of the institutions, and

Whereas, the June 27 press release from Chancellor Ryan, along with pressure from a number of other entities has made the potential for a System-Wide Residence Hall Smoking Ban imminent, and

Whereas, this organization exists to protect the interests of its 414,000 constituents, many of whom choose to smoke, and

Whereas, the proposed residence-hall ban would reduce both fire hazards and insurance costs for the University System, and

Whereas, 87% of state-operated residential facilities are currently smoke-free, and

Whereas, the same pressures for a residence hall smoking ban are calling for campus-wide smoking bans, therefore be it

Resolved, that the State University of New York Student Assembly Executive Committee supports a System-Wide Residence Hall Smoking Ban, and be it further

Resolved, that while the Executive Committee supports such measures in residence halls, we stand firmly objected to any system-wide campus smoking bans, and be it further

Resolved, that the Executive Committee hopes that measures are taken to accommodate those students who choose to smoke outside residential facilities in some fashion at legally designated distances.

Attachment G


 <p>Category: HR / Labor Relations Student Affairs</p> <p>Responsible Office: University Counsel</p>	<p>Policy Title: Residence Hall Smoking Policy</p> <p>Document Number: 3452</p> <p>Effective Date: July 01, 2007</p> <p>This policy item applies to: State-Operated Campuses</p>
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Table of Contents

- [Summary](#)
- [Policy](#)
- [Definitions](#)
- [Other Related Information](#)
- [Procedures](#)
- [Forms](#)
- [Authority](#)
- [History](#)
- [Appendices](#)

Summary

The Board of Trustees of the State University of New York (University) has prohibited smoking in all residence halls and apartment buildings owned or operated by the University, and in vehicles owned or leased by the University or the State of New York. Campuses are directed to designate preferred smoking locations and/or establish an appropriate minimum distance from residence halls and apartment buildings, particularly, entrances to such buildings, within which smoking is prohibited, to avoid the exposure of building residents to second hand smoke.

Policy

- A. Smoking is prohibited in all residence halls and apartment buildings owned or operated by the State University of New York (University).
- B. The remainder of the campus is subject to the Clean Indoor Air Act, which prohibits smoking in public facilities, and to local campus rules.
- C. Smoking is prohibited within vehicles owned or leased by the University or the State of New York.
- D. Campus presidents are directed to:
 1. Review current policies regarding smoking outside of residential buildings, giving consideration to the safety of students and employees who may go outside to smoke;
 2. work with various constituencies, including students, to designate preferred smoking locations and/or establish minimum distances from residential buildings beyond which smoking

is allowed to limit the exposure of second hand smoke for those entering and exiting residence halls, as well as to prevent the possibility of smoke being drawn into air intakes or open windows; and

3. Review current educational efforts with regard to smoking and enhance smoking cessation programs, as appropriate.

E. The president of each University campus may seek to develop a smoking policy that is more restrictive than this policy, subject to collective bargaining agreements to the extent applicable.

Definitions

Smoking - the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

Secondhand smoke - a mixture of the smoke given off by the burning end of a cigarette, pipe or cigar, and the smoke exhaled from the lungs of smokers.

Other Related Information

[Passenger Vans](#)

Procedures

There are no procedures relevant to this policy.

Forms

There are no forms relevant to this policy.

Authority

[Public Health Law Article 13-E](#)

State University of New York Board of Trustees Resolution 2007-21, adopted January 11, 2007.

History

Amended - 2003

- reflects the State's commitment to ensuring that all workers are protected from secondhand smoke.

Enacted - 1989

- The Clean Indoor Air Act prohibits smoking in indoor public areas.

Appendices

There are no appendices relevant to this policy.

Stony Brook University
University Senate and Campus Environment Committee
Smoking Ban Subcommittee
March 1, 2007

MINORITY REPORT

Cosigners:	Ketty Dautruche USG Senator Campus Environment Committee Ketty87@aol.com	Louis Edgar Esparza GSO Executive Board lesparza@notes.cc.sunysb.edu
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	Rebekah Schiller GSO Senator schiller@grad.physics.sunysb.edu	Dan Woulfin SB Independent News Editor (former) GSO Senator dan.woulfin@gmail.com

Executive Summary

The Minority members of the Smoking Ban Subcommittee recommend that the University Senate take the following steps:

- 1) Recognize and support the work that the Smoking Ban Subcommittee has done to improve the existing campus smoking policy;**
- 2) Form a cross-campus subcommittee tasked with formulating a strong and enforceable campus smoking policy that students, faculty, and staff can openly support, armed with the proposals that have come out of the Smoking Ban Subcommittee, the GSO Senate, and the USG Senate.**

All members of the Smoking Ban Subcommittee recognize the public health risk caused by smoking. Due to these health risks, the Minority has recommended revisiting the campus smoking policy, which has not been updated in 10 years. The Minority takes a conscientious position to achieve an environment that students, faculty and staff can thrive in.

The Smoking Ban Subcommittee has recommended several positive initiatives to educate members of the campus community about the dangers of smoking. **However, the Minority does not support the policy prescriptions that take steps to ban smoking on campus.** We feel that these steps are unfeasible, unenforceable and make the campus smoking policy weaker rather

than stronger. We feel that the policy recommendations from the GSO and USG contribute to a stronger, more feasible, and more enforceable policy that salvages the spirit of a total smoking ban while still being enforceable.

Relevant History

In the Spring of 2006, the Campus Environment Committee took steps to ban smoking at the university. On April 28, 2006, without the consultation of the GSO or the USG, the committee developed the following proposal for University Senate adoption:

Effective Fall 2006 smoking will be limited only to pre-designated areas on campus. These areas are yet to be determined, but will allow for existing limitations as noted for dormitories, the hospital, and the Long Island State Veterans home. In a time frame not to exceed three years a total ban on smoking is to be implemented campus-wide. This ban will follow a policy recently implemented by SUNY Upstate Medical University that affects all faculty, staff, students, patients, and visitors. Smoking cessation assistance is available through the New York State Smokers Quitline by calling 1-(866)-697-8487 or online at www.nysmokefree.com.

The University Senate was made aware of the statement on May 1, 2006. Afterwards, the Executive Committee called for a subcommittee to be formed with the explicit task to make the proposal for a total smoking ban stronger. The committee was limited to discussing the following items:

- To amend the proposal to include text as to the availability of smoking cessation options.
- To develop a draft policy statement to clearly define the proposed prohibitions.
- To outline the elements of a media campaign to raise awareness of the policy's pending implementation.

The GSO and USG Executive Boards were informed of the proposal on May 11, 2006. On September 12, 2006, the GSO Executive Board introduced a Resolution to the GSO Senate stating:

Be it resolved that the GSO strongly opposes the proposed complete and total ban on the SUNY at Stony Brook campus; and

Be it further resolved that in order to reduce the possibility of second-hand smoking on said campus, the University should allocate the necessary resources and take the necessary steps in enforcing the already-existing policy, which prohibits smoking with 15 (fifteen) feet from the entrance to buildings.

The Resolution was passed by the GSO Senate unopposed, 20-0-3. The same Resolution was introduced to the USG Senate on September 19, 2006 and passed the USG Senate by a wide majority, 14-2-0. On October 10, 2006, the GSO Executive Board introduced a second resolution with detailed smoking policy recommendations that did not include a total smoking ban (See Attachment B). The Resolution passed by a wide majority, 30-1-3. The University Senate Executive Board was informed in a timely fashion.

The Smoking Ban Subcommittee began meeting in the Fall of 2006. At the December 5, 2006 meeting of the Subcommittee, there was a discussion about expanding the role of the committee to allow for editing of the proposal to exclude a total ban. The Chair was asked to approach the Executive Committee with this idea. The Chair was not agreeable. Seeing that the Report that would come out of this subcommittee would not reflect the position of the student government representatives on the body, work began on drafting this Minority Report around the January 23, 2007 meeting.

Stony Brook University
University Senate
Campus Environment Committee
Smoking Policy Subcommittee
November 14, 2007

Resolution on the Terms of the Development of a Fair Smoking Policy

Whereas the Smoking Policy Subcommittee proposed a Smoking Ban to the University Senate in April of 2007; and

Whereas after considering both the Smoking Policy Subcommittee and Minority Reports, the University Senate did not pass a proposed Smoking Ban by of vote of 16-17-2; and

Whereas in considering that smoking has a severe, irrefutable, and adverse effect on the campus environment; and

Whereas both the University Senate and the Smoking Policy Subcommittee are starkly divided on a proposed Smoking Ban; therefore

Be it resolved that the Smoking Policy Subcommittee will work to find common ground on a fair Smoking Policy for the entire campus; and

Be it resolved further that the recommendations developed by the Smoking Policy Committee will not contain a total and complete ban on smoking on the campus.

Louis Edgar Esparza, Chair
Smoking Policy Subcommittee

Stony Brook University
University Senate and Campus Environment Committee
Smoking Ban Subcommittee
Final Report
February 28, 2007

Executive Summary

The original one-paragraph proposal, as amended, is stated below and should be approved as written.

Effective Fall 2006 smoking will be limited only to pre-designated areas on campus. These areas are yet to be determined, but will allow for existing limitations as noted for dormitories, the hospital, and the Long Island State Veterans home. In a time frame not to exceed three years a total ban on smoking is to be implemented campus-wide. This ban will follow a policy recently implemented by SUNY Upstate Medical University that affects all faculty, staff, students, patients, and visitors. Smoking cessation assistance is available through the New York State Smokers Quitline by calling 1-(866)-697-8487 or online at www.nysmokefree.com.

Note: All residents of the State of New York, including faculty, staff, students, patients and visitors to the Stony Brook University campus have access to the New York State Smokers Quitline. For many requests, the caller will be referred to local resources.

The prohibition on tobacco use will reflect on both the role that the university plays as a health care provider and as a major employer and a serious effort to directly address the detrimental effects of tobacco use. Through this policy, Stony Brook University also affirms its obligation to work to contain the costs of providing quality health care. But, most of all the university must provide a clean and healthy environment for all members of the campus community. Additionally, a ban on all tobacco use removes at least two deficiencies with the existing policy; one is the varied size of the non-smoking radius at campus entrances (15 feet versus 50 feet). Another includes problems associated with smoking-related litter.

Implementing the new policy will not be easy. In detail provided later in this document just over 20% of all residents of New York are smokers. The percentage should be the same for members of our campus community. Most users of tobacco products grew up exposed to tobacco use by family members or through the extensive media coverage that has glamorized smoking behaviors over the years. In 2006 the U.S. Surgeon General called nicotine addiction a serious public health problem based on irrefutable research. In particular, it was reported that secondhand smoke can negatively impact the health of nonsmokers. As tobacco users are not a protected class under the U.S. Constitution, local government does have the right to prohibit the use of tobacco use by its constituents. However, based on the severity of the addiction and likelihood of relapse, providing a three-year time frame for full implementation of this policy will allow those that are willing to stop use of tobacco products to access smoking cessation and nicotine replacement therapies. It will also allow for the development of a full media campaign for the benefit of all stakeholders that should take place prior to full policy implementation.

“We . . . believe that the conclusions of public health officials concerning environmental tobacco smoke are sufficient to warrant measures that regulate smoking in public places. We also believe that where smoking is permitted, the government should require the posting of warning notices that communicate public health officials' conclusions that secondhand smoke causes disease in non-smokers.” - Philip Morris USA. (2007).

Relevant History:

During the first quarter of 2006 a request was made to the Campus Environment Committee, by the Executive Committee of the University Senate, to address the inconsistencies with the existing smoking policy, *Smoke-Free University P112*, as approved on Nov. 20, 1997. (Stony Brook University, 1997). The initial recommendation was considered to be too weak to be effective. A subsequent recommendation was made that would ban all smoking on campus within a three-year period of time. This revised proposal was then approved by the Campus Environment Committee on April 28, 2006.

This proposal was then presented to the members of the University Senate on May 1, 2006 for informational purposes. Prior to it being scheduled for a vote of approval during a subsequent meeting, the Executive Committee asked that a subcommittee be developed to address three issues in terms of the proposal.

- To amend the proposal to include text as to the availability of smoking cessation options.
- To develop a draft policy statement to clearly define the proposed prohibitions.
- To outline the elements of a media campaign to raise awareness of the policy's pending implementation.

The subcommittee was formed and intentionally included representation from campus administration, graduate and undergraduate students, the hospital, plus members of the greater Long Island community. Of the 27 members, 12 are students and three are not affiliated with the university. Besides the committee members, five campus administrators were identified as consultants in regard to their areas of expertise. Much of the committee research was carried out by Michael Cohen, a graduate student in the School of Social Welfare. (Details on the committee membership are provided in Attachment C). The subcommittee met three times. These meetings were held on November 21 and December 5, 2006. The committee then met again on January 23, to finalize the products that resulted from the three initial charges to the committee. These products are included in this report.

During these meetings a number of reports and documents related to secondhand smoke were presented. One report identified 34 college campuses that have already passed campus-wide smoke or tobacco-free policies. This report, dated October 2006, was compiled by the American Nonsmokers' Rights Foundation (ANRF). As of January 12, 2007, the updated list named 42 colleges and universities where the entire campus, both indoors and out has been declared smoke-free. (American Nonsmoker's Rights, 2007).

Identified Smoke-free campuses in the United States as of January 12, 2007:

Arkansas: North Arkansas Community College, Harrison; University of Arkansas at Fort Smith, and the University of Arkansas for Medical Sciences.

California: DeAnza Community College, Fullerton College, Ohlone College, Mesa College, Riverside Community College, San Joaquin Delta College, and the University of California at San Francisco.

Georgia: Darton College, Floyd College and Gainesville College.

Indiana: Indiana University East Campus, Indiana University Purdue University at Indianapolis.
Iowa: Des Moines University and Mercy College of Health Sciences.
Maine: Kennebec Valley Community College.
Maryland: Columbia Union College, Garrett College, and Maryland Bible College and Seminary.
Michigan: Great Lakes Christian College and Lansing Community College.
Missouri: Ozarks Technical Community College, St. Charles Community College, and State Fair Community College.
New Jersey: Burlington County College and County College of Morris.
New York: Cazenovia College and SUNY Upstate Medical University.
North Dakota: Bismarck State College and Minot State University.
Ohio: Circleville Bible College.
Tennessee: Austin Peay State University.
Texas: Alvin Community College, San Antonio College, and San Jacinto College, South Campus.
Utah: Brigham Young University
Washington: Clark College
West Virginia: West Virginia School of Osteopathic Medicine.
Wisconsin: University of Wisconsin at Baraboo/Sauk County and Western Technical College.

Of the known smoke-free campuses, not all posted their smoke-free policy statements to the web. Of the available policy statements, the subcommittee relied extensively on those from SUNY-Upstate and Indiana University Purdue University Indianapolis Campus (IUPUI).

Besides an inventory of smoke-free and tobacco-free universities, the following states have legislation that mandates smoke-free workplaces. These include Delaware, Florida, Hawaii, Louisiana, Massachusetts, Montana, Nevada, New Jersey, New York, North Dakota, Ohio, Rhode Island, South Dakota, Utah, and Washington State.

“Philip Morris USA agrees with the overwhelming medical and scientific consensus that cigarette smoking is addictive. It can be very difficult to quit smoking, but this should not deter smokers who want to quit from trying to do so.” (Philip Morris USA, 2007).

Precipitating Factors:

Developments both on-campus and nationwide contributed to the recommendation to ban all use of tobacco products on the Stony Brook University campuses. Some of these factors are highlighted below.

On or regarding the Stony Brook University campus:

The inconsistency of no-smoking perimeters at building entrances on east campus (50 feet) and west campus (15 feet) particularly during inclement weather, the lack of clarity regarding policy enforcement, and chronic littering of tobacco related-products all contributed to a need to review the existing policy. The original policy was written and implemented in 1997.

Until recently it has been difficult to gauge the interest in a smoking ban by students or other constituent groups. During meetings on September 26 and October 10, 2006 with the Undergraduate and Graduate Student Government, nonsupport of the proposal to ban smoking on campus was evident by discussion. In contrast, the Tobacco Action Coalition of Long Island had a full-page add in Suffolk Life newspaper. This paid ad listed a number of student groups

across the county that went on record as “saying no to tobacco money.” Of the groups highlighted, 20 student groups were identified as being from the Stony Brook University campus. That list is found in Attachment E.

Several articles have also been printed in Stony Brook University student publications over the last few months. The visibility of these articles has helped to raise the awareness of the issues related to secondhand smoke. A limited listing of these articles is included in the reference section of this report.

External developments:

On June 27, 2006 the U.S. Surgeon General, Richard H. Carmona, released a report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*. Based on extensive research, this report indicates there is no risk-free level of exposure to secondhand smoke. In fact, tobacco smoke has toxic properties that negatively impact the health of nonsmoking adults and children. In addition, the report verifies:

- Breathing secondhand smoke contributes to a number of preventable diseases.
- Secondhand smoke causes premature death and disease in nonsmokers. In 2005, these deaths were estimated to be more than 50,000 nationwide.
- Brief exposure to secondhand smoke has immediate adverse effects on the cardiovascular system and increases risk for heart disease and lung cancer.
- Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke.
- Only smoke-free environments can provide full protection from secondhand smoke.
- Sustained efforts are required to protect those who continue to be regularly exposed to secondhand smoke.
- Workplace smoking restrictions are effective in reducing secondhand smoke exposure.
- Establishing a smoke-free policy is the only way to ensure that secondhand exposure does not occur in the workplace.

In response to the Surgeon General’s report, on Jan. 11, 2007 the SUNY Board of Trustees adopted a policy that bans smoking in all residence halls, apartment buildings, and in all campus vehicles effective July 1, 2007. This policy addresses the remaining nine percent of SUNY residence hall beds, including those at Stony Brook University, where smoking was still permitted. (Cannistraci, C. 2007, Jan. 11).

In support of the Surgeon General’s findings on January 18, 2007 in a reanalysis of nicotine yields from major cigarette brands sold between 1997 and 2005, the Massachusetts Department of Public Health (MDPH) confirmed that tobacco product manufacturers have actually increased the levels of nicotine in cigarettes by 11 percent. As nicotine is the primary addictive agent in all tobacco products this re-engineering process created a more addictive product for the end user. The increased concentration was evident irrespective of whether the cigarette was mentholated, non-mentholated, full-flavor, light, or ultralight. The research was performed by a team from the Tobacco Control Research program at the Harvard School of Public Health (HSPH). This report further states that tobacco companies can and do control the level of nicotine delivered in their products. As a result, tobacco products are being reengineered to increase the rate of nicotine delivery, resulting with a higher rate of addiction. (Harvard School of Public Health, 2007, Jan. 18).

During this same period of time, the American Cancer Society estimated that use of tobacco products directly causes 30% of all cancer deaths. Of all smokers, they reported that one-third will die prematurely from tobacco use. In addition, nearly 10% of all college students in the United States will die prematurely from tobacco use, and many of these deaths will be from cancer. They attribute part of these phenomena as being caused by tobacco industry marketing efforts that have targeted young adults aged 18 – 24. (American Cancer Society, 2002, May 22).

As a final observation, as is proposed the prohibition of tobacco products on campus will address both tobacco consumption and byproducts. Cigarette butts as byproducts, have filters that are made of plastic and contain chemicals that if eaten, can kill small animals. During the 12-15 years that it will take a cigarette butt to decay the nicotine residue remains at toxic levels to the environment. (Register, K., 2000). Nicotine is considered to be a natural insecticide.

Tobacco Control Legal Consortium's Position Regarding Legal Bans on Tobacco Use:

The Tobacco Control Legal Consortium has developed a synopsis of legal precedents regarding constitutional rights to smoke. (Graff, 2005). In this document they raise several key points, most of which are relevant to approval of this proposal at Stony Brook University.

- There is no such thing as a constitutional “right to smoke.” The Constitution of the United States does not extend special protection to smokers.
- Since smoking is not a protected constitutional right, the Constitution does not bar the passage of local, state, or federal smoke-free laws and other restrictions on smoking.
- Smoke-free legislation is rationally related to a legitimate government goal. The courts have long held that protecting the public’s health is one of the most essential functions of government.
- The constitutional ‘right to liberty’ (e.g. smokers’ rights and personal choice) does not shield smokers from compliance with smoke-free legislation.
- The fundamental ‘right to privacy’ does not include smoking or use of tobacco products.
- Since smoking is not a fundamental privacy right, government does have a legitimate goal of protecting the health of the general public by enforcing non-smoking restrictions.
- A smoke-free law that “discriminates” against smokers will not violate the Equal Protection Clause of the Constitution so long as the law is rationally related to a legitimate government goal of protecting public health.
- Smokers’ rights proponents who challenge a “discriminatory law” limiting smoking also are unlikely to convince a court that smokers deserve special protection under a New York State equal protection clause.
- The mere fact that a smoking ban will single out and place burdens on smokers as a group does not, by itself, offend the equal protection clause because there is no basis upon which to grant smokers the status of a specially protected group (i.e. race, national origin, ethnicity, gender, and illegitimacy).

The text referenced in this section is not based on consultation with legal experts affiliated with Stony Brook University. However, it does reflect an overview of government bans on tobacco use at both the state and local levels.

Perceived Consequences to Policy Implementation.

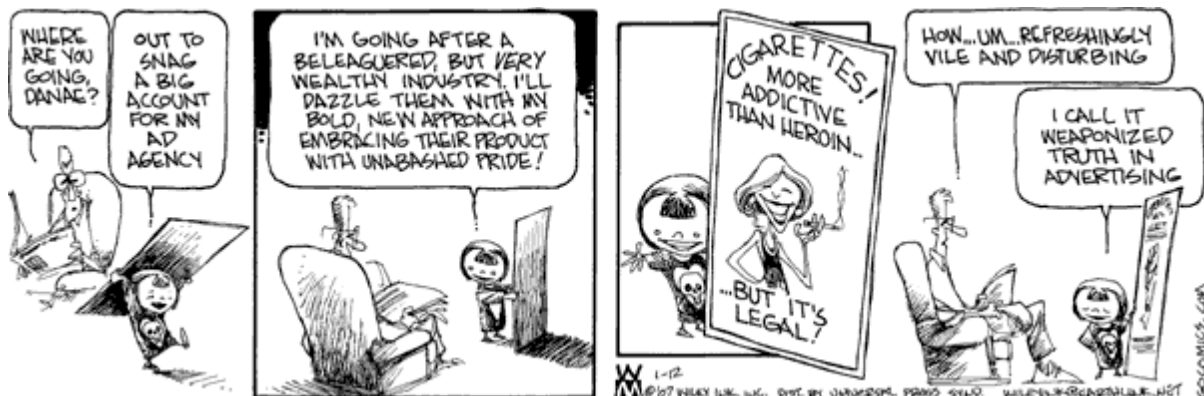
Over the course of the discussion by the subcommittee a few points were explored regarding potential consequences to passage of this proposal. Each point will be addressed separately.

There will be a perceived decline in student applications for admission:

Of the universities that have become smoke-free and reported their experiences on the web, all have indicated they did not have a decline in student admission applications. This outcome is also likely to happen here. During a site visit by staff of the Stony Brook University Student Health Services at Rocky Point High School on December 19, 2006, they met with 150 seniors in small groups. Of the total, 24 students reported being smokers. Each small group was asked if Stony Brook University became smoke free, would that deter interest, applications, and/or enrollment if the applicant was accepted. (Of the total, 28 students in the group have applied to SBU and await responses). There were no students responding that indicated it would deter their interest. In fact, the follow-up comments to the proposed policy change were all positive. The three year period for implementation of the ban will allow ample opportunity for prospective students to be made aware of the university's policy.

Passage of the smoking ban will present a hardship to the international students:

As of January 1, 2007 Hong Kong banned the majority of smoking both indoors and out. It now joins Singapore as the latest city in Asia to ban smoking in most public places. In addition, France is to ban smoking in all restaurants as of Jan. 1, 2008. They in turn are joining other countries in Europe with proposed or existing smoking bans. (Associated Press, 2007). Since smoking bans are becoming common across the globe there will not be any greater hardship for our international students that use tobacco products than for any other member of the campus community. At this point in time the following countries are known to have comprehensive smoke-free or tobacco-free workplace laws as per the American Nonsmokers Rights Foundation: Belgium, Bhutan, Czech Republic, Egypt, England, Finland, France, Iran, Ireland, Italy, Hong Kong, Maldives, Malta, New Zealand, Northern Ireland, Norway, Scotland, Singapore, Sweden, Thailand, Uganda, and Uruguay. In addition, the majority of both the Canadian provinces and the Australian states should be included on this list.



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CAMPUS ENVIRONMENT COMMITTEE 2006/2007

Charge: This Committee shall examine all aspects of the campus environment, including but not limited to safety, security, facilities planning, state of facilities, and general appearance of the campus. It will consult with and advise the Assistant Vice President for Facilities and Services.

Attachment K

Clean Indoor Air Act Effective July 24, 2003

◆ 1399-n. Definitions.

For purposes of this article:

1. "Bar" means any area, including outdoor seating areas, devoted to the sale and service of alcoholic beverages for on-premises consumption and where the service of food is only incidental to the consumption of such beverages.
2. "Employer" means any person, partnership, association, limited liability company, corporation or nonprofit entity which employs one or more persons, including the legislative, executive and judicial branches of state government and any political subdivision of the state.
3. "Food service establishment" means any area, including outdoor seating areas, or portion thereof in which the business is the sale of food for on-premises consumption.
4. "Membership association" means a not-for-profit entity which has been created or organized for a charitable, philanthropic, educational, political, social or other similar purpose.
5. "Place of employment" means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services, and shall include, but not be limited to, offices, school grounds, retail stores, banquet facilities, theaters, food stores, banks, financial institutions, factories, warehouses, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, rooms or areas containing photocopying equipment or other office equipment used in common, and company vehicles.
6. "School grounds" means any building, structure, and surrounding outdoor grounds contained within a public or private pre-school, nursery school, elementary or secondary school's legally defined property boundaries as registered in a county clerk's office, and any vehicles used to transport children or school personnel.
7. "Retail tobacco business" means a sole proprietorship, limited liability company, corporation, partnership or other enterprise in which the primary activity is the retail sale of tobacco products and accessories, and in which the sale of other products is merely incidental.
8. "Smoking" means the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco.

◆ 1399-o. Smoking restrictions.

Smoking shall not be permitted and no person shall smoke in the following indoor areas:

1. Places of employment;
2. Bars;
3. Food service establishments, except as provided in subdivision six of section thirteen hundred ninety-nine-q of this article;
4. Enclosed indoor areas open to the public containing a swimming pool;
5. public means of mass transportation, including subways, underground subway stations, and when occupied by passengers, buses, vans, taxicabs and limousines;
6. Ticketing, boarding and waiting areas in public transportation terminals;
7. Youth centers and facilities for detention as defined in sections five hundred twenty-seven-a and five hundred three of the executive law;
8. Any facility that provides child care services as defined in section four hundred ten-p of the social services law, provided that such services provided in a private home are excluded from this subdivision when children enrolled in such day care are not present;
9. Child day care centers as defined in section three hundred ninety of the social services law and child day care centers licensed by the city of New York;
10. Group homes for children as defined in section three hundred seventy-one of the social services law;
11. Public institutions for children as defined in section three hundred seventy-one of the social services law;
12. Residential treatment facilities for children and youth as defined in section 1.03 of the mental hygiene law;
13. All public and private colleges, universities and other educational and vocational institutions;
14. General hospitals and residential health care facilities as defined in article twenty-eight of this chapter, and other health care facilities licensed by the state in which persons reside; provided, however, that the provisions of this subdivision shall not prohibit smoking by patients in separate enclosed rooms of residential health care facilities, adult care facilities established or certified under title two of article seven of the social services law, community mental health residences established under section 41.44 of the mental hygiene law, or facilities where day treatment programs are provided, which are designated as smoking rooms for patients of such facilities or programs;

15. Commercial establishments used for the purpose of carrying on or exercising any trade, profession, vocation or charitable activity;

16. Indoor arenas;

17. Zoos; and

18. Bingo facilities.

◆ 1399-p. Posting of signs.

1. "Smoking" or "No Smoking" signs, or the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it, shall be prominently posted and properly maintained where smoking is regulated by this article, by the owner, operator, manager or other person having control of such area.

2. The owner, operator or manager of a hotel or motel that chooses to develop and implement a smoking policy for rooms rented to guests shall post a notice at the reception area of the establishment as to the availability, upon request, of rooms in which no smoking is allowed.

◆ 1399-q. Smoking restrictions inapplicable.

This article shall not apply to:

1. Private homes, private residences and private automobiles;

2. A hotel or motel room rented to one or more guests;

3. Retail tobacco businesses;

4. Membership associations; provided, however, that smoking shall only be allowed in membership associations in which all of the duties with respect to the operation of such association, including, but not limited to, the preparation of food and beverages, the service of food and beverages, reception and secretarial work, and the security services of the membership association are performed by members of such membership association who do not receive compensation of any kind from the membership association or any other entity for the performance of such duties;

5. Cigar bars that, in the calendar year ending December thirty-first, two thousand two, generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the appropriate enforcement officer, as defined in subdivision one of section thirteen hundred ninety-nine-t of this article. Such registration shall remain in effect for one year and shall be renewable only if: (a) in the preceding calendar year, the cigar bar generated ten percent

or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, and (b) the cigar bar has not expanded its size or changed its location from its size or location since December thirty-first, two thousand two;

6. Outdoor dining areas of food service establishments with no roof or other ceiling enclosure; provided, however, that smoking may be permitted in a contiguous area designated for smoking so long as such area: (a) constitutes no more than twenty-five percent of the outdoor seating capacity of such food service establishment, (b) is at least three feet away from the outdoor area of such food service establishment not designated for smoking, and (c) is clearly designated with written signage as a smoking area; and

7. Enclosed rooms in food service establishments, bars, catering halls, convention halls, hotel and motel conference rooms, and other such similar facilities during the time such enclosed areas or rooms are being used exclusively for functions where the public is invited for the primary purpose of promoting and sampling tobacco products, and the service of food and drink is incidental to such purpose, provided that the sponsor or organizer gives notice in any promotional material or advertisements that smoking will not be restricted, and prominently posts notice at the entrance of the facility and has provided notice of such function to the appropriate enforcement officer, as defined in subdivision one of section thirteen hundred ninety-nine-t of this article, at least two weeks prior to such function. The enforcement officer shall keep a record of all tobacco sampling events, and such record shall be made available for public inspection. No such facility shall permit smoking under this subdivision for more than two days in any calendar year.

◆ 1399-r. General provisions.

1. Nothing in this article shall be construed to deny the owner, operator or manager of a place covered by this article the right to designate the entire place, or any part thereof, as a nonsmoking area.

2. The provisions of this article shall apply to the legislative, executive and judicial branches of state government and any political subdivision of the state.

3. Smoking may not be permitted where prohibited by any other law, rule, or regulation of any state agency or any political subdivision of the state. Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article.

◆ 1399-s. Violations.

1. It shall be unlawful for any person, firm, limited liability company, corporation or other entity that owns, manages, operates or otherwise controls the use of an area in which smoking is prohibited or restricted pursuant to section thirteen hundred ninety-nine-o of this article to fail to comply with the provisions of this article. For violations of this subdivision, it shall be an

affirmative defense that during the relevant time period actual control of the area was not exercised by the respondent, but rather by a lessee, the sublessee or any other person. To establish an affirmative defense, the respondent shall submit an affidavit and may submit any other relevant proof indicating that the respondent did not exercise actual control of said area during the relevant time period. Such affidavit and other proof shall be mailed by certified mail to the appropriate enforcement officer within thirty days of receipt of such notice of violation.

2. It shall be unlawful for an employer whose place of employment is subject to subdivision one of section thirteen hundred ninety-nine-o of this article to fail to comply with the provisions of such subdivision. For violations of such subdivision, it shall be an affirmative defense that the employer has made good faith efforts to ensure that employees comply with the provisions of this article.

3. It shall be unlawful for any person to smoke in any area where smoking is prohibited or restricted under section thirteen hundred ninety-nine-o of this article.

◆ 1399-t. Enforcement.

1. For the purpose of this article the term "enforcement officer" shall mean the board of health of a county or part county health district established pursuant to title three of article three of this chapter, or in the absence thereof, an officer of a county designated for such purpose by resolution of the elected county legislature or board of supervisors adopted within sixty days after the effective date of this article. Any such designation shall be filed with the commissioner within thirty days after adoption. If no such designation is made, the county will be deemed to have designated the department as its enforcement officer. Any county that does not designate an enforcement officer during the time period specified above may do so at any time, thereafter, such designation will be effective thirty days after it is filed with the commissioner. The enforcement officer shall have sole jurisdiction to enforce the provisions of this article on a county-wide basis pursuant to rules and regulations promulgated by the commissioner. In a city with a population of more than one million the enforcement officer shall be the department of health and mental hygiene of such city which shall have sole jurisdiction to enforce the provisions of this article in such city.

2. If the enforcement officer determines after a hearing that a violation of this article has occurred, a civil penalty may be imposed by the enforcement officer pursuant to section thirteen hundred ninety-nine-v of this article. When the enforcement officer is the commissioner, the hearing shall be conducted pursuant to the provisions of section twelve-a of this chapter. When the enforcement officer is a board of health or in a city with a population of more than one million, the department of health and mental hygiene, or an officer designated to enforce the provisions of this article, the hearing shall be conducted pursuant to procedures set forth in the county sanitary code, or health code of such city, or in the absence thereof, pursuant to procedures established by the elected county legislature or board of supervisors. No other penalty, fine or sanction may be imposed, provided that nothing herein shall be construed to prohibit an enforcement officer from commencing a proceeding for injunctive relief to compel compliance with this article.

3. Any person who desires to register a complaint under this article may do so with the appropriate enforcement officer.

4. The owner, manager, operator or other person having control of any area subject to the provisions of this article, shall inform, or shall designate an agent who shall be responsible for informing individuals smoking in an area in which smoking is not permitted that they are in violation of this article.

5. Any person aggrieved by the decision of an enforcement officer other than the commissioner may appeal to the commissioner to review such decision within thirty days of such decision. The decision of any enforcement officer shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.

6. The enforcement officer, subsequent to any appeal having been finally determined, may bring an action to recover the civil penalty provided in section thirteen hundred ninety-nine-v of this article in any court of competent jurisdiction.

7. An enforcement officer who discovers a retail dealer who or which does not display a retail dealer certificate of license or registration from the department of taxation and finance issued pursuant to section four hundred eighty-a of the tax law shall notify the commissioner of taxation and finance within thirty days of the name and address of any such establishment so that the commissioner of taxation and finance can take appropriate action.

◆ 1399-u. Waiver.

1. The enforcement officer may grant a waiver from the application of a specific provision of this article, provided that prior to the granting of any such waiver the applicant for a waiver shall establish that:

- (a) Compliance with a specific provision of this article would cause undue financial hardship; or
- (b) Other factors exist which would render compliance unreasonable.

2. Every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke and to ensure that the waiver is consistent with the general purpose of this article.

◆ 1399-v. Penalties.

The commissioner may impose a civil penalty for a violation of this article in an amount not to exceed that set forth in subdivision one of section twelve of this chapter. Any other enforcement officer may impose a civil penalty for a violation of this article in an amount not to exceed that set forth in paragraph f of subdivision one of section three hundred nine of this chapter.

◆ 12. Violations of health laws or regulations; penalties and injunctions.

1. Any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the people of the state for a civil penalty of not to exceed two thousand dollars for every such violation.

2. The penalty provided for in subdivision one of this section may be recovered by an action brought by the commissioner in any court of competent jurisdiction.

3. Nothing in this section contained shall be construed to alter or repeal any existing provision of law declaring such violations or any of them to be misdemeanors or felonies or prescribing the penalty therefore.

4. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general, and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner.

5. It shall be the duty of the attorney general upon the request of the commissioner to bring an action for an injunction against any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto; provided, however, that the commissioner shall furnish the attorney general with such material, evidentiary matter or proof as may be requested by the attorney general for the prosecution of such an action.

6. It is the purpose of this section to provide additional and cumulative remedies, and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provision of this section, nor any action done by virtue of this section, be construed as stopping the state, persons or municipalities in the exercising of their respective rights to suppress nuisances or to prevent or abate pollution.]

◆ 1399-w. Limitation of causes of action.

An employer, administrator, manager, owner or operator of any indoor area, food service establishment, or place of employment regulated by this article who complies or fails to comply with the provisions of this article shall not be subject to any legal liability or action solely as a result of such compliance or noncompliance except as provided in section thirteen hundred ninety-nine-v of this article. Nothing in any other section of this article shall be construed to create, impair, alter, limit, modify, enlarge, abrogate or restrict any theory of liability upon which any person may be held liable to any other person for exposure to smoke.

◆ 1399-x. Rules and regulations.

The commissioner shall not promulgate any rules or regulations to effectuate the provisions of section thirteen hundred ninety-nine-n, subdivision six of section thirteen hundred ninety-nine-o or subdivision one of section thirteen hundred ninety-nine-p of this article. The commissioner shall not promulgate any rules or regulations that create, limit or enlarge any smoking restrictions.

Article L

ARTICLE 11

SMOKING RESTRICTIONS

§760-1101 Smoking in Public Places

No person shall smoke or carry a lighted cigar, cigarette, pipe or any other form of smoking object or device in any elevator; in any retail food establishment, commonly known as a "supermarket" or "grocery store," including any store which offers foodstuffs for sale, other than restaurants and eating places; and in any department store or retail clothing store. The owner or person in charge may designate special areas where smoking is permitted, unless otherwise prohibited by law or fire department rule or regulation.

§760-1102 Smoking in Classrooms and Lecture Halls

No person shall smoke or carry a lighted cigar, cigarette, pipe or any other form of smoking object or device in any classroom or in any lecture hall, except that the owner or person in charge of such classroom or lecture hall may designate a special contiguous area containing not more than twenty percent (20%) of the total seats of the classroom or lecture hall in which smoking is permitted, unless otherwise prohibited by law or fire department rule or regulation.

§760-1103 Smoking in Health-Care Facilities

No person shall smoke or carry a lighted cigar, cigarette, pipe or any other form of smoking object or device in any hospital, sanitarium, nursing or convalescent home, home for the aged or chronically ill patients, except that the owner of any such facility may designate special areas where smoking is permitted, unless otherwise prohibited by law or fire department rule or regulation, provided that in any health-care facility, such special area shall be so removed from hazard to patients or other residents.

§760-1104 Smoking at Public Gatherings

No person shall smoke or carry a lighted cigar, cigarette, pipe or any other form of smoking object or device in any enclosed public space in which members of the public gather for religious, recreational, political or social purposes; except that the owner or person in charge of any building structure; or place specified in this section may designate a special area therein to be contiguous and

constituting not more than twenty percent (20%) of the total seats or floor space, where smoking is permitted, unless otherwise prohibited by law or fire department rule or regulation. (Proviso: §760-1104 shall not apply to any place in which social functions such as weddings, parties, testimonial dinners and similar functions are held and in which seating arrangements are under the control of the sponsor of the function and not of the owner or person in charge of such place.)

§760-1105 Smoking in County-Owned Facilities

No person shall smoke or carry a lighted cigar, cigarette, pipe, or any other form of smoking object or device in any structure or facility owned and/or operated by the County of Suffolk; except in the areas where smoking is permitted, unless otherwise prohibited by law or fire department rule or regulation.

63

§760-1106 Posting of Notice

Signs prohibiting smoking or designating an area where smoking is permitted shall be conspicuously posted in such a manner as to be easily seen by the general public. It shall be the duty of the owner, manager or person in charge of each of the buildings, structures or facilities specified herein to see to it that these signs are installed and properly maintained.

§ 760-1107 Tobacco Vendor Education Certification of Tobacco Retailers

Section 760-1107.1 Purpose

The purpose of this section is to protect public health by establishing safeguards to control the sale of tobacco products to minors. By controlling the sale of tobacco products to minors, addiction to the product can be significantly reduced. Article 13-F of the New York State Public Health Law, known as the Adolescent Tobacco-Use Prevention Act (ATUPA) expressly prohibits the sale of tobacco products to minors and further charges the Commissioner of the Suffolk County Department of Health with the duty of enforcing the provisions of ATUPA.

Section 760-1107.2 Scope

Educating local tobacco retailers will facilitate and enhance retailer compliance with the provisions of ATUPA and local laws. Local certification requirements will also permit a more systematic monitoring of local tobacco retailer compliance to ATUPA and ensure that dealers of tobacco products are fully educated about their responsibility under ATUPA.

Section 760-1108 Definitions

For purposes of this section,

A. **“Person”** means an individual person, firm, company, corporation, partnership, sole proprietor, limited partnership, or association, business entity of any type or any combination thereof.

- B. **“Tobacco Retail Dealer”** means any person who owns or operates a site at which tobacco products, as defined herein, are sold or offered for sale to the public.
- C. **“Tobacco Products”** means one or more cigarettes or cigars, chewing tobacco, powdered tobacco or any other tobacco products, including any product made primarily of an herb or combination of herbs, and intended to be smoked in any of the methods that tobacco is smoked, including but not limited to, as a cigarette, cigar or pipe filler or chewed.
- D. **Tobacco Vendor Education Certificate** means a certificate issued by the Suffolk County Department of Health Services.
- E. **“Commissioner”** means the Commissioner of the Department of Health Services.
- F. **“Department”** means the Suffolk County of Health Services.

Section 760-1109 Registration and Certification for Retail Dealer of Cigarettes and/or Tobacco Products

No person shall sell or offer for sale tobacco products within Suffolk County without first complying with Section 480-a of the New York State Law and having obtained a valid New York State Retail Dealer Certificate of Registration for cigarettes and/or Tobacco Products from the New York State Department of Taxation and Finance and obtaining a valid Tobacco Education Certificate issued by the Commissioner.

64

- A. It is unlawful for any person to engage in the selling of tobacco or tobacco products without obtaining a valid Retail Dealer Certificate of Registration for Cigarettes and/or Tobacco Products. Each tobacco retail dealer must obtain a Retail Dealer Certificate of Registration for Cigarettes and/or Tobacco Products for each site at which tobacco products are sold.
- B. It shall be unlawful for any person to be engaged in the sale of tobacco products without first having obtained a valid Suffolk County Tobacco Vendor Education Certificate in accordance with the provisions of this article.
- C. A certificate issued in accordance to Section 480-a of the New York State Tax Law and the Tobacco Vendor Educational Certificate shall be conspicuously posted in each place of business of the permittee.

Section 760-1110 Information Required

- A. All tobacco retailer dealers in Suffolk County shall comply with Section 480-a of the New York State Tax Law and possess a valid Retail Dealer Certificate of Registration for Cigarettes and/or Tobacco products, and all tobacco retailers shall provide the commissioner with proof of such compliance.
- B. Tobacco product retailer dealers shall submit to the Commissioner, prior to the selling tobacco products, a duplicate of the Application for Registration of Retail Dealers and Vending Machines for Sales of Cigarettes and/or Tobacco.
- C. For the purpose of registration the commissioner may require the submission of additional written information on forms furnished by the Department.

Section 760-1111 Certification Requirements;Recertification

- A. One year from the effective date of this article, at least one principal listed on the tobacco retail dealer certificate, or designee, shall possess a valid Tobacco Vendor Education Certificate issued by the Commissioner. Recertification shall be required

every three years.

(1) Any person listed on the Application for Registration of Retail Dealers and Vending Machines for Sales of Cigarettes and Tobacco Products, or their designee, shall attend and satisfactorily complete a Tobacco Vendor Education Certification course of instruction whenever deemed necessary by the Commissioner.

(2) A Tobacco Vendor Education Certificate may be revoked anytime after due hearing, on notice for violations of any of the provisions of this article.

B. Applicants shall meet such further qualifications as may be prescribed by this Article and any other appropriate Article or regulations.

C. Registration for the course shall be in writing on forms furnished by the Department.

65

D. The commissioner may at her discretion establish criteria for reciprocal agreements for vendor education certification through outside agencies.

Section 760-1112 Fines, Suspension, Revocation or Denial of Tobacco Vendor Education Certificate

A. The Commissioner may, at her own discretion, deny, refuse to renew or revoke an application for a Tobacco Vendor Education Certificate if the applicant for State registration or any person listed on the application was listed on a previous application where the registration was revoked for violations of Article 13-F of the New York State Public Health Law known as the Adolescent Tobacco Use Prevention Act (ATUPA), or for violations of this Article.

B. The Commissioner shall have the power to impose a fine pursuant to Article 2 of the Suffolk County Sanitary Code upon a Tobacco Retail Dealer or to deny, suspend or revoke a Tobacco Vendor Education Certificate for any one (1) or more of the following causes:

(1) Fraud, deceit, misrepresentation or bribery in securing or use of a Tobacco Vendor Education Certificate.

(2) The making of any false statement in an application for a Tobacco Vendor Education Certificate.

(3) Violations of Article 13-F of the New York Public Health Law; New York State Tax Law Article 20; or a violation of any relevant provision of the Suffolk County Code, this Article, any other appropriate Article of this Chapter or any regulation promulgated hereunder or any amendment made thereto.

(4) Failure to make payment in connection with fines imposed pursuant to this Chapter.

(5) Any misuse of the Tobacco Vendor Certificate.

C. Except for a Tobacco Vendor Education Certification suspension or revocation required because of the loss of the certificate holders' Retail Dealer Certificate of Registration for Cigarettes and/or Tobacco Products, no Tobacco Vendor Education Certificate shall be suspended or revoked, nor a fine imposed, until after a hearing has been held before the Commissioner or hearing officer designated for that purpose by the commissioner upon at least seven (7) business days notice to the certificate holder. Notice shall be given to persons listed on the State registration who may be affected by the proceedings and to the person whose name appears on the Tobacco Vendor Education Certification Application. Such notice shall be served either personally or by certified mail, return requested, to the

last known address of the certificate holder and persons listed on the application for the State registration and shall state the date and place of the hearing as well as enumerate the grounds constituting the allegations against such certificate holder. The certificate holder or other persons who may be affected by the proceedings may be represented by counsel and may produce witnesses in his own behalf. A record of the hearing shall be served either personally or by certified mail, return receipt requested, to the last known address of the certificate holder and persons listed on the application for State registration and shall state the date and place of the hearing as well as enumerate the grounds constituting the allegations against such certificate holder. The certificate holder or other persons who may

66
be affected by the proceedings may be represented by counsel and may produce witnesses in his own behalf. A record of the hearing shall be taken and preserved. For purposes of such hearing, the Commissioner or designee may administer oaths, take testimony, subpoena witnesses and compel the production of books, paper, records or other documents deemed pertinent to the subject of the hearing.

Section 760-1113 Severability

If any clause, sentence, paragraph of subdivision or part of this Article or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance, shall be adjudged

by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Article, or in its application to the person, individual, corporation, firm, partnership, entity or circumstance, directly involved in the controversy in which such judgment shall be rendered.

(Adopted 5/21/1975; Amended 2/21/1979; Amended 3/18/2001)