

Save the Date!

The Center for Public Health and Tobacco Policy's Point-Of Sale Summit will be held **Thursday, October 21** at the Hilton Garden Inn Albany Medical Center. Attendance is required for NYTCP Reality Check and Community Partnership contractors. Registration information will be available soon.

Confirmed speakers for the event include:

- Kurt Ribisl, PhD, UNC Gillings School of Public Health
- La Tanisha Wright, National African American Tobacco Prevention Network
- Alyonik Hrushow, San Francisco Department of Public Health

There will be a meeting for NYTCP Reality Check and Community Partnership contractors on **Friday, October 22**. Additional information will be forthcoming.

Survey Finds Substantial Support for Smoke-Free Outdoor Areas

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A new survey funded by American Legacy Foundation, a national nonprofit public health organization, indicates that many Americans support outdoor smoke-free policies. The National Social Climate Survey of Tobacco Control asked the respondents whether they would support a variety of outdoor smoke-free policies. The results demonstrated that women were more likely to support smoke-free outdoor air policies than men, and nonsmokers were significantly more likely to support the policies than smokers.

The outdoor smoke-free policy that garnered the most support was one that would prohibit smoking within 20 feet of a door. Overall, two thirds (67.3%) of the surveyed adults agreed that the first twenty feet in front of a door should be a smoke-free area. A majority of women (74.2%) agreed with this policy, and 59.1% of males agreed. A large number of smokers (42.5%) as well as nonsmokers (72.7%) were in agreement.

The least supported policy was one that would prohibit smoking on sidewalks. Only 32.1% of adults surveyed supported this policy. An outdoor smoke-free policy that would prohibit smoking at public beaches was supported by 43% of adults, and prohibiting smoking at outdoor parks was supported by 36.5% of those surveyed.

The CEO of Legacy, Cheryl G. Heaton, DrPH explains, "As America heads outside this summer, more and more public spaces are smoke-free in light of growing evidence of the dangers of secondhand smoke. Families deserve to have smoke-free spaces to play and relax, both indoors and out." The survey results are evidence that smoke-free outdoor air policies are gaining more widespread support.

Click [here](#) for the American Legacy Foundation survey.

Court Rules Class Action Findings Can Be Used By Individual Tobacco Plaintiffs in Florida

On July 22, 2010, the Eleventh Circuit Court of Appeals ruled that the findings in phase I of a class action suit, originally brought in 1994 (known as the “Engle case”) by a group of smokers against tobacco companies, can be used to some extent by plaintiffs in the 4,000 cases against tobacco companies pending in federal court in Florida. The plaintiffs in these cases are smokers who have developed cancer or other smoking-related illnesses, or relatives of deceased smokers. In phase I of the Engle case, the jury found, among other things, that the defendants placed cigarettes on the market that were defective and unreasonably dangerous, and that the defendants misrepresented the health effects of smoking.

In phase II of the Engle case, the jury

awarded the class \$145 billion in punitive damages. However, in 2006 the Florida Supreme Court rejected the \$145 billion verdict and ruled that the case could no longer continue as a class action because the individual cases were too dissimilar to be joined in one lawsuit. An August 2008 order by a U.S. District Court judge had eliminated the preclusive effect of the jury’s findings in phase I of the Engle case on future actions brought by individual plaintiffs who were members of the class action. Last month’s Eleventh Circuit decision vacated the 2008 district court order and allowed some preclusive effect (“*res judicata*”) to be given to the phase I findings from Engle. According to the decision, exactly what effect will be given to the factual findings made in phase I of the Engle case is for the district court to decide, by

applying Florida law to each individual case.

The defendants, who are lobbying for a narrow interpretation of the factual findings from Engle, argue that they merely show that one cigarette was defective—not that they all were. On the other hand, the plaintiffs are arguing that the court should take a broad interpretation of the findings and determine that all of the cigarettes produced were “defective and unreasonably dangerous” because there is nothing to suggest that any type or brand is safer than any another.

Each of the plaintiffs—who can now proceed to trial—will still have to show that the defendants are liable for the damage that was caused to them individually, as well as that the factual findings in phase I of Engle should apply to their individual case.

Boston Housing Authority Clears Smoke

The Boston Housing Authority (BHA) has announced that Washington-Beech, a public housing development in Roslindale, is now a smoke-free development. This change in policy follows a recent poll of residents which shows that 85% have a desire for smoke-free housing. Public health advocates have been pushing for this policy for some time, seeing it as a natural extension of smoke-free policies. Several years ago, housing officials were concerned with a higher than normal frequency of asthma and other respiratory diseases in public housing developments. Cigarette smoke was spreading through the multi-unit dwellings—underneath doors and through the ventilation system. Bill McGonagle, who grew up in public housing and now is the administrator of the BHA, stated that “residents don’t have rights to endanger the health of ... their eld-

erly neighbor or their asthmatic 10 year old neighbor.”

The smoke-free policy was tested in a few units last October in a Dorchester public housing development called Franklin Hills. This summer, coinciding with a major redevelopment of Washington-Beech, the BHA implemented a smoke-free policy in all of Washington-Beech’s units. These newly-built units are designed to be highly energy efficient, exceeding Energy Star standards. Mayor Menino praised the redevelopment and the new smoke-free policy, saying that “[t]his redevelopment is creating jobs, clean, green and affordable housing, and promoting healthy living.” Other policies to increase air quality in the units include an integrated pest control policy, which will reduce airborne antigens by eliminating mold and pests.

The BHA plans to implement the smoke-free policy in all public housing units by 2013, which will affect over 27,000 residents in 12,000 units. While the enforcement plan is still under development, no-smoking terms are being added to leases for the new Washington-Beech units through an addendum. Violating the policy could put tenants in breach of the lease, carrying the possibility of eviction. Jonathan Winickoff, MD, MPH, and author of a recent report on this issue in the *New England Journal of Medicine*, says that the policy has a firm basis in evidence. “Research shows that those living in multiple-unit housing are being exposed to toxins from tobacco smoke. Even if you are not a smoker and don’t smoke inside of your own apartment, if you have a neighbor who is smoking inside of his, the entire building is contaminated.”

Gloversville Public Housing Going Smoke-Free:

Gloversville Housing Authority (GHA) resolved to adopt a smoke-free policy in May 2010. In order to give residents time to adjust, the policy will not be effective until September 1, 2010. The policy “prohibits smoking inside any area of the properties under [GHA] management by residents, guests, service personnel, or employees.” GHA is the first housing authority in New York to institute a smoke-free policy.

Statewide Housing Call Spotlights Public Housing Authorities:

Community Partnership and Colleges for Change contractors held a statewide smoke-free housing call on August 18th. The guest speaker was Kate Bennett, Special Assistant to the Administrator for Planning for the Boston Housing Authority (BHA). Ms. Bennett is developing a three-year implementation plan for BHA’s smoke-free policy initiative, with a focus on education for the first year. She coordinates BHA staff, residents, and outside partners as part of this effort. Topics discussed included: residents’ asthma and respiratory illness problems, particularly youth; integrated management and improvements; upfront investments; pilot programs as part of the process; the critical impact of resident support; strong health partners and advocates; challenges; and potential accommodation policies. Ms. Bennett shared with attendees prior to the call a BHA Smoke-Free Housing Survey, offered in several languages, that was a critical piece of BHA’s ongoing process.

Agreement Between Oregon Attorney General and E-Cigarette Makers to Halt Sales

The office of Oregon Attorney General (AG) John Kroger recently reached a settlement involving its lawsuit against e-cigarette manufacturer Smoking Everywhere. Under the settlement, Smoking Everywhere admitted to violating Oregon’s Unlawful Trade Practices Act and agreed to stop selling e-cigarettes in Oregon. In the announcement of the settlement, the Oregon AG’s office stated that Smoking Everywhere has provided no evidence in support of its claims that e-cigarettes are a safe alternative to normal cigarettes, made no effort to seek approval from the U.S. Food and Drug Administration (FDA), and marketed specifically toward minors. Additionally, Smoking Everywhere will pay the Oregon Department of Justice more than \$95,000. Elico Taieb, company president, will pay \$25,000 and be

prohibited from doing any business in Oregon related to e-cigarettes, tobacco, or nicotine.

Prior to the lawsuit, the Oregon AG reached an agreement with two store chains, Pilot Travel Centers and TA Operating, to stop selling e-cigarette devices at all of their Oregon locations. The AG also reached an agreement with another e-cigarette maker, Sottera Inc., to cease distribution of e-cigarettes in the state until local and federal regulations regarding the devices are resolved. This month, the California Attorney General reached a similar agreement with Sottera.

Vapor Corp., which accounts for 20% of the e-cigarette market, voluntarily withdrew its products from Oregon. The AG attempted

to reach a similar agreement with Smoking Everywhere, and the company’s refusal led the AG to file the lawsuit. Oregon became the first state to file suit against an e-cigarette manufacturer to prohibit sale of the devices. Subsequently, Florida and California have filed similar lawsuits against Smoking Everywhere.

Currently, e-cigarettes are not classified as either a tobacco product or a drug-delivery device, allowing makers of the products to avoid restrictions on each. The FDA is currently involved in a lawsuit with e-cigarette manufacturers regarding the claim by the FDA that the product qualifies as a drug-delivery device and therefore requires FDA approval.

Health Groups File Brief in Support of NYC Point-Of-Sale Warnings

As we previously reported, the New York City Board of Health’s regulation requiring tobacco retailers to post health warnings at the point of sale has been challenged in court by tobacco manufacturers and retailers. On August 13, the New York City Board of Health filed a motion for summary judgment, asking the federal judge overseeing the case to rule that the regulation is legally sound and to dismiss the lawsuit. On August 20, a broad array of health groups and tobacco control organizations (listed below) filed an *amicus curiae* (“friend of the court”) brief, supporting the City’s position and explaining why point-of-sale warnings are an important tobacco control tool. (One of the groups joining the brief was the Tobacco Control Legal Consortium, of which the Center for Public Health and Tobacco Policy is a member.)

The brief makes a powerful case that the New York City regulation is well supported by empirical data and that the features of the regulation to which the plaintiffs object—the vivid imagery, the size and placement of the warnings, the encouragement to quit smoking—are all crucial to its success. The brief summarizes:

[E]ach aspect of the anti-smoking signs’ design furthers the City’s compelling interest in helping the maximum number of city residents quit smoking. These studies also establish that Plaintiffs’ proposed “alternatives” will not achieve the same result.... The difference, reflected in the number of persons who would not use tobacco products and would quit if they see the Board of Health’s

signs, is literally a matter of life and death.

The *amicus* brief also makes a strong argument that the requirement to post health warnings does not violate the First Amendment rights of the tobacco manufacturers or retailers. As the health groups write, “[T]he signage requirements of Resolution § 181.19 are triggered not by Plaintiffs’ speech or expressive activity, but rather by the fact that they sell cigarettes and tobacco products. Resolution § 181.19 accordingly cannot be viewed as deterring any speech by Plaintiffs....”

The next step in the process is for the plaintiffs to file a response to the City’s motion for summary judgment. It is expected that the judge will hear oral arguments on the summary judgment motion in mid-October and will issue a ruling sometime after that.

Organizations Signing the *Amicus Curiae* Brief in Support of New York City

American Legacy Foundation	American Academy of Pediatrics	American Cancer Society
ACS Cancer Action Network	American College of Preventive Medicine	American Lung Association
American Lung Association (NY Chapter)	American Medical Association	American Public Health Association
Asian Pacific Partners for Empowerment, Advocacy and Leadership	Campaign for Tobacco-Free Kids	Citizens’ Commission to Protect the Truth
Faith United Against Tobacco	Lung Cancer Alliance	Massachusetts Assn. of Health Boards
Medical Society of the State of New York	National African American Tobacco Prevention Network	National Assn. of Chronic Disease Directors
National Assn. of County and City Health Officials	National Assn. of Local Boards of Health	National Coalition for LGBT Health
National LGBT Tobacco Control Network	Oncology Nursing Society	Partnership for Prevention
Tobacco Control Legal Consortium		

Landlord Survey in Six NY Counties Shows Most Have Implemented No-Smoking Policies

Momentum has been building around smoke-free housing for several years, and now the Siena College Research Institute (SRI), a public opinion research center, has released a survey of landlords in Albany, Rensselaer, Saratoga, Schenectady, Warren, and Washington that quantifies this trend in those upstate counties. The survey covers over 400 landlords and over 10,000 housing units in urban and rural areas and thus gives a broad snapshot that will be useful for policymakers well beyond New York. It was recently conducted from April 20, 2010 to June 28, 2010. Among the most important findings:

- The trend toward smoke-free housing is large and growing fast. Overall, 54% of all surveyed landlords have a non-smoking policy for at least some of their multi-unit properties. 43% of landlords who owned multiple buildings already have some smoking restrictions, and the number is even higher for single building landlords at 56%. Of the single building owners with some smoking restrictions, 73% have a smoking ban in all units. 42% of landlords with smoke-free policies instituted them in the past 5 years, and the high rate of complete satisfaction with the policy (84%) could possibly indicate that occupancy rates in smoke-free buildings did not fall during that period because of the policy.

- The top reasons cited for why landlords went smoke-free are: lessened risk of fire (91%), smaller clean up costs (85%), reduced health risks for tenants (73%), fewer tenant complaints (67%), and lower insurance rates (44%). Although some of the benefits sought are too long-term to be measured in this type of survey, 80% of landlords said that maintenance costs had decreased since instituting smoke-free policies.
- Although 72% of landlords who have not yet implemented smoke-free rules said that enforcement was a concern, only 10% of smoke-free landlords “strongly agreed” that this had been a challenge. A possible reason for the relative ease of enforcement is general tenant acceptance of the policy. Only 2% of landlords strongly agreed that they had received many complaints from tenants, while 84% of landlords who had an opinion said that they had experienced generally positive feedback from tenants.

This survey is important because it confirms the rapid growth of smoke-free housing, a long-running goal for many health advocates. That such a large percentage of buildings and landlords already have addressed smoking policies may encour-

age other private and public landlords to institute no-smoking policies. Knowing that fire safety is such a great driver of smoke-free policies may be useful to health advocates in delivering more effective outreach and education to landlords.

The survey was commissioned by the Capital District Tobacco-Free Coalition and the Southern Adirondack Tobacco-Free Coalition. Donald Levy, Director of SRI, Jeanie Orr, Project Coordinator for the Capital District Tobacco-Free Coalition, and Janine Stuchin, Director of the Southern Adirondack Tobacco Free Coalition, issued a press release for the survey on August 10, 2010. SRI and both coalitions distributed the press release to their Capital Region media contacts with articles resulting in publications such as the *Albany Times Union*, *Saratoga Business Journal*, and *Troy Record*.

A report of the SRI survey with accompanying recommendations is available [here](#).

The Smoke-Free Coalition of Maine conducted an abbreviated, multi-term landlord survey to track the impact of their projects and sustained efforts in 2009; a summary of results is available [here](#). Both surveys show similar percentages of smoke-free landlords, similar patterns of growth, and help to sketch a nationwide trend toward smoke-free housing.

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The Center for Public Health and Tobacco Policy (Center) is a new resource for the New York tobacco control community. The Center is funded by the New York State Department of Health and will be working with the New York State Tobacco Control Program and its contractors to develop and support policy initiatives that will reduce tobacco-related morbidity and mortality in New York.

The Center is located at New England Law | Boston and is project of the Center for Law and Social Responsibility. The Center is also affiliated with the Tobacco Control Legal Consortium.

The Center will work with tobacco control advocates in New York to support the adoption of evidence-based policies that reduce the availability of tobacco products, protect non-smokers from secondhand smoke, and minimize tobacco advertising and promotion.

Please Note: The Center is funded to provide assistance to the New York State Tobacco Control Program and its contractors. At this time, the Center is unable to provide assistance to individuals or groups who are not funded by the New York State Tobacco Control Program.