

Why Regulate the Sale of Hookah Tobacco?

Hookah is a water pipe used to smoke tobacco. Hookah tobacco, sometimes known as shisha, is very moist and usually sweetened with either molasses or fruit. Confusingly, shisha also refers to tobacco-free herbal mixtures, which is likewise used in a hookah and virtually indistinguishable from tobacco-shisha. Also problematic, tobacco is frequently present in shisha marketed as tobacco-free.¹ Adolescent hookah use is increasing² and “hookah bars” that sell shisha and permit hookah smoking are growing in popularity throughout the U.S., particularly in cities and near college campuses.³

Hookah smoking is not a safe alternative to cigarette smoking. Hookah smokers are exposed to doses of nicotine sufficient to cause addiction,⁴ and a one hour hookah use session generates second-hand smoke that contains carcinogens and toxicants equal to the amount generated by 2-10 cigarette smokers.⁵

New York’s Adolescent Tobacco Use and Prevention Act (ATUPA) prohibits the sale of shisha to persons under the age of 18 years.⁶ However, retailers of exclusively non-tobacco shisha are not required to register with the New York State Department of Tax and Finance as tobacco retailers, despite the fact that the product is identical in appearance and used in the same manner as tobacco shisha, and can cause serious adverse health effects.⁷ Moreover, recent New York City enforcement activities have found that hookah bars claiming to sell non-tobacco shisha may actually be selling tobacco-containing shisha⁸ (and should therefore be registered and periodically inspected).

New York local governments have the authority to impose more stringent sales restrictions on tobacco and other products regulated through ATUPA. New York City, for instance, restricts the sale of hookah to establishments whose primary business (more than 50 percent of revenue) is derived from the sale of hookah. Given the difficulty in determining whether shisha is tobacco-containing or tobacco-free, and the negative health effects of using either kind, localities will benefit from incorporating all types of shisha into their tobacco controls.

Review our [technical report on Tobacco Retail Licensing](#) to understand how local governments may regulate where and how tobacco products are sold.

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¹ An undercover sting by the New York City Health Department in 2015 caught 13 hookah bars serving tobacco-containing shisha in violation of the Clean Indoor Air Act. City Health Department busts 13 hookah bars, NY DAILY NEWS, <http://www.nydailynews.com/blogs/dailypolitics/city-health-department-busts-13-hookah-bars-blog-entry-1.2069318> (last visited Jan 20, 2017).

² LLOYD D. JOHNSTON ET AL., MONITORING THE FUTURE NATIONAL SURVEY RESULTS ON DRUG USE, 1975-2015: OVERVIEW, KEY FINDINGS ON ADOLESCENT DRUG USE. (2016).

³ American Lung Association, AN EMERGING DEADLY TREND: WATERPIPE TOBACCO USE (2007), http://www.lungusa2.org/embargo/slati/Trendalert_Waterpipes.pdf (last visited Jan 12, 2017).

⁴ WORLD HEALTH ORGANIZATION STUDY GROUP ON TOBACCO PRODUCT REGULATION (WHO), WATERPIPE TOBACCO SMOKING: HEALTH EFFECTS, RESEARCH NEEDS AND RECOMMENDED ACTIONS BY REGULATORS 2 (2005).

⁵ Daher N et al., *Comparison of carcinogen, carbon monoxide, and ultrafine particle missions from narghile waterpipe and cigarette smoking: Sidestream smoke measurements and assessment of second-hand smoke emission factors* (2010), 44 ATMOS. ENVIRON. 8, 14 (2010).

⁶ N.Y. PUB. HEALTH LAW § 1399-aa *et seq.*

⁷ CTRS FOR DISEASE CONTROL AND PREVENTION, SMOKING AND TOBACCO USE; FACT SHEET; HOOKAHS SMOKING AND TOBACCO USE (2016), http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/ (last visited Jan 12, 2017); citing American Lung Association, *supra* note 20; and American Lung Association, HOOKAH SMOKING: A GROWING THREAT TO PUBLIC HEALTH (2011), <http://www.lung.org/assets/documents/tobacco/hookah-policy-brief-updated.pdf> (last visited Jan 12, 2016).

⁸ See Erin Durkin, New York Daily News, City Health Department busts 13 hookah bars for violating smoking ban (Jan. 7, 2015) (reporting that New York City health officials sampled purportedly tobacco-free shisha sold by 13 hookah bars and found tobacco).

