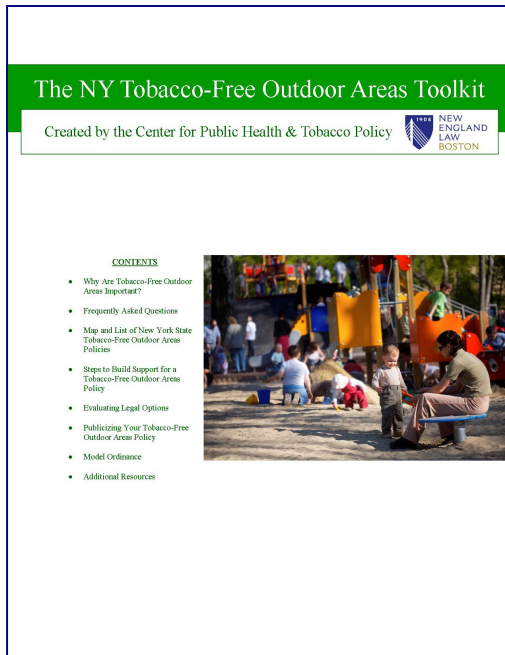


## Tobacco-Free Outdoor Areas Toolkit Now Available



We heard from many NYTCP contractors regarding their interest in comprehensive policy information on tobacco-free outdoor areas, and in December of last year we completed and released our NY Tobacco-Free Outdoor Areas Toolkit. The toolkit utilizes existing information on tobacco-free outdoor area policies from around the country, and includes much new information targeted specifically for those working on outdoor policies in New York. The NY Tobacco-Free Outdoor Areas Toolkit contains an assortment of valuable information including:

- Why tobacco-free outdoor areas are important, as well as their benefits;
- Frequently asked questions about tobacco-free outdoor area policies;
- A map and list of New York State tobacco-free outdoor area policies;
- Steps to build support for a tobacco-free outdoor areas policy;

- Evaluating legal options regarding the proper type of policy for particular needs;
- Ways to publicize the adoption of tobacco-free outdoor areas policies;
- A New York model ordinance to prohibit tobacco use and smoking in specified outdoor areas; and
- Additional outside resources.

Our staff is available to answer questions about the toolkit and provide personalized assistance to help your NY community put a tobacco-free outdoor areas policy in place. Please contact us at [tobacco@nesl.edu](mailto:tobacco@nesl.edu) or (617) 368-1465 with any questions.

[Click here to download the Tobacco-Free Outdoor Areas Toolkit.](#)

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## All NYC Parks and Beaches Now Smoke-Free

On February 2, 2011, the New York City Council approved a bill to prohibit smoking in 1,700 city parks and on fourteen miles of city beaches. Smoking will no longer be allowed in Central Park, on the Coney Island boardwalk, or within any of the 29,000 acres of parkland the city parks department maintains. The law also applies to pedestrian malls and plazas such as those in Times Square. The Department of Parks and Recreation will be responsible for enforcing the law and violators may be subject to fifty dollar fines.

The Council approved the bill with a 36-to-12 vote. Voicing support for the bill, Council speaker Christine C. Quinn noted that the law would protect the rights of nonsmokers, stating that, "[t]heir health and their lives should not be negatively impacted because other people have decided to smoke."

Mayor Michael R. Bloomberg, who pushed to prohibit smoking in restaurants and bars in 2002, signed the measure into law on February 22. He said, "[t]his summer, New Yorkers who go to our parks and beaches for some fresh air and fun will be able to breathe even cleaner air and sit on a beach not littered with cigarette butts[.]" In 2009 a health department study was published finding that fifty-seven percent of nonsmoking adult New York City residents had an elevated level of a nicotine byproduct in their blood, indicating that they were recently exposed to cigarette smoke. In comparison, the national level for nonsmokers was forty-five percent. Regardless of whether people are sitting indoors or outdoors, if they are within three feet of smoker they will be exposed to the approximately the same levels of secondhand smoke.

## Lorillard Liable for \$152 Million in Damages After Targeting Children with Free Samples

The estate of Marie Evans of Roxbury, MA sued Lorillard, the company that produces Newport cigarettes, in a wrongful death lawsuit that resulted in a jury verdict of \$71 million in compensatory damages to Ms. Evans' estate, as well as \$81 million in punitive damages (reflecting five days of net tobacco sales for Lorillard). Mrs. Evans, who received free samples of Menthol cigarettes from Lorillard when she was a child, died in 2002 of lung cancer after smoking Newport menthol cigarettes for 40 years. The December 14, 2010 decision in Suffolk County Superior Court was groundbreaking in that it was the largest jury award ever in the state and the first time a tobacco company has been found liable for marketing cigarettes by handing out free samples.

Evans' lawsuit alleged that at the age of 9, she received free samples of Newport cigarettes from Lorillard in a targeted and predatory marketing campaign aimed at youth in an African-American community in Roxbury. Just weeks before Evans died (at 54 years of age), she videotaped a deposition testifying that in the early 1960's Lorillard employees drove around the Orchard Park housing de-

velopment of Roxbury, passing out free samples of Newport cigarettes to children from a white truck similar to an ice cream truck. In the wrongful death suit, Evans' lawyers argued that Lorillard marketed "fun" menthol cigarettes to children to get them hooked at a young age and that the company was negligent in not disclosing the health risks of smoking and the addictiveness of nicotine.

Lorillard denied Evans' allegations that the company handed out free cigarettes in Orchard Park. Lorillard claimed that the company had communicated what it knew at the time to be the health risks associated with smoking and that Evans was aware of such dangers as an adult. Lorillard argued that Evans was responsible for her own actions in continuing to smoke even after she gave birth to her son and watched her own father die of lung cancer. Evans testified in the videotape that when she first received the company's free samples, she traded them for candy, but by age 13 began smoking them and continued this addiction until her death. She tried to quit about 50 times, but could not break the

addiction. The jury concluded that Lorillard was negligent for marketing its cigarettes to children and for denying the health risks associated with this dangerous product. Lorillard has appealed this decision.

This verdict could influence the results of tobacco lawsuits across the country and may play a large role as the U.S. Food and Drug Administration considers a complete ban on the sale of menthol cigarettes. This case scrutinized the marketing strategy used by Lorillard to target inner-city neighborhoods. Newport cigarettes have been strategically marketed toward African-American communities, and the menthol brand is popular within this demographic, as well as with younger smokers. A 2005 U.S. Department of Health and Human Services [study](#) indicates that African-American smokers are more likely to smoke Newports than any other brand of cigarette. Lorillard is the third largest tobacco company in the United States, and Newport, its leading product, is the number one selling menthol cigarette in the country.

## Tobacco Companies Seek to Weaken "Corrective Statements" Ordered by Court

After U.S. District Court Judge Gladys Kessler found that the leading tobacco companies had engaged in a decades-long pattern of racketeering, she ordered them to publish "corrective statements" informing their consumers that they had been lied to for decades. These corrective statements will appear in newspapers and magazines and attached to cigarette packs.

Having lost the trial and their appeal, the tobacco companies are now trying to weaken the corrective statements, which the Department of Justice developed in consultation with health communications experts. The statements are based on Judge Kessler's factual findings, which she issued after an extensive nine-month trial. On February 23, Judge Kessler denied the

tobacco companies' motion to keep the proposed corrective statements secret. However, the tobacco companies are continuing to challenge the proposed statements, vowing to bring the case to the appeals court yet again. To read the Justice Department's proposed corrective statements, click [here](#).

## FCTC Agrees to Ingredient Disclosures and Restrictions on Flavor Additives

In November 2010, delegates from 172 countries that are signatories to the Framework Convention on Tobacco Control (FCTC) agreed to make the following two recommendations: (1) to restrict or ban flavor additives that make cigarettes more attractive to new smokers; and (2) to require tobacco producers to disclose their ingredients to health authorities. The recommendations came as a major blow to the tobacco industry, which intensely lobbied against the guidelines.

The convention spokesman, Tarik Jasarevic, explained "[t]here was a lot of campaigning

against these guidelines. It's a major achievement because countries really showed unity and showed they are putting public-health policies as a priority before the interests of the industry. . . . If these guidelines are implemented, this could lead to a certain decrease of new smokers — fewer young people getting hooked."

The FCTC entered into force in February 2005. The World Health Organization (WHO) drafted the FCTC in an effort to address the global nature of the tobacco epidemic. The FCTC is the first time the WHO has taken the lead in negotiating an inter-

national treaty. The central goal of the FCTC is to protect the right of all people to the highest standard of health. The treaty also facilitates international efforts to combat tobacco.

Although the United States has signed the FCTC, it is not a party to the agreement because it has not been ratified by the Senate.

[For more information about the FCTC, please visit the Framework Convention Alliance here.](#)

## Judge Rules Against NYC Health Warning Law

On December 29, 2010, Judge Jed Rakoff of the Southern District of New York struck down a New York City Board of Health requirement that tobacco retailers display health department messages that include pictorial images of smoking's adverse health effects and information about quitting smoking. Judge Rakoff found that the law is preempted by the Federal Cigarette Labeling and Advertising Act (FCLAA).

Preemption occurs when federal law prohibits state and local governments from regulating in a particular area. In this case, the FCLAA contains a preemption provision that reads in part: "No requirement or prohibition based on smoking and health shall be imposed under state law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter." Judge Rakoff ruled that because point-of-sale displays constitute "promotion," the New York City regulation requiring warning signs to be placed near those displays was a "requirement . . . with respect to" the promotion of cigarettes and therefore invalid.

New York City argued that the city's regulation was not "with respect to" the promotion of cigarettes, because the law did not in any way regulate how tobacco companies could promote their products. The law is triggered by the decision to *sell* tobacco products, the retailer's obligations remain the same whether or not the products are advertised or promoted. Moreover, the city's law is motivated by a desire to educate the public about the risks of smoking, an educational function that local governments have assumed for decades. The City filed an appeal of the decision with the U.S. Court of Appeals on January 4, 2011.

We believe that Judge Rakoff interpreted the preemption provision in an overly broad manner that is not supported by law and unduly limits the scope of local government authority. The Center will be joining with the Tobacco Control Legal Consortium to file an *amicus curiae* brief in the Second Circuit Court of Appeals urging the court to reverse Judge Rakoff's decision.

[Click here for the full decision.](#)

### Judge Rakoff's Decision Does Not Impact Display Ban or Licensing Laws:

**Display Bans:** The Family Smoking Prevention and Tobacco Control Act of 2009 (FSPTCA) gave state and local governments the authority to "enact statutes and promulgate regulations, based on smoking and health . . . imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes." In short, federal law now clearly authorizes states and localities to regulate the time, place, and manner of cigarette advertising and promotion.

- Restrictions on point-of-sale displays would constitute limits on the "place" and "manner" of cigarette promotions, and are therefore not preempted by federal law.
- Importantly, the provision allowing for "time, place, and manner" restrictions on cigarette advertising and promotion was not at issue in the New York case and was not discussed or interpreted by Judge Rakoff.
- In sum, although the New York court's decision referred to "point of sale promotions," the issue it was considering was completely different from the issue of point-of-sale display regulations, and the court did not consider the key legal provision that would apply to limits on point-of-sale displays.

**Licensing:** The New York City decision did not address laws relating to where tobacco products can be sold. It is well-recognized that state and local governments have the authority to regulate the sale (as opposed to the advertising and promotion) of cigarettes, and the U.S. Supreme Court has clearly stated that "States remain free to . . . regulate conduct with respect to cigarette use and sales." *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 550, (2001).

## Study Finds That Ireland's Display Ban Did Not Cause Economic Harm to Retailers

A peer-reviewed study published in *Tobacco Control* examined the economic impact of national legislation removing tobacco promotional displays from the retail sector. In 2009, the Republic of Ireland implemented legislation that prohibited point-of-sale tobacco promotional displays and point-of-sale tobacco advertising. This study evaluated the short-term economic impact of the legislation and found no statistically significant impact on cigarette sales.

Using sales data collected by AC Nielsen

from cigarette and tobacco retailers, the study focused on changes in sales of cigarette packs between 2006 and July 2010, before and after the legislation was implemented. The study indicated that cigarette sales were already declining before the tobacco display and advertising ban was implemented. After the law went into effect, no change in cigarette sales was observed over and above seasonal and underlying trends. Although some retailers and tobacco manufacturers have claimed that the law hurt small businesses, the

study concluded that underlying trends such as the global recession were far more likely explanations for any decrease in sales.

Instead of harming retailers economically, the study suggested that the law's primary effects were to reduce youth smoking and help to denormalize tobacco use. Thus, while the law did not have an economic impact on retailers in the short term, it will help to reduce smoking in the long run.

[Click here for the study in Tobacco Control.](#)

# Surgeon General's Report Details How Tobacco Smoke Causes Disease

In 2010, Surgeon General Regina Benjamin released the latest report focused on the adverse health effects of smoking. The report details the evidence behind six major conclusions.

**1) There is no risk-free level of exposure to tobacco smoke.** Cigarette smoke, by itself and in combination with genetic processes, has a powerful effect on the body's ability to ward off disease. Exposure to the carcinogens present in cigarette smoke, the report finds, can result in DNA damage, which in turn can create a "pathway" that fosters the mutations and uncontrolled cell growth present in lung cancer. Cigarette smoke overwhelms the lungs' defense mechanisms, causing oxidative injury that can result in emphysema. Research has not shown there to be a tolerable dose of cigarette smoke that avoids this oxidative injury. Inhalation delivers the smoke's chemicals from the lungs into the blood stream, so even short term exposure to secondhand smoke results in immediate adverse effect on the circulatory system.

**2) Inhaling tobacco smoke causes adverse health outcomes.** Breathing the complex chemical mixture inherent in cigarette smoke can not only cause cancer, but can result in cardiovascular and pulmonary diseases. The report finds cigarette smoke can cause DNA damage, chronic inflammation in the lungs, and oxidative stress.

**3) The risk and severity of many negative health effects caused by cigarette smoke are directly related to the length and intensity of**

**exposure.** The body's mechanisms that are placed at the greatest risk are those with sustained exposure to cigarette smoke. In addition to risks of cancer, emphysema, and heart disease, the report lists the many reproductive implications of cigarette smoke inhalation.

**4) The powerfully addictive quality of tobacco products are related to the various actions of nicotine and other compounds on the brain, and this can lead to sustained use of and exposure to tobacco products.** Adolescents are particularly vulnerable to nicotine addiction. Research shows nicotine sensitivity to be higher in adolescents than adults, and adolescent smokers show signs of dependence even with low levels of cigarette consumption. Evidence also indicates there may be genetic factors, in addition to environmental and psychological factors, that inform both the nicotine dependence itself and the severity of withdrawal symptoms, which in turn help explain the variation in success of individual attempts to stop smoking.

**5) Low level exposure to cigarette smoke, including secondhand smoke, sharply increases risk for heart disease, stroke, aortic aneurysm, and peripheral arterial disease.** Any exposure to cigarette smoke greatly increases the chance for cardiovascular disease. For this reason, reducing the exposure to cigarette smoke by cutting back to a few cigarettes a day has not been shown to reduce the risk of cardiovascular disease. For those already diagnosed with

coronary heart disease, research shows the use of nicotine patches or other medications to help with quitting is far less risky than continuing to smoke, and smoking cessation greatly reduces the risk of dying.

**6) Product modifications intended to lower the amount of specific toxins found in tobacco smoke have not conclusively been shown to actually reduce the smoker's health risk.** While the study finds a theoretical benefit to reducing the amount of toxins in cigarette smoke, evidence shows that filtered, low-tar, and "light" varieties of cigarettes have not reduced the disease risk found in cigarette smoke exposure. Furthermore, the idea that these cigarettes are "safer" may (1) discourage actual cessation by smokers who may otherwise quit; (2) encourage former smokers to resume smoking due to a perceived reduction in risk; and (3) persuade nonsmoking young people to begin smoking by presenting what looks to be a safer alternative to "regular" cigarettes. These types of toxin-reducing modifications, therefore, may actually put the public health at further risk.

The report encourages state involvement in helping monitor prevention policies, protecting people from secondhand smoke, and offering assistance to help smokers quit and warning them about the dangers of continued smoking. It also recommends comprehensive state and local restrictions on tobacco advertising, promotion, and sponsorship, as well as higher tobacco taxes.

[The executive summary as well as the full report can be found here.](#)

## ***CENTER FOR PUBLIC HEALTH AND TOBACCO POLICY***

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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.**