



What does NYS Public Health Law say about tobacco and cannabis use in parks?

NYS Public Health Law places restrictions on smoking and vaping of both tobacco and cannabis in a wide variety of indoor and outdoor locations. Some of these restrictions impact local municipal property and, when taken together, create a somewhat confusing patchwork of regulation. NYS Public Health Law:

- Prohibits **smoking and vaping** of tobacco and cannabis products between sunrise and sunset at all playgrounds in New York when one or more children under age 12 are present.
- As of October 13, 2022, will prohibit **smoking** of tobacco and cannabis in “any public park,” and the term “park” is defined to include “public parks, beaches, pools, boardwalks, marinas, playgrounds, recreation centers, and group camps.” Also authorizes local municipalities to impose a \$50 penalty for violations.
- **Does NOT** prohibit smoking, vaping and use of non-combustible tobacco and cannabis products on municipal property other than parks and playgrounds as noted above.
- Requires signs to be posted in outdoor areas where smoking is restricted.

Smoking and vaping of tobacco and cannabis are prohibited on playgrounds during daylight hours when children are present, AND smoking is prohibited everywhere in parks all the time (as of October 13, 2022 and with a few exceptions).

Fortunately, local municipalities have the authority to expand the provisions set forth in NYS Public Health Law to be more **comprehensive, consistent and easier to enforce**.

The case for prohibiting vaping

While electronic smoking devices (ESDs) are arguably less dangerous than traditional tobacco products, they are by no means “safe” for users, those exposed to the secondhand aerosol emissions that they produce, or to the environment. And despite some claims to the contrary, ESDs are not FDA-approved for use as a smoking cessation aid. Prohibiting vaping in shared outdoor public spaces:

- **Reduces exposure to harmful secondhand aerosols.** Secondhand emissions from ESDs are NOT harmless water vapor. They're an aerosol that contains nicotine, ultrafine particles and low levels of toxins that are known to cause cancer. Exposure to fine and ultrafine particles, and specific elements in ESD aerosols including heavy metals and nicotine, may exacerbate respiratory ailments like asthma, and cause other respiratory distress and disease.
- **Reduces toxic litter.** ESD waste is potentially a more serious environmental threat than cigarette butts by introducing plastic, nicotine salts, heavy metals, lead, mercury, and flammable lithium-ion batteries into waterways, soil and to wildlife. In addition, ESD waste often contains the remains of highly concentrated liquid nicotine which can cause serious irreversible, or incapacitating illness, and can even be fatal if swallowed, absorbed by the skin or inhaled, even in small doses. Unlike cigarette butts, ESD waste won't biodegrade even under severe conditions.

- **Makes compliance and enforcement easier.** In almost all cases in NY State Public Health Law, if there's an outdoor location in which you can't smoke, you also can't use an ESD. The most recent amendment to the NYSPHL is a notable exception that results in a confusing public message and makes enforcement more difficult.

The case for prohibiting the use of non-combustible tobacco products

- **Positive health messaging.** Municipalities often set out not only to prevent secondhand smoke and aerosol exposure, but also to protect the natural environment, decrease exposure to toxic nicotine and cannabis litter, promote a positive health message, and contribute to a tobacco-free community norm. Policies that prohibit all tobacco use, including non-combustible tobacco, are most effective at achieving these various goals.
- **Reduce toxic litter.** Smokeless tobacco spit is considered a biohazard and contains at least 24 carcinogenic chemicals. Spit tobacco often creates unwanted hazardous waste and byproducts, which creates a hazard for anyone who comes in contact with it, including maintenance workers. A dip of smokeless tobacco typically contains 3-5 times more nicotine than a cigarette.

The case for making ALL municipal property tobacco-, smoke- and vape-free

Without a local policy in place, people can smoke, vape and use non-combustible tobacco and cannabis products on all municipal property not affected by the NYS Public Health Law. In addition, the current Public Health Law prohibiting smoking in local public parks does not include:

- the sidewalks immediately adjoining parks, squares and public places;
 - any pedestrian route through any park strip, median or mall that is adjacent to vehicular traffic;
 - parking lots or roadways;
 - theatrical productions; and
 - any portion of a park that is not used for park purposes.
- **Municipalities have a special responsibility** to make public services and programs accessible to all members of the community, including those with health conditions that can be exacerbated by exposure to secondhand smoke and ESD aerosols.
 - **Incremental changes can be expensive.** Changes to NYSPHL tend to happen incrementally, each time requiring local municipalities to post signage reflecting the new provisions.
 - **Comprehensive policies maximize compliance because they're easier to understand.** While there may be compelling reasons for certain exceptions to comprehensive policies, the fewer there are, the easier it is to communicate the policy to the public which, in turn, makes it easier for community members to comply.

Implementation, enforcement, and compliance

The new amendment to NYS Public Health Law allows local municipalities to impose a civil penalty of \$50 for each violation (this does NOT apply to the section of the law that prohibits smoking and vaping of tobacco and cannabis products between sunrise and sunset at all playgrounds when one or more children under age 12 are present). In addition, many municipalities already have local ordinances in place that impose monetary fines for violations.

Even so, most communities rely primarily on voluntary compliance and encourage self-enforcement by widely publicizing the policy and posting prominent signage with positive messaging, a strategy that has proved to be very effective.

- **NYS Public Health Law requires signs to be posted** in outdoor areas where smoking is restricted, and municipalities are responsible for posting signage on municipal property impacted by state law.
- **Signage is one of the primary mechanisms used to inform visitors of smoke- and vape-free policies** and to encourage visitor compliance. There are many important considerations for designing effective signage and

clarity is high on that list. Signage that changes from one area within a park to another are likely to confuse visitors and contribute to non-compliance.

- **Signage is a fairly permanent expression of a tobacco-free policy, and it can be costly.** Municipalities can save both time and money to consider what local provisions, if any, they want to adopt to make their local policy more comprehensive, consistent and easier to enforce *before* investing in signage.

Tobacco-Free Erie Niagara can help!

Tobacco-Free Erie Niagara (TFEN) is funded by the NYS Department of Health to provide support to local municipalities to transition their property to smoke- and vape-free spaces. This FREE support includes:

- **Information and technical assistance** on policy implementation, including community education to maximize compliance.
- **FREE signage to support local policy implementation.** TFEN can provide free signage to municipalities that adopt a local policy expanding the provisions contained in NYS Public Health Law. TFEN is not able to provide free signage to local municipalities to implement the state law, although we can provide guidance about how to design effective signage and facilitate the production of signage, if desired.
- **Access to the Public Health Law Center** which has been contracted by the NYS Department of Health to provide law and policy expertise related to commercial tobacco control.

Contact TFEN:

Krista Douvlos, kdouvlos@caiglobal.org, 716-427-0144

Rashawn Smalls, rsmalls@caiglobal.org, 716-427-0106