

Analysis of Proposed Changes to the Fort Collins Smoking Ordinance
Prepared for the Health District of Northern Larimer County Board of Directors

Issue Summary: The Fort Collins City Council is considering changes to the clean indoor air ordinance that might allow the continued existence of hookah bars and the establishment of similar businesses.

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Background

According to a Fort Collins city attorney, during the past year, several businesses in Fort Collins, including two hookah bars, have expressed interest in ensuring that they meet the criteria to operate as “retail tobacco stores” under the City Code. In response, City staff crafted a more detailed definition of retail tobacco store to be implemented as administrative regulations. However, once the state passed the statewide indoor smoking ban, the Colorado Clean Indoor Air Act, effective July 2006, staff decided to include the more detailed definition in any revised ordinance drafted to move the city’s smoking restrictions into line with the state law.

In August, the City Council of Fort Collins heard the first reading of an ordinance to amend the City Code regarding the restriction of smoking in public establishments. When the Fort Collins smoking restriction was enacted in 2002 it included certain exemptions that are now not allowable under the recently passed statewide smoking law, the Colorado Clean Indoor Air Act. For example, the city allowed exemptions for bingo parlors and bowling alleys which are not exempted under state law. The state law allows local government ordinances banning smoking to be more restrictive than the state law but not less so. According to Janna West Kowlaski at the Larimer County Department of Health, the two hookah bars and one cigar business in Fort Collins asked the City Council for provisions in the ordinance that would further define a “retail tobacco store” to allow their continued existence. It is unclear if the three businesses meet the criteria defined in the state law to continue to operate as a “tobacco business”.

During the first debate on the proposed changes to the ordinance, the Council decided they would like more time to look at the issue and postponed a decision. In the weeks since the first introduction of this issue, some members of the Council decided that they would like to grandfather the existing three tobacco businesses while enacting a revised ordinance that would prevent the future establishment of smoking lounges and hookah bars of any type. The discussion at the September 26th City Council meeting centered around a concern by council members that they do not want to put anyone out of business so they are trying to protect the three currently established tobacco businesses. The revised ordinance they debated included a grandfather clause AND new language for future tobacco businesses that limits their size to 5000 sq. ft. and allows only 40% of the floor space to be used for on-site consumption. Ben Manvel put forward an amendment to drop the floor space used for on-site consumption from 40% to 1/3 and it passed. Manvel also suggested an amendment to the language that states that no more than 8% of the total on-site revenues of the retail tobacco business will be from the sale of incidental goods. He wanted it to be 0% and that amendment was not passed. The Council again decided to delay a decision on a final ordinance for another four weeks to further consider the option of not having a grandfather clause.

Hookah Smoking

Hookah or waterpipe smoking is a practice that originated hundreds of years ago in the Middle East, India and other countries. Although it had been declining in popularity in the past century, throughout many areas of the world there is a resurgence of the practice, particularly among youth.¹ A waterpipe is comprised of four parts:

- A base, or smoke chamber, which is partially filled with water
- A bowl, which contains tobacco and a heating source
- A pipe that connects the bowl to the base and dips into the water in the base
- A hose, a second tube in the pipe that does not dip into the water but opens into air in the base and allows users to inhale the hookah smoke.²

A smoker inhales through the pipe, forcing the smoke to pass through the water, cooling the smoke. The tobacco used in the pipe is infused with flavors, often fruity, which is part of the appeal to hookah smokers.

Studies on the health effects of waterpipe smoking are difficult to evaluate given wide variations in the content of the tobacco and the fact that many waterpipe smokers also smoke cigarettes.³ There are several misconceptions surrounding waterpipe smoking, the most prevalent being that moving the tobacco smoke through the water reduces both toxins and nicotine content. In 2005 the World Health Organization Study Group on Tobacco Product Regulation issued an advisory note on waterpipe smoking.⁴ The Study Group found that smoke from waterpipes releases both nicotine and numerous toxins associated with lung cancer, heart disease and other diseases. In addition, the advisory noted that a typical hookah smoking session lasts much longer than the time it would take a person to smoke a cigarette. For that reason, “The waterpipe smoker may therefore inhale as much smoke during one session as a cigarette smoker would inhale consuming 100 or more cigarettes.”

What are other communities doing?

Communities across the country are navigating this issue in diverse ways. Some communities are allowing the bars to classify themselves as tobacco bars and continue to operate under indoor smoking laws. Other communities have implemented very strict clean indoor air laws that provide no exemption for existing hookah bars and smoking lounges.

It appears in some cases, hookah bars exist to skirt bans on indoor smoking. In New York City, hookah bars are exempt from the indoor smoking law because they are classified as tobacco bars and therefore allow both hookah smoking and cigarette smoking. New York City tobacco bars must earn at least 10 percent of their revenue from the sale of tobacco products and 60% from the sale of alcohol. A newspaper profile of a hookah bar in New York City indicated that very few patrons were smoking hookah, most were smoking their own cigarettes. New York City also has more traditional hookah bars catering to Arab American customers that do not sell alcohol (because Muslims do not drink) and are therefore not classified as tobacco bars. Because smoking is prohibited in those bars members of the Arab American community feel that they are being discriminated against.

Taking a different approach, the state of Washington passed a law restricting all indoor smoking including restaurants and bars and did not carve out an exemption for hookah bars. As a result of the initiative, hookah

¹ Knishkowsky, B., and Amitai, Y., Water-Pipe (Narghile) Smoking: An Emerging Health Risk Behavior, *Pediatrics*, 2005; 116:113-119, accessed at <http://www.pediatrics.org/cgi/content/full/116/e113>

² <http://www.mayoclinic.com/health/hookah/AN01265>

³ Knishkowsky, et al

⁴ http://www.who.int/tobacco/global_interaction/tobreg/waterpipe/en/index.html

bars in Seattle were forced to either change their business model by selling more food and beverages or go out of business.

Why is this issue important?

As with cigarette smoke, hookah smoking presents significant health risks to both the individual smoking and to any person exposed to secondhand smoke. The WHO Study Group surveyed the available literature on hookah smoking and reached the following conclusions:

- Using a waterpipe to smoke tobacco poses a serious potential health hazard to smokers and others exposed to the smoke emitted.
- Using a waterpipe to smoke tobacco is not a safe alternative to cigarette smoking.
- Even after it has been passed through water, the smoke produced by a waterpipe contains high levels of toxic compounds, including carbon monoxide, heavy metals and cancer-causing chemicals.⁵

What has the Board done in the past?

In 2002, staff conducted a large overview of the issue of secondhand smoke. The overview examined evidence regarding health risks of exposure to secondhand smoke and examined all policy options available for reducing exposure to secondhand smoke. At the April 23, 2002 Board meeting, in response to the work the Fort Collins City Council was doing to make revisions to the clean air ordinance, the Board passed a motion to support a 100% smoke-free ordinance consistent with the Colorado Tobacco Education and Prevention Alliance's gold standard and communicate that message with decision makers. In addition, the Board offered to have Health District staff help the City with additional research, if desired.

Reasons to oppose a grandfather clause for existing hookah bars and the establishment of new businesses:

- The new Surgeon General's Report released in June 2006, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, documents beyond any doubt that secondhand smoke harms people's health. An important new conclusion of this Report is that smoke-free environments are the ONLY approach that effectively protects nonsmokers from the dangers of secondhand smoke. Because there is no risk-free level of secondhand smoke exposure, anything less cannot ensure that nonsmokers are fully protected from the dangers of exposure to secondhand smoke.
- Allowing the existing hookah bars to continue to operate violates the spirit and intent of the statewide smoking ban which aims to prevent worker and public exposure to dangerous secondhand smoke.
- Both research conducted by the City of Fort Collins and the Health District's Triennial Survey showed that the majority of the public supported adoption of policies that reduced the public's exposure to secondhand smoke. There is strong local support in the Health District and Larimer County for policies to protect the public, and workers in particular, from exposure to environmental tobacco smoke. In 2001, as part of the Health District's Community Health survey, 71% of respondents supported policies or ordinances that protect the public from secondhand smoke. By 2004, that number had increased to 76% of respondents. 63.6% of local residents reported that they think "there should be a law to protect employees that are exposed to secondhand smoke (i.e. restaurant workers)."
- There is concern that hookah bars appeal to younger consumers, particularly college students (a group that continues to have the highest rates of smoking). Allowing the continued existence or new establishment of hookah bars runs counter to the Tobacco Partnership's goal of prevention of tobacco use among youth.
- The WHO advisory recommends some suggested actions around waterpipe smoking for regulators and those recommendations state that "Waterpipes should be prohibited in public places consistent with the bans on cigarette and other forms of tobacco smoking."⁶

⁵ *ibid.*

⁶ WHO advisory

Reasons to support a grandfather clause for hookah bars and allow the establishment of new businesses:

- The tobacco businesses operating in Fort Collins established themselves before the statewide ban was enacted.
- Because these establishments are touted as smoking establishments, only patrons who knowingly wish to expose themselves to secondhand smoke will subject themselves to exposure.

Other Issues to Consider:

It is likely that the City Council will receive a staff recommendation for the new ordinance. Staff is looking at two possibilities:

- 1) Grandfathering the existing hookah bars while crafting an ordinance that would effectively prohibit any new smoking lounge businesses.
- 2) Creating a level playing field by allowing the old businesses to continue and allowing new businesses to establish themselves with some restrictions on size and floor space available for on-site consumption of alcohol.

About this Analysis

This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. Analyses are based on bills or issues at the time of their consideration by the Board and are accurate to the best of staff knowledge. It is suggested that people check to see that a bill has not changed during the course of a legislative session by visiting the Colorado General Assembly web page at www.state.co.us/gov_dir/stateleg.html. To see whether the Health District Board of Directors took a position on this or other policy issues, please visit www.healthdistrict.org/policy.

About the Health District

The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves.

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