Addressing ICAA exemptions through local ordinances

Andrew Epstein, Policy Lead
Tara Gedman, Community Programs Liaison/ Asthma Program Coordinator

HPCDP Grantee and Contractor Meeting 2011
Session overview

- Indoor Clean Air Act exemptions
- The smoke shop and hookah problem
- Local policy options
- Lessons from the field - local action for clean indoor air
- Sharing of plans and needs
Oregon’s Indoor Clean Air Act

- Enacted by the Legislature in 2007; effective Jan. 1, 2009
- “An employer shall provide a place of employment that is free of tobacco smoke for all employees.”
Smokefree workplaces and public places

- Bars and taverns, including bar areas of restaurants
- Bowling centers
- Bingo halls
- Private and fraternal organizations
- Employee break rooms
- Restaurants
- Private offices and commercial office buildings
- Retail and wholesale establishments
- Manufacturing plants and mills
- Truck stops
- Child and adult day-care
- Assisted living facilities
- Movies theaters and indoor entertainment venues
- Hotels and motels (Exception: up to 25% of guest rooms may be designated as smoking rooms by the owner or entity in charge)
- Work vehicles that are not operated exclusively by one employee
Exceptions to the law

- Certified smoke shops
- Certified cigar bars
- Hotel or motel rooms that are designated as smoking allowed (may not exceed 25% of sleeping rooms)
- Smoking of non-commercial tobacco for American Indian ceremonial purposes
Other areas not covered by the ICAA

• Structures that do not meet the definition of “enclosed area”
• Any unenclosed area more than 10 feet from an entrance, exit, window that opens, air intake, or accessibility ramp leading to an enclosed structure.
ICAA smoke shop exemption

- **Smoke shop certification requirements** (2007 legislation)
  - At least 75 percent of gross revenues from sale of tobacco products and smoking instruments
  - Prohibits persons under 18 years of age
  - No video lottery games, social gaming or betting
  - No on-premises consumption of alcoholic beverages
  - Is a stand-alone business
  - Applies to OHA and receives certification before allowing smoking on the premises

- **Legislative intent**: To enable retail tobacco stores to allow customers to sample products
Cumulative smoke shop applications
December 2008 - May 2011

Hookah lounge  Cigar lounge  Retail tobacco shop

1/1/09: ICAA goes into effect
Hookah use among 11th grade boys and girls in Oregon, comparing counties with and without hookah lounges

- 11th grade boys hookah use in counties with hookah lounges
- 11th grade boys hookah use in counties without hookah lounges
- 11th grade girls hookah use in counties with hookah lounges*
- 11th grade girls hookah use in counties without hookah lounges

*Statistically significant change from 2008-2009
### Peak PM$_{2.5}$ in smoking lounges

<table>
<thead>
<tr>
<th>EPA Air Quality Index</th>
<th>Business Type</th>
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<tbody>
<tr>
<td>Hazardous $\geq 251$</td>
<td>Hookah Lounge</td>
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<td>Hookah Lounge</td>
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<td>Very Unhealthy 151-250</td>
<td>Hookah Lounge</td>
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<td>Cigar Lounge</td>
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<td>Unhealthy 66-150</td>
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<td>Hookah Lounge</td>
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<td>Hookah Lounge</td>
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<td></td>
<td>Cigar Lounge</td>
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<tr>
<td>Sensitive Groups 41-65</td>
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<td>Moderate 16-40</td>
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<td>Good $\leq 15$</td>
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<td></td>
<td>Cigar Lounge</td>
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Media clip – hookah lounge
2011 legislation: HB 2726

- HB 2726 introduced to tighten the loophole in the smoke shop exemption:
  - 4-seat max capacity
  - Smoking for sampling purposes only
- Opposed by hookah lounges
- Negotiations and amendments
  - grandfather in existing hookah lounges
  - removal of stand-alone property requirement for some smoke shops (with ventilation system as alternative)
Local implications of HB 2726

- Grandfathered certified smoke shops may continue to operate with a smoking lounge environment
- Grandfathered smoke shops may relocate and grow in size
- Some establishments will allow smoking in malls
- New smoke shops may open with smoking allowed indoors anywhere in the state

Handout: ICAA Exemptions Comparison
Rolling back smokefree air laws

- Private clubs exemptions
- Removing stand-alone requirement
- Ventilation alternatives

- Comprehensive local ordinances provide protection against weakening of state law.
Opportunities for local action

• Local ordinance adoption preceded strong state law
• Preemption adopted in 2001
• Preemption removed in 2007
• County TPEP grantees – leading the way for local action
Local regulation of smoking

• A local government may enact local laws that are more restrictive than state law, regulating smoking
  – in ICAA-exempt workplaces (smoke shops, cigar bars, hotels/motels)
  – on government-owned properties
  – in areas not covered by state law (e.g. outdoor dining areas)
  – products not addressed in the ICAA (e.g. e-cigarettes or herbal shisha)

• Policies may be adopted by local government entities including cities and counties
  – County authority may be limited to unincorporated areas

What types of policies might a local government adopt for stronger smokefree air laws?
Potential local strategies include...

- Comprehensive local clean indoor air ordinance (no exemptions)
- Tobacco retail licensing
- Tobacco flavor sales ban
Grantee presentations

Lane County TPEP – Wednesday 7/28
Benton County TPEP – Thursday 7/29

Presentation slides will be posted to the meeting website.
Plans for local action

• What are county TPEP programs planning for FY 2011-2012 and beyond to address ICAA exemptions?
Questions: Carousel Walk

- Group 1: What barriers do you foresee towards local policy adoption?

- Group 2: What information would you need in order to move forward with local policy work to close ICAA loopholes?

- Group 3: What types of resources would you like developed to support this work?
Next steps

- Tobacco Retail Licensure/ICAA exemptions workgroup – open to all TPEP grantees
- Development of technical assistance resources
- Contact your HPCDP liaison with questions, consultation, or to discuss adding this to your workplan if not already included
- Please refer any inquiries from potential smoke shop applicants to Andrew Epstein at HPCDP.
Resources

• **Tobacco Control Network** – recordings and materials from webinars and teleconferences related to smokefree air policy http://www.ttac.org/tcn/materials/

• **Americans for Nonsmokers’ Right** – Information and resources for campaigns to enact local smokefree indoor air laws http://no-smoke.org/goingsmokefree.php?id=110

• **Campaign for Tobacco-Free Kids** – Fact sheets and resources related to smokefree laws http://www.tobaccofreekids.org/what_we_do/state_local/smoke_free_laws/
Questions?

Andrew Epstein
andrew.d.epstein@state.or.us
phone: (971) 673-2379