



## Revision to the Policy on Smoking at the University of Maryland

**PRESENTED BY** Jo Zimmerman, Chair

**REVIEW DATES** SEC – April 9, 2020 | SENATE – April 2020

**VOTING METHOD** In a single vote

**RELEVANT POLICY/DOCUMENT** [Policy on Smoking at University of Maryland](#)

**NECESSARY APPROVALS** Senate, President

### ISSUE

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In September 2019, the Senate Office was asked whether the definition of “smoking” in the Policy on Smoking at University of Maryland restricts the use of vaping devices and e-cigarettes. After consulting with stakeholders involved in implementing the policy, the Senate leadership found that the current policy lacks clarity on whether it prohibits or permits the use of such devices, and determined that the Campus Affairs Committee should consider whether vaping should be explicitly addressed in the policy. The SEC charged the committee with reviewing past Senate action on the University’s approach to smoking, reviewing recent actions at the state and federal level addressing vaping devices and e-cigarettes, examining definitions of smoking at Big 10 and peer institutions, considering the impact of vaping devices and e-cigarettes on members of the campus community and whether their use is consistent with the principles of the University’s Policy on Smoking, and recommending whether the policy should be revised to prohibit the use of vaping devices and e-cigarettes.

### RECOMMENDATIONS

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The Campus Affairs Committee recommends that the Policy on Smoking at University of Maryland (VI-8.10[A]) be revised as indicated in the policy document immediately following this report.

The Campus Affairs Committee recommends that the University should consider whether current smoking cessation resources will be adequate to meet the needs of incoming cohorts of students disproportionately affected by vaping and e-cigarette use.

### COMMITTEE WORK

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The committee reviewed a range of resources identified in its charge, and consulted with the Office of General Counsel (OGC) and the Division of Administration and Finance on the current policy and its implementation. After reviewing recent research on the effects of secondhand emissions from vaping devices and e-cigarettes, the committee determined that explicitly prohibiting the use of vaping devices and e-cigarettes was clearly consistent with the intention of both the USM and University policies on smoking, which were designed to create a smoke-free environment and reduce risks to bystanders. The committee worked to develop a new definition that was sufficiently flexible to address new technologies and mechanisms that simulate smoking.

The committee also consulted with a representative of the University Health Center (UHC), and learned that current staffing levels in the UHC do not allow it to meet the existing demand for smoking cessation services. The committee noted that the significant rise in the use of vaping devices and e-cigarettes among middle- and high-school students will result in large cohorts of matriculating students who may need nicotine-cessation services, which led to the committee's administrative recommendation.

In addition to revising the definition of smoking, the committee made technical changes to the policy and shared its proposed revisions with the OGC, which had no concerns. After due consideration, the Campus Affairs Committee voted to approve the revised Policy on Smoking at University of Maryland and an administrative recommendation at its February 26, 2020, meeting.

## **ALTERNATIVES**

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The Senate could reject the proposed revised policy and the University would retain the current policy. However, the University would lose the opportunity to better protect the health and safety of members of the campus community.

## **RISKS**

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There are no associated risks to the University in adopting these recommendations.

## **FINANCIAL IMPLICATIONS**

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Depending on how the recommendation is implemented, financial resources may be required to provide nicotine-cessation services for those who use vaping devices or e-cigarettes.



## Revision to the Policy on Smoking at the University of Maryland

### 2019-2020 Committee Members

**Jo Zimmerman** (Chair)  
**Yanne Chembo** (Faculty)  
**Venkat Chintha** (Graduate Student)  
**David Cronrath** (Ex-Officio Provost's Rep)  
**Andy Fellows** (Faculty)  
**Stacy Garza** (Staff)  
**Melody Hashemi** (Undergraduate Student)  
**Luke Jensen** (Ex-Officio Chief Diversity Officer Rep)  
**Ireland Lesley** (Ex-Officio SGA Rep)  
**Anne Martens** (Ex-Officio VP Administration and Finance Rep)  
**Max McKittrick** (Undergraduate Student)  
**Pamela McNally** (Staff)  
**Annie Rappeport** (Ex-Officio GSG Rep)

**Joel Seligman** (Ex-Officio VP University Relations Rep)  
**Anjali Sharma** (Undergraduate Student)  
**Sue Sherburne** (Ex-Officio Chair of Coaches Council Rep)  
**Elizabeth Warner** (Faculty)  
**Elizabeth Wasden** (Faculty)  
**Joshua Westgard** (Faculty)  
**Carly Woods** (Faculty)  
**John Zacker** (Ex-Officio VP Student Affairs Rep)

### Date of Submission

**March 2020**

## BACKGROUND

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In September 2019, the Senate Office was asked whether the definition of “smoking” in the Policy on Smoking at University of Maryland restricts the use of vaping devices and e-cigarettes. After consulting with stakeholders involved in implementing the policy, the Senate leadership found that the current policy lacks clarity on whether it prohibits or permits the use of such devices, and determined that the Campus Affairs Committee should be charged with considering whether vaping should be explicitly addressed in the policy.

The SEC charged the committee with reviewing past Senate action on the University’s approach to smoking, reviewing recent actions at the state and federal level addressing vaping devices and e-cigarettes, examining definitions of smoking at Big 10 and peer institutions, and considering how the definition of smoking in the current Policy on Smoking could be revised to more clearly indicate that it encompasses vaping devices and e-cigarettes (Appendix 8). After initial work by the committee, the SEC adjusted the scope of the committee’s review. The revised charge focuses on considering the impact of vaping devices and e-cigarettes on members of the campus community, assessing whether the use of such devices is consistent with the principles of the University’s Policy on Smoking, and recommending whether the policy should be revised to prohibit the use of vaping devices and e-cigarettes (Appendix 9).

## CURRENT PRACTICE

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In June 2012, the University System of Maryland (USM) instituted [a policy](#) requiring smoke-free environments across the USM. The policy was intended primarily to protect non-users from the risks associated with secondhand smoke, rather than focused on the impact of smoking on individual tobacco users. Institutions were given until June 30, 2013, to establish policies that would ensure smoke-free environments. In August 2012, the SEC charged the Campus Affairs Committee with

developing a new policy consistent with the USM directive. In April 2013, the Senate voted to approve the committee's report calling for a new Policy on Smoking at University of Maryland (Appendix 1).

The policy prohibits "smoking," which is defined as "carrying or smoking a lighted tobacco product or the burning of any material to be inhaled including, but not limited to, cigarettes, cigars, hookahs, and pipes." The policy indicates that the University Health Center will provide smoking cessation services for students, faculty, and staff. The policy also permits the President to establish designated areas on campus where smoking will still be permitted; four such locations have been established.

## COMMITTEE WORK

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To address its charge, the Campus Affairs Committee reviewed past Senate action on smoking and considered definitions of smoking in policies at Big 10 and other peer institutions (Appendix 2). The committee consulted with the Office of General Counsel (OGC) and the Division of Administration and Finance on the current policy and its implementation. The committee also considered recent state legislation regulating the sale of electronic smoking devices, and testimony by the acting commissioner of the Food and Drug Administration addressing federal regulation of electronic nicotine delivery systems (Appendices 3 and 4). In the course of its work, the committee received letters from Public Health Action Through Civic Engagement (PHACE) and the Student Government Association advocating for the prohibition of vaping devices and e-cigarettes (Appendices 5 and 6).

The committee considered recent research on the effects of secondhand aerosol (SHA) emissions from vaping devices and e-cigarettes (Appendix 7). The literature indicates that vaping devices and e-cigarettes represent a much less harmful method of ingesting nicotine for those attempting to stop smoking traditional tobacco products. It is also the case, however, that SHA emissions include volatile organic compounds that are exhaled by those using vaping devices and e-cigarettes. While the long-term effects of exposure to SHA remain to be determined, there is evidence that preventing SHA exposure would have protective benefits for members of the campus community.

The committee determined that explicitly prohibiting the use of vaping devices and e-cigarettes was clearly consistent with the intention of both the USM and University policies on smoking, which were designed to create a smoke-free environment and reduce risks to bystanders. The committee worked to develop a new definition that was sufficiently flexible to address new technologies and mechanisms that simulate smoking. Its proposed definition of smoking includes a prohibition on "burning, vaporizing, or aerosolizing tobacco, nicotine, or any other material or substance to be inhaled." The committee carefully considered whether such a definition would prohibit legitimate activities and therapies, such as nebulizers. The committee determined that when the revised policy is read in its entirety, the full context of the language is clear. The committee's intent is to prohibit activities that have the potential to harm others, and the policy is not intended to restrict legitimate medical therapies authorized for use on campus.

The committee also consulted with a representative of the University Health Center (UHC) on current smoking cessation services. In addition to serving students who voluntarily seek out such services, the UHC also receives referrals from the Department of Resident Life when students are found responsible for using vaping devices or e-cigarettes in the residence halls. Current staffing levels in the UHC do not allow it to meet the existing demand for smoking cessation services, and students are often directed to outside resources, such as Maryland Quitline ([mdquit.org](http://mdquit.org)), for support. The committee noted that the significant rise in the use of vaping devices and e-cigarettes among middle- and high-school students will result in large cohorts of matriculating students who may need nicotine-cessation services, which led to the committee's administrative recommendation.

The committee made additional, technical changes to the policy and shared its proposed revisions with the OGC, which had no concerns. After due consideration, the Campus Affairs Committee voted to approve the revised Policy on Smoking at University of Maryland and an administrative recommendation at its February 26, 2020, meeting.

## **RECOMMENDATIONS**

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The Campus Affairs Committee recommends that the Policy on Smoking at University of Maryland (VI-8.10[A]) be revised as indicated in the policy document immediately following this report.

The Campus Affairs Committee recommends that the University should consider whether current smoking cessation resources will be adequate to meet the needs of incoming cohorts of students disproportionately affected by vaping and e-cigarette use.

## **APPENDICES**

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Appendix 1—Report on Senate Document #12-13-07

Appendix 2—Peer Smoking Definitions Research

Appendix 3—HB 1169 Fiscal and Policy Note

Appendix 4—Testimony on Federal Regulation of E-Cigarettes

Appendix 5—PHACE Letter

Appendix 6—SGA Letter

Appendix 7—Brief Synopsis of Research on the Secondhand Effects of Vaping

Appendix 8—Charge from the Senate Executive Committee

Appendix 9—Revised Charge from the Senate Executive Committee

VI – 8.10(A) **UNIVERSITY OF MARYLAND** POLICY ON SMOKING ~~AT UNIVERSITY OF MARYLAND~~

(Approved by the President May 2, 2013)

I. Purpose and Scope

- a. Purpose. This policy establishes standards and requirements to provide a smoke-free environment for all UMD faculty, staff, students, and visitors, in compliance with the Board of Regents Policy on Smoking at USM Institutions (VI – 8.10).
- b. Scope. This policy applies to all UMD students, faculty, staff, contractors and employees of contractors providing services at UMD, agents, guests, and visitors.
- ~~c. The following policy, VI 8.10(A) Policy on Smoking at University of Maryland, replaces any policies or procedures previously established at the University of Maryland that are in conflict with the purpose, applicability, or intent herein.~~

II. Definitions

- a. “Institutional Property” means any property owned, leased, or otherwise controlled or operated by UMD, including buildings, other structures and grounds, and vehicles owned or leased by the institution.
- b. “Smoking” ~~means carrying or smoking a lighted tobacco product or the burning of any material to be inhaled including, but not limited to, cigarettes, cigars, hookahs, and pipes.~~ **includes:**
  - i. Inhaling, exhaling, or carrying lighted tobacco products; **and**
  - ii. Burning, **vaporizing, or aerosolizing tobacco, nicotine, or any other material or substance** to be inhaled ~~including, but not limited to, cigarettes, cigars, hookahs, and pipes; and.~~
  - ~~iii. Using electronic cigarettes, vaporizing systems, or other devices that burn or vaporize tobacco or any other material or substance.~~

III. Prohibitions on Institution Property

- a. Prohibitions against Smoking
  - i. Consistent with Maryland law, **s**Smoking is not permitted in any institution building, including academic buildings, residence halls, administrative buildings, other enclosed facilities, or vehicles, except as provided in Section III(~~a.~~)iii, below.
  - ii. Smoking is prohibited on all institution grounds and property, including walkways, parking lots, and recreational and athletic areas, except as provided in Section III(~~a.~~)iii, below.

- iii. Smoking in and on ~~i~~Institutional ~~p~~Property will be permitted only as follows:
  - 1. For controlled research, and educational, theatrical, or religious ceremonial purposes, with prior approval of the President or the President's designee;
  - 2. In limited and specifically designated areas on ~~University~~ ~~Institutional~~ ~~p~~Property ~~and areas leased to third parties~~ as may ~~from time to time~~ be approved by the President; or
  - 3. Subject to any other exception to this policy recommended by the President and approved by the Chancellor.
- b. Prohibitions against Sale. The sale of tobacco and smoking-related products is prohibited on ~~i~~Institutional ~~p~~Property.

#### IV. Smoking Cessation Assistance

- a. Assistance Programs. The University Health Center shall make available smoking cessation assistance to students, faculty and staff, which may include opportunities to participate in smoking cessation seminars, classes, and counseling and the availability of smoking cessation products and materials.
- b. Smoking Cessation Information. The University Health Center shall be designated to answer questions, refer students and employees to on-campus and outside resources, and otherwise provide information about smoking cessation assistance options and opportunities.

#### V. Implementation Process

- a. This policy shall be administered by the Division of Administration and Finance.
- b. Communication. The University shall provide initial and ongoing information to communicate the requirements of this policy, including:
  - i. Dissemination of the key elements of the policy to faculty, staff, students, and others on websites and in appropriate written materials; and
  - ii. The placement of exterior and interior notices and signs announcing that ~~s~~Smoking is prohibited.
- c. Community Outreach. The University will engage in outreach to the community, as appropriate, to facilitate coordination with local government authorities and to assist residents and businesses near the institution in preventing trespass and littering that may result if members of the campus community seek to smoke in nearby off-campus areas.
- d. Consequences. The University may establish appropriate procedures and consequences, which may include fines or disciplinary measures, for violations

of this policy.


~~e. Implementation. The provisions of this policy shall be implemented at the University of Maryland no later than June 30, 2013.~~





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## SENATE LEGISLATION APPROVAL

<b>Date:</b>	April 9, 2013
<b>To:</b>	Wallace D. Loh
<b>From:</b>	Martha Nell Smith Chair, University Senate 
<b>Subject:</b>	Implementation of the Policy on Smoking at USM Institutions
<b>Senate Document #:</b>	12-13-07

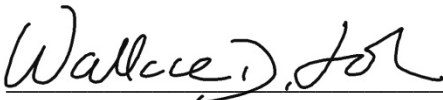
I am pleased to forward for your consideration the attached legislation entitled, "Implementation of the Policy on Smoking at USM Institutions." Marcia Marinelli, Chair of the Campus Affairs Committee, presented the proposal. The University Senate approved the proposal at its April 4, 2013 meeting.

We request that you inform the Senate Office of your decision as well as any subsequent action related to your conclusion.

Enclosure: Implementation of the Policy on Smoking at USM Institutions  
 Senate Document # 12-13-07

MNS/rm

Cc: Mary Ann Rankin, Senior Vice President & Provost  
 Reka Montfort, Executive Secretary and Director, University Senate  
 Juan Uriagereka, Associate Provost for Faculty Affairs  
 Terry Roach, Executive Assistant to the President  
 Janet Turnbull, President's Legal Office  
 Elizabeth Beise, Associate Provost for Academic Planning & Programs  
 Sylvia B. Andrews, Academic Affairs  
 Robert Specter, Vice President of Administration & Finance  
 Brian Ullman, Director of Marketing

Approved:  Date: 05-02-2013  
 Wallace D. Loh  
 President

**Enclosure – Memo, Clarifications of Specific Recommendations for Senate Doc #12-13-07**




# UNIVERSITY OF MARYLAND

OFFICE OF THE PRESIDENT

Main Administration Building  
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May 2, 2013

**TO:** Professor Martha Nell Smith  
Chair, University Senate

**FROM:** Wallace D. Loh   
President

**SUBJECT:** Senate Document #12-13-07, Policy on Smoking at USM Institutions

I have approved Senate Document #12-13-07, "Implementation of the Policy on Smoking at USM Institutions," with several clarifications below with regard to specific recommendations.

1. *"The Campus Affairs Committee recommends that the new smoking policy be administered by the Division of Administration and Finance ... and that (the Division) have responsibility to oversee implementation and manage enforcement of the policy ... :"*  
As with all policies on the campus, everyone owns enforcement. Supervisors are responsible for enforcing policies as a regular course of business, and for counseling their employees who may violate policies. No one office can take full responsibility for enforcement of policies.
2. *"The Campus Affairs Committee recommends that the Division of Administration and Finance develop a centralized reporting mechanism for concerns regarding the policy from the campus community:"*  
This recommendation would require significant resources unavailable currently in the Division. At this point, we will need to rely on regular mechanisms for expression of concerns about campus policies.
3. *"The Senate recommends placing at least one fireproof garbage receptacle near each major building, but at least 25 feet away from any building air intake:"*  
I reject this recommendation as it makes no sense, on a non-smoking campus, to encourage smoking by placing fireproof receptacles near every major building.

I want to add that I enjoyed working with you and greatly appreciate your service as University Senate Chair. We certainly accomplished much together over this past year.



## University Senate TRANSMITTAL FORM

<b>Senate Document #:</b>	12-13-07
<b>Title:</b>	Implementation of the Policy on Smoking at USM Institutions
<b>Presenter:</b>	Marcy Marinelli, Chair, Campus Affairs Committee
<b>Date of SEC Review:</b>	February 1, 2013
<b>Date of Senate Review:</b>	February 14, 2013
<b>Voting (highlight one):</b>	<ol style="list-style-type: none"> <li>1. On resolutions or recommendations one by one, or</li> <li>2. In a single vote</li> <li>3. To endorse entire report</li> </ol>
<b>Statement of Issue:</b>	<p>In June 2012, the Board of Regents (BOR) instituted a policy requiring smoke-free environments at each institution throughout the University System of Maryland (USM). Each institution must implement this policy prior to June 30, 2013. The Senate Executive Committee (SEC) charged the Campus Affairs Committee (CAC) with reviewing the USM policy on smoking and making recommendations on a related campus policy and an implementation process for the University of Maryland.</p>
<b>Relevant Policy # &amp; URL:</b>	<p>USM Policy VI-8.10 "Policy on Smoking at USM Institutions."  <a href="http://www.president.umd.edu/policies/vi810.html">http://www.president.umd.edu/policies/vi810.html</a></p>
<b>Recommendation:</b>	<p>The CAC recommends that the attached policy entitled, "VI – 8.10 (A) Policy on Smoking at University of Maryland" be adopted as official University of Maryland policy and be added to the Consolidated USM and UMD Policies and Procedures Manual.</p> <p>In addition, the CAC presents thirteen recommendations on the implementation of the policy for Senate consideration. These recommendations are organized under the following categories: Communication; Policy Management, Assessment, and Evaluation; Enforcement; Prevention, Education, and Treatment; and Reporting Responsibilities.</p>

<p><b>Committee Work:</b></p>	<p>The CAC began reviewing the charge and the USM policy at its meeting on September 6, 2012. The committee devoted six meetings to consideration of the charge.</p> <p>In order to organize its research and discussion over the course of the semester, the CAC formed a number of subgroups focused on different aspects of the policy and its implementation. The subgroups were charged with studying peer institutions, creating and disseminating a survey, researching prevention, education, and treatment resources on campus, exploring models of enforcement at institutions with smoke-free policies, considering the management, assessment, and evaluation of the policy, and considering communications strategies related to the new smoke-free policy. These subgroups performed research and made recommendations to the full committee.</p> <p>Over the course of its work, the CAC reached out to various units and groups on campus to better understand how the new policy would affect the community and its operations. The CAC spoke with representatives from the University Health Center, Resident Life, Residential Facilities, the Department of Intercollegiate Athletics, University Human Resources, and the Office of Legal Affairs, and also asked for feedback from the Senate Staff Affairs Committee.</p> <p>After much review and discussion, the Campus Affairs Committee voted to approve the recommendations and send them forward for consideration at its meetings on December 13, 2012 and January 24, 2013.</p>
<p><b>Alternatives:</b></p>	<p>The Senate could reject the proposed policy and the recommendations for implementing a policy tailored to the University of Maryland campus. The USM policy would remain as the official policy for the campus.</p>
<p><b>Risks:</b></p>	<p>There are no associated risks.</p>
<p><b>Financial Implications:</b></p>	<p>Financial resources may be needed to carry out some of the recommendations for implementation, particularly those affecting the University Health Center and its services.</p>
<p><b>Further Approvals Required:</b></p>	<p>Senate approval, Presidential approval.</p>

# **Senate Campus Affairs Committee**

## **Senate Document # 12-13-07**

### **Implementation of the Policy on Smoking at USM Institutions**

**January 2013**

#### **BACKGROUND**

In June 2012, the Board of Regents (BOR) of the University System of Maryland (USM) instituted a policy that requires smoke-free environments at each institution throughout the system (Appendix 4). Each institution is required to implement this policy prior to June 30, 2013. The University of Maryland (UM) Senate Executive Committee (SEC) charged the Campus Affairs Committee (CAC) with reviewing the USM policy on smoking and making recommendations on a related campus policy and an implementation process for UM (Appendix 5).

#### **CURRENT PRACTICE**

The University Senate has previously considered whether to ban smoking on campus, and has received a number of proposals related to smoking policies over the past few years. In 2009-2010, the CAC was charged with reviewing a proposal to ban smoking from campus and chose not to recommend the adoption of a smoke-free campus policy. The CAC did, however, make administrative recommendations regarding the existing smoking policies on campus. In response, the Division of Administration and Finance (then known as the Division of Administrative Affairs) proposed that the campus smoking policy be amended to adjust the distance from buildings in which smoking is allowed. The CAC reviewed the proposal and recommended its adoption, which was subsequently approved by the Senate and the President in September 2011.

The recently approved USM policy on smoking (Appendix 4) prohibits smoking on all institution grounds and property. As a USM policy, this new initiative takes precedence over the current UM campus policy. However, the new policy allows each campus the latitude to establish limited designated areas in which smoking would be allowed at its discretion.

#### **COMMITTEE WORK**

Over the course of five months during the 2012-2013 academic year, the CAC considered its charge regarding the implementation of the policy banning smoking at UM. Throughout its review, the CAC discussed the complexity of implementing a campus-wide ban. The CAC recognizes that smoking is not illegal, and the committee is sensitive to the fact that smoking is an addiction that is difficult to quit. It is also cognizant of the campus climate and the message that the University wants to send about being smoke-free.

From September 2012 to January 2013, the CAC focused on consideration of the smoking policy and its implementation. At its initial meeting, the CAC developed a plan and timeline for studying the issue.

In order to organize its research and discussion over the course of the semester, the CAC formed a number of subgroups focused on different aspects of the policy and its implementation. These subgroups performed research and made recommendations to the full committee.

The Peer Institutions Subgroup was charged with researching policies and practices related to smoking at peer institutions. This group reviewed the experiences of Towson University, Montgomery College, University of Missouri, Ball State, University of North Carolina, Oregon State University, and University of Michigan in their implementation of a smoke-free campus. The CAC discussed experiences at other universities, which sent conflicting messages when they included designated areas for smoking in their smoke-free policy. For example, the University of Michigan designed a policy with designated areas that included smoking pavilions, and specifically changed its policy after its implementation to remove the designated areas on campus, because it felt the existence of smoking pavilions weakened the smoking policy and made it less effective.

The Survey Subgroup was charged with creating a survey to measure campus-wide awareness of the USM policy and attitudes towards a smoke-free campus policy. A survey was created by the subgroup, with the committee's advice, and was sent to a random sample of faculty, staff, and students. The survey was also advertised on the Senate website, Facebook, and Twitter, and promoted at the Great American Smoke-Out event hosted by the University Health Center (UHC).

The smoking ban survey received over 2,900 responses (Appendix 3). Significant findings from the survey include the following:

- Only a small percentage (21.76%) of respondents were familiar with the USM policy;
- More than half (58.09%) of the respondents were in favor of banning smoking on campus;
- 58% of respondents would approve of having designated smoking areas;
- Respondents do not feel comfortable asking others to stop smoking – only 35.28% would feel comfortable doing so; and
- 21.48% of the respondents indicated that they were smokers. Of those who smoke, only 7.74% would be encouraged to quit because of the ban, and only 3.63% indicated they would take advantage of smoking cessation services on campus.

The Prevention, Education, and Treatment Subgroup was charged with researching smoking cessation resources available on campus through the UHC. It reported that services are provided free of cost by the UHC to students, faculty, and staff, and include smoking cessation counseling, nicotine patches, acupuncture, and the other services. These services are provided primarily in English, as well as in Spanish to some extent. The subgroup reported a concern that the UHC may have to impose a fee for these services if the smoking ban results in a great number of campus members seeking services. It noted that additional financial support for the UHC for increased staffing may be needed to continue to provide these services.

An Enforcement Subgroup focused on enforcement of the policy and explored models at peer institutions, while considering what scenarios may be appropriate for use at UM. It reported on the policies at University of Michigan, Frostburg State University, and Towson University, and found differing levels of enforcement at each institution, ranging from emphasis on a climate of respect and wellness to more severe enforcement methods involving fines and infractions as part of the staff performance, review, and development (PRD) process. The CAC discussed UM's campus climate and agreed that a policy focused on respect and wellness, rather than punitive actions, would be a better fit. The CAC agreed that communication, education, social norming, and a strong focus on the health benefits of a smoke-free environment would be better suited to the University than strict enforcement methods. The CAC also agreed that efforts to change the campus culture may prove more effective in aiding enforcement of the policy than punitive measures, and discussed ways to utilize the influence and passion of student groups to affect such change.

The Enforcement Subgroup also led a lengthy discussion on designated smoking areas. It presented the challenges of enforcing the smoking ban on UM's large, non-contiguous campus. It also noted that it would be difficult to prohibit activity on UM property that is legal on the property surrounding campus. The CAC discussed whether designated areas would weaken the policy and noted that the USM policy intentionally provides the option of designated areas.

The Policy Management, Assessment, and Evaluation Subgroup was charged with reviewing the exact specifications of the BOR policy and reporting on what a campus policy might entail. This subgroup presented its finding that it would be difficult to enforce designated smoking areas, and advocated that the committee recommend following the BOR's intent to create a smoke-free campus. It cited the University of Michigan's experience, where smoking pavilions were initially created in designated areas and then eliminated. Michigan's continued requests for additional pavilions eventually made them realize the smoke-free policy seemed to be moving in the opposite direction of its original intent. The subgroup recognized the difficulties in changing the culture on campus, and recommended that the first year of implementation should focus on education and communication tailored to each campus constituency to explain that UM is now a smoke-free campus.

The CAC discussed communications strategies at length and noted how important communication will be to implementation of the policy. Committee members agreed that communications should have a supportive and positive tone, and that they should be put in the context of a "smoke-free environment," while being sensitive to the challenges that smokers will face. The CAC discussed a phased-in communications campaign to start immediately, which would focus on awareness of the new policy and campus resources, involvement of the campus community, and implementation of the policy. A marketing campaign, similar to the "Nothing is Slower than a Sick Turtle" or the sustainability awareness campaigns, was discussed.

In the course of its work, the CAC reached out to various units and groups on campus to better understand how the new policy would affect the community and its operations. The committee spoke with representatives from the University Health Center, Resident Life, Residential Facilities, and the Department of Intercollegiate Athletics, to make them aware of the smoking ban and learn how this might affect their operations. The CAC met with representatives of University Human Resources (UHR) on their perspective on the new USM policy. UHR had concerns about how it might affect faculty and staff differently, in terms of enforcement and possible disciplinary action. For instance, staff members have limited breaks in their schedule, and requiring them to leave campus to smoke may place more of a burden on staff than on faculty or students who smoke.

The CAC also reviewed feedback that it received from the Senate Staff Affairs Committee about the smoking ban and its potential impact on staff members. The Staff Affairs Committee noted that there has been little communication about the impending smoking ban, and committee members felt that more should be done to inform the campus community of the upcoming changes. Members of the committee also agreed with the idea of a progressive system of implementation that focuses on communication and education first.

In addition, the CAC consulted with the Office of Legal Affairs on the text of a draft policy on smoking at UM (Appendix 2).

## **RECOMMENDATIONS**

At its meetings on December 13<sup>th</sup>, 2012 and January 24<sup>th</sup>, 2013, the Campus Affairs Committee voted in favor of recommendations on the implementation of the smoke-free campus policy.

The Campus Affairs Committee recommends that the attached policy (Appendix 2) entitled “VI – 8.10 (A) Policy on Smoking at University of Maryland” be adopted as official University of Maryland policy and be added to the Consolidated USM and UMD Policies and Procedures Manual. In addition, the CAC presents the following recommendations on the implementation of the policy for Senate consideration.

### ***Communication***

- The Campus Affairs Committee recommends that the Division of Administration and Finance and University Relations lead the development and dissemination of an appropriate communication and signage strategy for the campus, beginning with awareness communication to start immediately. A smoke-free campus identity campaign should be promulgated throughout campus, and adequate and appropriate signage should be located at all entrances to campus, as well as at major public thoroughfares and spaces, and in campus buildings. An emphasis should also be placed on the area in front of McKeldin Library.
- The Campus Affairs Committee recommends that the smoke-free policy be continually communicated to the University community in a simple, positive, and respectful manner throughout each phase of implementation.
- The Campus Affairs Committee recommends that the smoke-free policy be adequately communicated to external constituents, including but not limited to, applicants for admission and employment, contractors, visitors to campus, and vendors.

### ***Policy Specifications, Management, and Evaluation***

- The Campus Affairs Committee recommends that all University of Maryland property be smoke-free. Any limited and specific designated areas in which smoking may be permitted would be subject to the designation of the President.
- The Campus Affairs Committee recommends that the new smoking policy be administered by the Division of Administration and Finance, with appropriate involvement of relevant groups on campus, including University Relations, the University Health Center, the Division of Student Affairs and other appropriate units as designated by the President. The committee recommends that the Division of Administration and Finance have responsibility to oversee implementation and manage enforcement of the policy, and recommends that it involve faculty, staff, and students in its processes when appropriate.
- The Campus Affairs Committee recommends that the Division of Administration and Finance develop a centralized reporting mechanism for concerns regarding the policy from the campus community.
- The Campus Affairs Committee recommends that the University conduct periodic evaluations of effectiveness of the policy during the first five years of its implementation. The data collected could include measurements of the utilization of health and educational services, and annual surveys of random faculty, staff, and students, among other sources.
- The Senate recommends placing at least one fireproof garbage receptacle near each major building, but at least 25 feet away from any building air intake.

### ***Enforcement***



- The Campus Affairs Committee recommends that enforcement and administration of the smoking policy focus on respect and wellness as opposed to discipline and punitive measures by utilizing a progressive enforcement program whereupon we seek voluntary compliance before any strict sanctions. Such a program should focus on warnings and persuasion first; referrals to resources second; and punitive measures as a last resort in situations of blatant or repeated violation of the policy. The committee recommends that any punitive enforcement be delayed during the initial year of the policy to allow the University to first focus on communication and preparation.
- The Campus Affairs Committee recommends that the Division of Administration and Finance (or other appropriate units as designated by the President) work with University Human Resources and the University Health Center to develop resources for faculty, staff, and students that empower them to assist in achieving campus compliance with the smoke-free policy through peer interaction.

### ***Prevention, Education, and Treatment***

- The Campus Affairs Committee recommends that the University Health Center continue to be designated as a centralized resource for information regarding both on-campus and off-campus smoking cessation resources and peer education programs for faculty, staff, and students.
- The Campus Affairs Committee recommends that prevention, education, and treatment strategies be equally geared towards all constituencies and that steps be taken to ensure that faculty, staff, and students all have access to the services provided. One way to accomplish this goal would be to effectively promote services to faculty, staff, and students through concerted communication efforts.
- Campus Affairs Committee recommends that sufficient resources be allocated to the University Health Center to support smoking cessation efforts for faculty, staff, and students, and that the current smoking cessation services offered by the University Health Center be expanded, where appropriate.

### ***Reporting Responsibilities***

- The Campus Affairs Committee recommends that the Division of Administration and Finance (and other appropriate units as designated by the President) provide status reports to the University Senate on the progress and outcomes of implementation as well as on campus compliance with the policy each year for the first five years of the smoking policy.

## **APPENDICES**

Appendix 1 – Suggestions for Implementation

Appendix 2 – Proposed Policy on Smoking at University Of Maryland (VI – 8.10(A))

Appendix 3 – Campus Affairs Committee Smoking Ban Survey – Abbreviated Results

Appendix 4 – University System of Maryland (USM) Policy VI – 8.10 Policy on Smoking at USM Institutions

Appendix 5 – Senate Executive Committee Charge on Implementation of the Policy on Smoking at USM Institutions

## **SUGGESTIONS FOR IMPLEMENTATION**

The Campus Affairs Committee discussed implementation scenarios and options in depth from September 2012 through January 2013. As a result, the CAC would like to share suggestions for how implementation could proceed, while ultimately encouraging the administration to conduct its implementation efforts however it feels appropriate outside of the recommendations the CAC has previously presented.

### ***Communication***

The CAC stresses that communication should be the first priority of implementation of the smoking policy, and it should begin immediately. The CAC has found that most faculty, staff, and students are not familiar with the policy and do not know that the University will be smoke-free by June 30, 2013. There is a great deal of confusion over whether it will in fact be implemented. Understanding this reality, the CAC developed its recommendations regarding communication with the consensus that these are the most critical for implementation of the policy.

In its committee work, the CAC discussed many options for implementation of its communication recommendations. The committee discussed breaking communications strategies into phases, to appropriately focus efforts at specific points before and during implementation. It suggests focusing first on awareness and education about the policy, next on engaging the campus community in discussions about the policy, and then focusing on the actual details of the policy and its implementation.

Immediate communication efforts could start small and grow as appropriate.

- The CAC found the countdown ticker on the UHR webpage, and suggests incorporating a similar effort into other critical websites, such as the UM homepage.
- Websites and promotional materials that reach external constituents, such as applicants for admission and employment and visitors to campus, could incorporate notices about the smoke-free policy.
- Email messages or other communications from the University administration may raise the profile of the policy and greatly assist in spreading awareness across campus.
- Also, common venues that communicate campus news to faculty, staff, and students – such as *Between the Columns*, *Faculty Voice*, and *The Diamondback*, -- could be utilized as well.
- Physical signage campaigns take a great deal of time, so the CAC suggests that other strategies be utilized for quicker dissemination of information while physical signage is created. The committee suggests maximizing use of social media messaging, FYI advertisements, email messages, website announcements, and other digital methods as appropriate.

In discussing the content of communications, the CAC stresses a focus on positive language and the phrase “smoke-free environment” can be more effective than messages that single out those who smoke or focus on negative language, such as “smoking strictly prohibited.” Using such language is also one way of shaping the context for the policy and building a campus identity that could lead to a genuine acceptance of the policy. As an example of a simple, positive, and respectful messaging campaign, the CAC discussed the “Nothing Slower Than a Sick Turtle” flu prevention campaign and suggests development of a similar messaging tool that can be placed on windows, doors, or elsewhere throughout campus to serve as a positive daily reminder of the smoke-free policy.

### ***Policy Specifications, Management, and Evaluation***

The CAC believes that the leadership of the Division of Administration and Finance (DAF) in administering the policy will help provide centralization for the efforts associated with the smoking policy and significantly impact its success. The committee feels that many of the critical aspects of the policy will involve different departments in DAF – from UHR to Facilities Management to Finance and Community Engagement – and that it warrants the oversight of the Vice President for Administration and Finance (VPAF).

However, the CAC would not suggest that the DAF work alone in its efforts and offers the following suggestions for implementation process:

- The CAC suggests that the DAF work closely with other groups across campus as necessary to implement and enforce the policy.
  - Other universities have found it helpful to form smoke-free environment implementation committees or work groups with all of the relevant departments represented. Such a committee could be useful in:
    - Carrying out implementation details,
    - Tracking the progress of implementation across campus, and
    - Making decisions as new developments unfold.
- The DAF should engage with faculty, staff, and students whenever possible as it makes decisions about implementation and policy assessment. The DAF could:
  - Conduct surveys where the campus or specific constituencies are asked to rate their preferences on different implementation options;
  - Invite representatives of different constituencies to meetings; or
  - Hold specific meetings or open forums with each constituency.

The CAC stresses the importance of continual evaluation of the smoking policy. By evaluating the effectiveness of the policy on an annual basis, the University will have an opportunity to identify pieces that are not working and adjust its procedures over time. The CAC suggests that evaluations:

- Examine the violations of the policy, including violations resulting in “formal” action (such as referral to smoking cessation resources or further measures) and the trend of violations over the years;
- Attempt to illustrate the extent to which smoking remains a problem on campus over time; and
- Seek to determine whether the campus culture is changing to incorporate a smoke-free identity.

### ***Enforcement***

The CAC stresses a policy based on respect and wellness, and feels that, consistent with policies at other campuses, such a policy will be more likely to be respected. However, the committee also understands that further enforcement options should be available for more serious violations of the policy. It recommends a progressive enforcement system, and presents the following suggestions for such a program.

The CAC found that in most peer institutions, implementation of a smoke-free policy is a multi-year process, and the CAC is concerned about the level of understanding of and preparation for the new policy in the UM community. The CAC suggests that any aspects of implementation that involve punitive enforcement measures be delayed initially, and that the University place emphasis on awareness and preparation within the first year of the policy.

The CAC feels that persuasion and peer interaction should be the basis of the first level of enforcement. Peer interaction is a powerful tool, and the CAC regards it as an important enforcement mechanism. While CAC’s survey results show that most people would not feel comfortable addressing smokers, the

committee believes that if individuals are given appropriate tools, they will be more likely to address situations they see arising across campus. The CAC suggests that tools and language specifically geared towards faculty, staff, and students be developed to give the campus community constructive ways to address smoking and smokers on campus with the goal of encouraging compliance with the policy.

The CAC also suggests developing a friendly reminder system that can be used by all campus members to encourage adherence to the smoking policy. Similar to the previously discussed communications strategies, the CAC suggests creating a simple, positive tool that each person can use to encourage others to adhere to the policy. The CAC discussed the friendly warning tickets used for first-time parking violations as a guide.

The tools developed should be widely shared and the community should be encouraged to use them appropriately. While the CAC is hesitant to suggest involving campus police too heavily in enforcement, the committee considered that the Police Auxiliary might be involved in dissemination of communications and friendly reminders about the policy. Likewise, student groups could be called upon to assist in spreading information about the policy in particular areas where smoking has been reported as a problem. These could be either existing groups that focus on smoking cessation or related activities that wish to be involved, or new groups created specifically for this purpose.

The second and third levels of enforcement would be reserved for repeat instances of violation of the policy. The CAC feels that referring individuals to the resources available to them is a critical step in enforcement of the policy. Referring individuals to the UHC or other resources on campus for smoking cessation, stress relief, or other assistance should be prioritized. In situations of blatant or repeated violations of the policy, additional intervention may be necessary and disciplinary measures can be considered. However, the CAC strongly rejects the idea that smoking should enter into any PRD discussions for faculty or staff.

### ***Prevention, Education, and Treatment***

During its review of the smoking policy, the CAC found that the UHC already has programs in place to provide resources and information about smoking cessation opportunities, and the CAC recommends that it continue to do so. The CAC was very pleased to hear that their services are open to all campus constituencies, and was also pleased to learn that some of the services are currently provided with Spanish translations. The CAC offers the following suggestions for enhancing the services already offered in the wake of the new smoking policy.

- The committee recommends that the UHC be given the resources it needs to appropriately fulfill their responsibilities under this new policy.
- The CAC feels that an expansion of UHC services may be warranted
  - In its review, the CAC found that some smoking cessation services are not provided due to cost considerations. The CAC suggests considering whether these services would be possible with appropriate additional funding.
  - The committee's survey results included many comments that asked for more options for smoking cessation services. Specifically,
    - Additional smoking cessation workshops and seminars,
    - Campus support groups,
    - Resources on how to adapt smoking habits around new schedules,
    - Extra stress management and reduction services as a component of smoking cessation
  - The committee also received many concerns that staff members feel that they are unable to take advantage of the services available to them. The UHC could consider:

- Providing more Spanish-language services and assessing whether additional languages would be appropriate,
    - Tailoring some services more effectively to staff members,
    - Offering certain events or resources at different hours to reach those with different schedules,
    - Offering more services and resources online, and
    - Communicating with supervisors about encouraging staff and faculty who choose to take advantage of these services.
  - The CAC suggests that peer education on smoking cessation be added to existing Peer Education programs.
- The CAC suggests that UHC evaluate the marketing of its smoking cessation programs and consider how to use the new policy to enhance awareness of its services.
  - The committee's survey showed that only 49.39% of those who reported that they smoked were familiar with the smoking cessation services offered by the UHC.
  - The CAC suggests that UHC work with the DAF to combine communication efforts where possible.

### ***Reporting Responsibilities***

Due to a short time-frame for implementation, it is unrealistic to expect full implementation and campus acceptance immediately. The CAC anticipates this reality, and will remain interested in the implementation and success of the policy as it progresses. To encourage communication between the representatives for the University's diverse constituencies and the administrators of this policy, the CAC recommends that the DAF report to the SEC once every year for the first five years of implementation of the smoking policy. The committee suggests that these reports contain a brief status update on how the implementation is progressing, what the DAF's internal evaluations of the policy find on its acceptance across campus, and what future steps need to be taken to successfully implement the policy. These updates can also serve as an opportunity for the DAF to ask the Senate for further review of any aspect of the smoking policy if such reviews become necessary.

**APPENDIX 2 - PROPOSED POLICY ON SMOKING AT UNIVERSITY  
OF MARYLAND (VI - 8.10 (A))**

VI – 8.10(A) POLICY ON SMOKING AT UNIVERSITY OF MARYLAND  
(Proposed Policy)

- I. Purpose and Scope
  - a. Purpose. This policy establishes standards and requirements to provide a smoke-free environment for all UMD faculty, staff, students, and visitors, in compliance with the Board of Regents Policy on Smoking at USM Institutions (VI – 8.10).
  - b. Scope. This policy applies to all UMD students, faculty, staff, contractors and employees of contractors providing services at UMD, agents, guests, and visitors.
  - c. The following policy, VI-8.10(A) Policy on Smoking at University of Maryland, replaces any policies or procedures previously established at the University of Maryland that are in conflict with the purpose, applicability, or intent herein.
- II. Definitions
  - a. “Institutional Property” means any property owned, leased, or otherwise controlled or operated by UMD, including buildings, other structures and grounds, and vehicles owned or leased by the institution.
  - b. “Smoking” means carrying or smoking a lighted tobacco product or the burning of any material to be inhaled including, but not limited to, cigarettes, cigars, hookahs, and pipes.
- III. Prohibitions on Institution Property
  - a. Prohibitions against Smoking
    - i. Consistent with Maryland law, smoking is not permitted in any institution building, including academic buildings, residence halls, administrative buildings, other enclosed facilities, or vehicles, except as provided in Section III(a)iii, below.
    - ii. Smoking is prohibited on all institution grounds and property, including walkways, parking lots, and recreational and athletic areas, except as provided in Section III(a)iii, below.
    - iii. Smoking in and on institution property will be permitted only as follows:
      1. For controlled research, and educational, theatrical, or religious ceremonial purposes, with prior approval of the President or the President’s designee;
      2. In limited and specifically designated areas on University property and areas leased to third parties as may from time-to-time be approved by the President; or
      3. Subject to any other exception to this policy recommended by the President and approved by the Chancellor.
  - b. Prohibitions against Sale. The sale of tobacco and smoking-related products is prohibited on institution property.
- IV. Smoking Cessation Assistance
  - a. Assistance Programs. The University Health Center shall make available smoking cessation assistance to students, faculty and staff, which may include opportunities to participate in smoking cessation seminars, classes, and counseling and the availability of smoking cessation products and materials.
  - b. Smoking Cessation Information. The University Health Center shall be designated to answer questions, refer students and employees to on-campus and outside resources, and otherwise provide information about smoking cessation assistance options and opportunities.
- V. Implementation Process
  - a. This policy shall be administered by the Division of Administration and Finance.

- b. Communication. The University shall provide initial and ongoing information to communicate the requirements of this policy, including:
  - i. Dissemination of the key elements of the policy to faculty, staff, students, and others on websites and in appropriate written materials; and
  - ii. The placement of exterior and interior notices and signs announcing that smoking is prohibited.
- c. Community Outreach. The University will engage in outreach to the community, as appropriate, to facilitate coordination with local government authorities and to assist residents and businesses near the institution in preventing trespass and littering that may result if members of the campus community seek to smoke in nearby off-campus areas.
- d. Consequences. The University may establish appropriate procedures and consequences, which may include fines or disciplinary measures, for violations of this policy.
- e. Implementation. The provisions of this policy shall be implemented at the University of Maryland no later than June 30, 2013.

**APPENDIX 3 - CAMPUS AFFAIRS COMMITTEE SMOKING SURVEY - ABBREVIATED RESULTS****NOTE: A complete record of survey comments is on file in the Senate Office.****Q1. How familiar are you with the University System of Maryland's new policy banning smoking on all campuses?**

Count	Percent	
209	7.12%	Extremely familiar
430	14.64%	Very familiar
893	30.41%	Moderately familiar
704	23.97%	Slightly familiar
701	23.87%	Not at all familiar
2937		Respondents

**Q2. Are you in favor of banning all smoking on campus?**

Count	Percent	
1301	44.30%	A great deal
405	13.79%	Considerably
226	7.69%	Moderately
146	4.97%	Slightly
859	29.25%	Not at all
2937		Respondents

**Q3. How will the campus-wide smoking ban make you feel about our campus community?**

Count	Percent	
206	7.01%	1 - Doesn't care about my health
177	6.03%	2
633	21.55%	3
620	21.11%	4
1301	44.30%	5 - Cares a lot about my health
2937		Respondents

**Q4. Do you favor asking people to leave campus entirely in order to smoke?**

Count	Percent	
636	21.65%	Strongly favor
574	19.54%	Favor
422	14.37%	Neither opposed or in favor
436	14.85%	Opposed
845	28.77%	Strongly opposed
24	0.82%	Prefer not to respond
2937		Respondents

**Q5. Are you in favor of having designated areas on campus for smoking?**

Count	Percent	
1713	58.32%	Yes (where would you want these areas to be?)
979	33.33%	No
245	8.34%	Prefer not to respond
2937		Respondents

**Q6. Please indicate your level of agreement with the following statements: - Breathing smoke-free air in my daily environment is important to me**

Count	Percent	
1734	59.04%	Strongly agree
568	19.34%	Agree
282	9.60%	Neither agree nor disagree



**Q6. Please indicate your level of agreement with the following statements: - Breathing smoke-free air in my daily environment is important to me**

<b>Count</b>	<b>Percent</b>	
130	4.43%	Disagree
194	6.61%	Strongly disagree
29	0.99%	Prefer not to respond
2937		Respondents

**Q7. Please indicate your level of agreement with the following statements: - Having smokers leave campus to smoke will lead to lost productivity**

<b>Count</b>	<b>Percent</b>	
815	27.75%	Strongly agree
796	27.10%	Agree
603	20.53%	Neither agree nor disagree
370	12.60%	Disagree
306	10.42%	Strongly disagree
47	1.60%	Prefer not to respond
2937		Respondents

**Q8. Please indicate your level of agreement with the following statements: - Having smokers who live on campus leave their residence hall at night to smoke is a safety concern**

<b>Count</b>	<b>Percent</b>	
858	29.21%	Strongly agree
914	31.12%	Agree
467	15.90%	Neither agree nor disagree
410	13.96%	Disagree
248	8.44%	Strongly disagree
40	1.36%	Prefer not to respond
2937		Respondents

**Q9. Please indicate your level of agreement with the following statements: - I would feel comfortable telling a smoker that this is a non-smoking campus.**

<b>Count</b>	<b>Percent</b>	
498	16.96%	Strongly agree
538	18.32%	Agree
441	15.02%	Neither agree nor disagree
652	22.20%	Disagree
745	25.37%	Strongly disagree
63	2.15%	Prefer not to respond
2937		Respondents

**Q10. Please indicate your level of agreement with the following statements: - No Smoking signs are effective at deterring smoking**

<b>Count</b>	<b>Percent</b>	
248	8.44%	Strongly agree
685	23.32%	Agree
621	21.14%	Neither agree nor disagree
714	24.31%	Disagree
629	21.42%	Strongly disagree
40	1.36%	Prefer not to respond
2937		Respondents

**Q11. Do you smoke (cigarettes, cigars, pipe, hookah, marijuana)?**

Count	Percent	
620	21.48%	Yes
2267	78.52%	No
2887		Respondents

**Q12. How often during the last 30 days have you smoked?**

Count	Percent	
181	6.27%	1 - 2 days
81	2.81%	3 - 5 days
50	1.73%	6 - 9 days
73	2.53%	10 - 19 days
77	2.67%	20 - 29 days
181	6.27%	All 30 days
2244	77.73%	I have not smoked in the last 30 days.
2887		Respondents

**Q13. Do you smoke on campus?**

Count	Percent	
427	14.79%	Yes
2460	85.21%	No
2887		Respondents

**Q14. Where on campus do you smoke? (Check all that apply)**

Count	Respondent %	Response %	
146	35.35%	15.45%	Outside my residence hall
161	38.98%	17.04%	Outside my office building
133	32.20%	14.07%	Outside the Stamp Student Union
189	45.76%	20.00%	Outside McKeldin and Hornbake Libraries
201	48.67%	21.27%	In the parking lots
115	27.85%	12.17%	Other (please specify)
413			Respondents
945			Responses

**Q15. Please indicate your level of agreement with the following statements: - When more restrictive smoking regulations are implemented at UMCP I would transfer to another college or seek employment elsewhere.**

Count	Percent	
46	11.14%	Strongly agree
41	9.93%	Agree
90	21.79%	Neither agree nor disagree
92	22.28%	Disagree
107	25.91%	Strongly disagree
37	8.96%	Prefer not to respond
413		Respondents

**Q16. Please indicate your level of agreement with the following statements: - Having a no smoking policy on campus would encourage me to quit smoking.**

Count	Percent	
16	3.87%	Strongly agree

**Q16. Please indicate your level of agreement with the following statements: - Having a no smoking policy on campus would encourage me to quit smoking.**

Count	Percent	
16	3.87%	Agree
52	12.59%	Neither agree nor disagree
82	19.85%	Disagree
239	57.87%	Strongly disagree
8	1.94%	Prefer not to respond
413		Respondents

**Q17. Please indicate your level of agreement with the following statements: - I am familiar with the campus smoking cessation services.**

Count	Percent	
67	16.22%	Strongly agree
137	33.17%	Agree
63	15.25%	Neither agree nor disagree
58	14.04%	Disagree
72	17.43%	Strongly disagree
16	3.87%	Prefer not to respond
413		Respondents

**Q18. Please indicate your level of agreement with the following statements: - After the smoking ban is implemented, I will take advantage of the campus smoking cessation services.**

Count	Percent	
4	0.97%	Strongly agree
11	2.66%	Agree
102	24.70%	Neither agree nor disagree
77	18.64%	Disagree
195	47.22%	Strongly disagree
24	5.81%	Prefer not to respond
413		Respondents

**Q19. What is your age?**

Count	Percent	
21	0.74%	17 years old or younger
1128	39.58%	18 - 21 years old
560	19.65%	22 - 26 years old
284	9.96%	27 - 30 years old
246	8.63%	31 - 39 years old
218	7.65%	40 - 49 years old
226	7.93%	50 - 59 years old
128	4.49%	60 - 69 years old
19	0.67%	Over 70 years old
20	0.70%	Prefer not to respond
2850		Respondents

**Q20. What is your classification?**

Count	Percent	
1398	49.05%	Undergraduate student
642	22.53%	Graduate student
281	9.86%	Faculty
336	11.79%	Exempt staff

**Q20. What is your classification?**

<b>Count</b>	<b>Percent</b>	
137	4.81%	Non-exempt staff
32	1.12%	Contingent staff (I or II)
24	0.84%	Other (please specify)
2850		Respondents

**Q21. Are you an international student?**

<b>Count</b>	<b>Percent</b>	
145	5.09%	Yes
2705	94.91%	No
2850		Respondents

**Q22. Where do you live?**

<b>Count</b>	<b>Percent</b>	
108	3.79%	On campus - North Campus
91	3.19%	On campus - Denton
68	2.39%	On campus - Ellicott
67	2.35%	On campus - Cambridge
170	5.96%	On campus - Commons
145	5.09%	On campus - South Hill
33	1.16%	On campus - Leonardtown
2168	76.07%	Off campus (please specify)
2850		Respondents

## APPENDIX 4 - UNIVERSITY SYSTEM OF MARYLAND POLICY VI- 8.10 POLICY ON SMOKING AT USM INSTITUTIONS

### VI – 8.10 POLICY ON SMOKING AT USM INSTITUTIONS

(Approved by the Board of Regents, June 22, 2012)

#### I. PURPOSE AND SCOPE

- A. Purpose. The University System of Maryland (USM) seeks to promote a healthy, smoke-free environment for students and employees. In recognition of the health risks of tobacco smoke, this policy establishes standards and requirements to provide a smoke-free environment for all USM faculty, staff, students, and visitors.
- B. Scope. This policy applies to all USM students, faculty, staff, contractors and employees of contractors providing services on USM campuses, agents, guests, and visitors.

#### II. DEFINITIONS

- A. “Institution Property” means any property owned, leased, or otherwise controlled or operated by an institution, including buildings, other structures and grounds, and vehicles owned or leased by the institution.
- B. “Smoking” means carrying or smoking a lighted tobacco product or the burning of any material to be inhaled including, but not limited to, cigarettes, cigars, hookahs, and pipes.

#### III. PROHIBITIONS ON INSTITUTION PROPERTY

- A. Prohibitions against Smoking
  - 1. Consistent with Maryland law, smoking is not permitted in any institution building, including academic buildings, residence halls, administrative buildings, other enclosed facilities, or vehicles, except as provided in Section III(A)3, below.
  - 2. Smoking is prohibited on all institution grounds and property, including walkways, parking lots, and recreational and athletic areas, except as provided in Section III(A)3, below.
  - 3. Smoking in and on institution property will be permitted only as follows:
    - a. For controlled research, and educational, theatrical, or religious ceremonial purposes, with prior approval of the President or the President’s designee;
    - b. In limited and specific designated areas on institution grounds, as approved by the President; or
    - c. Subject to any other exception to this policy recommended by the President and approved by the Chancellor.

- B. Prohibitions against Sale. The sale of tobacco and smoking-related products is prohibited on institution property.

#### IV. SMOKING CESSATION ASSISTANCE

- A. Assistance Programs. Each institution may make available smoking cessation assistance to students, faculty and staff, which may include opportunities to participate in smoking cessation seminars, classes, and counseling and the availability of smoking cessation products and materials.
- B. Smoking Cessation Information. The President of each institution shall designate an individual or individuals to answer questions, refer students and employees to on-campus and outside resources, and otherwise provide information about smoking cessation assistance options and opportunities.

#### V. IMPLEMENTATION PROCESS

- A. Communication. Each institution shall provide initial and ongoing information to communicate the requirements of this policy, including:
  - 1. Dissemination of the key elements of the policy to faculty, staff, students, and others on websites and in appropriate written materials; and
  - 2. The placement of exterior and interior notices and signs announcing that smoking is prohibited.
- B. Community Outreach. Each institution will engage in outreach to the community, as appropriate, to facilitate coordination with local government authorities and to assist residents and businesses near the institution in preventing trespass and littering that may result if members of the campus community seek to smoke in nearby off-campus areas.
- C. Consequences. Each institution may establish appropriate consequences, which may include fines or disciplinary measures, for violations of this policy.
- D. Implementation. The provisions of this policy shall be implemented at each institution no later than June 30, 2013.

**APPENDIX 5 - SENATE EXECUTIVE COMMITTEE CHARGE ON  
IMPLEMENTATION OF THE POLICY ON SMOKING AT USM INSTITUTIONS**



**University Senate  
CHARGE**

<b>Date:</b>	September 5, 2012
<b>To:</b>	Marcia Marinelli Chair, Campus Affairs Committee
<b>From:</b>	Martha Nell Smith  Chair, University Senate
<b>Subject:</b>	Implementation of the Policy on Smoking at USM Institutions
<b>Senate Document #:</b>	12-13-07
<b>Deadline:</b>	January 11, 2013

The Senate Executive Committee (SEC) requests that the Campus Affairs Committee review the recently approved University System of Maryland (USM) Policy on Smoking at USM Institutions (VI-8.10) and make recommendations on a related policy and implementation process for our campus.

Specifically, we ask that you:

1. Review the report of the 2010-2011 Campus Affairs Committee regarding the Proposal for a Tobacco-Free Campus (Senate Doc. No. 08-09-15).
2. Review similar policies and implementation strategies at other USM and peer institutions.
3. Consult with representatives from University Human Resources regarding the impact of such a policy on the University's employees,
4. Consult with a representative from the Office of Staff Relations.
5. Consult with a representative of the University Health Center regarding smoking cessation programs, including who will be designated to answer questions, refer students and employees to on-campus and outside resources, and otherwise provide information about smoking cessation assistance options and opportunities.
6. Consult with representatives from the Division of Administrative Affairs regarding potential implementation and enforcement procedures, and effective communication about campus policy.

7. Gather input from various campus constituents, including faculty, staff, and students, regarding the impact of such a policy.
8. Consider the impact of such a policy on external constituents such as visitors, alumni, patrons of University events etc.
9. Develop a campus policy that aligns with the USM Policy on Smoking at USM Institutions.
10. Develop potential implementation procedures for a campus policy.
11. Consult with a representative of the Office of Legal Affairs.

We ask that you submit your report and recommendations to the Senate Office no later than January 11, 2013. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.





## Revision to the Policy on Smoking at the University of Maryland (Senate Document #19-20-17)

### Indiana University – Bloomington

Policy: [Tobacco-Free University](#) (2014)

#### Definition(s)

- **“Tobacco and smoking related products** - all tobacco-derived or tobacco containing products including, and not limited to, cigarettes, electronic cigarettes and vaping, cigars and cigarillos, hookah smoked products, pipes, and oral tobacco (e.g., spit and spitless, smokeless, chew, snuff) and nasal tobacco (e.g. snus). It also includes any product intended to mimic tobacco products or the smoking of any other substance.”

### Michigan State University

Policy: [Smoke and Tobacco-Free Policy](#) (2016)

#### Definition(s)

- “To ‘**smoke**’ means inhaling, exhaling, burning, or carrying any lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic. To “smoke” also includes the use with any such tobacco or plant product of a pipe or hookah; of any electronic smoking device which creates, in any manner, an aerosol or vapor, in any form; or any other oral smoking device.”
- **“Tobacco-derived or containing products’** include, without being limited to, cigarettes (including clove, bidis, kreteks), electronic cigarettes, aerosol or vapor nicotine delivery devices, cigars and cigarillos, pipe tobacco, hookah-smoked products, and oral tobacco (spit and spitless, smokeless, chew, snuff).”

### Northwestern University

Policy: No campus-wide policy, though addressed in [Student Handbook](#) (2017)

#### Definition(s)

- Per handbook, **“smoking**, including, but not limited to, cigarettes, ecigarettes, vaporizers, and hookahs, is prohibited in all areas of all residence halls, including, but not limited to, sleeping rooms, lounges, suite living rooms, dining rooms, corridors, stairwells, courtyards, washrooms, and within 25 feet of any entrance, open window, ventilation intake, or similar feature of a University building.”

## THE Ohio State University

Policy: [Tobacco Free Ohio State](#) (2018)

### Definition(s)

- Defers to state law, which defines smoking as “[inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant. "Smoking" does not include the burning of incense in a religious ceremony.](#)”
- “**Tobacco** is defined as all tobacco-derived or containing products, including and not limited to, cigarettes (e.g., clove, bidis, kreteks), electronic cigarettes, cigars and cigarillos, hookah smoked products, pipes and oral tobacco (e.g., spit and spitless, smokeless, chew, snuff) and nasal tobacco. It also includes any product intended to mimic tobacco products, contain tobacco flavoring or deliver nicotine other than for the purpose of cessation.”

## Penn State University

Policy: [Smoking and Tobacco Policy](#) (2018)

### Definition(s)

- “**Smoking** includes the burning of any type of lit pipe, cigar, cigarette, or any other smoking equipment, whether filled with tobacco or any other type of material.”
- “**Tobacco** is defined as all tobacco-derived or containing products, including and not limited to cigarettes (e.g., clove, bidis, kreteks, electronic cigarettes, cigars and cigarillos), hookah smoked products, pipes and oral tobacco (e.g., spit and spitless, smokeless, chew, snuff) and nasal tobacco. It also includes any product intended to mimic tobacco products, contain tobacco flavoring or deliver nicotine. Products approved by the U.S. Food and Drug Administration, when used for cessation, are not considered tobacco under this policy.”

## Purdue University

Policy: [Smoke-Free West Lafayette Campus](#) (2018)

### Definition(s)

- The policy covers “Cigarettes, cigars, pipes, e-cigarettes or any other device used to burn tobacco or other like substances or to vape.”

## Rutgers University

Policy: [No Smoking Policy](#) (2016)

### Definition(s)

- “**Smoking**’ means the burning of, inhaling from, exhaling the smoke from, or the possession of alighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked or the inhaling or exhaling of smoke or vapor from an electronic smoking device.”

- “**Electronic smoking device**’ means an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe.”

## University of California – Los Angeles

Policy: [Smoke-Free Environment](#) (2013)

### Definition(s)

- “**Tobacco Product** means any form of tobacco, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), smokeless tobacco products and unregulated nicotine products (e.g., “e-cigarettes”).”
- “**Tobacco Use** means the act of using any Tobacco Product, including smoking, chewing, spitting, inhaling, ingesting, burning, or carrying any lighted or heated Tobacco Product.”

## University of California – Berkeley

Policy: [Tobacco-Free Campus](#) (2017)

### Definition(s)

- “**Tobacco Product:** All forms of tobacco, including but not limited to cigarettes, cigars, shisha, pipes, herbal cigarettes, water pipes (hookahs), electronic cigarettes (vaporizers), electronic hookahs, and all forms of smokeless tobacco including but not limited to:
  - Chew: tobacco placed between the cheek and gum or upper lip teeth.
  - Orbs: Nicotine-infused orbs consumed like breath mints.
  - Snuff: Fine-ground tobacco inhaled through the nose.
  - Snus: Ground tobacco in a tea bag-like sack kept between the cheek and teeth.
  - Sticks: Nicotine-infused sticks chewed like a tooth-pick.
  - Strips: Nicotine-infused strips that dissolve on the tongue.”
- “**Tobacco Use:** Smoking, chewing, dipping, or any other use of tobacco.”

## University of Illinois – Urbana-Champaign

Policy: [Smoke and Tobacco-Free Campus](#) (2019)

### Definition(s)

- “**Smoke**’ or **smoking**’ means the carrying, smoking, burning, inhaling, or exhaling of any kind of lighted pipe, cigar, cigarette, cigarillos, hookah, beedies, kreteks, weed, herbs, electronic cigarettes, water pipes, bong, marijuana or other lighted smoking equipment. “Smoke” or “smoking” also includes products containing or delivering nicotine intended or expected for human consumption, or any part of such a product that is not a tobacco product as defined by Section 321(rr) of Title 21 of the United States Code, unless it has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration for tobacco use cessation or other medical purposes and is being marketed and sold solely for that approved purpose. ‘Smoke’ or ‘Smoking’ does not include smoking that is associated with a native recognized

religious ceremony, ritual, or activity by American Indians that is in accordance with the federal American Indian Religious Freedom Act, Sections 1996 and 1996a of Title 42 of the United States Code.”

- **“Non FDA-approved nicotine delivery devices and products”** means any product or device containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

## University of Iowa

Policy: [Tobacco-Free Campus](#) (2019)

### Definition(s)

- Smoking is not defined.
- **“Tobacco products** are defined as including but not limited to cigarettes, cigars, pipes, water pipes (hookahs), bidis, kreteks, smokeless tobacco, chewing tobacco, snus, snuff, electronic cigarettes, and any non-FDA-approved nicotine delivery device.”

## University of Michigan

Policy: [Smoking on University Premises](#) (2018)

### Definition(s)

- None

## University of Minnesota

Policy: [Smoke and Tobacco Free Campus: Crookston, Duluth, Rochester, and Twin Cities](#) (2018)

### Definition(s)

- **Smoking:** “Inhaling, exhaling, burning, or carrying of a lighted cigarette, cigar, pipe, or other lighted smoking product. The burning of any type of lighted pipe, cigar, cigarette, or any other smoking equipment or device, whether filled with tobacco or any other type of material.”
- **Electronic Cigarette:** “Any oral device that provides a vapor of liquid nicotine, lobelia, and/or other substance, and the use or inhalation of which simulates smoking. The term shall include any such devices, whether they are manufactured, distributed, marketed, or sold as e-cigarettes, e-cigars, e-pipes, or under any other product name or descriptor.”

## University of Nebraska – Lincoln

Policy: [Tobacco-Free and Smoke-Free Campus Policy](#) (2017)

### Definition(s)

- “**Smoking**’ means inhaling, exhaling, burning, or carrying any lighted or heated tobacco, plant (including marijuana) or synthetic products.”
- “**Tobacco Products**’ includes all forms of tobacco, inclusive of but not limited to, cigarettes, cigars, pipes, water pipes (hookah), electronic cigarettes and similar devices, and smokeless tobacco products. It also includes any product intended to mimic tobacco products, contain tobacco flavoring or deliver nicotine. FDA approved nicotine replacement therapy products, when used for the purpose of cessation, are not considered “Tobacco Products” under this policy.

## University of North Carolina – Chapel Hill

Policy: [No Smoking Policy](#) (2019)

### Definition(s)

- Smoking is not defined, though the policy does indicate that “visitors, patients, and students who violate the no smoking policy should be reminded of the policy and asked to comply by putting out the lighted tobacco product.”

## University of Wisconsin – Madison

Policy: [Smoke-Free Policy](#) (2016)

### Definition(s)

- “**Smoking** includes the burning of any type of lighted pipe, cigar, cigarette, or any other smoking equipment or the use of electronic smoking devices including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe.”

HB 1169

**Department of Legislative Services**  
Maryland General Assembly  
2019 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1169 (Delegate D.E. Davis, *et al.*)

Economic Matters and Health and  
Government Operations

**Business Regulation - Tobacco Products and Electronic Smoking Devices -  
Revisions**

This bill (1) alters the definition of “tobacco product” to include electronic smoking devices (ESDs), renames electronic nicotine delivery systems (ENDS) to be ESDs, and makes related changes; (2) increases fees for specified retail licenses and ESD wholesaler licenses; (3) raises the minimum age, from 18 to 21, for an individual to purchase or be sold tobacco products; (4) authorizes the Maryland Department of Health (MDH) to conduct unannounced inspections of specified retailers; (5) specifies signage requirements for specified retailers; (6) alters restrictions pertaining to the sale of tobacco products through vending machines; and (7) makes other revisions to provisions of law pertaining to the distribution of tobacco products to minors and possession of tobacco products by minors.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$41,900 in FY 2020 only. General fund revenues decrease significantly beginning in FY 2020, as discussed below.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$41,900	\$0	\$0	\$0	\$0
Net Effect	(-)	(-)	(-)	(-)	(-)

*Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Revenues increase significantly from additional licensing fee revenues. Enforcement can be handled with existing resources.

**Small Business Effect:** Meaningful.

## Analysis

### Bill Summary:

#### *Tobacco Products and Electronic Smoking Devices – Definitions*

*Electronic Smoking Devices:* The bill renames an ENDS to be an ESD and makes further revisions to the definition. Accordingly, an “ESD” is a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. “ESD” includes an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, vaping liquid, and any component, part, or accessory of such a device, regardless of whether the component is sold separately, including any substance intended to be aerosolized or vaporized during the use of the device. “ESD” excludes a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration (FDA) under the federal Food, Drug, and Cosmetic Act.

*Tobacco Products:* The bill alters the definition of “tobacco product” to include ESDs and makes other revisions to the definition. Accordingly, “tobacco product” means a product that is intended for human inhalation, absorption, ingestion, smoking, heating, chewing, dissolving, or any other manner of consumption that is made of, derived from, or contains tobacco or nicotine. “Tobacco product” includes cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and snus; ESDs; and filters, rolling papers, pipes, and liquids used in ESDs, regardless of nicotine content. “Tobacco product” excludes a drug, device, or combination product authorized for sale by FDA under the federal Food, Drug, and Cosmetic Act.

#### *License Fees*

The bill increases existing annual fees for State cigarette retailer, other tobacco products (OTPs) retailer or tobacconist, ENDS (under the bill, ESD) retailer, and ENDS (under the bill, ESD) wholesaler licenses. Accordingly:

- the fee for a cigarette retailer license increases from \$30 to \$300;
- the fee for an OTP or tobacconist license increases from \$15 to \$300;
- the fee for an ENDS (under the bill, ESD) retailer license increases from \$25 to \$300; and
- the fee for an ENDS (under the bill, ESD) wholesaler license from \$150 to \$300.

#### *Tobacco Products – Minimum Age*

The bill raises, from 18 to 21, the minimum age for an individual to purchase or be sold tobacco products and makes conforming changes. The bill affects several sections of the

Annotated Code of Maryland, including the Criminal Law, Health-General, Local Government, and State Finance and Procurement articles. References to “minor” or “18” are modified to be “an individual under the age of 21 years” or “21.”

In addition, the bill repeals a provision of criminal law that prohibits a minor from using or possessing a tobacco product, cigarette rolling paper, or an ENDS or from using a false form of identification to obtain a tobacco product, cigarette rolling paper, or an ENDS.

Furthermore, the bill repeals an authorized defense for a violation of a criminal prohibition against the distribution of tobacco products to a minor that the defendant examined the purchaser’s or recipient’s employer-issued or school identification.

#### *Inspections of Retailers by the Maryland Department of Health*

The bill authorizes MDH to conduct unannounced inspections of a licensed cigarette, OTP, or ESD retailer to ensure the licensee’s compliance with the criminal prohibition against the distribution or sale of tobacco products to underage individuals (under the bill, the criminal prohibition pertains to individuals younger than age 21). MDH may use an individual younger than age 21 to assist in conducting the inspections.

#### *Required Signs for Retail Licensees*

A cigarette, OTP, or ESD retailer must post a sign in a location that is clearly visible to the consumer that states, in letters that are at least one half-inch high, “No person under the age of 21 may be sold tobacco products.”

#### *Restrictions on the Sale of Tobacco Products through a Vending Machine*

In the State, a person may not sell, dispense, or offer to sell or dispense a tobacco product through a vending machine unless the vending machine is located in an establishment that individuals younger than age 21 are prohibited by law from entering at any time.

#### *Civil Fines for Unlawful Sale of Tobacco Products to Underage Individuals*

The bill specifies that if a person acting on behalf of a retailer violates specified prohibitions against the sale or distribution of tobacco products or ESDs, the retailer must pay the civil penalty.



## **Current Law:**

### *Definitions*

*Electronic Nicotine Delivery Systems:* “ENDS” means an electronic device, a component for an electronic device, or a product used to refill or resupply an electronic device that can be used to deliver nicotine to an individual inhaling from the device. “ENDS” includes an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, and vaping liquid. “ENDS” excludes a nicotine device that contains or delivers nicotine intended for human consumption that is approved by FDA for sale as a tobacco cessation product and is being marketed and sold solely for that purpose; cannabis oil or any other unlawful substance; or an electronic device that is being used to deliver cannabis oil or other unlawful substance.

*Tobacco Products:* “Tobacco product,” as it applies to provisions of the Business Regulation, Criminal Law, Health-General, and Local Government articles, means any substance containing tobacco, including cigarettes, cigars, smoking tobacco, snuff, or smokeless tobacco.

### *Business Regulation Article – Licensing and Fees*

Generally, a person must obtain a license to engage in the retail sale or wholesale distribution of cigarettes, OTPs, or ENDS. Licenses are subject to annual renewal. To renew a license, a licensee must pay the applicable license fee.

*Retail Licenses:* The Comptroller issues cigarette retailer licenses, OTP retailer and tobacconist licenses, and ENDS retailer and vape shop vendor licenses through the local clerks of the court. To obtain one of these licenses, a person must (1) obtain a county license; (2) file an application with the clerk; and (3) pay the clerk a specified fee, a portion of which is distributed to the Comptroller. The fee for a cigarette retailer license is \$30; for an OTP retailer or a tobacconist license, \$15; and for an ENDS or vape shop vendor license, \$25. An applicant for an OTP retailer or tobacconist license need not pay the specified fee if the applicant holds a specified cigarette retailer license. In addition, a person need not obtain an ENDS retailer or vape shop vendor license if the person has a license to act as a cigarette or OTP retailer or tobacconist.

*Electronic Nicotine Delivery Systems Wholesaler Licenses:* The Comptroller issues ENDS wholesaler distributor and wholesaler importer licenses. An applicant for an ENDS wholesaler distributor or wholesaler importer license must (1) obtain a county license, (2) file an application with the Comptroller, and (3) pay to the Comptroller a fee of \$150. A person need not obtain an ENDS wholesaler license if the person has a license to act as a cigarette or OTP wholesaler.

*Sale of Tobacco Products through Vending Machines:* In the State, a person may not sell, dispense, or offer to sell or dispense a tobacco product through a vending machine unless the vending machine is located in an establishment that minors are prohibited by law from entering; is located in a bona fide fraternal or veterans organization; or can only be operated with a token, card, or similar device that an individual can only obtain or purchase from the owner or an employee or agent of the owner. A violator is guilty of a misdemeanor and subject to a maximum fine of \$100.

#### *Criminal Law Article – Tobacco Products and Minors*

A commercial tobacco distributor may not distribute a tobacco product, tobacco paraphernalia, a coupon redeemable for a tobacco product, or an ENDS to a minor unless the minor is acting solely as the agent of his or her employer if the employer distributes such products for commercial purposes. Likewise, someone else may not purchase for, sell to, or distribute to a minor a tobacco product, tobacco paraphernalia, or an ENDS. A person that violates these provisions is guilty of a misdemeanor and is subject to a maximum fine of \$300 for a first violation, \$1,000 for a second violation occurring within two years after the first violation, and \$3,000 for each subsequent violation occurring within two years after the preceding violation. However, in a prosecution for a violation, it is a defense that the defendant examined the purchaser's or recipient's license or other valid identification that positively identified the purchaser or recipient as being at least age 18.

A minor may not use or possess tobacco products, cigarette rolling paper, or an ENDS unless he or she is acting as the agent of the minor's employer within the scope of employment. Additionally, a minor is prohibited from using false forms of identification to obtain tobacco products, cigarette rolling paper, or an ENDS, including a form of identification that identifies someone other than the minor. A minor who violates these provisions is guilty of a civil offense.

#### *Health-General Article – Tobacco Products and Minors*

*Funding:* State funds are used to (1) conduct media campaigns aimed at reducing smoking initiation, encouraging smokers to quit, and educating the public about the dangers of secondhand smoke exposure; (2) enforce existing laws banning the sale and distribution of tobacco products to minors; (3) promote and implement smoking cessation programs; and (4) implement school-based tobacco education programs.

*Restrictions on Distribution of Tobacco Products and Electronic Nicotine Delivery Systems to Minors:* A person may not distribute a tobacco product, tobacco paraphernalia, or a coupon redeemable for a tobacco product to a minor. In addition, a person may not sell, distribute, or offer for sale to a minor an ENDS as defined under the Business Regulation Article. County health officers and designees of county health officers may

issue civil citations for violations. A violator is subject to a maximum civil penalty of \$300 for a first violation; \$1,000 for a second violation occurring within 24 months after the previous violation; and \$3,000 for each subsequent violation occurring within 24 months after the preceding violation. However, in a prosecution for a violation, it is a defense that the defendant examined the purchaser's or recipient's license or other valid identification that positively identified the purchaser or recipient as being at least age 18. The District Court must remit any penalties collected to the county in which the violation occurred. The imposition of a civil penalty precludes prosecution for a violation of criminal laws relating to the distribution of tobacco products or ENDS that arises out of the same violation, and vice versa.

#### *Local Government Article – Tobacco Products and Minors*

In Carroll, Cecil, Garrett, and St. Mary's counties, a person may not (1) distribute a tobacco product to a minor unless the minor is acting solely as the agent of the minor's employer who is engaged in the business of distributing tobacco products, (2) distribute cigarette rolling papers to a minor, or (3) distribute to a minor a coupon redeemable for a tobacco product. Civil penalties vary depending on the county. It is a defense if the person examined the recipient's driver's license or other valid government-issued identification that positively identified the recipient as at least age 18. A county health officer or the county health officer's designee may issue civil citations for violations (except in Cecil County, where only a sworn law enforcement officer may do so). The District Court must remit any penalties collected to the county in which the violation occurred.

#### *State Finance and Procurement Article – Cigarette Restitution Fund*

The Cigarette Restitution Fund is used to fund the Tobacco Use Prevention and Cessation Program; the Cancer Prevention, Education, Screening, and Treatment Program; and other various programs aimed at reducing the use of tobacco products by minors, education and public school campaigns to decrease tobacco use, promoting smoking cessation, and other public purposes.

### **Background:**

#### *Rise in Youth Tobacco Use*

FDA and the U.S. Department of Health and Human Services report that, between 2017 and 2018, use of tobacco products by high school and middle school students in the United States increased by 27.1% and 7.2%, respectively. The increase in youth tobacco use is largely attributable to a rise in youth e-cigarette use; between 2017 and 2018, e-cigarette use by high school and middle school students in the United States increased by 78% and 48%, respectively.

### *Minimum Age for Tobacco in Other States*

According to the Campaign for Tobacco-Free Kids, as of January 2019, six states (California, Hawaii, Maine, New Jersey, Oregon, and Massachusetts) have raised the minimum age to purchase tobacco to 21, as have at least 430 localities (including New York City, Chicago, San Antonio, Boston, Cleveland, Minneapolis, both Kansas cities, and Washington, DC).

### *Tobacco Taxes in Maryland*

Chapter 121 of 1999 increased the cigarette tax from 36 to 66 cents. In addition, Chapter 121 imposed a 15% tax on the wholesale price of OTPs such as cigars and smokeless tobacco. Chapter 288 of 2002 increased the cigarette tax from 66 cents to \$1.00 per pack. Chapter 6 of the 2007 special session increased the cigarette tax to \$2.00 per pack.

Chapter 2 of the first special session of 2012 increased the OTP tax rate from 15% to 30% of the wholesale price for all products except cigars, effective July 1, 2012. The tax rate for cigars that are classified as premium cigars remained at 15% of the wholesale price; all other cigars are taxed at 70% of the wholesale price.

Cigarette and OTP tax revenues accrue to the general fund. In addition, the State sales tax rate of 6% is imposed on the final retail price of cigarettes and OTPs. In fiscal 2018, cigarette tax revenues totaled \$331.2 million, and OTP tax revenues totaled \$41.3 million.

**State Revenues:** The bill raises the minimum age to purchase tobacco products, tobacco paraphernalia, and ESDs from age 18 to 21. Based on prior-year estimates of the continued use among a portion of this cohort and the tax revenues apportioned to their current use, general fund revenues decrease, likely significantly, due to a decrease in the collection of the various taxes imposed on such products (cigarette and OTP excise taxes and sales tax). The State does not currently tax ESDs as tobacco products. Any decrease in sales tax revenue resulting from the increased minimum age for purchasing ESDs under the bill cannot be reliably estimated at this time.

Nevertheless, **Exhibit 1** is illustrative of the *potential* revenue loss stemming from the bill's alteration of the minimum age to purchase tobacco products from fiscal 2020 through 2024; the estimate for fiscal 2020 reflects the bill's October 1, 2019 effective date. This illustrative estimate is based on the following facts and assumptions:

- The Comptroller’s Office advised in 2018 that the excise tax rate for OTP varies by product, but its weighted average is 43.5%. OTP tax collections are generally 10.9% of the amount collected for cigarettes. Thus, the reduction in OTP excise tax revenues is assumed to be 10.9% of the reduction in cigarette excise tax revenues.
- The Comptroller’s Office estimated in 2018 that 25% of individuals ages 18 through 20 will *continue* to consume tobacco products – with purchase in Maryland – the fiscal year the increased minimum age takes effect. This amount is estimated to decrease to 15% in the second year and by approximately five percentage points annually for the next two years – as current users are more likely to purchase illegally – until it stabilizes at 5%. The Comptroller’s Office based this estimate on U.S. Centers for Disease Control and Prevention data regarding youth cigarette use and population projections.

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**Exhibit 1**  
**Illustrative Tax Revenue Decreases**  
**Fiscal 2020-2024**  
**(\$ in Millions)**

	<u><b>FY 2020</b></u>	<u><b>FY 2021</b></u>	<u><b>FY 2022</b></u>	<u><b>FY 2023</b></u>	<u><b>FY 2024</b></u>
Excise Tax	\$3.7	\$5.5	\$5.8	\$6.1	\$6.1
Sales Tax	1.1	1.4	1.4	1.4	1.4
<b>Total General Fund</b>	<b>\$4.8</b>	<b>\$6.9</b>	<b>\$7.2</b>	<b>\$7.5</b>	<b>\$7.5</b>

Note: Includes excise and sales taxes for both cigarettes and other tobacco products. The fiscal 2020 projection reflects the bill’s October 1, 2019 effective date.

Source: Comptroller’s Office (based on an estimate from the 2018 legislative session)

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The Department of Legislative Services (DLS) further advises that the impact of the bill’s minimum age provision on tobacco tax revenues depends on rates of tobacco use among young adults that would be observed in the absence of the bill. In addition to moderating use among young adults, the bill likely changes the initiation age. For example, according to a 2015 report by the Institute of Medicine (IOM), approximately 90% of adults who are daily smokers report first use before reaching age 19. In that report, IOM also estimated that raising the minimum age to 21 may result in a 12% decrease in the prevalence of smoking by the time current teenagers reach adulthood, and that smoking initiation rates among those ages 18 to 20 may decrease by 15%. However, IOM notes that these estimates are based on national models and do not take into account variations in tobacco use,

initiation rates, tobacco control activities, or the effects of new products (*e.g.*, ESD) on future smoking and tobacco use rates.

General fund revenue losses due to foregone taxes are slightly offset by increased licensing fee revenues under the bill. The bill doubles the fee, from \$150 to \$300, for an ENDS (ESD under the bill) wholesaler license. Revenues from these licensing fees accrue to the general fund. Accordingly, general fund revenues increase minimally from this provision.

Generally, revenues from business licenses issued by local clerks of the court are split between local government (92%) and the State general fund (8%). Accordingly, 8% of the additional licensing fees collected under the bill's alteration of cigarette retailer, OTP retailer and tobacconist, and ENDS (ESD under the bill) retailer and vape shop vendor licenses accrues to the State general fund. The Judiciary advises that, in 2018, there were a total of 6,782 cigarette retailer licenses, 6,601 OTP retailer and tobacconist licenses, and 123 ENDS retailer licenses issued in the State. Assuming that the number of licensees in each license category remains constant in future years, general fund revenues increase by approximately \$147,400 in fiscal 2020 and \$148,000 annually thereafter. This estimate accounts for the bill's October 1, 2019 effective date and the annual expiration of cigarette retailer and OTP retailer and tobacconist licenses on April 30. However, as stated above, general fund revenue increases stemming from the bill's alteration of licensing fees only slightly offset general fund revenue decreases stemming from the bill's alteration of the minimum age for purchasing tobacco products.

### **State Expenditures:**

#### *Judiciary Programming Changes*

The Judiciary advises that the alteration of fees for specified retail licenses under the bill requires programming changes to its revenue collection system at a one-time cost of \$11,490 in fiscal 2020. Thus, general fund expenditures increase accordingly.

#### *Maryland Department of Health Administrative Expenses*

MDH advises that, under the bill, training and educational materials for tobacco retailers and local health departments must be updated to reflect the bill's changes. These costs are anticipated to total \$30,390, which include necessary mailings and modification to enforcement and educational materials. Thus, general fund expenditures increase accordingly in fiscal 2020 only.

### *Comptroller's Office Enforcement*

The Comptroller's Office did not respond to a request for information for this fiscal and policy note. However, it is assumed, for the purposes of this fiscal and policy note, that the Comptroller's Office can enforce the bill's provisions with existing resources.

### *Potential Medicaid Expenditure Decrease*

The Maryland Association of County Health Officers has historically advised altering the minimum age for purchasing tobacco products to 21 likely results in Medicaid savings in the near term, particularly from a potential reduction in preterm births and related hospital stays (as smoking during pregnancy is a contributing factor to such preterm births) and in smoking-related health care costs (e.g., asthma treatment and related emergency department visits), and that out-year savings are also likely realized through a reduction in health care costs associated with tobacco-related diseases (e.g., cancer, heart disease, and stroke). Thus, to the extent the bill results in reduced health care costs covered by Medicaid, general fund expenditures decrease. Medicaid-eligible services are subject to a federal match rate (which varies depending on the coverage group of the individual). Therefore, federal fund expenditures also decrease; federal fund revenues decrease correspondingly. However, DLS advises that the extent of this impact cannot be reliably estimated at this time, as it depends on whether and to what extent the bill reduces tobacco use in the State.

**Local Revenues:** As discussed above, local governments generally collect 92% of revenues from business licenses issued through the clerks of the court. Based on the number of cigarette retailer, OTP retailer and tobacconist, and ENDS retailer and vape shop vendor licenses issued in the State in 2018 (as discussed above), local revenues in the State increase, in the aggregate, by approximately \$1.7 million in fiscal 2020 and annually thereafter from the bill's alteration of specified licensing fees, assuming the number of licensees in each license category remains constant.

In addition, the bill expands the definition of tobacco product (to include ESDs) as it applies to several provisions of State law, including provisions pertaining to civil offenses for the unlawful distribution of tobacco products in Carroll, Cecil, Garrett, and St. Mary's counties. Accordingly, Carroll, Cecil, Garrett, and St. Mary's County revenues increase minimally from civil penalties to the extent that additional citations are issued under the bill's expansion of the definition of tobacco products.

DLS notes that Montgomery County recently imposed its own excise tax on electronic cigarette products, which became effective August 2015. The tax rate is 30% of the wholesale price. To the extent the bill results in reduced sales of electronic cigarette products, Montgomery County revenues decrease. However, the extent of this decrease cannot be reliably estimated at this time.

**Small Business Effect:** To the extent that small businesses in Maryland currently sell cigarettes, OTPs, and ESDs to young adults younger than age 21, sales decline. These businesses are subject to civil and criminal penalties if they continue to do so.

**Additional Comments:** According to the Department of Juvenile Services, in fiscal 2018, citations issued for tobacco-related violations accounted for only 0.7% of juvenile offenses. Accordingly, the bill's repeal of provisions prohibiting minors from possessing tobacco products or attempting to obtain tobacco products with false identification is not likely to materially impact State or local operations.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 895 (Senator Kelley) - Finance.

**Information Source(s):** Maryland Association of County Health Officers; Anne Arundel County; Montgomery County; Maryland Association of Counties; Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Health; U.S. Food and Drug Administration; U.S. Department of Health and Human Services; Campaign for Tobacco-Free Kids; Institute of Medicine; Department of Legislative Services

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TESTIMONY

# FDA Regulation of Electronic Nicotine Delivery Systems and Investigation of Vaping Illnesses

SEPTEMBER 25, 2019

**Testimony of**

Norman E. "Ned" Sharpless, MD

**Before the**

House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations (/node/390633)

## Introduction

Good morning, Chairwoman DeGette, Ranking Member Guthrie, and Members of the subcommittee.

Thank you for the opportunity to be here today to discuss the Food and Drug Administration's (FDA or the Agency) regulation of electronic nicotine delivery systems, or ENDS, which include e-cigarettes, and the Agency's role in the ongoing investigation into severe respiratory lung injury associated with e-cigarette use or vaping. I am Ned Sharpless, Acting Commissioner of the U.S. Food and Drug Administration, which is part of the Department of Health and Human Services (HHS).

FDA is deeply concerned by the severe respiratory lung injuries and reported deaths associated with e-cigarette use or vaping, and the Agency is working very closely with the Centers for Disease Control and Prevention (CDC) and state officials to investigate these incidents. FDA is committed to taking appropriate actions to protect the public as the facts emerge. To date, most patients have reported a history of using vaping products containing tetrahydrocannabinol (THC). Many patients have reported using products containing THC and products containing nicotine. Some have reported the use of e-cigarette products containing only nicotine.

I appreciate the opportunity to be here today to provide an update on FDA's regulation of ENDS, including the Administration's recent announcement to finalize a compliance policy that would prioritize enforcement against flavored ENDS to clear the market of those products, unless and until their marketing has been shown to be appropriate for the protection of the public health, as Congress required, and to provide an update on FDA's efforts to investigate the illnesses associated with the use of vaping products.

## Background

Let me start with some basic background on our tobacco regulatory authorities.

Tobacco use is the single largest preventable cause of disease and death in the United States. Each year, more than 480,000 people in the United States die prematurely from diseases caused by cigarette smoking and exposure to tobacco smoke. In 2009, the Family Smoking Prevention and Tobacco Control Act

(Tobacco Control Act) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to authorize FDA to oversee the manufacture, marketing, distribution, and sale of tobacco products and protect the public from the harmful effects of tobacco product use. This authority gave FDA comprehensive tools to protect the public from the harmful effects of tobacco use through science-based tobacco product regulation.

With limited exceptions, FDA evaluates new tobacco products based on a public health standard that considers the risks and benefits of the tobacco product to the population as a whole, including users and non-users. Similarly, when developing regulations, the law generally requires FDA to apply a public health approach that considers the effect of the regulatory action on the population as a whole, not just on individual users, taking into account initiation and cessation of tobacco use.

Under the statute, FDA had immediate authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. The Tobacco Control Act also authorized FDA to “deem” other “tobacco products” (which include “any product made or derived from tobacco that is intended for human consumption” that is not a drug, device, or combination product under the FD&C Act, “including any component, part, or accessory” of that product) to be subject to the Agency’s regulatory authority in Chapter IX of the FD&C Act.

On May 10, 2016, FDA issued a final rule (the “deeming rule”) to deem additional products that meet the statutory definition of a “tobacco product,” except for accessories, to be subject to FDA’s regulatory authority. Deemed products include ENDS, cigars, pipe tobacco, nicotine gels, waterpipe (or hookah) tobacco, and any future tobacco products. The deeming rule, and FDA’s regulation of these products, took effect on August 8, 2016.

## **Regulatory Requirements for ENDS Products**

When the deeming rule took effect in August 2016, many of the regulatory and legal requirements that had been in place for manufacturers of cigarettes, smokeless tobacco, cigarette tobacco, and roll-your-own tobacco since 2009, as well as several new requirements specific to deemed products, became applicable to makers of e-cigarettes and other ENDS products. These include:

- Registering domestic establishments and submitting lists of products manufactured at those establishments, including all labeling and representative samples of advertisements;
- Submitting tobacco health documents;
- Submitting ingredient listings;
- Marketing new tobacco products only after FDA review; and
- Marketing products with direct or implied claims of reduced risk only if FDA confirms that scientific evidence supports the claim and determines that providing a marketing authorization for the product will benefit the health of the population as a whole.

In addition, the following regulatory provisions also apply to deemed tobacco products, including ENDS products:

- Minimum age restriction and identification requirement to prevent sales to underage youth;
- Requirements to bear certain health warnings on packages and advertisements (including certain ENDS components, such as e-liquids) such as, “WARNING: This product contains nicotine. Nicotine

is an addictive chemical” and

- Prohibition of vending machine sales, unless in a facility that never admits youth.

FDA recognized that industry would need time to comply with some of the new regulatory requirements triggered by the final deeming rule and announced a compliance policy with staggered timeframes for compliance. Some of the requirements, such as the Federal minimum age of purchase, took effect immediately when the deeming rule took effect on August 8, 2016, while, as an exercise of enforcement discretion, FDA provided industry with additional time to comply with other requirements, such as premarket review of “new” tobacco products.

## **Premarket Review of ENDS**

All deemed products, including ENDS products, became subject to the premarket authorization requirements in the Tobacco Control Act on August 8, 2016. All “new” tobacco products are required to obtain authorization from FDA before they can be legally marketed. Pursuant to the Tobacco Control Act, a “new” tobacco product is one that was not commercially marketed as of February 15, 2007, or that was modified after February 15, 2007.

FDA’s initial compliance policy for premarket review stated that the Agency did not intend to enforce the requirements of premarket review against manufacturers of newly-regulated new tobacco products that were on the market as of August 8, 2016, as long as they submitted applications seeking marketing authorization within specific timeframes. As a result, FDA anticipated that many ENDS products would remain on the market without premarket authorization for up to three years.

In July 2017, FDA announced a new comprehensive plan for tobacco and nicotine regulation that would serve as a multi-year roadmap in an effort to significantly reduce tobacco-related disease and death. The comprehensive plan was, in part, announced to afford the Agency time to explore clear and meaningful measures outside of premarket review to make combustible tobacco products less toxic, less appealing, and less addictive. One aspect of the plan involved striking a balance between regulation and encouraging development of innovative tobacco products that may be less harmful than cigarettes. The Agency announced that it planned to issue an updated compliance policy further deferring some enforcement timelines described in the final deeming rule.

The July 2017 announcement led to publication of the August 2017 Compliance Policy, which was later the subject of litigation. In May 2019, a U.S. District Court in Maryland vacated FDA’s 2017 Compliance Policy. In July 2019, the court ordered that applications for deemed “new” tobacco products such as e-cigarettes, cigars, pipe tobacco, and hookah tobacco, that were on the market as of August 8, 2016, must be filed with FDA no later than May 12, 2020. The court order also provided for a one-year period during which products with timely filed applications might remain on the market pending FDA review, but subsequently clarified that its order does not restrict the agency’s authority to enforce the premarket review provisions against deemed products prior to May 12, 2020, or during the one-year review period.

No ENDS product in the United States is on the market legally. To be legally marketed as a tobacco product, the product would need to undergo FDA scientific review and the Agency would have to find that the marketing of the product is appropriate for the protection of the public health. Alternatively, an ENDS

product that is marketed for therapeutic purposes as a drug would need to be reviewed under FDA's drug authorities, and approved for such marketing. There is no FDA-authorized or FDA-approved ENDS product currently on the market.

## **FDA's Aggressive Actions to Address the Youth Epidemic of ENDS Product Use**

At the time FDA issued the August 2017 Compliance Policy to modify the enforcement discretion policies regarding premarket authorization, nationally representative data suggested that youth use of e-cigarettes had declined. <sup>1</sup> While no level of youth use is acceptable, FDA took this directional data into consideration, along with the potential for some such products to offer a public health benefit to some individual addicted adult smokers. In the context of these uncertainties and this evidence, and with the potential for FDA to pursue other bold measures, in part by reducing the addictiveness of combustible cigarettes while temporarily delaying the immediate market exit of innovative, potentially less harmful tobacco products, FDA determined that the balancing of public health considerations argued in favor of a different comprehensive approach. However, the NYTS 2018 data showed a significant increase in youth use of e-cigarettes. Data from the NYTS showed that, between 2017 and 2018, current e-cigarette use among high school students increased 78 percent, from 11.7 percent to 20.8 percent. <sup>2</sup> Current e-cigarette use among middle school students also increased by 48 percent over the same time period, from 3.3 percent to 4.9 percent. <sup>3</sup>

Moreover, evidence demonstrates that youth are especially attracted to flavored ENDS products. Data from the 2018 NYTS showed that current (past 30-day) use of any flavored e-cigarette increased substantially among high school students who reported current e-cigarette use (60.9 percent to 67.8 percent) in just one year. <sup>4</sup>

Preliminary data from the 2019 NYTS show a continued rise and disturbing rate of youth e-cigarette use, especially through the use of non-tobacco flavors that appeal to kids. In particular, the preliminary data show that more than a quarter of high school students were current e-cigarette users in 2019, and the majority of youth e-cigarette users cited the use of popular fruit and menthol/mint flavors.

FDA must act to try to reverse these trends. We are committed to keeping tobacco products out of the hands of youth and will not stand idly by as a new generation becomes addicted to nicotine and tobacco products. I am committed to tackling the epidemic of youth e-cigarette use using the regulatory tools at the Agency's disposal. We are taking a number of actions to help address the epidemic:

- Earlier this month, the President announced that as part of the Administration's ongoing work to tackle the epidemic of youth e-cigarette use, FDA intends to finalize a compliance policy in the coming weeks that would prioritize the Agency's enforcement of the premarket authorization requirements for non-tobacco-flavored e-cigarettes, including mint- and menthol-flavored products. It is important to note that this does not mean flavored e-cigarettes can never be marketed—if companies think they can show that specific products meet the standards established by Congress, then they can submit that evidence to FDA through a product application, which FDA will then evaluate. It does mean that FDA intends to prioritize enforcement action such that, unless and until the manufacturers of these products meet their burden under the Tobacco Control Act to show that scientific evidence

demonstrates that their marketing is appropriate for the protection of the public health, these products will be expected to exit the market.

- FDA has been holding retailers and manufacturers accountable for marketing and sales practices that have led to increased youth accessibility and appeal of e-cigarettes. For example, FDA has issued more than 10,000 warning letters and more than 1,400 civil money penalties to retailers, both online and in brick-and-mortar retail stores, for sales of ENDS and their components to youth.
- FDA has sent letters to about 90 companies seeking information on over 110 brands, including ENDS products, to determine whether those products were not marketed as of August 8, 2016, and therefore not subject to any previous FDA compliance policy. To date, FDA has issued warning letters to five ENDS companies notifying them of the need to remove a combined total of more than 40 products from the market.
- The Agency has issued warning letters, many in collaboration with the Federal Trade Commission (FTC), that resulted in the removal of dozens of e-liquid products resembling kid-friendly foods, such as juice boxes, cereal, and candy.
- FDA and FTC sent warning letters to firms that make and sell flavored e-liquids for violations related to online posts by social media influencers on their behalf that lacked the required nicotine addiction warnings.
- On September 9, 2019, FDA issued a warning letter 5 to JUUL Labs Inc. for marketing unauthorized modified risk tobacco products by engaging in labeling, advertising, and/or other activities directed to consumers, including a presentation given to youth at a school, by marketing it for reduced risk or harm from using the product compared to cigarette smoking. Concurrently, the Agency issued a second letter expressing its concern and requesting additional information about several issues raised by Congress regarding JUUL's outreach and marketing practices, including those targeted at students, tribes, health insurers and employers.
- The Administration has also continued to invest in campaigns to educate youth about the dangers of e-cigarette use. Last year, FDA launched "The Real Cost" Youth E-Cigarette Prevention Campaign 6 – a comprehensive effort targeting nearly 10.7 million youth, aged 12-17, who have used e-cigarettes or are open to trying them. The campaign features hard-hitting advertising on TV, digital and social media sites popular among teens, as well as posters with e-cigarette prevention messages in high schools across the nation.
- FDA joined forces with Scholastic to develop educational resources for high school teachers and administrators. These materials have been distributed to over 700,000 high school educators. Our work with Scholastic continues, and we are currently developing additional resources, including lesson plans, for both middle and high school educators throughout this school year.
- The Agency also developed posters and resources for doctors, youth groups, churches, state and local public health agencies, and others on the dangers of youth e-cigarette use and has worked to advance discussion and understanding around how to help those kids who are already addicted to e-cigarettes quit.

We will continue to take vigorous actions aimed at ensuring e-cigarettes and other tobacco products are not being marketed or sold to kids. In addition, we will continue and expand our public education efforts to get the word out to youth about the harms of e-cigarettes.

## **Investing in Research to Learn More About the Health Impacts of ENDS Products**

FDA is funding several research projects assessing the health impact of e-cigarettes, including the FDA and NIH Population Assessment of Tobacco and Health (PATH) Study. The PATH Study is a national, longitudinal cohort study of almost 46,000 youth and adults in the United States that collected its first wave of data in 2013 and is following study participants over time to learn how and why people start using tobacco products, quit using them, and start using them again after they have quit, as well as how different tobacco products affect health (such as cardiovascular and respiratory health) over time. The PATH Study is tracking potential behavioral and health impacts, including collecting biospecimens to analyze for biomarkers of exposure and harm. <sup>7</sup>

In 2016, FDA awarded a contract to National Academy of Sciences, Engineering and Medicine (NASEM) to “conduct an in-depth evaluation of the available evidence of health effects from electronic nicotine delivery systems (ENDS) and make recommendations for future federally funded research.” This work included convening a multi-disciplinary committee of 13 members that met several times and holding an open meeting in order to obtain input from a wide range of stakeholders. The committee’s methodology included a comprehensive literature search, literature review and quality assessment, evidence synthesis to assess causality for health effects, and application of a framework for levels of evidence. Over 800 peer-reviewed scientific studies were evaluated and the consensus report, “Public Health Consequences of E-Cigarettes,” was released by NASEM in January 2018. <sup>8</sup> Among the conclusions in the NASEM report is that teens who experiment with an e-cigarette are more likely to try conventional cigarettes compared to teens who never used an e-cigarette.

As noted in the NASEM report, assessing the long-term health effects of e-cigarettes is challenging given the range of devices and constituents. For example, products can vary widely in terms of device type, mechanism, ingredients and the characteristics of aerosol generation. Variables of ENDS that could affect health impact include factors such as: exposure to metals (including heavy metals), heating capacity, e-liquid substrates, nicotine concentration, flavors and flavoring ingredients, and use of other ingredients or contaminants with unknown inhalation effects. A specific ENDS product’s health impact is also likely to be significantly affected by user behaviors (and we know that many ENDS users also use other tobacco products in addition to e-cigarettes). Assessing the short-term health effects is also challenging for these same reasons. To help understand the individual and population impact of ENDS, FDA is funding studies assessing the short- and long-term health effects of e-cigarettes including nicotine dependence, cardiovascular and pulmonary toxicity, potential carcinogenesis, effects of maternal use during pregnancy, and effects in the oral cavity. <sup>9</sup>

## **Investigation of Severe Respiratory Illnesses Associated with Vaping Products**

In recent weeks, an outbreak of severe respiratory lung injury associated with the use of vaping products has possibly sickened over 530 people from 38 states and one U.S. Territory. Sadly, seven deaths have been confirmed in California, Illinois, Indiana, Kansas, Minnesota, and Oregon. These illnesses do not appear to be due to infectious diseases but rather appear to be associated with a chemical exposure from vaping products. Patients report a gradual start of symptoms including breathing difficulty, shortness of breath, and/or chest pain before hospitalization. Many patients have reported recent use of vaping products

containing THC. Although these cases seem similar, it is not clear if they have a common cause, or if they involve different diseases with similar presentations. The investigation has not identified any specific product or substance or vaping product that is linked to all cases.

FDA is working closely with CDC and the affected states to investigate these cases. FDA's Office of Emergency Operations has activated an Incident Management Group (IMG) and is working alongside CDC's Incident Management System. The IMG serves as FDA's focal point for emergency management and is staffed by experts from across FDA.

FDA's work to investigate the illnesses includes field sample collections in coordination with states, sample analysis, criminal and civil investigations, and coordination with state and Federal partners.

FDA is also assisting states by collecting and analyzing samples. FDA's Forensic Chemistry Center (FCC) is an accredited laboratory in the field of forensic science testing and has experience in rapid response and specialized analytical services. FDA is analyzing samples for the presence of a broad range of chemicals, including nicotine, THC and other cannabinoids along with cutting agents/diluents and other additives, pesticides, opioids, poisons, and toxins. Many samples received have contained little to no liquid, which limits the amount of testing our laboratory is able to conduct. In most cases, patients have acknowledged recent use of THC-containing vaping products. Many patients have reported using products containing THC and products containing nicotine. Some have reported the use of e-cigarette products containing only nicotine. Similarly, the samples we are continuing to evaluate show a mix of results and no single substance, including Vitamin E acetate, has been identified in all of the samples tested. Importantly, identifying any compounds that are present in the samples will be one piece of the puzzle but will not necessarily answer questions about causality, which makes our ongoing work critical.

Investigating this crisis is FDA's Office of Criminal Investigations' top priority. Our agents are following every possible lead, which includes traveling throughout the country and attempting to gather any available evidence, including devices, pods/cartridges, diluting agents, etc.

FDA is working with our other Federal partners to investigate the illnesses. For example, we are working with Customs and Border Protection to identify potential illicit FDA-regulated products at the border.

It is critical that FDA communicate with the public when we have information to share, and we work to do that as frequently and openly as possible. For example, earlier this month, FDA issued a warning to consumers to avoid THC-containing vaping products. While the investigation is ongoing, we strongly encourage consumers to help protect themselves and avoid buying vaping products of any kind on the street, and to refrain from using THC oil or modifying/adding any substances to products purchased in stores. FDA also encourages the public to submit detailed reports of any unexpected tobacco- or vaping-related product issues to FDA via the online Safety Reporting Portal, which can be found on our website (or at [www.safetyreporting.hhs.gov](http://www.safetyreporting.hhs.gov)).

## Conclusion

Thank you for the opportunity to testify today about FDA's work to investigate the severe respiratory illnesses associated with vaping and our efforts to regulate ENDS products. It is an ever-changing landscape that FDA is committed to navigating with the goal of vigorously protecting and improving the public health.

I am happy to answer any questions you may have.

## Footnotes

1. Jamal A, Gentzke A, Hu SS, et al. Tobacco Use Among Middle and High School Students — United States, 2011–2016. *MMWR Morb Mortal Wkly Rep* 2017;66:597–603.

[https://www.cdc.gov/mmwr/volumes/66/wr/mm6623a1.htm?s\\_cid=mm6623a1\\_w](https://www.cdc.gov/mmwr/volumes/66/wr/mm6623a1.htm?s_cid=mm6623a1_w)

([https://www.cdc.gov/mmwr/volumes/66/wr/mm6623a1.htm?s\\_cid=mm6623a1\\_w](https://www.cdc.gov/mmwr/volumes/66/wr/mm6623a1.htm?s_cid=mm6623a1_w)) The NYTS defines e-cigarettes as “battery-powered devices that provide nicotine and other additives to the user in the form of an aerosol.”

2. *Id.*

3. *Id.*

4. Cullen, K.A., B.K. Ambrose, A.S. Gentzke, et al., “Notes from the Field: Increase in e-cigarette use and any tobacco product use among middle and high school students – United States, 2011-2018,” *Morbidity and Mortality Weekly*, 67(45);1276-1277 (2018).


5. The warning letter is available at: <https://www.fda.gov/news-events/press-announcements/fda-warns-juul-labs-marketing-unauthorized-modified-risk-tobacco-products-including-outreach-youth> (/news-events/press-announcements/fda-warns-juul-labs-marketing-unauthorized-modified-risk-tobacco-products-including-outreach-youth).

6. More information is available at: <https://www.fda.gov/tobacco-products/real-cost-campaign> (/tobacco-products/public-health-education/real-cost-campaign)

7. More information on the PATH Study can be found at <https://www.fda.gov/tobacco-products/research/fda-and-nih-study-population-assessment-tobacco-and-health> (/tobacco-products/research/fda-and-nih-study-population-assessment-tobacco-and-health).

8. More information can be found at <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx> (<http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>) ↗ (<http://www.fda.gov/about-fda/website-policies/website-disclaimer>).

9. More information can be found on the FDA website at <https://www.fda.gov/tobacco-products/research/ctp-supported-tobacco-regulatory-research-projects> (/tobacco-products/research/ctp-supported-tobacco-regulatory-research-projects)

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## SCHOOL OF PUBLIC HEALTH

PHACE: Public Health Action Through Civic Engagement

January 14, 2020

To Whom It May Concern,

As a public health oriented student group on campus, Public Health Action Through Civic Engagement (PHACE) encourages the University to amend their policy on smoking on campus to include wording that explicitly bans electronic nicotine delivery systems (ENDS) such as devices that include Juuling and vaping of all varieties.

The mission of PHACE is to facilitate the translation of public health science into policy and change through meaningful stakeholder partnerships and effective civic engagement by providing students a platform to advocate for and drive positive change on the campus and within their communities. One of our group's four foundational pillars focuses on the latest concerns and science in public health. The other four pillars include innovation to create new and exciting strategies for civic engagement, getting involved with community/organizational partnerships, and developing leadership and facilitating leadership opportunities.

We have seen an increase of students using vaping devices in class and throughout the campus. Within the past year more research and information has become available on the potential negative consequences that ENDS usage on individuals as well as on air quality and public health. Changes in access and usage continue to be debated and change across the country and locally. In fact, in Spring 2019 the Residence Hall Association passed a resolution to ban ENDS such as Juuling and vaping, which was approved by the Department of Resident Life. The 2019-2020 UMD Residence Halls Handbook now includes Residence Hall Rule #26 which states, "Using Electronic Nicotine Delivery Systems (also known as vapes, juuls, e-cigarettes) within any residence hall space, or within 25 feet of any residence hall [is prohibited]."

These products and their health effects are under review and current investigation by the Centers for Disease Control and Prevention, the Food and Drug Administration and National Institutes of Health. Student use on campus has both personal and environmental impacts. When students vape in class it adds smoke and vapor to the classroom, polluting the air, disturbing other students, and distracting the students and the instructor from the lecture and from the educational experience. Additionally, students often vape in other campus spaces, as well as litter their used pods on campus, making campus less clean and harming the environment.

We believe that updating the language in University of Maryland's smoking policy to explicitly mention and ban ENDS usage would improve our health, the educational experience and preserve the environment, ultimately making the campus cleaner and safer.

*Maddie News*

Maddie News  
President, Public Health Action for Civic Engagement



# UNIVERSITY OF MARYLAND

STUDENT GOVERNMENT ASSOCIATION

To Whom it May Concern,

As representatives of the Student Government Association (SGA), we are writing in support of amending the smoking policy to explicitly ban electronic nicotine device systems (ENDS). This proposal would help students and faculty understand their rights regarding what is non-permissible smoking product. There are many smoking products introduced that appeal to young adults and they change constantly. ENDS are used heavily on campus, yet with the way the policy is currently worded it is unclear whether or not these devices are allowed. The language proposed in the new policy should be clear to students, yet sustainable so amendments will not have to be made in the future. This proposal aims to tear down any misconceptions and clarify smoking concerns that may be experienced by students, faculty or staff.

SGA strives to promote and advocate for the physical, mental, and social health of the undergraduate student body. This approach proposed by the School of Public Health, combined with collaboration from the University Health Center, the Department of Recreation and Wellness, and student leadership can help foster a smoke-free environment, which aligns with the SGA's values on Health and Wellness. In the past, the Residence Hall Association (RHA) has passed a very similar proposal of banning the use of vapes in residence halls. Collaborating with different governing bodies, academic colleges on campus, and departments can lead to a nicotine-free community that benefits the campus and the health of our community.

Students, faculty, and staff should understand the smoke-free policy includes ENDS. As we anticipate some students' disagreement with this proposal, we look forward to future discussions and education to facilitate adherence to the policy change. We believe that this has the potential of creating a smoke-free campus leading to improvement in students' mental, physical, and nutritional wellbeing.

This proposal is a productive first step to achieve a smoke-free campus. Therefore, we urge the University Senate and the Campus Affairs Committee to look favorably on a proposal and approve an amendment to the smoking policy at the University of Maryland - College Park.

Handwritten signature of Kelly Sherman in black ink.

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Kelly Sherman  
Director of Health and Wellness

Handwritten signature of Ireland Lesley in black ink.

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Ireland Lesley  
Student Body President

*The opinions in this letter are the authors' own and do not necessarily represent the views of the Student Government Association.*

### Brief Synopsis of Research on the Second-Hand Effects of Vaping

Conventional smoking produces second-hand smoke (SHS), which is well established as a health risk to bystanders. The SHS comes from the end of the burning cigarette (or other tobacco-based products such as cigars, pipes, hookahs) and from the exhalations of the active smoker. Vaping (meaning use of anything in the category of electronic smoking simulation devices) produces a similar effect called second hand aerosol (SHA), not from the passive vaping device itself but from the exhalations of the active vaper.

There is a great interest in continuing the evaluation of vaping as a less-risky alternative to conventional smoking, and the evidence is strong at several levels of examination. There is very little disagreement that smoking is extremely harmful to the smoker and also to bystanders, and that vaping in general is substantially less risky for vapers and bystanders. As a step-down from smoking for people who want to reduce personal risk yet still use nicotine or who want to quit smoking entirely, the change to vaping may be a good decision (Nitzkin, 2014). What is less clear are the risks associated with vaping itself, particularly given its possible role in increases in nicotine consumption and addiction in young adults (Gentzke et al., 2019).

Risks from SHS compared to risks from SHA are very different. SHS contains measurable particulates, including microscopic carbon and heavy metals (Avino et al., 2018) which are produced by the combustion of both tobacco and any possible additives. The authors note that vaping produces water droplet vapor rather than particle-based smoke. While carcinogenic substances can be transmitted in water vapor, the calculated lung cancer risk for tobacco cigarettes is approximately 15 times greater than for e-cigarettes, the risk associate e-cigarettes is estimated as 3 times greater than for non-users.

While SHA is lower risk than SHS, there are specific substances that are still very concerning for bystanders. Papaefstathiou et al. (2019) confirm that SHA has little to no particulate components, but the droplets convey volatile organic compounds (VOCs), including acetone, acetaldehyde, benzene, and formaldehyde among many others. These are measured in the inhaled and the exhaled vapor, such that these substances can reach bystanders.

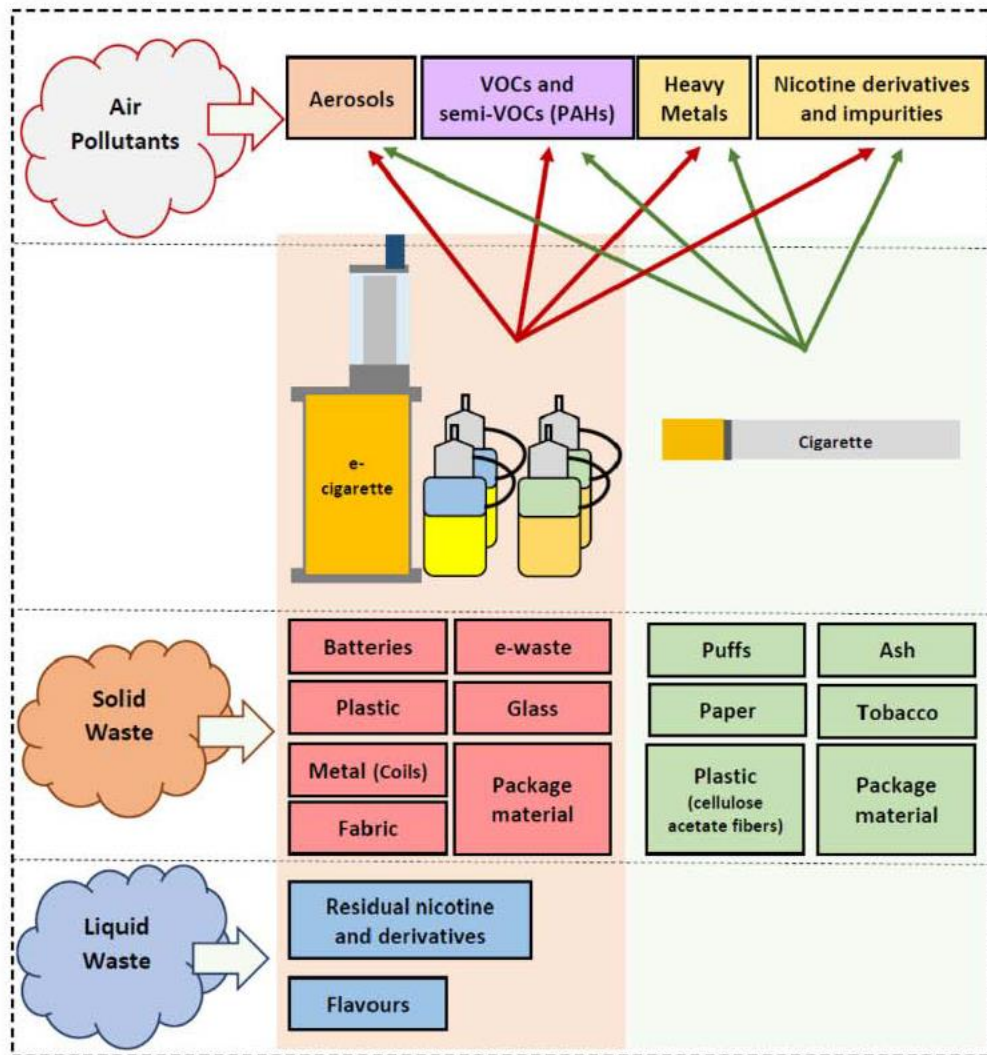


Fig. 3. Potential waste load produced by e-cigarettes and traditional cigarettes.

From Papaefstathiou et al. (2019)

Testing that mimics real-world environments has shown that SHA causes symptoms of irritation in bystanders. In a simulated office setting, Visser et al. (2019) measured the exhaled air and sampled room air before and after a typical vaping session from 17 volunteer vapers. Across these sessions, levels of nicotine alone were recorded at elevated levels that would cause acute symptoms in bystanders such as heart palpitations and increase blood pressure. The other SHA contents -- propylene glycol, heavy metals, and VOCs -- cause respiratory irritation from acute exposure, but longer-term effects from SHA remain to be seen.

While it is abundantly clear that SHS is very harmful, there is growing evidence that SHA is also harmful. This has bearing on governance of shared spaces. While the evidence regarding long-term impact of SHA remains to be established, there is clear evidence that preventing SHA exposure for bystanders will have protective benefits. Those who choose to be nicotine users have options such as gum, lozenges, or patches that can meet their needs with no effects on bystanders.

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**Revision to the Policy on Smoking at the University of Maryland  
(Senate Document #19-20-17)  
Campus Affairs Committee | Chair: Jo Zimmerman**

The Senate Executive Committee (SEC) and Senate Chair Lanford request that the Campus Affairs Committee review the definition of smoking in the Policy on Smoking at University of Maryland.

Specifically, it asks that you:

1. Review the Policy on Smoking at USM Institutions ([VI-8.10](#)).
2. Review the Policy on Smoking at University of Maryland ([VI-8.10\[A\]](#)).
3. Review past Senate action that led to the creation of the current University Policy - Implementation of the Policy On Smoking At USM Institutions ([Senate Document #12-13-07](#)).
4. Review similar provisions on vaping, e-cigarettes, and other inhaled forms of tobacco or nicotine products in policies at Big 10, USM, and other peer institutions.
5. Review recent federal and state regulations/guidance related to vaping, e-cigarettes, and other inhaled forms of tobacco or nicotine products.
6. Consult with a representative of the Office of General Counsel on its guidance related to the University's policy and vaping, e-cigarettes, and other inhaled forms of tobacco or nicotine products.
7. Consult with a representative of the Division of Administration & Finance.
8. Consider how to revise the definition of "smoking" in the University's policy to include vaping, e-cigarettes, and other inhaled forms of tobacco or nicotine products.
9. Consult with a representative of the Office of General Counsel on any proposed changes to the University's policy.
10. If appropriate, recommend whether the policy should be revised.

We ask that you submit a report to the Senate Office no later than **March 6, 2020**. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.



## Revision to the Policy on Smoking at the University of Maryland (Senate Document #19-20-17)

Campus Affairs Committee | Chair: Jo Zimmerman

The Senate Executive Committee (SEC) and Senate Chair Lanford request that the Campus Affairs Committee review the definition of smoking in the Policy on Smoking at University of Maryland.

Specifically, it asks that you:

1. Review the Policy on Smoking at USM Institutions ([VI-8.10](#)).
2. Review the Policy on Smoking at University of Maryland ([VI-8.10\[A\]](#)).
3. Review past Senate action that led to the creation of the current University Policy - Implementation of the Policy On Smoking At USM Institutions ([Senate Document #12-13-07](#)).
4. Review similar provisions on vaping, e-cigarettes, and other inhaled forms of tobacco or nicotine products in policies at Big 10, USM, and other peer institutions.
5. Review recent federal and state regulations/guidance related to vaping, e-cigarettes, and other inhaled forms of tobacco or nicotine products.
6. Review scholarship on the impact of secondhand aerosol emissions from vaping or e-cigarette use.
7. Consult with a representative of the Office of General Counsel on its guidance related to the University's policy and vaping, e-cigarettes, and other inhaled forms of tobacco or nicotine products.
8. Consult with a representative of the Division of Administration & Finance on implementation of the smoking policy.
9. Consider the impact of secondhand aerosol emissions from vaping and e-cigarette use on other members of the campus community based on the committee's review of relevant scholarship.
10. Consider whether vaping and e-cigarette use is consistent with the principles behind the University's smoking policy.
11. Consider whether vaping, e-cigarettes, and other inhaled forms of tobacco or nicotine products should be prohibited under the provisions in the Policy on Smoking at the University of Maryland.
12. If the committee decides to prohibit vaping, e-cigarettes, and other inhaled forms of tobacco or nicotine products, consider how to revise the definition of "smoking" in the University's policy to include vaping, e-cigarettes, and other inhaled forms of tobacco or nicotine products.



13. Consult with a representative of the Office of General Counsel on any proposed changes to the University's policy.
14. If appropriate, based on the committee's consideration of the above items, recommend whether the policy should be revised.

We ask that you submit a report to the Senate Office no later than **March 30, 2020**. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, at [reka@umd.edu](mailto:reka@umd.edu) or 301.405.5804.