



## Tobacco-Free Chautauqua, Cattaraugus, Allegany

20 West Third Street, Suite 18

Jamestown, NY. 14701

Dear Town/Village/City Board,

On July 15, 2022 Governor Hochul signed legislation (S.4142/A.5061) which amends the current public health law 1399-0-2, in relation to smoking in certain outdoor areas. The amendment **prohibits the smoking of tobacco and cannabis on any municipal or state operated park**. Municipal or state operated parks include beaches, boardwalks, marinas, playgrounds, recreation centers, and group camps that are located at or on any property under charge or control of any state or local government. The amendment establishes that smoking in these areas is punishable with a fine of \$50 by local authorities. **Municipalities are required to post signage to inform the community about the designation of these new smoke free areas. The amendment went into effect on October 13, 2022.**

Vaping of nicotine or cannabis was not added to public health law 1399-0-2. Vaping of nicotine is the most popular way for teenagers to start using tobacco products. In 2020, the percentage of New York high school students that smoked cigarettes was 2.4% compared to 22.5% that used electronic nicotine delivery devices (ENDS). Studies have shown that ENDS can contain ingredients that are harmful to the public's health, including nicotine, ultrafine particles, flavorings, volatile organic compounds (such as benzene, which is found in car exhaust) and heavy metals (such as nickel, tin and lead). Vaping exposes young people to nicotine at a time when the brain is most at risk for addiction. Because the brain continues to develop until early adulthood, use of any addictive substance prior to these years is especially risky.

The 2020 Monitoring the Future Survey, which surveys young people across the United States, showed that vaping of cannabis for high school students was 11.75%. Since cannabis is illegal under federal law, there have been a limited number of studies examining health risks associated with marijuana use and exposure in the United States. However, the use of high-potency concentrates, like those found in vape pens also correlates with a higher incidence of mental and physical health problems and may lead to a higher risk of developing acute adverse effects, such as paranoia, psychosis, and cannabis hyperemesis syndrome. In addition, there is a lack of evidence comparing long-term effects on lung health of smoked versus vaporized cannabis. In fact, while some vaporizers and vape pens can be used with relatively unprocessed cannabis leaves, buds, or flower, many vaping devices use highly processed products whose safety and chemical profile are much closer to that of e-liquids used in e-cigarettes.

**Municipalities are authorized to make local laws that are more restrictive than this state law.** For example, if a local municipality wishes to enact a local law that includes any form of vaping (including cannabis) in their parks or in any municipal owned property, they have the ability to do so. Some municipalities in our area have recently done this. If you have any questions or concerns on legislation (S.4142/A.5061), signage, or policy options, you can reach out to Tobacco-Free CCA's Community Engagement Coordinator, Ken Dahlgren at: [kenneth.dahlgren@roswellpark.org](mailto:kenneth.dahlgren@roswellpark.org) or (716) 489-1114. The complete (S.4142/A.5061) can be read at <https://www.nysenate.gov/legislation/bills/2021/S4142>. I have also enclosed a frequently asked questions document which was provided by the Public Health Law Center.

Thank You for your time,

A handwritten signature in blue ink that reads "Ken Dahlgren".

Ken Dahlgren, MPH  
Tobacco-Free CCA

## NEW YORK STATE'S NEW SMOKE-FREE PARKS LAW Frequently Asked Questions

*On July 15, Governor Kathy Hochul signed legislation (Senate Bill S4142) that restricts smoking in certain outdoor areas. The Public Health Law Center has received several questions about this law. This document is intended to provide a summary of the law and answer common questions.*

### Q: Where is smoking restricted under this law?

**A:** The law prohibits smoking in “any public park,” and the term “park” is defined to include “public parks, beaches, pools, boardwalks, marinas, playgrounds, recreation centers, and group camps.” Smoking is also prohibited in “equipment, buildings and facilities” in any of those areas that are under the control of “any state or local government.” Consequently, the smoke-free provisions apply to both state-owned parks, as well as those managed by local governments.

### Q: In which outdoor areas is smoking not prohibited by state law?

**A:** In addition to areas not specifically listed in the law, the law contains some exceptions. The law does not apply to Adirondack Park or Catskill Park. It also does not apply to the following areas:

- the sidewalks immediately adjoining parks, squares and public places;
- any pedestrian route through any park strip, median or mall that is adjacent to vehicular traffic;
- parking lots or roadways;
- theatrical productions; and
- any portion of a park that is not used for park purposes, except when smoking has been specifically prohibited in a state park or portion thereof by the office of parks, recreation and historic preservation.

However, local units of government retain the ability to adopt stronger regulations that would restrict smoking in additional outdoor areas.



### Q: Does the law restrict vaping in specified outdoor areas?

**A:** No. The law restricts only “smoking,” which is defined separately than “vaping” in New York law. However, local units of government retain the ability to adopt stronger regulations that would restrict vaping / e-cigarette use in outdoor areas.

### Q: How is the law enforced?

**A:** A person who violates the law by smoking outdoors in a restricted area is subject to “a civil penalty of fifty dollars for each violation.”

**Q: Does New York law require signs to be posted in outdoor areas where smoking is restricted?**

**A:** Yes. Existing law requires the posting of signs in areas where state law restricts smoking.

**Q: How does the law interact with existing laws?**

**A:** New York Public Health Law Section 1399-O-1 prohibits smoking and vaping in playgrounds between sunrise and sunset when one or more person under the age of twelve is present. Senate Bill S4142 did not change any provisions of Section 1399-O-1, so they are both in effect. This means that both smoking and vaping are prohibited on playgrounds during daylight hours when children are present, and smoking is prohibited everywhere in parks all the time, subject to the exceptions mentioned previously.

**Q: When does the law take effect?**

**A:** The law takes effect “on the ninetieth day after it shall have become a law.” It was signed on July 15. Ninety days later was **October 13, 2022**.

**Q: Can local governments adopt stronger ordinances restricting outdoor smoking and vaping?**

**A:** Yes. New York Public Health Law Section 1399-R(3) states that “Smoking and vaping may not be permitted where prohibited by any other law, rule, or regulation of any state agency or any political subdivision of the state. Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article.” In addition, Senate Bill S4142 states that “This subdivision shall not limit the applicability of any other laws to” places explicitly not covered by the new state law, such as sidewalks adjacent to parks, parking lots, and theatrical productions. This makes it clear that cities and counties retain the ability to further restrict smoking in those areas.

This fact sheet was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health, and was made possible by a grant from the New York State Department of Health. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice.