

**VII. STANDING COMMITTEES****B. Finance, Audit and Facilities Committee****Adoption of Proposed Amendments to Chapter 478-136 WAC, Use of University of Washington Facilities****RECOMMENDED ACTION:**

It is the recommendation of the administration and the Finance, Audit and Facilities Committee that the Board of Regents adopt the proposed amendments to Chapter 478-136 WAC, Use of University of Washington Facilities, concerning the University's No Smoking Policy.

**BACKGROUND:**

With the passage of I-901 in the fall of 2005 and an implementation date of 12/8/05, the University of Washington's smoking rule (Chapter 478-136 WAC), which had established a model and exemplary program that restricted smoking in University buildings, vehicles and at certain other sites, became obsolete because of new restrictions regarding outdoor smoking that were not covered in the University's rules. I-901 established restrictions for smoking in any place of employment as well as a minimum distance of twenty-five feet from any building openings. Enforcement of the employer's implementation of the law rests with local health jurisdictions, and enforcement for individual compliance rests with jurisdictional law enforcement agencies.

While a working group comprised of Environmental Health and Safety (EH&S), University of Washington Police Department (UWPD), Facilities Services, Human Resources (HR), and the Rules Coordination Office quickly met to establish basic emergency rules, John Coulter, Executive Director of the Health Sciences Administration, established a Smoking Task Force, chaired by the Director of EH&S, to recommend appropriate language for an updated permanent rule. The committee was comprised of representation from the Bothell, Seattle, and Tacoma campuses and the offices of EH&S, UWPD, HR Administration, Labor Relations, GPSS, ASUW, Faculty Senate, Facilities Services, Housing and Food Services, Rules Coordination, Health Sciences Administration, HMC, UWMC, Intercollegiate Athletics, and the Attorney General's Office as well as the Use of University Facilities Committee, and the University-Wide Health and Safety Committee. The group met between April and August 2006 to discuss the implications of implementation and review the emergency rule in depth. Based on those discussions and reviews a few modifications to the emergency rule were made. These were reviewed with the Use of University Facilities Committee in October 2006. The key modifications included: (1) establishing a standalone section in the WAC rules so that the No Smoking Policy could be easily differentiated from other Use of University Facilities issues; (2) changing the policy title from "Smoking" to "No Smoking"; (3) clarifying the requirements for

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housing; (4) eliminating certain smoking options in the stadium; and (5) clearly establishing a no smoking campus, with exceptions for spaces designated by the Director of EH&S.

The following were the key issues that emerged during deliberations on the rule:

1. *Should we simply adopt the twenty-five foot distance from all buildings?*

Based on the configuration of the Seattle campus and historical complaints received by EH&S, the twenty-five foot distance became problematic. The Health Sciences Building has long enforced a distance greater than that for its no smoking zone, as had the Bothell and Tacoma campuses, and in Seattle the twenty-five foot setback from one building would intersect with other buildings' spaces. The group concurred that it was both a statement for health promotion and a more effective implementation strategy to adopt a no smoking campus with designated spaces for smokers. This trend is slowly being seen in other institutions as well.

An additional complication for the University is that, interpreted broadly, our grounds and walkways are indeed places of employment for the grounds staff, staff from EH&S, the UWPD, Facilities Services, and other administrative units whose work takes them to outdoor areas frequently. Thus it is equally important to protect them from involuntary exposure to smoke.

2. *What about residential housing?*

The Housing and Food Services Office has implemented a no smoking policy in their residence halls for some time, although primarily for fire safety. The proposed rule reflects that restriction but continues to allow some flexibility for other housing units.

3. *How do we deal with Husky Stadium?*

As with other sports arenas, Husky Stadium allowed smoking in the concourses, but the initiative changed that ability. Here too designated smoking areas outside of the stadium have been established. Husky fans are slowly getting accustomed to this as it is consistent with what they are finding in other public arenas.

4. *How do we accommodate hospital patients?*

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This is a controversial issue for health care providers, and again we were able to designate smoking areas that addressed both patient needs and employee protection.

5. *Will the Health Department approve our designated spaces?*

Working closely with Facilities Services, EH&S established designated smoking sites on all three campuses. Special urns and signage were installed. The local health jurisdictions were requested to review and approve these sites and did so, with just a couple of changes. The currently designated sites meet both the intent of the law and provide some flexibility for employees.

6. *Why don't we simply eliminate all smoking and recognize that non-smokers are in the majority?*

While there is nothing in the initiative that provides any rights to smokers, and it is clear most complaints received by administrative units are from non-smokers impacted by side-stream smoke, the reality is that in a campus of so many thousands of faculty, staff, students, and visitors there will be smokers. Tobacco causes an extremely strong addiction, and while various free or low-cost smoking cessation programs are available to our students and employees, it takes time to successfully stop smoking.

7. *How will faculty, staff, students, and visitors know about the No Smoking Policy?*

There have been some news releases, primarily through *The Daily*, and the *Environmental Health and Safety Update* and information was shared with the University-Wide Health and Safety Committee. Information is also currently posted on the EH&S Web site. After adoption of a permanent rule, a more formal roll out of this rule is planned through the Web, campus news media, information distribution through the University Health and Safety Committee, informational brochures at entry kiosks, and additional signage.

Public hearings on the proposed amendments were held in November and December 2006. Notices for the public hearing were published in the *Washington State Register*, *The Daily*, *The Ledger*, *The UW Buzz*, and *University Week* as well

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as included in the online campus calendar of events at all three campuses. From those hearings one set of written comments was received. The comments questioned the legality of the University's policy in restricting smoking beyond the initiative's limits. A response from the Attorney General's Office was provided to the individual asserting that the University did have the legal authority to further restrict smoking on its grounds. A copy of the Hearing Officer's Report is attached which reviews these matters in greater detail.

#### ATTACHMENTS:

- (1) Hearing Officer's Report on the proposed amendments to Chapter 478-136 WAC.
- (2) The proposed amendments to Chapter 478-136 WAC, Use of University of Washington Facilities.

January 4, 2007

President Mark A. Emmert  
Office of the President  
University of Washington  
Box 351230

Dear President Emmert:

Pursuant to your delegation, I and my designee, Karin Nyrop, served as the Hearing Officers to receive public comment on the University of Washington's proposed amendments to Chapter 478-136 WAC, "Use of University of Washington Facilities," concerning the University's No Smoking Policy. Three hearings were scheduled, all commencing at 12:00 p.m., on the following days: Tuesday, November 29, 2006, in Room 005 of the UW2 Building at the UW Bothell campus; Friday, December 1, 2006, in Room 309 of the Husky Union Building (HUB) at the UW Seattle campus; and Tuesday, December 5, 2006, in the Carwein Auditorium, first floor of the Keystone Building at the UW Tacoma campus. I am pleased to provide you a report of those hearings and the written comments received.

As required by the Administrative Procedure Act, the University filed the following notices with the State of Washington Code Reviser: a Preproposal Statement of Inquiry (published as WSR 06-10-016, in the *Washington State Register* on May 17, 2006) and a notice of Proposed Rule Making (published as WSR 06-21-077, in the *Washington State Register* on November 1, 2006). Campus notices that the hearings would be held were published in *The Ledger* and in *University Week* on November 16, 2006; in the *UW Buzz* on November 20, 2006; and in *The Daily* on November 22, 2006. In addition, notices of the public hearings were included in the online events calendars for the UW Bothell, UW Seattle, and UW Tacoma campuses. The written comment period began May 17, 2006, and ended December 5, 2006.

Due to inclement weather, the UW Bothell hearing was cancelled. A notice was posted at the hearing location door requesting any interested parties to call the Rules Coordination Office or list their names and contact information on the sign-up sheet provided for possible rescheduling of the hearing at a later date. The UW Seattle and UW Tacoma hearing times and locations were posted on this notice, as well as information on submitting written (including e-mail) comments. However, no individuals signed the notice, called, or otherwise responded on that day or the days that followed.

No individuals attended the UW Tacoma hearing to provide comment on these proposed amendments, and no written comments were received.

The UW Seattle hearing was attended by one individual who provided written comments, but did not otherwise speak on the record.

**Background**

The Washington Clean Indoor Air Act (also known as I-901) went into effect December 8, 2005, prohibiting smoking in most public buildings and within 25 feet of doors, windows, and air intakes outside of public buildings. The University responded by adopting emergency rules on January 31, 2006, and re-adopting similar emergency rules on two subsequent occasions. On March 16, 2006, a Smoking Rule Revision Task Force was established by John Coulter, Executive Director of Health Sciences Administration, to be chaired by Karen VanDusen, Director of Environmental Health and Safety. This task force was charged with developing the final policy (now known as the University's No Smoking Policy) included in Chapter 478-136 WAC. As part of that policy, the Environmental Health and Safety Department and members of the task force worked with students, faculty, and staff at each of the University's three campuses to identify various designated outdoor smoking locations that met the conditions of the new law. The designated smoking areas for each campus are identified with maps and photos on the "Smoking at the UW" Web page on the Environmental Health and Safety Web site. In addition, the proposed amendments to Chapter 478-136 WAC were reviewed by the Office of the Attorney General, and endorsed by the Committee on the Use of University Facilities.

**Public Comment**

One set of written comments was received. The University staff member who commented expressed the belief that only the letter of the law should be met; i.e., smoking should not be prohibited from any outdoor location that meets the new legal restrictions of being 25 feet from doors, windows, and air intakes of public buildings. The individual also questioned various technical aspects of the University's rule making process, including whether or not the University has the authority to set more restrictive health and safety policies for its buildings and grounds than those required by state law.

**Analysis and Recommendation**

In its deliberations, the Smoking Rule Revision Task Force had contemplated both smoke-free grounds and allowing the law to stand without further limitations to outdoor smoking. However, it decided instead on the middle ground in recommending that smoking outdoors on the University campuses be limited to specific designated locations. The task force based its recommendations on the following. (1) For health reasons, nonsmokers should not be subjected to smoking on the many paths that bisect the University's campuses. (2) For fire safety reasons, smoking urns should be available where smoking is not prohibited. (3) University grounds staff should not be subject to cleaning up smoking litter scattered throughout campus grounds. (4) There is no easy way to enforce a 25-foot nonsmoking perimeter around building doors, windows, and air intakes given the complex nature of the University's buildings and grounds. This information was conveyed to the individual who had submitted comments. In addition, the Attorney General's Office responded to the individual's inquiry with the opinion that the University of Washington Board of Regents does indeed have the authority to further restrict smoking on University grounds.

Notwithstanding the concerns of the one set of comments received, I recommend that the Board of Regents adopt the proposed amendments to Chapter 478-136-WAC, "Use of University of Washington Facilities," concerning the University's No Smoking Policy.

Audio tapes of the hearings have been deposited with the Secretary of the Board of Regents.

Sincerely yours,

Carol S. Niccolls  
Special Counsel to the President

cc: Mr. John Coulter  
Ms. Rebecca Goodwin Deardorff  
Ms. Michele M. Sams  
Ms. Karen VanDusen

AMENDATORY SECTION (Amending WSR 02-06-020, filed 2/25/02, effective 3/28/02)

**WAC 478-136-012 Definitions.** (1) "Facilities" includes all structures, grounds, parking lots, waterfront, and airspace owned or operated by the University of Washington. Specific rules also apply to parking lots, bicycle and skateboard use (chapter 478-116 WAC), boat moorage facilities (chapter 478-138 WAC and *University Handbook*, Volume 4, Part VII, Chapter 3, Section 2), residence halls (chapter 478-156 WAC), airspace use (*University Handbook*, Volume 4, Part VII, Chapter 3, Section 5), nonuniversity speakers on campus (*University Handbook*, Volume 4, Part VII, Chapter 3, Section 4), (~~((smoking (*University Handbook*, Volume 4, Part VII, Chapter 6),))~~) and use of facilities by the Associated Students University of Washington (ASUW), Graduate and Professional Student Senate (GPSS), and other affected organizations (*University Handbook*, Volume 3, Part III, Chapter 5).

(2) "Use of facilities" includes, but is not limited to: The holding of events, the posting and removal of signs, all forms of advertising, commercial activities, and charitable solicitation.

(3) "Approved event" means a use of university facilities which has received preliminary approval from an academic or administrative unit and which has received final approval from the committee on the use of university facilities.

AMENDATORY SECTION (Amending WSR 06-13-021, filed 6/13/06, effective 7/14/06)

**WAC 478-136-030 Limitations on use.** (1) Freedom of expression is a highly valued and indispensable quality of university life. However, university facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. Additionally, use of university facilities may be subject to reasonable time, place and manner restrictions.

(2) University facilities may be used for events and forums regarding ballot propositions and/or candidates who have filed for public office so long as the event has received preliminary approval by an administrative or academic unit and final approval by the committee on the use of university facilities. There are, however, certain limitations on the use of university facilities for these political activities.

(a) First priority for the use of campus facilities shall be



given to regularly scheduled university activities.

(b) University facilities may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office only when the full rental cost of the facility is paid. However, use of state funds for payment of facility rental costs is prohibited.

(c) Forums or debates may be scheduled at full facility rental rates if all parties to a ballot proposition election or all candidates who have filed for office for a given position, regardless of party affiliation, are given equal access to the use of facilities within a reasonable time.

(d) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(e) Public areas outside university buildings may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office, excluding solicitation of funds, provided the other normal business of the university is not disrupted and entrances to and exits from buildings are not blocked.

(f) University facilities or services may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(3) University facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities serve an educational purpose, as determined by the committee on the use of university facilities.

(4) Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular university media or publications. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory committees, in accordance with applicable state and federal laws.

(5) In accordance with WAC 478-136-010, the university will make its facilities available only for purposes related to the educational mission of the university, as determined by the committee on the use of university facilities, including but not limited to instruction, research, public assembly, and student activities. When permission is granted to use university facilities for approved instructional or related purposes, as a condition of approval, the user of university facilities agrees to include in all materials nonendorsement statements in the form approved by the committee on the use of university facilities. "Materials" includes all communications, advertisement, and any other printed, electronic, or broadcast/telecast information related to the user's activities offered in university facilities. The committee will determine the content, size of print and placement of the nonendorsement language. The university will not make its facilities available for instructional or related purposes that compete with courses or programs offered by the university.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the university community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would significantly impinge upon the primary business being conducted.

(7) Solicitation and distribution of materials in university residence halls are governed by residence hall policies. No solicitation of a commercial nature is permitted in university residence halls. Commercial advertising may be allowed, and is restricted to certain designated areas of each residence hall, when it is related to the university's mission and approved by the department of housing and food services.

(8) Electronic amplification on the grounds of the campus is prohibited with the following exceptions:

(a) The lawn area immediately west of the Husky Union Building will be available for open-air speaking events using directional and volume-controlled speech amplification equipment provided by the university. Use of the Husky Union Building lawn site will be available to registered or official student organizations and faculty or staff groups on a first-come, first-served basis. The amplification system will be issued upon presentation of a currently valid student, faculty or staff identification card at the Husky Union Building Reservation Office.

(b) The committee on the use of university facilities may grant permission, under special circumstances, for the use of other amplification equipment on the lawn site west of the Husky Union Building or in other outdoor locations. Permission should be requested through:

University of Washington  
Secretary to the Committee on the  
Use of University Facilities  
239M Gerberding Hall  
Box 351241  
Seattle, WA 98195-1241

(or phone: 206-543-9233), sufficiently in advance of the program to allow timely consideration.

(9)(a) No person may use university facilities to camp, except if permission to do so has been granted in accordance with the provisions of chapters 478-116 and 478-136 WAC or except as provided in (b) of this subsection. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) This provision does not prohibit use of the university residence facilities in accordance with chapter 478-156 WAC or the use of facilities where the employee remains overnight to fulfill the responsibilities of his or her position or where a student remains overnight to fulfill the requirements of his or her course of study.

(10) Within the limits of applicable laws, the University of Washington is committed to establishing and maintaining safe conditions for persons attending football games in Husky Stadium or other athletic events or concerts in campus facilities. Accordingly, the rules enumerated below will apply to all such events and be strictly enforced.

(a) The possession or consumption of alcoholic beverages or illegal drugs is prohibited, except for alcohol allowed under a permit or license obtained under subsection (13) of this section. In addition to having the beverages or drugs confiscated, violators may be subject to university disciplinary action and/or legal proceedings, and removal from the events.

(b) Air horns, glass bottles, cans, picnic baskets, bota bags, ice chests, and thermoses (in excess of two-quart capacity) are prohibited. Individuals possessing such will not be admitted to, or will be removed from, Husky Stadium or other athletic or concert facilities until the items have been stored temporarily at locations provided for that purpose or disposed of in some other manner.

(c) Except for designated outdoor smoking sites, as provided in WAC 478-136-035, smoking is prohibited in ((the seating areas of)) all portions of all athletic stadia, including, but not limited to, the seating areas, public concourses, and enclosed and covered spaces. ((Smoking is permitted on pedestrian concourses.))

(d) All persons entering events in Husky Stadium or other athletic venues or events in other campus auditoria or facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected. Security personnel shall first ask permission to visually inspect the item and advise the person that he/she may refuse. Persons who refuse to allow inspection shall be allowed to return the item to a vehicle or otherwise dispose of it, after which admission shall be allowed. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(11) Only public service announcements and acknowledgment of sponsors will be allowed on scoreboards at athletic venues.

(a) For purposes of this section, a public service announcement is defined as an announcement which promotes the activities or services of federal, state or local governments, including the University of Washington, or nonprofit organizations, or generally contributes to the community's welfare and interests.

(b) In acknowledgment of their sponsorship of the scoreboards or sponsorship of events and programs, sponsors may propose public service announcements for display on the scoreboard during athletic events. The public service announcement may be accompanied by a sponsor's name or logo, but in keeping with university policy may not directly promote the products or services of the company. The text and graphics of public service announcements must be submitted at least three days in advance to the department of intercollegiate athletics for approval by the university.

(c) In addition to these public service announcements, sponsors also may be acknowledged by the display of corporate logos, trademarks, or other approved messages upon panels located

on the scoreboard.

~~(12) ((The University of Washington is committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. Accordingly, the University of Washington establishes the following smoking policy to protect nonsmokers from exposure to smoke in their university-associated environments and to protect life and property against fire hazards:~~

~~(a) Except as provided in subsections (10)(c) and (12)(b) of this section, smoking is prohibited in all university vehicles, inside all buildings owned or occupied by the university and/or used by the university's faculty, staff or students and at any outside areas or locations that may directly or indirectly affect the air supply of buildings or carry smoke into buildings.~~

~~(b) Smoking may be permitted in student rooms in university residence halls and apartments in university student housing in accordance with smoking regulations established for those facilities by the vice-president for student affairs.~~

~~(c) The director of environmental health and safety may designate specific outdoor locations as no smoking areas.~~

~~(d) Any student, staff, or faculty member who violates the university smoking policy may be subject to disciplinary action. In addition, violations of the university smoking policy may be subject to enforcement by the University of Washington police department.~~

~~(13))~~ Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(a) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(b) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(c) Alcoholic beverages may be possessed, sold, served, and consumed at the faculty center, as so designated by the university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.

(d) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(e) Except as provided in (c) and (d) of this subsection, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(i) Events at which alcohol is to be sold must be approved by the committee on the use of university facilities and an application to the committee must be accompanied by a request for written authorization under (f) of this subsection or proof that the seller holds an appropriate license; and

(ii) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must not be within the spectator viewing areas and must have restricted attendance, and a university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) of this subsection; and

(iii) A university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) of this subsection; and

(iv) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) specified on the license or permit. Unopened containers may not be sold or served. No alcohol is permitted to be taken off-premises.

(f) Written authorization to apply for a special occasion license to sell alcoholic beverages or a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the committee on the use of university facilities prior to applying for a special occasion license or banquet permit from the Washington state liquor control board. Authorization should be requested through the University of Washington, secretary to the committee on the use of university facilities, sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such a permit/license shall accompany the application filed with the Washington state liquor control board.

(g) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

#### NEW SECTION

##### **WAC 478-136-035 No smoking policy for university facilities.**

(1) The University of Washington is committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. Accordingly, the University of Washington establishes the following no smoking policy, consistent with chapter 70.160 RCW (I-901), to protect individuals from exposure to second-hand smoke in their university-associated environments and to protect life and property against fire hazards.

(a) Except as provided in subsection (1)(b) and (c) of this section, smoking of all kinds is prohibited in all university facilities, including, but not limited to, vehicles, inside all buildings owned, occupied, or managed by the university and/or used by the university's faculty, staff, students, or visitors, and at any outside areas or locations, including, but not limited to, bus shelters, benches, and walkways.

(b) Smoking, while not permitted in on-campus residence halls, may be permitted in a limited portion of designated university

student housing in accordance with smoking regulations established for those facilities by the vice-provost for student life.

(c) Smoking may be permitted in specific designated outdoor locations approved by the director of environmental health and safety as smoking areas in accordance with chapter 70.160 RCW and published on the environmental health and safety web site. Signage also identifies the designated locations.

(2) Violations of the university no smoking policy are subject to enforcement by the University of Washington police department or other jurisdictional law enforcement agencies with regulatory responsibility. In addition, any student, staff, or faculty member who violates the university no smoking policy may be subject to disciplinary action.