

Regarding the enforcement of the revised Health Promotion Act

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Background from the Japanese Journal of Tobacco Control

1. Before the passage of the law

The Kanagawa Prefecture administration of Governor Shigefumi Matsuzawa first implemented passive smoking regulations in Japan in 2009. But for the 10 years thereafter, almost no new legislation was created in Japan due to political resistance from organizations like JT (Japan Tobacco, Incorporated), the Smoking Research Foundation and Dentsu advertising agency; politicians reliant on tobacco tax revenues; and the Ministry of Finance, which also relies on tobacco tax revenues.

But with Tokyo's invitation to host the 2020 Olympics, the Japan Society for Tobacco Control has accelerated the push for further smoking restrictions in conjunction with 130 other health organizations.

In August 2014, prefectural Governor Yōichi Masuzoe (at that time) made a constructive statement, as quoted in the following text from Bloomberg on August 22:

- “Promoting the health of all the people in the world is one of the major aims of the Olympics and Paralympics,” Masuzoe told reporters today. “I think it’s important to properly prevent passive smoking in the run-up to 2020,” he added.

To make Japan's tobacco regulations consistent with international standards, we visited Geneva with Shigefumi Matsuzawa, now a member of the House of Councilors, to meet with the International Olympic Committee (IOC), the World Health Organization (WHO), and the Secretariat of the WHO's Framework Convention Tobacco Control (FCTC). The IOC and WHO wrote a formal letter to the Society and Governor Masuzoe stating that a tobacco-free Olympics is already implemented as an international standard practice. The letter was signed by Douglas Becher, the Director of the WHO department of the prevention of lifestyle diseases; Bella da Costa Silva, FCTC

Convention Secretary General; the presidents of the World Medical Association, the World Dental Association, the World Pharmacists Association, the World Nursing Association, and the World Heart Foundation.

Due to a scandal from mixing public and private monies, Governor Masuzoe has since resigned, but Yuriko Koike has become governor of Tokyo with the support of the Tomin (Tokyo Citizens) First party. And momentum to pass new passive smoking regulations has since increased.

As part of this momentum, the Japan Society for Tobacco Control has led a petition to collect 100,000 signatures in support of new passive smoking regulations. The Japan Medical Association and other associations have collected an additional 2.64 million signatures, which were submitted to the Minister of Health, Labor and Welfare, Yasuhisa Shiozaki. Although Minister Shiozaki has been devoted to tobacco control, others in the Ministry of Finance and legislative assemblies have been less enthusiastic, so that demonstrating popular support for reform has been deemed necessary.

The Tokyo Medical Association (led by chairperson Ozaki Haruo) also led a petition to collect 200,000 signatures in support of reform. The Tokyo Medical Association, with the Japan Medical Association, collected more than two times the number of signatures in favor of stronger passive smoking restrictions than those collected by the tobacco industry in favor of limited restrictions. The higher numbers from the medical associations indicate that stronger passive smoking restrictions have popular support.

Also indicating popular support for healthy behavior was the fact that many people wrote statements in petition journals like “I thought that the medical associations were for-profit organizations, but I now see that they are interested in promoting the health of citizens”.

Partly in response to the canvassing of citizens and partly in preparation for the 2020 Olympics, the Prevention of Passive Smoking Act (the revised Health Promotion Act) was passed in 2017 with the support of Katsunobu Katō, the Minister of Health, Labor and Welfare.

One month before the revision of the national law, the Tokyo government also revised its metropolitan passive smoking regulations. These prefectural and metropolitan regulations are similar to but sometimes different from the revised Health Promotion Act at the national level. A comparison of the national law and the metropolitan regulations is shown in the table below.

## 2. Comparison of the revised Health Promotion Act with the revised Tokyo passive smoking regulations

Regulations applied to:	Revised Health Promotion Act (Enacted on 18 July 2018)	Tokyo passive smoking regulations (Enacted on 27 June 2018)
Kindergartens, elementary/middle/high schools, universities, hospitals, government agencies	No smoking indoors on the premises (but outdoor smoking areas may be installed)	No smoking indoors on the premises (and kindergartens, nursery schools, elementary/middle/high schools also may not have outdoor smoking areas)
Large scale restaurants (such as chain stores)	Restaurants with capital > 50 million yen, restaurants with customer seating area > 100 m <sup>2</sup> , and newly opened restaurants are generally non-smoking indoors (but may install smoking rooms)	Restaurants with employees must be generally non-smoking indoors (but may install smoking rooms)
Small scale restaurants (such as individually operated stores)	Existing stores with capital ≤ 50 million yen <i>and</i> a customer seating area ≤ 100 m <sup>2</sup> may have smoking if signs are posted (this is a provisional regulation with a expiration date)	Only restaurants without paid employees (sole proprietor stores operated only by kin who live together) may have smoking allowed if signs are posted
Heated tobacco and nicotine vapor in restaurants	As a transitional measure “for the present time (indefinite time period)” heated tobacco and nicotine vapor may also be used inside of a designed smoking room while eating or drinking	
Other facilities (such as offices, hotels, et	Generally non-smoking indoors (but smoking rooms may be installed)	

cetera)		
Provisions for the protection of minors	Minors are prohibited from entering any smoking space	
Penalties (authoritative measures)	Site manager: Fine of 500,000 yen or less Smoker: Fine of 300,000 yen or less	Site manager: Fine of 50,000 yen or less Smoker: Fine of 30,000 yen or less (Penalty does not apply for heated tobacco and nicotine vapor)

The revised Health Promotion Act was enforced after 1 July 2019.

In particular, from 1 July 2019, all level 1 facilities such as schools, hospitals, and government agencies have implemented these regulations. The laws will also be applied at level 2 facilities (for example, elderly care facilities, gymnasiums and other health facilities) from 1 April 2020.

<https://notobacco.jp/pslaw/psjoreilawhikaku1812.pdf>

### 3. Government officials who enacted the revised Health Promotion Act

At one time there was doubt about whether the national Health Promotion Act would be revised, so we should not forget the persistent efforts of the officials that eventually made its enactment possible. One of these individuals is Mr. Tokuaki Shobayashi, who was the Director of Health Division, Ministry of Health, Labor and Welfare until August 2018 and is currently the Deputy Director-General of Secretariat of the Ministry of the Environment. We at the Society shared his belief that if Japan could not revise the passive smoking law by 2020, it would lose the momentum to revise the law. To pass the revised bill, he had to overcome opposition from the Liberal Democratic Party's Health, Labor and Welfare Committee and its Policy Affairs Research Council. By defining "large-scale" restaurants as those with at least a 100m<sup>2</sup> customer seating area, he could extend the revised passive smoking regulations to most restaurants and thus avoid opposition from most opponents not familiar with the regulations precise details. In addition, exemptions to the revised regulations for "small-scale" restaurants with less than a 100m<sup>2</sup> customer seating area are granted only for *existing* stores (*new* small-scale restaurants must follow the revised

passive smoking regulations), and any customers less than 20 years of age are forbidden from entering smoking areas in such restaurants and other places. Opposition often is generated from existing business interests, and few adults oppose restrictions for the benefit of the health of minors.

#### 4. Measures that the Society continues to advocate

Even though the Passive Smoking Prevention Act (revised Health Promotion Act) could be enacted, there remain holes and flaws. We feel that we have a duty to continue to improve regulations.

For example, we believe that designated smoking areas should not be allowed indoors or outdoors at public institutions at all. Moreover, there are the issues of third hand smoke (contamination of objects, like clothing and upholstery, from tobacco smoke) and the fact that air purifiers can only imperfectly purify the multitude of toxins in tobacco smoke. The WHO and the US government have stated that "There is no safe level for passive smoking. In addition, engineering measures like ventilation, air purifiers and limited smoking areas (so-called segregated smoking) do not prevent passive smoking."

Our position is shown in the following document:

<http://www.jstc.or.jp/uploads/uploads/files/essay/20181222.pdf>

We are close to people who suffer from passive smoking, and thus know that it needs to be eliminated. We have publicly stated that "If you are troubled with passive smoking, let us help":

<http://www.jstc.or.jp/uploads/uploads/files/information/JSTC2019717.pdf>

As part of our drive to eliminate designated smoking areas in public spaces, we have asked convenience store companies to remove ashtrays and not to install smoking rooms in their stores.

<http://www.jstc.or.jp/uploads/uploads/files/essay/conbini2019722.pdf>

In addition, the Supreme Court has established a general policy no smoking on premises accessed by the public, even at type 2 facilities, to prevent

passive smoking. Accordingly, regional courts have ruled in favor of not constructing indoor smoking areas. Likewise, legislatures in Tokyo, Oosaka, Aomori, Akita, Shiga, Fukushima and other prefectures have also banned smoking on their premises, and the Hokkaido parliament is planning to have no smoking indoors. Thus, the no passive smoking movement is undoubtedly gaining momentum throughout the country, albeit gradually.

## 5. About heated tobacco

Last year in Geneva, the FCTC 8<sup>th</sup> Conference of the Parties (COP8) passed a statement to declare that heated tobacco should be regulated in the same way as traditional tobacco.

WHO also issued a report on 26 July 2019 to state that “heated tobacco” is less harmful than traditional tobacco that is combusted, but that heated tobacco still contains some of the same harmful substances as combusted tobacco, and it is not necessarily risk-free for one’s health. It also pointed out that the harm from passive smoking can not be negated, and thus it called for regulation similar to that of traditional tobacco.

[https://www.who.int/tobacco/global\\_report/en/](https://www.who.int/tobacco/global_report/en/)

## 6. Conclusion

Due petition drives, the harm of passive smoking is now known to many citizens, and now it is time for citizens to join forces to avoid passive smoking.