

Investigation shows partial smoking ban on Atlantic City casino floors has little effect

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[Investigation shows partial smoking ban on Atlantic City casino floors has little effect](#) By MICHAEL CLARK, Staff Writer [pressofAtlanticCity.com](#) | [0 comments](#)

ATLANTIC CITY — Anyone hoping to gamble in a nonsmoking section at one of the Trump casinos earlier this month might have had to climb on top of a slot machine or sit in the center of a blackjack table.

Floor maps posted on the walls of the Trump Plaza Hotel and Casino and the Trump Taj Mahal Casino Resort showed smoking was prohibited in the physical space occupied by gaming tables and slot machines, but allowed in the area immediately around them, including the seats.

Within a day of a Press of Atlantic City reporter questioning a Trump executive about the smoking sections and pressure applied by the city and state, the casinos reverted to old floor plans that had larger nonsmoking areas.

The city's partial smoking ban for casinos — applauded by some but viewed as a handicap to doing business by others — turned 4 years old this month. But enforcement of the rules since 2007 has been virtually non-existent.

A Press review of city records and observation of floor activity in all 11 casinos show there is virtually no enforcement of the ban by city officials and that casino nonsmoking section boundaries are often ignored. The Press observed patrons smoking in nonsmoking sections in all but three gaming halls: Borgata, Bally's and Hilton.

In four years, only one smoking ordinance violation on a casino floor has been issued by the city's Department of Health and Human Services.

"It's a nightmare for the Health Department," Ron Cash, the department's director, said of enforcing the city law. "We're not surprised by the minimal number of violations. The reality is we don't have enough inspectors. ... We don't have the staffing or the resources."

City code requires casinos to prohibit smoking "on all employee-staffed portions of the casino floor; however, casino licensee operators are permitted to construct nonstaffed, separately exhausted, enclosed smoking lounges on no more than 25 percent of the gaming floor," the law reads.

On Sept. 17, 2007, Paulette Simonetti, a city sanitation inspector, filed a notice of violation against the Taj Mahal when she observed three patrons smoking in a restricted area on the casino floor. She also observed three separate smokers in nonsmoking areas in nongaming parts of the casino over a 45-minute period.

However, city inspectors would go more than three years before filing another smoking violation against a casino. Last February, Simonetti issued three separate violations on the same day against the Tropicana, mostly for violations in The Quarter.

The four citations were the only records provided after The Press requested documentation of all anti-smoking complaints in casinos through the Open Public Records Act. City officials confirmed those were the only citations.

“We’re not surprised,” Cash said of the handful of citations. “The only way we can really do this is to rely on the casino industry to enforce it themselves.”

Signs mix messages

There is strong incentive for Atlantic City casinos to allow smoking. The local industry faces growing competition in neighboring states and other locales across the nation.

Smoking is allowed on casino floors in Nevada and Mississippi, and Pennsylvania allows it in half a casino’s gaming space. Smoking is prohibited in all parts of racino properties in Delaware, New York and Maryland, according to the American Gaming Association.

A smoking ban can be bad for business: When Colorado and Illinois completely banned smoking in casinos in 2008, gaming revenue fell by double-digit percentages.

Earlier this month, the New Jersey Division of Gaming Enforcement confirmed it was investigating the Trump properties and their altered smoking sections.

Bob Griffin, chief executive officer of Trump Entertainment Resorts Inc., stood behind the new floor plans in an interview with a Press reporter. “We’re in full compliance,” he said. “We’re never going to violate the statute.”

But a day later, DGE Director Josh Lichtblau requested a conference call with The Press to confirm that Trump officials had agreed to revert to old floor plans that had larger nonsmoking areas clearly set off.

“In light of their meeting with city officials (April 8), they called us to let us know they would be going back to their old smoking sections,” Lichtblau said. “It’s fair to say that the difference in the floor plans did raise concerns.”

Trump spokesman Brian Cahill did not directly answer questions about why the company chose to abandon its new smoking section, referring only to previous comments about the company being in full compliance with the law.

John Donnelly, an attorney representing the Trump casinos in the matter, said: “The only thing I can say ... is they made a decision to return to the old methodology to the smoking area.”

Griffin had earlier confirmed that Trump Marina’s floor plans have not been adjusted since the property is in the process of being sold to Landry’s Inc., a gaming, restaurant and entertainment conglomerate.

But in Trump Marina, one pair of slot machines on the floor’s Monte Carlo Casino area sit next to each other, each with a sign above them. One says “Smoking Permitted,” the other reads “No Smoking Permitted.”

The Press observed patrons at all 11 Atlantic City casinos over a week and found customers smoking in nonsmoking areas at all but three of the gaming halls.

Many signs at Resorts Hotel Casino, for example, tell gamblers where they can smoke and not where it's prohibited. Stickers on numerous slot machines read: "Smoking permitted while playing" accompanied by a picture of a burning cigarette circled in green.

Only one of Resorts' four gaming-floor entrances features a "no smoking" sign, despite city law requiring casinos to "clearly and conspicuously" post signs at all of its entrances. The one sign is found at the street entrance known as the "Outside Smoking Area." The area is used mostly by casino employees and is located on Danny Thomas Boulevard, a small side street between Resorts and the Taj Mahal.

The only other nonsmoking signs at Resorts are found on the craps tables. Players are restricted from smoking on one side of the table, but can puff away on the other side of the same table.

Dennis Gomes, who with partner Morris Bailey bought Resorts in December, said he and his staff have recognized the casino's limited signage and smoking-section layout and intend to make changes. He said some of his executives brought the issue up within the last month, but he has not received their official recommendations yet.

"There are a lot of things that we are trying to fix here. That was one of the things that was brought up," he said. The smoking sections "really aren't as clearly defined as they could be."

Gomes said he expected to implement changes on the casino floor by Memorial Day.

Even where signs are definitively posted on casino floors, smoking in restricted areas is common in many Atlantic City casinos.

Showboat Casino Hotel patrons smoke on the sides of nonsmoking gaming floors where large trash containers with built-in ashtrays sit with extinguished cigarettes.

"I think we do a good job with it," said Don Marrandino, president of the Bally's, Caesars, Harrah's Resort and Showboat casinos owned by Caesars Entertainment Corp. "I mean, are we perfect? Obviously, I don't think we're perfect. We certainly try to abide by the law."

Cash of the city health department said his inspectors could easily manage violations such as Resorts' lack of signage at its entrances, but monitoring the smoking sections and issuing citations for daily violators is not possible.

"The only way we can do this is depending on the industry to do what they have to do," he said. "We have to witness it. We can't even cite Taj Mahal if someone says somebody is smoking if we don't see it."

Councilman Dennis Mason, who sponsored the city's partial smoking restrictions, acknowledged that there are problems with the law, but he also placed much of the blame on the industry.

"It's an enforcement issue," Mason said. "I would think the hotels themselves would do more of the regulation. We're not in there to manage their casinos."

Before Trump officials rescinded their new smoking sections, Griffin said that the smoking-area changes had come from an overall analysis of the casino's operation with an eye toward making the company more competitive in the industry.

Through Trump's analysis, Griffin said, the company realized its smoking sections were not even competitive locally — they accounted for less than 25 percent of the casino floor.

“We were putting ourselves at a competitive disadvantage within our own city limits,” he said.

But outside the city's boundaries, Atlantic City casino executives have long argued, is where the smoking laws really hurt them.

“It does create a competitive risk, there is no question about it,” said Michael Pollock, managing director of Spectrum Gaming Group, based in Linwood. “The world is ultimately moving toward a nonsmoking world, and gaming is heading in that direction as well. But all things being equal, a casino that allows people to smoke is going to perform better.”

Elsewhere in gaming

Different markets have different policies. In commercial-casino states such as New Jersey, only four of 14 states outlaw smoking entirely. Eight of the 14 states have no smoking restrictions on the casino floors, including Nevada and Indiana.

Among the eight racetrack casino states, half have full bans against smoking, including New York and Delaware, but two of those states have no restrictions at all.

Pennsylvania gaming halls, which are strong competition for Atlantic City, maintain an edge with their smoking restrictions. The laws there restrict smoking on all but 25 percent of casino floors for the first six months of their operation. However, after six months, if the casinos can illustrate that smoking sections are more profitable, executives can expand the sections to as much as 50 percent of the floor.

“All of them are at 50 percent,” said Richard McGarvey, a spokesman for the Pennsylvania Gaming Control Board. “After six months, everybody immediately expanded to 50 percent.”

The Pennsylvania Department of Revenue performed a 90-day analysis three months after the smoking restrictions were enacted to gauge the success of smoking slot machines as opposed to nonsmoking machines. The report is used to determine if a casino can expand its smoking sections and by how much.

All 10 of Pennsylvania's gaming halls saw more than a 50 percent profit increase in smoking sections compared to nonsmoking slots, according to state statistics. The average daily profit increases at the casinos ranged from 60 percent to 185 percent.

“That kind of thing in Pennsylvania isn't going away,” said Roger Gros, publisher of the Las Vegas-based Global Gaming Business magazine. “Atlantic City is already at a disadvantage. If they go back to the idea that they need a full ban, it's only going to get worse.”

But some still believe there's a market for nonsmoking casinos. Kevin DeSanctis, chief executive officer for Revel Entertainment Group, still plans to keep his to-be-opened casino smoke-free.

DeSanctis has said since 2007 that his casino will be smoke-free. The subsequent downturn of the economy and the company's own financial troubles have not changed that plan. But Revel officials are still considering ways to accommodate smoking customers.

“We don’t have anything against people who smoke,” he said. “If we can accommodate them, we will. But it creates all kinds of issues.”

His stance on nonsmoking doesn’t come without worry, though.

“I do have concerns,” DeSanctis said. “You have to be concerned about any decision you make when you’re going against ... conventional gaming wisdom. But a huge part of society has rejected smoking. We’re going after that same group of people.”

Gros predicted that Revel will eventually cave on its nonsmoking plans as its 2012 opening date gets closer, bowing to the additional profit possibilities.

“Cooler heads will prevail,” Gros said. “I think he was assuming that the full smoking ban would be in effect. I don’t think he thought this would continue the way it has. I would be surprised if he stuck with it.”

Compromised ban

In 2007, Councilman Mason’s 75 percent law was established as a compromise with those fighting for a full smoking ban in the city’s 11 casinos. But smoking opponents’ outrage, along with a lack of casino participation, caused the law to change multiple times over the years.

Resort casino workers, health groups and others have pressed the city and the state for years to prohibit smoking outright.

On April 15, 2006, then-Gov. Richard J. Codey signed The New Jersey Smoke-Free Air Act, which banned smoking in most workplaces in April 2006 but exempted casino gaming floors and simulcasting facilities.

“You have to weigh this on a total basis,” former Republican state Sen. William Gormley said at the time. “When you’re talking about the competition the casino industry faces from other jurisdictions, it’s an exemption you have to consider.”

But the state did leave open the possibility of Atlantic City’s government closing the loophole. Nonsmoking advocates increased pressure on City Council, and soon former Councilmen G. Bruce Ward and Eugene Robinson became vocal proponents of a full ban.

A full ban was proposed in February 2007 but was watered down with amendments shortly afterward, allowing smoking on 25 percent of all casino floors in enclosed sections, while the remaining space would be smoke-free. But the casinos’ slow effort to construct the enclosures angered smoking opponents and City Council, pushing Ward to reignite the full-ban effort.

Council narrowly passed the full ban about a year after approving the partial restrictions, but the vote came as the country began to see national indicators of a recession.

“There were rumors and indications out that the economy was going bad,” said Councilman Mason. “We couldn’t allow it.”

Council members eventually gave in to repealing the full ban after the economic downturn hurt the industry locally, reverting to the partial restrictions.

“Oftentimes, legislators make laws and they don’t think about the consequences of implementing them,” Cash said.

Asked if he warned City Council that his department’s staffing levels would make adequate enforcement near impossible, Cash said he did not.

“This stuff happened so fast,” he said. “There were a whole lot of other public-health issues going on at the time. Could I have gone to every council person and say, ‘No, don’t do that’? I guess possibly. But practically, there’s a lot of other stuff going on.”

City officials pledged to revisit the issue in a year, but delayed that debate until the end of this year.

Adjustments ahead?

City Council had intended to vote on a resolution calling for a review of the city’s smoking restrictions and pledging to collaborate with the DGE to “provide for more effective regulation of casino-floor smoking.”

However, legislators considered the issue dead after Trump’s agreement to revert to its old smoking sections and unanimously voted the measure down this month.

“They submitted a plan that, quite frankly, the city couldn’t support. But both sides talked about the pros and cons of the situation and they’re going to honor the old plan,” said Councilman Marty Small, head of council’s Health Committee.

DGE officials initiated a conversation with the city administration after receiving complaints and reviewing the Trump blueprints.

The city’s Department of Health and Human Services continues to endorse a full ban and has suggested other changes to the law to make it more threatening. Cash said he would like to increase smoking violation fines. City officials can charge a smoker or an establishment with fines ranging from \$25 to \$250. Cash said he hopes to see them boosted to the fines outlined in state law, which range from \$250 to \$1,000.

Any potential attempts by the administration to adjust the law could still run into obstacles at the legislative level.

Mason, a smoker, acknowledged he has unknowingly smoked a cigarette in a nonsmoking section at a casino on multiple occasions. Regardless, he supports keeping the law the way it is.

“I think what we have in place works,” Mason said. “I recognize that some people may be turning their heads (to violations), but I think in the long run it works.”

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