

US Public Health Mandates and the Restroom Problem in America

A Call To Action

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American Restroom
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Summary Abstract

In the United States, public availability of restrooms is a growing problem that can be traced to policy gaps at the national level. Two federal departments have mandates to rectify this problem. One has acted but the other has not.

The U.S. Department of Labor regulates workplace restrooms throughout the individual states through the U.S. Occupational Safety and Health Administration, or OSHA. OSHA provides the necessary regulations to ensure that employees “*will not suffer the adverse health effects that can result if toilets are not available*” when needed.

The U.S. Department of Health and Human Services is responsible for protecting the health of the public in general, not just employees. This federal agency, however, has failed to recognize the threat to public health if restroom facilities are not available.

This lack of federal recognition makes it easy for

- Local governments to close public restrooms
- Government-supported schools to prevent students from using restrooms.
- Transit systems to put their amenities off limits to passengers
- Airlines to deny passengers use of toilets throughout flights.

Since the Department of Health and Human Services has the mandate to protect the health of all Americans, the American Restroom Association is launching a call to action.

The group is calling on the American people to act through their representatives in Congress to ensure that the U.S. Department of Health and Human Services spells out the public health requirements related to toilet facilities. This will not require new legislation, only that an existing mandate be met.

The paper references numerous case studies where the basic human right to use a toilet has been denied.

Federal Agencies and their Responsibilities

The departments and agencies within the executive branch of the U.S. Government play a key role in policy implementation. While the United States Congress makes laws, it empowers the relevant federal departments or agencies to develop the regulations required to put the laws into effect. These regulations help shape state and local laws and directly affect people’s lives.

The mandate of the U.S. Department of Health and Human Services (DHHS) is “protecting the health of all Americans.”¹ Its budget² is larger than a majority of the other federal departments combined. DHHS administers Medicare health insurance in collaboration with the Social Security Administration and funds programs of state and local governments, either directly or through grants to private sector organizations. DHHS operates the National Institutes for Health, the Centers for Disease Control, and the Food and Drug Administration.

¹ U.S. Department of Health and Human Services, “HHS What We Do,” <<http://www.hhs.gov/about/whatwedo.html/>>.

² DHHS, FY 2007 Budget in Brief,” <<http://www.hhs.gov/budget/07budget/overview.html>>.

The U.S. Department of Labor (DOL) “fosters and promotes the welfare of the job seekers, wage earners, and retirees”. The federal labor laws it administers guarantee workers’ rights. Among these is the right “to safe and healthful working conditions.”³ Within DOL is the Occupational Health and Safety Administration, or OSHA.

The mission of OSHA is to assure the safety and health of America's workers. OSHA administers the Occupational Safety and Health Act by investigating, inspecting and regulating health and safety conditions in the workplace, either directly or through OSHA-approved state programs.⁴

Regulations made by the executive departments and federal agencies appear as the Code of Federal Regulation (CFR),⁵ which is ultimately enforced by the U.S. Department of Justice.⁶

Policy Gaps and the Public Restroom Crisis

OSHA has strong requirements for workplace restroom access that are based on the ill health effects of denying employees this access.⁷ Recognizing that a person's health is jeopardized when they are not able to use the toilet, OSHA decreed a regulation that is enforced by the U.S. Department of Justice. Entitled “Toilet Facilities,” 29 CFR 1910.141(c)(1)(i) “requires employers to provide their employees with toilet facilities so that they will not suffer the adverse health effects that can result if toilets are not available...”⁸

However, the authority to address the adverse health effects that result if toilets are not available is the DHHS, the lead agency of the United States Government responsible for protecting the health of all Americans.

Unfortunately, there appear to be no DHHS regulations or guidance-based recognition that lack of access to restrooms is a serious health issue. This is ironic since DOL based its CFR entitled “Toilet Facilities” on research published by the National Institutes of Health, a DHHS agency that conducts and supports medical research to improve people's health and save lives.⁹

Public Health Benefits of Clean, Safe, Accessible Restrooms

Adverse health effects result when people cannot get access to toilets when they are away from home. In establishing requirements for employers to make toilets available to employees, OSHA cited the following:

Medical studies show the importance of regular urination, with women generally needing to void more frequently than men. Adverse health effects that may result from voluntary urinary retention include increased frequency of urinary tract infections (UTIs), which can lead to more serious infections and, in rare situations, renal damage (Nielsen, A. Waite, W., "Epidemiology of Infrequent Voiding and Associated Symptoms," Scand J Urol Nephrol Supplement 157). UTIs during pregnancy have been associated with low birthweight babies, who are at risk for additional health problems compared to normal weight infants (Naeye, R.L., "Causes of the Excess Rates of Perinatal Mortality and the Prematurity in Pregnancies Complicated by Maternity Urinary Tract Infections," New England J. Medicine 1979; 300(15); 819-823). Medical evidence also shows that health problems, including constipation, abdominal pain, diverticuli, and hemorrhoids, can result if individuals delay defecation.¹⁰

Public restrooms serve the “restroom challenged.” This term refers to people who have to go frequently (every hour or so) and to those for whom the need to go comes suddenly and urgently. The “restroom

³ U.S. Department of Labor, “What does the Department of Labor do?” <<http://www.dol.gov/dolfaq/go-dol-faq.asp?faqid=478&faqsub=General+Information&faqtop>About+DOL&topicid=9>>.

⁴ U.S. Department of Labor, Occupational Health and Safety Administration, “OSHA’s Mission,” <<http://osha.gov/oshinfo/mission.html>>. See also “Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities,” <http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22932>.

⁵ Code of Federal Regulations, <<http://www.gpoaccess.gov/cfr/index.html>>.

⁶ U.S. Department of Justice, “About DOJ,” <<http://www.usdoj.gov/02organizations/>>.

⁷ J. Schmidt and R. Brubaker, “The Code and Practice of Toilets in the United States of America,” Presentation at the World Toilet Summit, Beijing, 17-19 November, 2004.

⁸ 29 CFR 1910.141, “Sanitation,” <http://www.access.gpo.gov/nara/cfr/waisidx_06/29cfr1910_06.html>.

⁹ U.S. Department of Health and Human Services, National Institutes of Health, <www.nih.gov>.

¹⁰ National Institutes of Health Publication No. 95-2754, July 1995, Quoted in Schmidt and Brubaker, “The Code and Practice.”

challenged” may be people with normal conditions such as pregnancy, youth¹¹, or aging¹² or those with a wide range of medical conditions.¹³ As many of these medical conditions are invisible, the “restroom challenged” make up a large and somewhat silent segment of society.

As rates of obesity rise dramatically, health officials recommend physical activity to reduce the risk of disease.¹⁴ Yet many people avoid physical activity in parks and public places if restrooms are not available.¹⁵

Apart from detriments to physical health, people’s mental well-being is compromised when families cannot enjoy activities in public places because of a lack of basic amenities.

Situations in which People are Denied Use of a Toilet

The lack of federal recognition of the right to and benefits of toilet use leads to the following situations:

- Local governments continue to close public restrooms
- Government-supported schools are preventing students from using the lavatories.
- Most transit systems put their amenities off limits to passengers
- Airlines can deny passengers use of toilets throughout flights.

Situation 1: Local governments continue to close public restrooms.

Despite broad citizen demand for restrooms¹⁶, city, town and county governments throughout the United States continue to close public restrooms, a trend that began a half century ago.

When local officials close or fail to open restrooms they often cite “security issues” which embody a whole gamut of fears ranging from international terrorism, to immoral behavior, to vandalism¹⁷ and misuse of premises for criminal activities.¹⁸ Restrooms are being closed to limit infractions of laws already on the books.¹⁹

¹¹ Couture, “Forced Retention of Bodily Waste.”

¹² Researchers report that “among postmenopausal women ... mean voided volume and maximum functional capacity were inversely related to patient age.” See M.P. Fitzgerald, N. Butler, S. Shott, and L. Brubaker, “Bother arising from urinary frequency in women,” *Neurology and Urodynamics*, vol. 21, no. 1:36-40, (2002), <<http://www.ncbi.nlm.nih.gov/sites/entrez?db=PubMed>>. Another expert says “the muscle of the bladder loses elasticity and tone. Hence, the bladder holds almost 50% less urine (causing more frequent urination) and empties less completely. The warning period between the urge and actual urination is shortened or lost as one ages. Muscular disability, spinal cord effects on the bladder muscle, tumors, infection, anatomic damage to the sphincters and/or bladder neck may cause incontinence in advancing age. Other risks for incontinence in old age include chronic disease, cognitive impairment, medications, smoking, pelvic muscle weakness, low fluid intake and environment.” See Linda Breytspraak, “Does bladder capacity decrease with age, which leads to frequent urination?” <<http://missourifamilies.org/quick/agingqa/agingqa27.htm>>.

¹³ Kathryn Anthony and Meghan Dufresne, “Potty Parity in Perspective: Gender and Family Issues in Planning and Designing Public Restrooms,” *Journal of Planning Literature*, vol. 21, no. 3, 267-294 (2007). See also Rebecca Chalker and Kristene E. Whitmore, *Overcoming Bladder Disorders: Compassionate, Authoritative, Medical and Self-Help Solutions for Incontinence, Cystitis, Interstitial Cystitis, Prostate Problems, Bladder Cancer*. Harper Perennial, 1991; “Who are the Restroom Challenged?” <<http://www.americanrestroom.org/pr/who.htm#OSHA>>.

¹⁴ The CDC notes that the prevalence of obesity among adults has increased from 15.0% to 32.9% in the past 25 years, with sharp increases also recorded for children and teens. See “Overweight and Obesity,” <<http://www.cdc.gov/nccdphp/dnpa/>>.

¹⁵ Restrooms were second only to drinking fountains as amenities desired by park users in survey conducted by the ETC Institute for Arlington County Parks and Recreation (Virginia), June 2002. “Restrooms in Parks, along trails, and in Public Space,” <www.americanrestroom.org/pnr/index.htm#ac>.

¹⁶ Luc Cebulski, “Let’s get this potty started.” *Eureka Times Standard*, July 7, 2006. <http://www.times-standard.com/portlet/article/html/fragments/print_article.jsp?article=4023>; Arun Kumar, “A fight on the Mall for a fundamental right,” DailyIndia.com, (no date); “At citizens’ symposium, the top complaint about the Mall in Washington D.C. was the lack of public restrooms,” Associated Press; “Public gets the chance to weigh in on how to improve the National Mall in Washington, D.C.,” *Boston Herald*, November 16, 2006; and Petula Dvorak, “For Starters, Mall Visitors Just Want More Bathrooms.,” *The Washington Post*, November 16, 2006.

¹⁷ Mollie Vander, “County Postpones Plan for DP Bathrooms Indefinitely,” *Daily Nexus*, (University of Santa Barbara, California), May 17, 2006, <<http://www.dailynews.com/news/2006/11739.html>>; Courtney Anderson, “Bathrooms off limits due to vandals,” *The Herald*, (Sharon, Pennsylvania), May 17, 2007; Bob Welch, “Of restrooms, runways and river flow.” *The Register-Guard*, (Eugene, Oregon), February 28, 2006.

¹⁸ ABC30.com, “Restrooms Demolished at Roeding Park,” May 26, 2006, <<http://abclocal.go.com/kfsn/story?section=local&id=4206949&ft=print>>; Adam Behsudi, “Lack of public toilets downtown

Cost is a factor²⁰ and only sometimes is it related to security and maintenance expenses²¹. Cities that had adequate restrooms in the past do not have them today.

Even when local jurisdictions keep restrooms open on a regular basis, there are gaps that render them unavailable to those who need them. Restroom hours are limited so they are not open in the early morning or early evening.²² There are winter closures.²³ Restrooms are also unavailable during the interim periods after old ones are closed²⁴, burn down²⁵ or are demolished for new construction.²⁶

Communities often split on the issue of restrooms, leaving city councils deadlocked.²⁷ Citizen pressure is both for and against, frequently pitting upscale neighborhoods and developers against the general public²⁸. Overlapping jurisdictions may disagree.²⁹ Some cities open and close restrooms in cycles, so no availability is guaranteed over time.³⁰

Situation 2: Government-supported schools are preventing students from using the lavatories

Throughout the United States, school administrators are restricting student access to restrooms. Few school systems have policies for restroom use but leave individual administrators or even teachers to determine the rules as they see fit.

Schools close or prohibit use of restrooms in response to threats of mischief,³¹ incidents of vandalism³², fear of “copy cat” attacks following school violence elsewhere³³, and practice lockdown drills³⁴. While school officials usually claim the need for safety and supervision, denial of toilet use is also being used as collective punishment.³⁵

In light of such bans, students may urinate on school grounds or in bottles,³⁶ suffering humiliation or

a concern,” *Asheville Citizen-Times*, (North Carolina), June 19, 2006.

¹⁹ Michael Martinez, “Old woes occupy toilets of tomorrow: Flush with optimism, cities are bringing back the public restroom -- but human nature calls,” *The Chicago Tribune*, June 25, 2007.

²⁰ Tristan Baurick, “Park potty clogged again: The council OKs a new design, but not enough money to actually build it,” *Bainbridge Island Review*, (Bainbridge Island, Washington), April 15, 2006.

²¹ John Seabrook, “Department of Amenities: A New Map,” *The New Yorker*, March 27, 2006.

<www.newyorker.com/printables/talk/060327ta_talk_seabrook>.

²² Behsudi, “Lack of public toilets downtown”; Meera Pal, “Pleasanton, CA: City opens new restrooms downtown,” *Contra Costa Times*, (California), December 28, 2006; and Dvorak, “For Starters, Mall Visitors Just Want More Bathrooms.”

²³ Welch, “Of restrooms, runways and river flow” and Brennan, George “In Sandwich, if ya gotta go, go elsewhere,” *Cape Cod News*, (Massachusetts), October 30, 2006, <<http://www.capecodonline.com/cgi-bin/print/printstory.cgi>>.

²⁴ “Closing Welcome Center would hurt downtown’s tourism effort,” *Times Herald*, (Port Huron, Michigan) April 4, 2006.

²⁵ Joel Gallob, “More port amenities needed, fisherman says,” *Newport News-Times* (Newport, Oregon) 12 August 2005, <http://www.newportnewstimes.com/articles/2005/08/12/news/news07_prt>.

²⁶ Tristan Baurick, “Park potty clogged again: The council OKs a new design, but not enough money to actually build it.” *Bainbridge Island Review*, (Bainbridge Island, Washington), April 15, 2006; and WJACTV.com, “No Public Restrooms In Johnstown Hindering Businesses?,” December 3, 2004, <<http://www.wjactv.com/news/3970666/detail.html>>.

²⁷ Rebecca Bender, “Public restroom project dies,” *The Eureka Reporter*, (California) August 3, 2006; Vander, “County Postpones Plan”; Auditi Guha, “A-B a big no go zone for those who have to go,” *Allston-Brighton TAB*, (Needham, Massachusetts), August 5, 2005.

<<http://www2.townonline.com/allston/localRegional/view.bg?articleid=300837>>; Cebulski, “Let’s get this potty started.”

²⁸ “Negative Associations: Portable toilets thwart beach-image upgrade” *The Sun News*, (Myrtle Beach, South Carolina), August 23, 2005; Seth Harkness, “OOB leaders target pay toilet for removal,” *Portland Press Herald*, (Maine), April 21, 2006, <<http://www.myrtlebeachonline.com/mld/sunnews/news/opinion/12451187.htm>>.

²⁹ Leslie Wilcox, “Inadequate bathroom facilities have people running,” KOHN, February 6, 2006, <<http://khon.com/khon/print.cfm?sid=1152&storyID=11387>>.

³⁰ Martinez, “Old woes occupy toilets of tomorrow”; Vander, “County Postpones Plan”; “More Potties Needed at NJ Beaches,” Associated Press, May 28, 2005, <<http://abclocal.go.com/wpvi/story?section=local&id=3110101>>.

³¹ Tom Hubbard, “Heavy school security is an ineffective quick fix,” Letter to *Statesman Journal*, (Salem, Oregon), November 22, 2006.

³² Anderson, “Bathrooms off limits”; Associated Press. “Pranksters’ tricks get students escorted to restroom,” *Boston Herald*, (Massachusetts), November 7, 2006.

³³ Anderson, “Bathrooms off limits.”

³⁴ KSAT.com, “Teacher Lets Kids Use Trash Can As Toilet: Students were practicing Lockdown,” October 16, 2006.

³⁵ Associated Press, “Pranksters’ tricks.”

³⁶ “CNN is on restroom case,” CNN/Dateline Florida, March 9, 2007.

suspension in the process.³⁷

Some principals lock all school lavatories except those near the main entrance. To use restrooms, students may be required to have escorts³⁸, acquire hall passes, sign in and sign out³⁹, or carry personal logs initialed by teachers.⁴⁰

A practice reported in several schools does not appear to be related to security. Students may use toilets during 90-minute classes but only at the expense of higher grades; unused restroom passes may be traded for extra academic credit.⁴¹

A further deterrent to normal toilet use is the removal of stall doors and the resulting denial of privacy. In some instances restroom doors are locked open so that boys standing at urinals and girls exiting stalls can be seen from the hallway.⁴² These rulings not only contradict basic health guidance⁴³ but also the counsel of school coaches that student athletes remain hydrated for after school sports training.⁴⁴

Situation 3: Most transit systems put their amenities off limits to passengers

Throughout the United States there is a general lack of available restrooms for users of public mass transit.

Many lavatories originally built for the public remain in working order to serve transit employees, whose right to use the restroom is guaranteed under OSHA. There is no such protection for the right of passengers to use the toilet despite the mandate of the Department of Health and Human Services to protect public health. A single transit stop in the Chicago transit system has a toilet for passenger use, while there are toilets in most of the 144 stations for employee use.

In 1940 there were 1,676 public toilets in New York City's subway stations. Sixty years later only 78 toilets remained to serve the four million riders who use the city's 468 subway stations every day.⁴⁵ In the period following September 11, 2001, security concerns led transit officials to close additional restrooms.⁴⁶ Temporary restroom lockdowns resulting from security alerts,⁴⁷ construction,⁴⁸ or budget shortfalls⁴⁹ can last many months or years. Apart from transit customers, cab drivers, cyclists, pedestrians and others who use alternatives to the private car, also have difficulty finding available toilets.⁵⁰

In some systems there is a policy to open restrooms at the request of passengers.⁵¹ However, the inadequate training or resistance of employees and poor communication of the policy to the public make this impracticable.⁵²

³⁷ Steve Lawrence, "Student Who Urinated in Class Suspended," *The Associated Press*, April 30, 2007.

³⁸ Associated Press, "Pranksters' tricks."

³⁹ Anderson, "Bathrooms off limits."

⁴⁰ Ian Shapira, "How Bad Do You Have to Go?: At Some Schools, It's Bathroom Breaks vs. Grades," *The Washington Post*, June 6, 2006, <wp-dyn/content/article/2006/06/05/AR2006060501491>; Michelle Groenke, "Schools play hard-to-get with potty breaks," *UPI.com*, June 7, 2006.

⁴¹ Groenke, "Schools play hard-to-get"; Shapira, "How Bad Do You Have to Go?"

⁴² Shapira, "How Bad Do You Have to Go?"

⁴³ Laurie A. Couture, "Forced Retention of Bodily Waste: The Most Overlooked Form of Child Maltreatment," *ChildAdvocate.org*, 2000-2003, <<http://www.childadvocate.org/1b.htm>>.

⁴⁴ Shapira, "How Bad Do You Have to Go?"

⁴⁵ Webber, Rebecca, "Public Toilets," *Gotham Gazette*, July 15, 2001,

<<http://www.gothamgazette.com/iotw/bathrooms/>>; Jane E. Brody, "A Simple Need, All Too Often Unmet," *The New York Times*, May 1, 2007; Metropolitan Transit Authority, "MTA Performance Indicators," <<http://mta.info/mta/ind-perform/month/nyct-s-ridership.htm>>, 2007.

⁴⁶ Rachel Gordon, "Grand tour of BART's bathrooms -- from the pristine to the pathogenic," *San Francisco Chronicle*, July 17, 2007.

⁴⁷ "Some transit systems increase security," *WOI TV*, August 11, 2006; Associated Press, "Metro riders make use of self-cleaning toilet," April 26, 2004.

⁴⁸ S.L. Wykes, "Lack of bathrooms gives rise to real stink, health issue," *Mercury News*. (San Jose, California), May 8, 2006; Melissa Green, "Bus Terminal is Under Way," *The Ledger*, (Polk County, Florida), January 24, 2007.

⁴⁹ Barbara Livingston Nackman, "Cold Spring's 6-year wait for public restrooms is over," *The Journal News*, (White Plains, New York), October 18, 2005.

⁵⁰ "Javits Center Offering Cabbies Potty Perk," 1010 WINS radio, January 13, 2005.

⁵¹ Among others, Boston's MTA, Atlanta's MARTA, Washington D.C.'s Metro and the Los Angeles County Metropolitan Transit Authority. See also Mike Rupert, "Metro to riders: Not now!" *The Examiner*, September 20, 2005; Associated Press "Metro riders make use of self-cleaning toilet."

Situation 4: Airlines can deny passengers use of toilets throughout a flight.

Airline passengers in United States appear to have no legal protection of their right to use restroom facilities on board an aircraft. Planes with single restrooms carry passengers on regularly scheduled flights of more than one hour. Passengers have suffered extreme discomfort and humiliation because the single restroom has been closed, in one case because the light did not work.⁵³

In the case of restroom malfunction, airline pilots are entitled to decide whether to divert the plane for repairs or to continue on course. Cabin crews simply enforce the authority of the pilot. Following passenger complaints airlines need do nothing more than apologize, although they may offer travel vouchers as a courtesy.

This is because under current US law, flying most commercial planes without a working toilet is legal. Moreover, there is no federal regulation of the passenger-to-toilet ratio.

There are a handful of federal regulations on airplane restrooms. The Air Carrier Access Act of 1986 requires a working restroom only on planes with more than one aisle that were delivered or refurbished after 1992. The Code of Federal Regulations has numerous rules about the installation of smoke detectors in aircraft restrooms to prevent passengers from smoking but is silent on the any other guidelines for restroom use. Comments *New York Times* writer Christopher Elliott, "A functioning toilet is such a basic necessity that the law appears to take it for granted."⁵⁴

Public Health, Restroom Availability and U.S. Government Mandates: A Call to Action

The health of today's Americans depends on the availability of clean safe restrooms in the public places. Restrooms advance mental and physical health, fitness, and well-being. Conversely, serious health issues result when restroom availability is compromised.

The United States Department of Health and Human Services has the mandate to protect the health of all Americans. The availability of toilet facilities is a core public health issue.

America's workers are guaranteed the right to use the toilet under the Occupational Health and Safety Administration of the U.S. Department of Labor. The general public deserves the same basic right.

Therefore, the American Restroom Association calls on the public and their representatives in the U.S. Congress to ensure that Department of Health and Human Services address this omission at least to the extent it has been addressed by OSHA.

Note: The original title of this paper is the following: *Availability of Restrooms In the United States and Federal Public Health Mandates: A Call to Action*

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⁵² For example, Chicago Transit Authority opens restrooms for passengers with medical conditions but only if three CTA employees are present; see John Hilkevitch, "Toilets on transit gaining popularity but CTA unlikely to be on that train," *Chicago Tribune*, May 14, 2007. A survey showed half of station managers in the Washington D.C. Metro denied restrooms are available despite official policy; see Mike Rupert, "Metro to riders: Not now!" Metro restrooms on request policy is four pages long and staff scratch off kiosk stickers that summarize policy; see "Soul of a New System," *The Washington Post*, August 13, 2006. See also Mark Ginocchio, "Panel wants answers on SoNo station," *The Stamford Advocate*, (Connecticut), September 22, 2006 and "Restroom Availability at Major American Subway Systems" at http://www.americanrestroom.org/metro/subway_rr.htm.

⁵³ Paul Beebe, "SkyWest sorry for not letting passenger use restroom: Passenger resorts to relieving himself in an airsickness bag when denied use of the lavatory," *The Salt Lake Tribune*, (Salt Lake City, Utah), March 20, 2007; Christopher Elliott, "Restroom closure leads to an unfortunate accident," *The Oregonian*, (Portland, Oregon), January 15, 2006.

⁵⁴ Christopher Elliott, "A Necessity Airlines Shouldn't Take for Granted," *New York Times*. 6 December 2005