



FUNDAMENTALS OF SMOKEFREE AIR POLICY DEVELOPMENT for HOOSIER COMMUNITIES

EXECUTIVE SUMMARY

The following are recommended guiding principles for developing and implementing effective smokefree policies that help achieve the goal of saving people's lives from the disease and death caused by secondhand smoke. These guidelines have been excerpted and adapted from a publication called "Fundamentals of Smokefree Workplace Laws," a smokefree air policy document that was collaboratively formulated by tobacco control partners at the national level. The principles are considered "best policy practice" for smokefree air policies and are based on the experiences and lessons learned from tobacco control advocates throughout the country over several decades.

It has been two decades since the United States Surgeon General published the first of a number of extensive reports and studies that clearly and overwhelming identified secondhand smoke as a major cause of disease and death¹. Exposure to secondhand tobacco smoke is the third leading

cause of preventable death and disease nationwideⁱⁱ. The remedy for protecting thousands of Hoosiers from the serious health hazard caused by secondhand smoke is equally clear: smokefree air policies. The Centers for Disease Control and Prevention's Community Prevention Guide has determined that the enactment of strong smokefree policies is among a couple of the most effective evidence-based best policy practices for combating the burden of morbidity and mortality due to secondhand smoke and for reducing the overall prevalence of smokingⁱⁱⁱ.

Our ultimate goal is to protect Hoosiers from exposure to secondhand smoke, to create healthier, thriving communities, and to help empower citizens to understand the health hazards they face from secondhand smoke and to expect that they will not be subjected to this unnecessary harm in workplaces or public places. The objective is not to simply "get a law passed." It's important to remember that this process takes time, sometimes years, and persistence.

As local policymakers in Indiana communities increasingly have expressed interest in adopting smokefree air laws, Hoosier tobacco control partners would like to outline the following models of success and pitfalls to avoid in smokefree air policy development. These principles are in accordance with similar smokefree policy fundamentals outlined by smokefree policy partners at the national level, including: American Cancer Society, American Heart Association, American Lung Association, Americans for Nonsmokers' Rights, Campaign for Tobacco-Free Kids, the Praxis Project, the Tobacco Technical Assistance Consortium, Tobacco Control Legal Consortium, National African American Tobacco Prevention Network, National Latino Council of Alcohol and Tobacco, and Asian Pacific Partners for Empowerment and Leadership^{iv}.

Policy Planning Guidelines

- Start with the model smokefree air ordinance
- Develop clear definitions
- Avoid the minors only trap
- Avoid Accommodation: such as ventilation, smoking rooms and sections, red light/green light
- Avoid hours provisions
- Avoid consent provisions
- Minimize exemptions
- Pursue smokefree workplaces, not just smokefree restaurants
- Avoid hardship exemptions
- Avoid long phase-in provisions
- Work from the inside out
- Remember the goal is a smokefree environment, not simply the passage of a law

POLICY PLANNING GUIDELINES

Start with the model smokefree air ordinance

When developing the language for your local ordinance, start with the model policy available from the ITPC web site or the American Nonsmokers' Rights Foundation. Using another community's ordinance as the source for your smokefree policy language is not recommended. Most enacted policies incorporate local conventions and reflect campaign-specific compromises and modifications. Therefore, the use of another community's policy entails a significant risk of acquiring undesirable ordinance language.

Starting with the model ordinance rather than taking the language from another city's ordinance helps avoid inheriting the flaws or political compromises that may have been written into the ordinance to appease a particular policymaker. One would not want to begin a policy campaign from a weakened point of concession as a starting point because the modifications and amendments that were agreed upon to win support of specific policymakers in one community will not necessarily win the support of any policymakers in another community.

By starting with the model ordinance, one begins with a sound policy as your starting point and has more of a sound foundation from which to navigate forward.

Develop clear definitions

The "devil is in the details" of a clean indoor air ordinance. Well-defined terms and provisions are critical for ensuring that the interpretation, implementation, and enforcement of the ordinance accomplish its original intent. A simple rule of thumb is to make sure the ordinance explains: 1) what venues are to be required to be smokefree under the proposed ordinance, and 2) what venues are exempt from the ordinance.

Well-written smokefree ordinances clearly, concisely and in plain language explain who is covered and who is not. An ordinance that is vague, contradictory, oblique or ambiguous potentially would cause confusion both for those who will be expected to comply with the ordinance and those who will enforce the ordinance. When in doubt, spell it out.

Distinguishing "bar" from "restaurant"

The definitions of "restaurants" and "bars" raise the most questions for newcomers to smokefree policy development, and it is not a coincidence that these are the constituencies that are most actively pursued to oppose smokefree policies by the tobacco industry and their Hoosier allies.

The general principle in defining these venues is that a restaurant is an establishment where the primary function is the consumption of food, and the consumption of alcoholic beverages is incidental.

Likewise, a bar is an establishment where the primary function is the consumption of alcoholic beverages and the consumption of food is incidental.

How does Indiana Code define “bar”...?

Nothing in Indiana’s state law delineates any particular way a municipality must define “bar” versus “restaurant” for the purposes of a local smokefree ordinance, as long as it doesn’t conflict with state law. Indiana’s state law relating to restaurants and alcohol service establishments (Indiana Code Title 7.1, Article 3) only stipulates certain rules regarding the types of permits offered, and under what circumstances they may be issued to establishments.

Indiana Code does not provide a general definition for the term “bar” as a particular type of establishment. Thus, this distinction can be determined by local policymakers who are crafting a smokefree ordinance.

If a policymaker decides for some reason to pursue a smokefree ordinance that covers workplaces—including restaurants, but excluding bars—then it would make sense to distinguish the definition of a “bar” versus that of a “restaurant” in a way that singularly characterizes the purpose and function of a bar as an establishment whose purpose is the sale and consumption of alcoholic beverages.

If such a smokefree ordinance were adopted that covered workplaces, including restaurants, but excluding bars, an establishment claiming a “bar” exemption simply would demonstrate that its revenues primarily come from alcohol, and that other revenues are incidental. This would not require the owners/managers of the establishment to keep new records, as alcohol beverage sales are and general sales presently are tabulated for the purposes of paying food sales and alcohol excise taxes for these establishments. The same data could be used to determine if an establishment is a “restaurant” or a “bar” for the purposes of a smokefree ordinance.

An establishment either is a restaurant or a bar, but it cannot be both. So-called “bar areas” of a restaurant are, indeed, part of the restaurant, and should be treated the same as the rest of the restaurant. A “bar” should be thought of as a room or a floor in a hospitality establishment, the whole establishment either is or is not a bar; likewise for restaurants.

Also, the smokefree ordinance should describe the establishments that are to be covered by the ordinance and those that are exempt based on the manner in which the establishment has been operated prior to and at the time of the passage of the ordinance, not they way they hope to operate in the future. Thus, just as people don’t get to choose which laws by which to abide, the management of hospitality establishments should not have the option of choosing whether or not to abide by the smokefree ordinance by declaring that an establishment is a bar if it is, in fact, a restaurant.

Avoid the “minors only” trap: alcohol sales vs. age of entry for defining bars

As a corollary to the principle above regarding the definition of “bar” versus “restaurant” based on a ratio of alcohol sales compared with other revenues, public health advocates should strongly urge policymakers to avoid the “minors only” trap.

In a nutshell, this fundamentally flawed concept is based in the premise that only children deserve protection from smokefree air. Framing secondhand smoke exposure solely from a youth perspective can create the misconception that secondhand smoke is harmful only to young people, while adult exposure is acceptable. Secondhand smoke poses significant health risk to all ages, and everyone deserves the right to a safe and healthy work environment. Just because a person is of legal age to smoke cigarettes does not mean that person should be required to smoke—via secondhand smoke—due to workplace exposure to tobacco smoke. It is a tobacco industry tactic to frame this as a “kids” issue. Don’t let them. Secondhand smoke is an equal opportunity killer, regardless of age, gender, or ethnicity.

Age vs. alcohol sales for defining “bar”

In distinguishing “bar” versus “restaurant” for the purpose of a smokefree ordinance, there may be an inclination for policymakers to define a bar as an establishment to which only adults are admitted. However, there are a few serious problems with using “age of entry” as a basis for the definition of “bar,” rather than alcohol sales compared with overall sales.

The first problem with using age-of-admission to an establishment as a determining factor as to whether or not the establishment is exempt or covered by an ordinance is that an establishment could choose to change the clientele it admits at certain times of the day or days of the week. If “bar” were defined solely based on the age of the patrons admitted to the establishment, an establishment could claim to be restaurant during a certain part of the day and admit all ages, while claiming to be a bar during other parts of the day, admitting only adults.

Such a situation would:

- lead to confusion among the public regarding which establishments are smokefree and prevent them from making health-conscious decisions about where to patronize;
- lead to confusion among smokers regarding where smoking is allowed and where it is prohibited, leading to lower compliance;
- lead to confusion among enforcement authorities regarding which establishments should be checked for compliance because it would be unknown which establishments would have to be smokefree under the law because the enforcement authorities would not know prior to visiting an establishment whether or not an establishment was claiming to be all-ages or adult-only;
- require the enforcement authority, in order to verify compliance with the law, if an establishment is claiming to admit only adults and therefore that it should be exempt from the law, to card patrons in such establishments.

Smoke does not dissipate from an establishment the moment an establishment switches from adult-only to all-ages, or when a door opens or closes.

Furthermore, an exemption from a smokefree workplace law for adult-only venues could have an unintended consequence of causing restaurateurs to choose between families and smoking. This scenario is the only scenario that actually would prohibit potential customers from entering certain establishments, which could adversely affect revenues in those establishments adversely.

Avoid “Accommodation” in its many forms

Tobacco companies have developed public relations and political affairs strategies to convince the public and the hospitality industry that there are alternate ways to handle the secondhand smoke issue aside from creating smokefree public places. Philip Morris’ *Accommodation Program* <http://legacy.library.ucsf.edu/cgi/getdoc?tid=ehf36e00&fmt=pdf&ref=results> is the most prominent of these PR campaigns.

The details of “accommodation” language in an ordinance vary, but the result is a weak and ineffective policy. Essentially, the premise of “accommodation” that the tobacco industry tries to pitch to policymakers and business owners is that smoking should be able exist in part of an establishment without concern about harm to nonsmokers and others who deserve to be protected from this exposure. As described below, it can take many forms: a ventilation/ smoking rooms provision; a provision requiring posting of signs for places where smoking is allowed (“red light/green light”); even basic smoking and nonsmoking sections.

Accommodation through ventilation

An element of the tobacco industry’s accommodation policy is the push for ventilation in ordinances instead of going smokefree. Led by the Philip Morris *Options* program, <http://tobaccodocuments.org/pm/2081374213-4239.html>, for example, the tobacco companies’ ventilation strategy seeks to convince business owners and operators, employees, and patrons that ventilation can eliminate and protect against the health risks caused by secondhand smoke.

The truth: no ventilation system can completely remove all the poisonous toxins and gases in secondhand smoke.

Even Philip Morris, numerous air filtration and ventilation companies (such as The Sharper Image, United Air Specialists, Brookstone, Radio Shack, IQAir North America, and Honeywell), and the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) agree that ventilation does not eliminate the health risks associated with secondhand smoke exposure.

ASHRAE, an international standard-setting body for indoor air quality, adopted a Board position statement in 2005, expressing the inadequacy of air filtration and other ventilation systems at protecting against secondhand smoke related ailments^v.

Further, allowing ventilation systems makes it very difficult to strengthen the law in the future. Once business owners have made large financial investments in smoking rooms (or any kind of construction) that are permitted by law, lawmakers are highly reluctant to then strengthen the law

in the future. Going 100% smokefree not only protects employees and patrons, but it also protects business owners' bottom line for the short and long terms.

Bottom line: 100% smokefree indoor air is the only solution to the problem of exposure to secondhand smoke.

Accommodation through smoking rooms or sections

Smoking room provisions prevent future progress and do not protect anyone's health. Smoking rooms do not protect people (such as workers) in the room from secondhand smoke. In addition, they offer limited protection, at best, to those outside the room. Secondhand smoke has a non-linear dose response. This means that just because one is exposed to less secondhand smoke does not necessarily mean that one is less at risk to developing adverse health effects, such as heart disease and asthma. This means that the health dangers persist despite the appearance that the problem has been addressed with a smoking room. Remember, there is no safe level of exposure to secondhand smoke^{vi}.

Smokefree laws should create smokefree establishments, not merely require certain rooms within establishments to become smokefree. If smoking is occurring in any portion of an establishment, then for all intents and purposes, that is a smoking establishment. Research shows that purportedly "smokefree" portions of establishments that have smoking rooms measure significant levels of secondhand smoke. These types of ordinances are antiquated remnants of early work to secure smokefree venues.

Smoking rooms are just smoking sections with a door.

Research shows that the so-called "smokefree" sections of establishments with smoking rooms have significant levels of secondhand smoke present.

Indiana's first major city's smokefree workplace ordinance, enacted in Fort Wayne in the 1990's, contained a clause that allowed for smoking rooms in workplaces. At the time of its passage the Fort Wayne ordinance was a landmark primarily because it was the first of its kind here in Indiana, but also because of the strong community-based campaign that led to the ordinance's enactment. However, since that time, the science and technology regarding ventilation and smoking rooms has been studied more extensively, and we know, based on the most state-of-the-art research and best practices, that smokefree ordinances should create smokefree venues that are smokefree all throughout all the time. We have newer models of success to follow, based on principles learned from the hundreds of campaigns for smokefree air across the country that have been waged since the adoption of the Fort Wayne ordinance back in the 90s.

Accommodation through "red light/green light" provisions

Restaurants, bars, or other places do not protect anyone by simply posting their smoking policy. Such "informed consent" provisions (generally referred to as a "Red Light/Green Light" policy) does not result in any protection for nonsmokers, but merely gives the impression that something has been done to solve the problem, thus suggesting that no further legislation is necessary. Moreover, even if customers can choose between smoking and nonsmoking establishments, employees cannot.

Avoid “hours” provisions

Places that are designated smokefree should be smokefree at all times, not just certain hours of the day or days of the week. Voluntary compliance will be more difficult to achieve if a person needs a watch or a calendar to know whether the law is in effect. In such cases, enforcement will consume more time, personnel and financial resources. Also, voluntary compliance will be lower if patrons receive mixed messages regarding whether or not smoking is permitted. For example, if physical cues in an establishment indicate that smoking is permitted (the presence of ashtrays, cigarette butts, and the smell of smoke), few smokers will know that a smokefree law is in place and thus fewer smokers will comply with the law.

Such provisions are generally found with respect to hospitality venues, usually in an attempt to make a distinction in the law with respect to when minors are present. First, smokefree laws are meant to protect employees as well as members of the general public, and allowing smoking at any part of the day will expose employees to secondhand smoke. Second, smokefree laws are important for everyone, not just minors. Third, because smoke lingers in places for as long as two weeks, allowing smoking in a restaurant or bowling alley at night, but not in the morning, will result in exposure to secondhand smoke by both the morning and evening workers and customers. Lastly, these provisions create confusion and are very difficult to enforce.

Avoid “Consent” provisions

Avoid loopholes where employees are pressured into “consenting” to work in smoke-filled areas either voluntarily or contractually. This kind of provision, usually used in connection with restaurants and bars that allow smoking in separate rooms or areas, puts undue pressure on employees, particularly new employees, to either agree to endanger their health or risk losing their jobs. If a smoking room or area is created and service must be provided there, then some employee or employees will have to work there, and the employer will expect that one or more employees will volunteer for the job. If nobody volunteers, the employer will necessarily have to replace one or more employees with people who are willing to risk their health to get a job. Also, consent forms are a means for employers to evade their liability for work-related health hazards.

This kind of provision is unacceptable because it creates a situation in which peer pressure, rather than an enforceable law, is the determining factor as to whether smoking is allowed. A nonsmoker who is outnumbered by smokers in a small office, or whose supervisor smokes, may believe that he will be subject to harassment, or even termination, if he complains about others' smoking. Even some smokers may prefer to have a smokefree office, but would feel the pressure from fellow smokers to allow smoking in the office. Further, once an office develops a "smoking allowed" policy, it will be difficult for a nonsmoker to be hired without agreeing to that policy.

Minimize exemptions

Generally, smokefree air ordinances should create establishments that are free from smoke throughout the establishment at all times. Exemptions should be limited because: 1) they do not effectively protect workers and the public from secondhand smoke exposure; 2) they weaken an ordinance; and 3) they are more susceptible to legal challenges. If your language does include exemptions and allows smoking in certain places, as part of a strategic incremental approach, be sure that the places that are covered are completely smokefree entirely throughout. For example, it may be appropriate to include 100% of workplaces and restaurants, while exempting free-standing bars in full, if the plan allows you to return at a later date to include all bars. On the other hand, an undesirable and troublesome compromise would be an ordinance that makes only a portion of many establishments smokefree, while still maintaining smoking in another part of each of these establishments. Advocates are advised that it is better health policy cover a smaller number of enclosed places with smokefree provisions, but to cover those venues entirely, thus making those establishments truly smokefree, rather than requiring only a portion of all venues to become smokefree, thereby maintaining the potential for secondhand smoke exposure in every venue.

Pursue smokefree workplaces, not just smokefree restaurants

Don't exempt factories, warehouses, etc. from the smokefree workplace policy.

All employees, not just those who work in an office or in a business open to the public, should be protected from the health hazards of secondhand smoke. There is no safe level of exposure to secondhand smoke, so the argument that, because of their large size, factories and warehouses should be exempt from the law is not valid. Nor should there be any distinction in protecting people from secondhand smoke between blue-collar and white-collar workers.

Don't exempt private offices in the workplace.

Because most buildings have shared ventilation systems, smoke from a private office can travel throughout the building, exposing everyone in the building to the health hazards of secondhand smoke. Further, nonsmokers who must enter the private offices for business purposes will also be exposed to secondhand smoke.

Avoid "hardship" exemptions

Hardship exemptions should be avoided because they weaken an ordinance and are based on the false premise that negative economic impact results from smokefree air laws.

Avoid long phase-in provisions

Smokefree laws should go into effect within 30-90 days of enactment. Smokefree ordinances typically provide for some phase-in period so that the employers and businesses subject to the law can prepare for its implementation and so that the authorities can adequately prepare for

enforcement procedures. But, at the behest of restaurant and bar owners, ordinances sometimes provide for overly long phase-in periods, even for as long as two or three years. Such a long period serves no purpose other than to postpone implementation of the law as long as possible or even to allow for the possible repeal of the law before it goes into effect. Restaurants and bars can fully prepare for a smokefree law by simply putting up a few signs and removing their ashtrays. If the sense of the community is that restaurants and bars should be smokefree, then there is no reason to postpone that from happening.

Work from the inside out

Tobacco control advocates should work “from the inside out.” Prior to addressing outdoor restrictions, municipalities first should achieve comprehensive smokefree coverage of indoor environments. Attempting to pass outdoor restrictions too soon runs the risk of having your efforts ridiculed as unnecessarily harsh. Further, without strong established policies restricting smoking in all enclosed places, outdoor policies may have the unintended consequence of encouraging people to come indoors to smoke.

Remember the goal is a smokefree environment, not simply the passage of law

Sure and steady wins the race. Diligence and persistence are qualities that lead to success, whereas impatience leads to problems. Accepting a flawed policy provision as a compromise to put an end to a difficult, exhausting process may seem like a way to accomplish your objective. However, this is a shortsighted approach. **The passage of a policy for the sake of getting “something” is not our purpose in embarking on a smokefree air campaign; ultimately, we seek to achieve comprehensive protections from exposure to secondhand smoke.** It can be difficult to investing significant time and effort into a smokefree campaign only to walk away with nothing, but often times that is the best thing to do.

Don’t be afraid to walk away with nothing rather than accepting something that hinders your efforts down the road. Holding firm to your goals puts you in the seat of power and makes it possible to do a new campaign when the circumstances have changed. There are many communities who have had to re-trench, and try a different way to get the smokefree policy they wanted without the bad compromises. Educate your champions on the need to have good policy, not just any policy.

Know your deal breakers. Advocates should not be afraid to walk away with nothing or work to defeat a bad policy than to support a perceived “step in the right direction” approach that ultimately goes against the principles outlined in this document and could even prevent us from reaching our smokefree goal. It is acceptable and many times advisable to take an incremental approach toward achieving comprehensive smokefree policy coverage (one example of incremental steps toward comprehensive coverage would be first achieving a policy that creates smokefree workplaces, but exempts bars, and then working and achieving coverage of bars in a second policy campaign).

But along the way, never accept a compromise that will prevent you from reaching that ultimate goal. Preemption, ventilation/smoking rooms, “accommodation” compromises, and other such policies described herein can create roadblocks to achieving comprehensive smokefree workplace laws in the future. Be steadfast and vigilant not to accept a weak compromise now that may set your efforts back in the future.

You are the experts on secondhand smoke and smokefree air – hold firm to ensure your public health policy goals are met.

ⁱ The Health Consequences of Involuntary Smoking: 1986 Surgeon General Report (1986), U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, Rockville, MD 20857.;

ⁱⁱ National Cancer Institute. *Health Effects of Exposure to Environmental Tobacco Smoke*. Smoking and Tobacco Control Monograph no. 10, NIH publication no. 99-4645, Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. August 1999.

ⁱⁱⁱ The Guide to Community Preventive Services on Tobacco. <http://www.thecommunityguide.org/tobacco/tobac-int-smoke-bans.pdf>

^{iv} http://www.no-smoke.org/pdf/CIA_Fundamentals.pdf

^v American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE). Environmental Tobacco Smoke Position Document, 2005 Conference, ASHRAE Board of Directors

^{vi} U.S. Public Health Service’s [National Toxicology Program issued its 10th Report on Carcinogens](#). Research Triangle Park, NC: U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, December 2002.