

Fundamentals of Clean Indoor Air Policy

The following are recommended guiding principles for developing and implementing effective clean indoor air campaigns. These guidelines are based on the experiences of tobacco control advocates throughout the US over many years. Smokefree policy victories provide us with direction; setbacks and defeats are equally instructive about the dangers of which to be aware and pitfalls to avoid.

Developed by:

Americans for Nonsmokers' Rights

American Cancer Society

American Heart Association

American Lung Association

American Medical Association

Campaign for Tobacco-Free Kids

SmokeLess States

Best Practices: Policy Elements

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 the coalition’s intent in pursuing the ordinance.

The definitions of “restaurants” and “bars” raise the most questions. The principle to follow 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. Coalitions should look to the model ordinance from Americans for Nonsmokers’ Rights (ANR) for guidance in defining these two terms.

Minimize exemptions

Generally, clean indoor air ordinances should create places that are free from smoke at all times. Exemptions should be limited, since they can weaken an ordinance and making it of little value or susceptible to a legal challenge. Further, exemptions should be precisely worded so as to prevent unintended consequences.

Avoid the “minors only” trap

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. If policymakers decide to write an ordinance that includes some places and excludes others (such as restaurants and not bars), the ordinance should specifically identify those places. One implementation problem with a “minors only” provision is that an establishment could claim to be “adults only” either at certain times of the day or on certain days of the week, thereby allowing smoking. At other times, the establishment could claim to be open to all ages. (See the discussion of the problems with time- and day-specific provisions discussed below.)

Always smokefree

Places that are designated smokefree should be smokefree at all times, not 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, the smell of smoke), few smokers will know that a smokefree law is in place and thus fewer smokers will comply with the law.

Avoid hardship exemptions

Hardship exemptions are not recommended because they weaken an ordinance and are based on the false premise that negative economic impact results from clean indoor air ordinances. If policymakers insist on including a hardship exemption, there are a few points to keep in mind to prevent the clause from being exploited. First, the exemption should require applicants to demonstrate that actual hardship was caused by the ordinance; the exemption should not be based on anticipated hardship. The exemption should require applicants to provide sales receipt data to validate their claims.

The single most critical requirement is that the exemption should require establishments to demonstrate that the hardship claimed was caused by the smokefree ordinance and not attributable to poor business practices, seasonal fluctuations in retail business, or a broad downward trend in the retail sector. Finally, health advocates should seek to include a “sunset” provision stipulating that the exemption will terminate on a certain date and that it is no longer valid thereafter.

“Accommodation” and ventilation

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 is the most prominent of these PR campaigns. The details of “accommodation” language in an ordinance vary, but the result is a weak or ineffective policy.

A common type of “accommodation” language is a “red light, green light” provision stipulating that, instead of a smokefree requirement, the establishment simply posts

signs at the entrances informing patrons of the establishment’s smoking policy.

A newer twist on the tobacco industry’s accommodation policy is the recent effort to push for ventilation standards in ordinances instead of prohibitions on smoking. Led by the Philip Morris Options program, for example, the Big Tobacco ventilation strategy seeks to convince owners, operators and patrons of establishments that ventilation can alleviate the problems caused by secondhand smoke. However, no ventilation system can claim truthfully to remove health risk due to secondhand smoke, and even Philip Morris states that its Options program does not purport to address health issues. The bottom line is that the creation of smokefree environments for indoor places is the only public health policy solution to the problem of exposure to secondhand smoke.

Important Campaign Elements

“Think globally, act locally”

While smokefree air advocates seek to protect as many people as possible from the dangers of secondhand smoke exposure, there are considerations in terms of local smokefree policies versus state laws of which advocates should be aware.

- a) Local grassroots ordinance campaigns educate and mobilize local advocates, empower concerned citizens, and help change community attitudes regarding smoking in enclosed public places. The community education component in local campaigns is likely to intersect with a greater percentage of the public than state law efforts. Win or lose, the action serves as a health intervention to educate citizens regarding the health risks of secondhand smoke exposure.
- b) The tobacco industry concentrates lobbying efforts and political campaigns contributions at the federal and state levels, but it cannot maintain a presence in every city council across the country. The tobacco companies’ own internal documents describe serious concern regarding the creation of local grassroots infrastructure engaging in local campaigns. As a result, Big Tobacco has engaged in an ongoing effort to preempt local authority as its number one policy goal.

In states that have a large percentage of the population already covered by strong municipal smokefree policies, a state clean indoor air law may be the next logical step. Similarly, state smokefree legislation also may be a viable

preemption repeal strategy if proposal contains explicit anti-preemption language. The general rule to follow in pursuing a state law is that the law should set a floor, not a ceiling, and the proposal should include explicit anti-preemption language, so as not to leave open the possibility of a preemptive interpretation.

Ballot initiatives and referenda

Generally, ballot initiatives for clean indoor air present unique challenges, whether it is the state or local level. Although the public supports clean indoor air and these ballot battles can be won, the tobacco industry benefits from the fact that the political arena is ‘home turf’ and public health advocates cannot match the industry’s resources. Coalitions often lack the necessary funds or fundraising ability to counter tobacco industry ad campaigns, phone banking and other tactics. Also, Big Tobacco has a stable of political campaign professionals who can be brought into a campaign on very short notice. Along with legal challenges, referenda and initiatives are commonly used by the tobacco industry to challenge strong policies enacted by local legislative bodies. Thus, while coalitions should prioritize defending strong policies that are challenged in this manner, smokefree air advocates may want to consider the ballot box the “avenue of last resort.”

Take it to the roots

A significant and active grassroots base of support is our most potent weapon to counter the relentless and well-funded opposition from the tobacco industry. Tobacco control advocates have the expertise to draft sound smokefree policies based on successes and lessons learned from other clean indoor air campaigns across the country, while policymakers often lack tobacco control knowledge or expertise. Likewise, while policymakers are potential allies and must be solicited as sponsors of proposed ordinances, they should not be making all the decisions in a smokefree campaign. Similarly, lobbyists and political consultants should take direction from the coalition, rather than be the drivers of the policy decisions on behalf of the coalition.

Plan before you act

The planning process allows advocates to identify and strategically coordinate policy goals and objectives, legislative targets, policymakers’ pressure points, allies and opponents, available resources, relevant tactics, and roles and responsibilities within a realistic timeframe.

A strategic action plan serves as the advocates’ map, helping them navigate issues that become more challenging with every opposition tactic encountered. The written plan serves as a reference point that provides coalition members with the big picture of a complex and lengthy process.

Be realistic about necessary resources

Organizing, educating, and empowering a community to undertake a strategic policy campaign is a major endeavor. While running an inexpensive campaign is possible, coalitions should plan to acquire and use the appropriate resources — time, money, people, and expertise. Hiring or obtaining an in-kind commitment for a full-time, trained organizer to oversee the campaign can make a significant difference in a policy advocacy effort. Ideally, this individual should have extensive political experience in the community where the policy battle is being waged. Additionally, funds or in-kind resources should be committed in advance by coalition members for the following: developing and disseminating educational materials, meetings and community events (forums, rallies, etc.), telephone and fax, computers and Internet access, local travel costs, food and refreshments, etc. A key tactic in winning policy advocacy campaigns is the judicious use of assistance from national tobacco control organizations and experts who have managed winning campaigns.

Reach out

Reaching out to new or potential allies prior to the campaign planning process is critical. A variety of demographic segments of the community should be involved in all aspects of the campaign. To make the smokefree issue relevant to non-health organizations and ordinary people who can serve as volunteers, the coalition needs to be able to answer the question “what’s in it for me?”

Start with a model policy

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. ANR’s model ordinance is recommended because it is a time-tested basis for a number of strong local clean indoor air ordinances across the country.

Include expert advisors

Delegating the policy drafting process to a single individual or the city attorney can lead to unintended consequences such as the inclusion of policy flaws or ambiguous language. The more coalition members that are involved in the drafting process, the more likely a strong ordinance without compromises will be maintained. In the early stages of a smokefree campaign, coalition leadership should focus significant attention on studying model ordinances and drafting proposed language to avoid potentially flawed policy elements or implementation difficulties. Sometimes, tobacco industry language is subtle, and problematic terms may be missed if the policy is read by a small number of people.

Move in step with the community

Be sure to educate before you legislate. The coalition's policy goals should mirror the community's beliefs, values, and attitudes regarding smokefree environments. Coalitions that choose policy goals out of step with the community often cannot garner the support necessary to enact a smokefree policy. Also, after enactment, it will be more difficult to adequately defend the policy against tobacco industry attacks. Coalitions should use surveys or polls to assess public opinion on smokefree environments. If a significant gap exists between the coalition's preliminary policy goal and public opinion, then coalition efforts should be directed to public education — the key to advancing or changing public opinion. An ordinance should be attempted only after the necessary groundwork has been done to educate the community about the dangers of secondhand tobacco smoke.

Take your time and do it right

Organizing, educating, and empowering a community to plan and execute a strategic smokefree policy campaign is not something that is accomplished in a few weeks or even a few months. While there is no specific amount of time necessary, previous experience suggests that at least one year and often two is necessary to run an effective, proactive campaign. The rule of thumb is to take as much time as necessary to ensure there is sufficient support for the smokefree ordinance. This groundwork will allow the campaign to withstand tobacco industry attacks and to effectively counter opposition tactics.

Expect a curve ball from the tobacco industry

The experiences of countless campaigns show that no matter how small or isolated a community, the tobacco industry will go to great lengths to stop, overturn, or

undermine a strong smokefree policy. When entering into the crucial enactment phase of a smokefree campaign, inexperienced advocates often note that they have not seen the tobacco industry or have not experienced any direct opposition. Hopeful that the industry has somehow overlooked their efforts, these advocates often are dumfounded when the local governing body withdraws its support for a proposed ordinance or when a former ally introduces a weaker alternative.

Coalitions should develop relationships with individual allies who can inform them about 'outsiders' who are lobbying, holding meetings for restaurant owners or political organizations, phone banking or petition gathering in opposition to an ordinance. It is also important to become aware of the many opposition tactics employed by the tobacco industry and to learn how others have successfully countered them. In short, while we may hope for the best, coalitions must prepare for the tobacco industry allies to utilize significant resources and dirty tricks to thwart your clean indoor air efforts.

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 the 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.

Something versus Nothing?!

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 short-sighted approach. The passage of a policy for the sake of getting "something" is not the goal; the goal is a smokefree environment. Be wary of accepting a weak compromise now that may set your efforts back in the future. An incremental strategic approach should involve, for example, passing an ordinance requiring municipal buildings to be smokefree, followed by an ordinance covering workplaces and enclosed public places (excluding restaurants), and then an ordinance covering restaurants, etc. Thus, the incremental approach ultimately results in good public policy.