

FUNDAMENTALS OF SMOKEFREE WORKPLACE LAWS

The following national partners have agreed to these fundamental principles, in hopes that this document will help guide and maximize the impact of efforts to increase the number of workers and residents in the United States who are protected from secondhand smoke in workplaces and public places:



April, 2006

EXECUTIVE SUMMARY

This summary includes an outline of the guiding principles described within the full document. These recommendations, for developing and implementing effective smokefree policies, are based on experiences and lessons learned from tobacco control advocates throughout the country over the past several decades.

I. GUIDING PRINCIPLES

- Begin at the local level (page 2)
- Plan before you act (page 3)
- Agree on a bottom line (page 4)
- Be realistic about resources (page 4)
- Reach out to all sectors of your community (page 4)
- Take it to the Roots: Start with a strong grassroots base (page 5)
- Move in step with your community (page 6)
- Start with model policy language (page 6)
- Include expert advisors (page 7)
- Avoid ballot measures (page 7)

II. BEST PRACTICES: POLICY ELEMENTS

- Develop clear definitions (page 8)
- Minimize exemptions (page 9)
- **Deal Breakers: Avoid at all costs** (starts on page 10)
 - *Ventilation exemptions*
 - *Smoking Rooms*
 - *Red light / Green light provisions*
 - *Minors Only provisions*
 - *Hours provisions*
 - *Consent provisions*
 - *Hardship exemptions*
 - *Licensing, Fees, and Tax incentives*
- **Other provisions to avoid:** (starts on page 12)
 - *Local Opt-Out Provisions*
 - *Grandfather Clauses*
 - *Overly long phase-in provisions (over 90 days)*
 - *Sunset provisions*

III. NEVER AGREE TO PREEMPTION (page 13)

IV. ADDITIONAL CAMPAIGN ELEMENTS (page 14)

- Take your time, and follow the guiding principles.
- Expect a curve ball from the opposition.
- Something vs. nothing: No law is always better than passing a *bad law*.

As you work for smokefree air, we hope that you will read this document in full and take advantage of technical assistance and resources from national partners listed on this document. Contact Americans for Nonsmokers' Rights for a complete list of resources at 510-841-3032 or visit www.no-smoke.org.

FUNDAMENTALS OF SMOKEFREE WORKPLACE LAWS

The following document contains recommended guiding principles for developing, enacting, and implementing effective smokefree air laws that protect people from the disease and death caused by secondhand smoke. These guidelines are based on the experiences and lessons learned from tobacco control advocates throughout the country over several decades.

There is clear scientific evidence on the hazards of exposure to secondhand tobacco smoke. Smokefree laws are tools intended to protect health based upon those scientific findings. Our ultimate goal is to protect everyone from exposure to secondhand smoke, to create healthier communities, and to create a social norm where the public expects smokefree environments. Our goal is *not* to simply “get a law passed.” It’s important to remember that this process takes time, sometimes years, and persistence.

The good news about the smokefree air movement is that we are making progress! In the 1980s, laws to create *smokefree sections* were viewed as a significant step forward. In the 1990s, ordinances with *ventilated smoking rooms* were accepted. Today, we know that there is no way to ensure real health protection without making the entire indoor area *100% smokefree*. Thanks to evidence from decades of scientific research, the new generation of smokefree laws emerges stronger than ever. Today’s advocates are less likely to settle for ineffective laws containing unnecessary exemptions and loopholes.

An ineffective law ultimately goes against the principles outlined in this document and could even prevent us from reaching our smokefree goal. **It is often best, to walk away with nothing rather than to support a perceived “step in the right direction” approach.** Along the way, never accept a compromise that will prevent you from reaching that ultimate goal of 100% smokefree indoor public places and workplaces. Preemption, ventilation, smoking rooms, age provisions, and “accommodation” compromises, for example, create roadblocks to achieving 100% comprehensive smokefree workplace laws in the future. In some cases, where the community is not fully educated on the issue, taking incremental steps (starting with smokefree workplaces first, then restaurants, then stand alone bars) is a wise approach. But as we take these incremental steps, take great care to ensure these laws are still effective. In other words, areas covered under the law should be smokefree *in their entirety*. Remember the goal is to pass and implement a smokefree law that brings about true health protections and social norm change.

If you are considering the pursuit of a law at the **state level**, the same rules within this document apply. You will witness similar strategies and tactics by the opposition, and you will encounter the same arguments for certain exemptions. The main difference is that the tobacco industry and other opposition groups have more power at the state level (greater lobbying influence, more money, etc.). For this reason, and others outlined below, passing **local** policies first, where we have stronger grassroots power and influence, is still the most effective strategy for guaranteeing strong smokefree protections.

I. GUIDING PRINCIPLES

Begin at the Local Level

While smokefree air advocates seek to protect as many people as possible from the dangers of secondhand smoke exposure, it is recommended that efforts begin at the local level rather than the statewide level. There are several considerations that favor local smokefree policies versus state laws.

First, local grassroots ordinance campaigns educate and mobilize local advocates, empower concerned citizens, and help change community attitudes regarding smoking in enclosed workplaces and public places. More intensive public education is likely to occur at the community level in local than state campaigns. Win or lose, a local smokefree ordi-

nance campaign is a powerful public health intervention that increases the community's awareness regarding secondhand smoke and other tobacco issues and the community's readiness to support policy change.

Second, the tobacco industry concentrates lobbying efforts and political campaign contributions at the federal and state levels, but it cannot maintain a presence in every city council and county commission across the country. The tobacco companies' own internal documents describe their concern about being vulnerable to local smokefree policy campaigns. The documents show that the tobacco industry recognizes that, while it has more clout in state legislatures, smokefree advocates typically wield more influence at the local level. The industry has addressed this vulnerability by lobbying for the passage of state laws preempting local smokefree policies.

Even when beginning at the local level, it's important not to put the cart ahead of the horse. It is a good idea to complete a **community readiness assessment** before launching a campaign. To access this form go to <http://www.no-smoke.org/pdf/Getstart.pdf> (or call ANR at 510-841-3032).

Consider sequencing the communities selected for smokefree ordinance campaigns within a state so that the state smokefree movement experiences some early victories and avoids demoralizing defeats. This will help build momentum and will enable advocates to share successful strategies, learn from mistakes, and exchange lessons learned. Again, it is important to recognize that smokefree campaigns do not end when a law is passed, but also include working with local government bodies to implement it and defending it against opposition efforts to have it repealed or watered down.

Capital cities often pose interesting challenges and have special importance to the smokefree movement in your state. If the campaign in a capital city is effectively planned and carried out and is successful, the resulting ordinance will have high visibility and will carry symbolic weight, and government officials, and reporters at the state level who live in the capital will gain a direct appreciation of the issues and what is at stake. Conversely, if such a campaign is inadequately planned or launched prematurely and is unsuccessful, it can be a major setback for the state movement. Smokefree campaigns in state capitals are likely to be especially hard-fought because the tobacco industry recognizes the symbolic importance of the capital enacting a smokefree law and because the industry's state lobbyists are typically based in the capital city and are well-connected to local as well as state power brokers there. In addition, the local policymaking process in a large capital city can be more similar to an effort to secure passage of state legislation than to a typical local ordinance campaign, giving the industry a further advantage.

In states where a large percentage of the state population already has experience living under strong local smokefree laws, a state smokefree air law may be the next logical step. To assess whether you are ready to pursue a statewide smokefree law, complete this statewide readiness assessment www.no-smoke.org/pdf/readiness.pdf (or call ANR at 510-841-3032).

Some states have preemptive state laws, prohibiting cities and towns from passing strong local smokefree laws. If this is the case in your state, you can still work locally to overturn your preemptive state law. Start by generating support at the local level, in every corner of your state, and encourage local advocates and city councils to speak out against preemption. Then you can get down to the business of passing strong local laws. (*See Section III for information on preemption or visit www.protectlocalcontrol.org for additional resources*).

Plan before you act

A written campaign plan is an absolute must. The readiness documents mentioned above can serve as useful tools to help begin the planning process. This process allows advocates to strategically coordinate the campaign by systematically identifying 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 plan should include a clear and concise message, and coalition members should agree to stay on message at all times throughout the campaign. For information on getting started, visit www.no-smoke.org/goingsmokefree.php?id=110 or call Americans for Nonsmokers' Rights at 510-841-3032.

Agree on a "bottom line"

Advocates need to discuss and reach consensus on the coalition's bottom line, and determine what principles and provisions are non-negotiable. In other words, advocates need to decide at what point a bill becomes too weak to merit support, and becomes counterproductive, requiring the coalition to move to have the legislation killed. This discussion should happen early in the planning process. It is a good idea to put the resulting agreement in writing to ensure that backtracking does not occur in the "heat of the campaign." Often there is very little time to react to an unacceptable bill, and having a written agreement spelling out "deal breakers" can save valuable time and avoid dissension that can jeopardize both your coalition's internal cohesion and its policy objectives.

If unacceptable legislation is proposed, your coalition must speak out forcefully against the objectionable provisions. If elected officials are unwilling to strengthen the language despite your best efforts, you must mobilize your forces to actively oppose the ordinance. It is best to walk away with nothing than to be left with an ineffective ordinance that may haunt you and undermine your efforts for years to come.

The ultimate goal is to fully protect everyone from the health hazards of secondhand smoke at all times. In order to reach that goal, you might take incremental steps (starting with smokefree workplaces first, then restaurants, then bars), and that is fine. But along the way, never accept a compromise that will prevent you from reaching that ultimate goal. Preemption, ventilation, smoking areas and accommodation compromises, for example, create roadblocks to achieving 100% comprehensive smokefree laws in the future.

Ask yourself what will happen if you accept these weaker provisions today? Often, a community will pass a law even though the legislators weren't happy with the details, only to find themselves stalled when they try to strengthen the law in coming years. Again, it is better to walk away from a bad deal than to accept a law that will prevent future progress.

Be realistic about necessary resources

Organizing, educating, and empowering a community to undertake an effective 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. If at all possible, coalitions should hire or obtain an in-kind commitment for a full-time, trained organizer to oversee the campaign.

Ideally, this individual should have extensive political experience in the community where the campaign is being waged, have a personal commitment to the issue, and be able to work well with others on the coalition. In addition, funds or in-kind resources should be committed in advance by coalition members for the following: developing and disseminating educational materials, coalition meetings, community events (forums, rallies, etc.), telephone and fax, computers and Internet access, local travel costs, food and refreshments, strategic paid media, etc. A key tactic in waging successful smokefree air campaigns is the judicious use of technical assistance from national tobacco control organizations and experts who have managed winning campaigns. These outside experts can provide a larger context and share insights gained from the experiences of other communities.

Reach out to all sectors of your community

Reaching out to new allies prior to the campaign planning process is critical. A variety of demographic segments of the community should be invited to participate in the campaign from the start. Smokefree advocates across the country have engaged medical professionals, organized labor, faith communities, health organizations, hospitality workers, youth

groups, various racial and ethnic coalitions, and others. The goal is to build a coalition reflective of your community as a whole, including those most heavily impacted by secondhand smoke exposure.

To make the smokefree issue relevant to non-tobacco control organizations and ordinary people who can serve as volunteers, the coalition has to be able to answer the question “what’s in it for me?” As you discuss the issue with potential allies, look at the issue from their perspective. A local parent may be most concerned about secondhand smoke exposure and children, while union workers may be more interested in the workers’ rights angle, and your Chamber of Commerce may respond well to economic data.

Take it to the roots: Start with a strong grassroots base

A significant and active grassroots base of support is your most potent weapon to counter the relentless opposition that you can expect to encounter. As you reach out to new partners and individual advocates, keep track of their contact information in a supporters’ database. You will need a critical mass of well-organized grassroots support to get the job done. Without a database, you merely have public opinion, rather than the ability to mobilize that opinion to bring pressure to bear on policymakers to convince them to do the right thing in the face of an organized opposition.

It is important to note that the bulk of these supporters will not attend your coalition meetings. These meetings will involve a core group of coalition members who are playing leading roles in the smokefree campaign. Successful campaigns utilize a “concentric circles” organizational approach, with an **Inner Core** group that is able to draw on a larger circle of devoted **Committed Supporters**, who act as strong workhorses in the campaign. You should also have a still larger circle of **Active Supporters** whose time and involvement are limited but who are willing to turn out for a key public hearing or to contact their local council member. **Coalitions are encouraged to recruit a large number of Active Supporters, equal to 10% of your community’s total population. See diagram below:**

Building a Strategic Base of Grassroots Support



Don’t worry if your coalition meetings are relatively small; in fact, in some ways this is advantageous, since smaller meetings are typically more productive. The important thing is that you have larger circles of supporters that you can call on when necessary. It is also important that you have systems in place to communicate the latest developments to these larger circles and to solicit their input.

Grassroots volunteers can make a key contribution to your campaign. Assign tasks to volunteers based on their skills, available time, and comfort levels. Volunteers can perform a wide range of tasks, including recruiting new coalition members, keeping the pressure on policymakers, writing letters to the editor, maintaining your database, conducting door-to-door canvasses, giving presentations to community groups, hosting meetings, or even preparing food for other volunteers. Some volunteers with special skill sets can head up certain segments of your campaign such as website

development, fundraising, media advocacy, community outreach, coordination of council contact, etc.

The *quality* of your base is as important as the quantity. Strong campaigns include **grasstops** supporters as well as **grassroots** ones. These grasstops contacts should include political, business, and civic leaders from all segments of the community. Health advocates and medical experts provide powerful voices in this fight, but you will typically need support from a variety of groups in order to sway local policymakers. The broader your base of grassroots and grasstops support, the better your chances of successfully enacting, defending, and implementing a strong smokefree law.

During your community coalition meetings, it is always a good idea to spend part of the time getting some real campaign work done. Consider taking 30-minutes during every meeting to stuff envelopes, stamp action alerts, or write letters to the editor. Most advocates like to feel productive and useful, so take advantage of that enthusiasm.

NOTE: *Ordinance sponsors play a key role in terms of introducing the proposed ordinance, acting as its champion, and communicating information about developments on the local government policymaking body to the coalition leadership, but **ordinance sponsors should not call the shots in a smokefree campaign.** Similarly, lobbyists and political consultants should take direction from the coalition, rather than setting strategy or negotiating compromises in its name.*

Move in step with your community

Educate before you legislate. The coalition’s policy goals should reflect the community’s beliefs, values, and attitudes regarding smokefree environments. Coalitions that choose policy goals that are out of step with the community often cannot garner the support necessary to successfully enact, implement, and defend smokefree laws in the face of coordinated opposition from the tobacco industry and its allies. Coalitions should use surveys or polls to carefully assess public opinion on secondhand smoke and smokefree policy in their community. If a significant gap exists between the coalition’s preliminary policy goal and public opinion, the coalition should move to close this gap either by scaling back its policy objective or by allowing more time to educate the community in order to build public support for this objective. A coalition should only launch an effort to pass an ordinance after it has laid the necessary groundwork by educating the community about the dangers of secondhand smoke and the benefits of smokefree environments.

Tobacco control advocates should work “from the inside out.” Prior to addressing outdoor restrictions, communities should first achieve comprehensive smokefree coverage of indoor environments. Since people are exposed to higher levels of secondhand smoke in indoor settings than in outdoor ones, attempting to pass outdoor smoking restrictions before all indoor workplaces and public places are smokefree doesn’t make sense and from a public health perspective and could actually have the effect of leading to more smoking in indoor spaces where smoking is still permitted. In addition, such efforts may be attacked as excessive and may trigger a backlash. As more scientific evidence on levels and health effects of outdoor exposure becomes available, we may find more support for outdoor smoking restrictions on the basis that they are necessary to protect people from secondhand smoke. Until that happens, if you do find yourself faced with a proposed outdoor smoking policy, be clear about the rationale for supporting such a measure. The primary objective is to prevent smoke from drifting into smokefree buildings. If you choose to support broader outdoor measures, be clear about your rationale for achieving another legitimate public health or social aim, such as setting a positive example for youth, sending consistent messages, cutting employee health care costs, reducing litter, etc.

Start with model policy language

Avoid using another community’s ordinance as the source for the language of your smokefree ordinance. Most ordinances incorporate specific local conventions and circumstances, and reflect compromises and concessions negotiated in the course of a particular campaign. Therefore, the use of another community’s law could result in your unnecessarily

including provisions in your ordinance that could weaken its public health protections. Start instead with a time-tested model, such as the ANR model ordinance that has provided the basis for many strong local smokefree air ordinances across the country, or the models that have been tailored to several states by state-based tobacco control legal centers. Don't sell yourself short: concessions that were needed to secure passage of an ordinance in another community may not be needed in yours. For ANR's model ordinance see www.no-smoke.org/document.php?id=229 or call ANR at 510-841-3032. For model policies tailored for use in California, Maryland, Massachusetts, Michigan, Minnesota, New Jersey or Ohio, contact the Tobacco Control Legal Consortium at (651)-290-7506, tobacco@wmitchell.edu.

Include expert advisors

Delegating the ordinance drafting process to a city attorney or another government official can lead to the inclusion of flawed or ambiguous language. Involving the coalition leadership in the drafting process increases the chances that this process will result in a strong, watertight, straightforward ordinance that is easy to implement and enforce. From the earliest stages, the drafting group must combine expertise in tobacco control with legal expertise and familiarity with local law and procedures. Consider consulting with national tobacco control organizations (such as the Tobacco Control Legal Consortium) and legal experts, and look for opportunities to engage with the city or county attorney, to cultivate a positive working relationship that will serve you well as the debate heats up. A small difference in language can make a big difference in the way an ordinance is interpreted and implemented, and it is easy to overlook problematic terminology or provisions if only one or two people read the ordinance, especially if they are doing so under time pressure. **You should always have outside tobacco control policy and legal experts review the proposed ordinance.**

Avoid ballot measures

Advocates new to the smokefree indoor air movement often wonder why they should bother trying to convince local elected officials to enact a strong smokefree indoor air ordinance when they could put the matter on the municipal ballot and let voters decide. The answer to this question is found in the experiences of smokefree advocates around the country, which indicate that ballot initiatives are NOT the preferred method to enact local and state smokefree laws. **Ballot measures are NOT a short cut that enables you to avoid going through the arduous, time-consuming process of conducting a traditional city council-centered smokefree campaign. If they were, more communities would take this route. Rather, ballot measures are a last-ditch option to turn to when all other approaches have failed.**

It is important to note that public opinion data showing public support for smokefree laws does not automatically translate into victory at the polls. The winner is determined, not by poll results, but by voter turnout. **The perceived benefits of using the ballot as a public health tool come at a significant cost, as the election process provides the tobacco industry with several significant advantages:**

- Political Experience.** While a smokefree ballot issue is in most cases a new activity for a local coalition, tobacco companies and their consultants have extensive experience with political campaigns. During a ballot initiative campaign, the tobacco industry employs professional campaign tactics that are difficult for a novice to counter: hiring savvy political operatives, sending out direct mail pieces, conducting massive phone banking, airing extensive paid television and radio ads, etc.

- Money.** Big Tobacco has deep pockets. Keep in mind that the tobacco industry can significantly outspend a smokefree coalition when it comes to funding expensive ballot initiative campaigns. As taxable entities, tobacco companies and their front groups and allies have fewer restrictions on how they use their money than do many non-profit agencies.

City councils, county commissions, and local boards of health have enacted the vast majority of smokefree ordinances in the United States. Ballot initiatives have been used successfully in those rare instances when local elected officials

refused to take action despite significant community education and mobilization efforts by a coalition as part of a traditional council-based smokefree ordinance campaign.

Sometimes, a measure is placed on the ballot by the opposition in an attempt to overturn a newly enacted smokefree ordinance. In that case, smokefree advocates have no choice but to fight to preserve the ordinance. It is becoming more and more difficult to overturn laws that have already been enacted, as public awareness of the dangers of secondhand smoke has increased. However, local coalitions will still need to invest substantial time and money in a campaign to ensure that they successfully defend the ordinance at the polls.

Advocates are urged to work on traditional council-based ordinance campaigns. These campaigns play to the strengths of grassroots smokefree advocates, and are the most likely to be successful.

In recent years, there have been several statewide ballot measures for smokefree laws. State initiatives are exponentially more costly and hold greater risk than local campaigns. Also keep in mind that opposition groups may petition to have a weaker deceptive version on the same statewide ballot, to offer a version that appears “more reasonable” to the public. This could trigger serious challenges for any state ballot campaign.

Statewide ballot campaigns were successful in both Washington and Florida, because advocates in these states planned ahead. Before they decided to go forward, they had enough money in the bank and ample volunteers in their database, to achieve victory. Before you decide on a state ballot campaign, consider this. Starting with strong poll numbers and a solid strategic plan, even the smallest state would require over a million dollars to get the job done. Where possible, it is still cheaper, easier, and less risky, to take the local approach and work with city and county governments to achieve smokefree air.

II. BEST PRACTICES: POLICY ELEMENTS

Develop clear definitions

When it comes to smokefree ordinances, the “devil is in the details.” Clear, consistent definitions of terms are critical for ensuring that the ordinance is interpreted, implemented, and enforced in ways that effectively protect nonsmokers from secondhand smoke.

Definitions for restaurants and bars: The definitions of “restaurants” and “bars” typically raise the most issues since these venues tend to be the major focus of debate and opposition. The guiding principle should be that a restaurant is an establishment whose primary function is the consumption of food, with the consumption of alcoholic beverages being incidental. Likewise, a bar is an establishment whose primary function is the consumption of alcoholic beverages, with the consumption of food being incidental. A “restaurant” should be defined as including any bar area within it. An establishment is either a bar or a restaurant, not both. A restaurant must be smokefree in its entirety in order to effectively protect nonsmoking workers and patrons from secondhand smoke. Smoking rooms and ventilation systems do not provide meaningful health protections. In these definitions, as with all others, however, you will need to take into account any existing terminology in your state and local laws, to avoid unintended conflicts.

Do not include unnecessary definitions: Do not define a term without using it in the substantive section of the ordinance. Defining terms without actually using them creates confusion as to what settings the ordinance covers. For example, if you define “bar” and the ordinance states that public places are smokefree without mentioning bars, there will be uncertainty as to whether the ordinance applies to bars.

Use clear, concise, and consistent language: Ambiguous or contradictory language leads to interpretation and enforcement problems, and makes it more likely that the ordinance will be challenged in court. Examples of this include making restaurants smokefree but exempting bars without clearly indicating whether the exemption includes bar areas

within restaurants, and both including a place under the smoking restrictions and exempting it from those restrictions. When in doubt, spell it out.

For the recommended definitions from Americans for Nonsmokers' Rights "Model Ordinance", see www.no-smoke.org/pdf/modelordinance.pdf (or call ANR at 510-841-3032). Local legal counsel should be brought in to assist with drafting language, to ensure that your proposal does not conflict with laws already on the books. Finally, engage personnel from the local enforcement agency and the city or county attorney's office, in the policy development process from the start. These personnel can identify potential problems based on their experiences with interpreting and enforcing other local laws. Engaging these stakeholders and asking for their advice before the ordinance is enacted also gives them buy-in and may lead them to be more supportive of the ordinance during the implementation phase (including in the event of opposition legal challenges).

Minimize exemptions

Smokefree ordinances should create places that are completely free from smoke. Exemptions should be limited because they do not effectively protect workers and the public from secondhand smoke exposure, because they make the ordinance more difficult to interpret and implement, because they make the ordinance more susceptible to legal challenges, because they lead some types of businesses to feel that the ordinance places them at a disadvantage relative to other types of businesses, and because they weaken the public health case for the ordinance. If your language does include exemptions and allows smoking in certain places as part of a strategic incremental approach, make sure that the places that are covered by the law are completely covered. For example, it may be appropriate to require that workplaces and restaurants be 100% smokefree while exempting freestanding bars from any smoking restrictions until public opinion in your community is prepared to support extending the ordinance to make bars smokefree as well.

Don't exempt factories, warehouses, etc. from the smokefree workplace law. 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. Blue-collar workers deserve the same health protections as white-collar workers. There is no safe level of secondhand smoke exposure, so the argument that factories and warehouses should be exempt from the law because of their size is not valid.

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. In addition, nonsmoking workers who must enter the offices as part of their jobs (e.g., custodians) and members of the public who must enter them for business purposes will also be exposed to secondhand smoke.

Avoid other unnecessary exemptions. Exemptions for *private clubs (with employees), tobacco retail shops, cigar bars, and hookah bars** are no longer the norm. The tobacco industry and other opposition groups continue to assert that these establishments warrant exemption. In reality, these businesses are no different than any other workplace or public place. All employees, no matter where they are employed, deserve the right to breathe safe, clean air at work. Opposition groups have taken full advantage these exemptions, stretching and testing the definitions in an effort to allow smoking in everyday bars. For example, Chicago's smokefree law contains an exemption for tobacco retail shops. So tobacco giant RJ Reynolds opened up a bar that fell under the definition of *tobacco retail shop*. The creation of this tobacco shop and bar was simply a deceptive tactic to circumvent the new smokefree law. In order to prevent loopholes like this in your area, it is best to avoid all exemptions for tobacco retail shops, cigar bars, and hookah bars*. Again, these are workplaces, too.

*A "*hookah bar*" is a place where patrons can purchase flavored tobacco and rent a water pipe with which to smoke it. Many hookah bars also sell food and drinks. Hookah bars appealing to young adults may sell alcohol as well, although more traditional hookah bars do not.

Deal Breakers: So-called “compromises” to avoid at all costs

If any of the following provisions are inserted in your ordinance at the eleventh hour, it is vital that you walk away. You can still claim a victory for defeating a bad ordinance that would have compromised the health of workers and the public, offered false reassurance, and stood in the way of future efforts. **Remember, no law is better than a weak or ineffective law.**

Do Not Accept Ventilation

Bottom line: *There is no safe level of secondhand smoke exposure – even brief exposures can be harmful. 100% smokefree indoor environments are the only solution to the problem of exposure to secondhand smoke.*

One element of the tobacco industry’s strategy is to present ventilation technology as a “reasonable” alternative to making workplaces and public places smokefree. The Philip Morris *Options* program, <http://tobaccodocuments.org/pm/2081374213-4239.html> for example, the tobacco companies’ ventilation strategy sought to convince policymakers, business owners and operators, employees, and patrons, that ventilation systems eliminate the health risks caused by secondhand smoke. In addition, internal British American Tobacco documents reveal the company knew from internal tests that air filtration or ventilation systems were ineffective, yet still promoted this technology to the hospitality industry as a viable option to smokefree laws.

No ventilation system can completely remove the cancer-causing and toxic chemicals in secondhand smoke.

In 2005, ASHRAE, an international standard-setting body for indoor air quality and ventilation, adopted a position document on approaches to controlling secondhand smoke, which states unequivocally, that “At present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity.” *The full document* can be accessed at www.ashrae.org.

In some cities, opposition groups have advocated for a loophole where if “*future ventilation technology*” can remove secondhand smoke to “*an acceptable level*”, smoking shall be allowed indoors. Do not agree to these types of amendments. They are unacceptable and provide an opening for future holes in your law.

Don’t settle for separately enclosed and/or separately ventilated smoking rooms. They do not effectively protect health and they make future progress more difficult. This approach does not protect people inside the smoking rooms (such as service workers or custodians who must enter the rooms as part of their jobs or patrons who smoke there) from secondhand smoke. In fact, people in these rooms – nonsmokers and smokers alike – are often exposed to especially high levels of secondhand smoke.

In addition, including an exemption for smoking rooms or any type of ventilation provision makes it more difficult to strengthen the law in the future. Once business owners have invested money in smoking rooms, other structural modifications, or expensive ventilation systems in order to continue to allow smoking while complying with the law, they are likely to resist revisiting the law, and lawmakers are also likely to be reluctant to do so. Also, smaller restaurants and bars that cannot afford or lack the space to take advantage of these exemptions often feel that the law is placing them at a competitive disadvantage relative to their larger counterparts. In contrast, going 100% smokefree costs nothing.

Do Not Accept “Accommodation”

Tobacco companies have mounted a sophisticated public relations offensive to convince the public and the hospitality industry that several alternative “solutions” to the problem of secondhand smoke are available that stop short of requir-

ing workplaces and public places to go smokefree. Philip Morris' *Accommodation Program* is the most prominent of these PR campaigns. "Accommodation" provisions can take a number of different forms, but the result is always the same: a weak and ineffective law. Common accommodation provisions include:

"Red Light/Green Light" Provisions:

Under "Red Light/Green Light" provisions, restaurants, bars, and other businesses can fulfill their obligations by simply posting signs stating their smoking policy. Businesses are not required to prohibit or restrict smoking. The rationale is that the signs give the public fair warning that businesses allow smoking, and that those who choose to patronize the businesses any way know what they are getting into. "Red Light/Green Light" provisions give the impression that something has been done to address the problem of secondhand smoke without providing nonsmokers with any actual health protections. Moreover, even if customers can choose between smoking and nonsmoking establishments, employees in most cases cannot. The "Red Light/Green Light" approach is in line with the tobacco industry's broader mantra that smoking and secondhand smoke exposure are adult "choices." This claim runs counter to a basic premise of the nonsmokers' rights movement which holds that nonsmokers generally do not have a choice about breathing other people's smoke, especially in the workplace. Service workers and customers should not have to step outside in order to breathe.

"Minors Only" Provisions:

"Minors only" provisions prohibit smoking only in settings where minors are present. Smoking is permitted in restaurants, bowling alleys, and/or other hospitality businesses as long as these venues are off-limits to minors. These provisions are inconsistent with the purpose of smokefree laws, which is to protect all people from secondhand smoke. After all, secondhand smoke is harmful to adults as well as minors, and to employees as well as patrons. All people, regardless of their age, deserve to be protected from the health risks posed by secondhand smoke. Again, this approach fits into a larger tobacco industry strategy of framing tobacco use and secondhand smoke as youth issues, instead of health issues that affect everyone.

An additional problem with this approach is that they sometimes allow businesses to claim that they are open to adults only and smoker-friendly at certain times, while being open to customers of all ages and prohibiting smoking at other times. This approach fails to provide even minors with complete protection from secondhand smoke, is confusing, and causes enforcement headaches. (See the next section for further information.)

Hours Provisions:

Hours provisions allow smoking in restaurants, bowling alleys, and/or other hospitality businesses during certain times, while prohibiting smoking at other times. **There are at least four problems with provisions of this type.** First, they do not provide meaningful protection against secondhand smoke. In order to protect nonsmokers' health, indoor settings need to be smokefree at all times. The chemicals in secondhand smoke linger in a building for days after smoking has occurred. If a restaurant or bowling alley allows smoking at night, employees and customers who are in the venue the following morning will be exposed to these chemicals, even if no smoking is allowed at that time. Secondly, patron compliance is likely to be lower if physical cues in a business (for example, the presence of ashtrays and discarded cigarette butts and the smell of smoke) suggest that the business permits smoking. Thirdly, checking whether a venue is in compliance becomes more difficult if a citizen or an enforcement agency needs a watch or a calendar to know whether smoking is allowed. Finally, hours provisions are often intended to prohibit smoking at times when minors are present. As described in the previous section, this approach brings with it an additional set of problems.

Consent Provisions:

Consent provisions allow smoking if all employees in a business consent. Workers are asked to give their consent to working in a smoking area or room, or to allowing smoking throughout the workplace. The problem with this approach is that employees - especially employees, who are new, lack education, are undocumented immigrants, or are vulnerable in other ways - can be pressured into "consenting" to work in smoke-filled areas either voluntarily or contractually (by signing a contract as a condition of employment). Employees may fear that they will be discriminated against or ha-

passed by the business proprietor, their supervisor, or their fellow employees – or even lose their job – if they refuse. **Workers should not be put in a position where they must choose between jeopardizing their health or their jobs.** After all, as long as a smoking room or area exists and service must be provided there, some employees will have to work there. Employees also sometimes use consent forms to try to evade legal liability for health conditions that employees develop as a result of being exposed to secondhand smoke on the job.

Don't Fall Victim to False Economic & Business Arguments

Avoid “Hardship” Exemptions:

Hardship exemptions allow restaurants, bars, or other hospitality businesses to obtain a waiver from complying with a smokefree law because doing so has supposedly caused them economic harm. **These exemptions should be avoided because they create a loophole, establish a favored class of businesses, and can lead to inconsistent application of the law.** In addition, these provisions are based on the false premise that smokefree laws have a negative economic impact on restaurants and bars. Peer-reviewed studies that examine objective measures such as sales tax receipts and employment levels have consistently found that this is not the case. If policymakers insist on a hardship exemption, you can limit the resulting damage by requiring applicants for this exemption to demonstrate that they actually experienced economic hardship. They should document this by providing sales tax receipts. Applicants should also be required to demonstrate that the significant economic hardship they experienced was caused by the smokefree law and not by other factors, such as poor business practices, seasonal business fluctuations, or a broad trend in the retail sector. Finally, hardship exemptions should only be valid for a limited period of time (no more than a year) and should not be renewable.

For more information regarding hardship clauses, see “Hardship Exceptions to Smoking Ordinances” from the Tobacco Law Center (Call ANR at 510-841-3032 for a copy).

Avoid Licensing, Fees, and Tax Incentives

Special licenses and permits:

This approach allows restaurants or other hospitality businesses to allow smoking if they purchase a license or permit or pay some other sort of fee. In effect, this gives a business a license to harm the health of its employees and customers. 100% smokefree laws are meant to protect all employees and customers, not merely those in businesses that can't afford or don't choose to pay such a fee.

Tax incentives:

This approach is the flip side of the previous one. Instead of imposing fees on restaurants or other hospitality businesses that allow smoking, it **provides tax incentives to businesses that voluntarily go smokefree.** Like the previous approach, this approach does not require any business to prohibit smoking, but merely creates a financial incentive for them to do so. Tax incentives reward businesses for doing something that they should be required to do in any case, namely protecting the health of their employees and customers. Like the various accommodation provisions discussed above, these provisions offer false reassurance, giving the impression that the problem of secondhand smoke has been solved without actually doing so. Again, to be effective smokefree laws should protect ALL employees and customers in ALL businesses. Other Provisions

Other Provisions to Avoid

Local opt-out provisions:

These provisions **allow local government bodies to ignore a statewide law** if a majority of the registered voters in the municipality vote to do so. The elected leaders of the local jurisdiction or a certain percentage of its registered voters in the municipality could place a measure on the ballot that would allow the community to “opt out” of the statewide smokefree law.

Allowing local jurisdictions to ignore state smokefree laws denies health protections to a portion of the state's population. It also violates a fundamental principle. Statewide smokefree laws should provide the floor for local smokefree laws, not the ceiling. Local laws should be used to strengthen these important public health measures, but not to weaken them. Municipalities aren't allowed to ignore other state public health measures such as laws and regulations on sanitary food preparation practices and drunk driving.

Grandfather clauses:

These provisions **establish separate rules for restaurants, bars, or other hospitality businesses based on the date that they obtained their operating permit.** By grandfathering in establishments that have a permit as of a particular date, this locks in a two-tier system of smoking restrictions. It is unfair to employees and customers of older establishments to deny them the health protections that apply in newer establishments. Again, smokefree laws are only effective when they make all businesses in a given category smokefree. In addition, these provisions may open the door to legal challenges by business proprietors who claim that their businesses are being placed at a competitive disadvantage and point out that the provisions are not based on legitimate public health grounds.

Long phase-in provisions:

Smokefree laws typically provide for a phase-in period (30-90 days) to allow employers and businesses time to prepare for the law, and for the designated enforcement agency to prepare to implement and enforce it. At the behest of restaurant and bar owners, ordinances sometimes provide for overly long phase-in periods of up to two or three years. Such a long phase-in period simply postpones implementation of the law as long as possible to allow opponents to mobilize to try to have the law repealed or watered down before it goes into effect. It shouldn't take much time for restaurants and bars to prepare for a smokefree law: in most cases this involves simply putting up a few signs and removing ashtrays.

Keep in mind, **you'll want to avoid implementing a smokefree law on January 1st.** This would make your new law effective at midnight on New Year's Eve, just as patrons are ringing in the New Year at local bars. For obvious reasons, this is not the best time to start enforcing a new law. Also avoid dates like Superbowl Sunday and St. Patrick's Day. In colder climates, it is also best to avoid implementation dates during the coldest winter months.

Sunset provisions:

A "sunset provision" stipulates that a law will expire on a certain date unless it is renewed and carries with it the inference that there is some reason to revisit the law, perhaps in order to ensure that the law is not having an adverse economic impact or other negative effects. Sunset provisions also place the burden on the public health community to prove that the law is working successfully and to advocate for its renewal. Public health measures should be permanent, and should not be left vulnerable to political pressures to allow these measures to expire. Advocates should not be forced to fight the same battle over and over again.

III. NEVERAGREE TO PREEMPTION

Preemption is a provision at one level of government that precludes lower levels of government from addressing an issue, or from enacting stronger laws on an issue than exist at the higher government level. Over the past 15 years, one of the tobacco industry's favorite tactics has been to lobby state legislatures to preempt local smokefree laws. Where successful, as it has been in a number of states, this tactic shifts the struggle for smokefree air from local jurisdictions, where grassroots smokefree advocates are more likely to have the upper hand, to the state legislature, where the tobacco industry typically wields substantial influence. Advocates in states where local smokefree ordinances have recently been passed for the first time, where a flurry of local ordinances has recently occurred, or where a smokefree ordinance has recently been enacted in the capital city should be on special guard for attempts to preempt local smokefree activity. These attempts are often stealthy, employing technical, unclear language, bills that are placed on the fast track by the legislative leadership with few committee assignments and no public notice, and amendments or riders that are tacked on to unrelated bills. The tobacco industry's push for preemption is a tribute to our success at the local

level. **Preemption is unacceptable and should be avoided at all costs.**

Local control is at the heart of our broader goal of educating the public about the health effects of secondhand smoke and changing social norms. Debates over proposed local smokefree ordinances typically generate extensive media coverage, letters to the editor, town hall meetings, and city council hearings, all of which increase public awareness of secondhand smoke and tobacco issues and public support for smokefree laws.

For further information on preemption, visit the Protect Local Control website supported by Americans for Nonsmokers' Rights and the American Cancer Society, at www.protectlocalcontrol.org

IV. ADDITIONAL IMPORTANT CAMPAIGN ELEMENTS

Take your time and follow the principles.

Organizing, educating, and empowering a community to plan and execute a successful smokefree air campaign is not a short-term project. There are no short cuts, and no way to cut corners. If you are serious about conducting a smokefree campaign, you need to do it right, and that takes time. Running an effective campaign from education through ordinance passage typically takes a minimum of one year. It may well take longer. You will not be able to predict in advance how long it will take to succeed. The general rule of thumb is to take as much time as necessary to ensure that you have mobilized sufficient organized public support for the smokefree ordinance. And during the campaign, it will be a full-time commitment for the local coalition, and especially for its leadership. The coalition should not plan to take on any other projects during this period; you will need to focus all your energy on the smokefree campaign if you want to be victorious. An effective smokefree campaign is really two campaigns in one: a public education campaign and a sophisticated political campaign. Both components require careful planning, hard work, and the discipline to stay on task and on message.

You also need to recognize going in that your work will not end when the law passes. At that point you will need to shift gears to focus on implementing the ordinance and defending it against opposition efforts to have it repealed or weakened. These are also full-time tasks that will require your attention for an extended period. A sustained commitment will be needed to ensure that the ordinance successfully weathers opposition attacks and the many weapons in the tobacco industry's arsenal.

Expect a curve ball from the Opposition.

The experiences of countless campaigns show that no matter how small or isolated a community, the tobacco industry, their allies, and other organized opposition groups will go to great lengths to prevent, overturn, or undermine the enactment and implementation of a strong smokefree law. When entering into the crucial enactment phase of a smokefree campaign, inexperienced advocates often note that they have not seen any signs of the tobacco industry or of organized opposition. Hopeful that the industry has somehow overlooked their efforts and that the ordinance can be quickly and quietly enacted without resistance, these advocates are caught by surprise when major opposition surfaces at the eleventh hour, prompting the city council to back away from the ordinance, or when it turns out that opponents have been active behind the scenes, resulting in ordinance language that is fatally compromised.

The industry often works to operate beneath the radar, since it has essentially no credibility at the community level. The fact that it is not visible does not necessarily mean that it is absent. It is important not to underestimate the industry's awareness of local smokefree policy efforts or its determination to oppose them. It is also important not to underestimate the influence and tenacity of local opponents of the proposed smokefree ordinance who may not be directly connected to the tobacco industry. **The bottom line is that there are NO short cuts to enacting smokefree ordinances.** There is invariably resistance, there is invariably a fight, and victory invariably takes time. Precisely because smokefree ordinances have such a significant, lasting impact on a community's culture and norms, they don't come easy.

Coalitions should develop relationships with city council “insiders,” local business contacts, and other allies who can inform them about “outsiders” who have suddenly surfaced following the introduction of a smokefree ordinance and who are lobbying, holding meetings with restaurant owners or political organizations, helping create new restaurant or hospitality associations, phone banking, conducting “push polls,” or petition gathering in opposition to an ordinance. It also is important to become aware of the many tactics that the tobacco industry uses to fight smokefree ordinances and to learn how others have successfully countered these tactics. Opposition is likely to be especially fierce in the first community in a state to consider a strong smokefree ordinance, and in a state’s capital city.

Something versus Nothing?!

When it comes to smokefree policy campaigns, sure and steady wins the race. Diligence and perseverance are keys to success, whereas impatience can lead to premature action that ends in defeat. It may be tempting to accept a concession that will fatally undermine your ordinance as the necessary price to bring a lengthy, frustrating process to a close. However, this is a shortsighted approach. **Remember: your goal is not to pass a law, but to effectively protect the public from the health effects of secondhand smoke and to change social norms.** It can be very difficult after investing so much time and resources into a smokefree campaign to walk away with nothing, but often that is the best thing to do. **Don’t be afraid to walk away with nothing** rather than to accept something that hinders your future efforts.

There are many communities that have had to retrench, and try a different way to get the smokefree law they wanted without the bad compromises. Educate your champions on the need to have a good law, not just any law. Tell them that you expect them to only lend their support to bills that effectively protect nonsmokers from secondhand smoke. Make clear to them that you expect them to withdraw a bill if it is amended to include unacceptable provisions, and that should this occur you will mobilize your forces to kill the bill. **An incremental strategic approach is recommended over accepting “poison pill” provisions such as ventilation, smoking areas, bad exemptions, or preemption.** For example, a community could first pass an ordinance requiring municipal buildings to be smokefree, then extend this ordinance to cover workplaces and enclosed public places (excluding restaurants), then extend it further to cover restaurants, then extend it yet further to cover bars. (Alternatively, depending on the level of public awareness and readiness in your community, you might be able to take several of these steps at once.) If pursued strategically, the incremental approach can ultimately achieve the goal of providing meaningful health protections in all workplaces and public places, without making fatal compromises along the way in an attempt to accelerate the process. The incremental approach also depends on carefully assessing public opinion in your community and proceeding accordingly. If you choose to take incremental steps, however, you should make it clear to the media, the public, and elected officials that your ultimate goal is a comprehensive 100% smokefree law.

Smokefree laws are one of the most powerful weapons in the arsenal of tobacco control practitioners. If you pursue them strategically, drawing on the principles and lessons outlined above, you can reap major benefits for your community. In addition to protecting all people from secondhand smoke exposure, smokefree laws also help smokers quit and change norms about the social acceptability of smoking - which is why the tobacco industry and its allies oppose them so bitterly.