

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:



AMERICANS for
NONSMOKERS'
RIGHTS



American
Public Health
Association



National African American
Tobacco Prevention Network



November 2009

FUNDAMENTALS OF SMOKEFREE WORKPLACE LAWS

Executive Summary & Index

2009

This summary includes an outline of 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.

OVERVIEW

I. GUIDING PRINCIPLES

- | | |
|------------------------------------------------------------------------------------|---------------|
| <input type="checkbox"/> Begin at the local level | <i>page 1</i> |
| <input type="checkbox"/> Plan before you act | <i>page 2</i> |
| <input type="checkbox"/> Agree on “dealbreakers” | <i>page 3</i> |
| <input type="checkbox"/> Be realistic about resources | <i>page 3</i> |
| <input type="checkbox"/> Take it to the Roots: Start with a strong grassroots base | <i>page 4</i> |
| <input type="checkbox"/> Move in step with your community | <i>page 5</i> |
| <input type="checkbox"/> Start with model policy language | <i>page 7</i> |
| <input type="checkbox"/> Include expert advisors | <i>page 7</i> |
| <input type="checkbox"/> Avoid ballot measures | <i>page 8</i> |

II. DRAFTING PRINCIPLES (*language*)

- | | |
|----------------------------------------------------------------------|----------------|
| <input type="checkbox"/> Develop clear definitions | <i>page 9</i> |
| <input type="checkbox"/> Use clear, concise, and consistent language | <i>page 9</i> |
| <input type="checkbox"/> Cover all workplaces | <i>page 10</i> |

III. NEVER AGREE TO PREEMPTION

page 11

IV. DEALBREAKERS: *Provisions to avoid at all costs*

- | | |
|-----------------------------------------------------------------|----------------|
| <input type="checkbox"/> Ventilation exemptions | <i>page 12</i> |
| <input type="checkbox"/> Red light / Green light provisions | <i>page 12</i> |
| <input type="checkbox"/> Minors Only provisions | <i>page 13</i> |
| <input type="checkbox"/> Hours provisions | <i>page 13</i> |
| <input type="checkbox"/> Consent provisions | <i>page 13</i> |
| <input type="checkbox"/> Hardship exemptions | <i>page 14</i> |
| <input type="checkbox"/> Opt Out exemptions | <i>page 14</i> |
| <input type="checkbox"/> Licensing, Permits, and Tax incentives | <i>page 14</i> |
| <input type="checkbox"/> Sunset provisions | <i>page 15</i> |
| <input type="checkbox"/> Trigger provisions | <i>page 15</i> |

V. ADDITIONAL PROVISIONS TO AVOID

- | | |
|----------------------------------------------------------------------------------|----------------|
| <input type="checkbox"/> Exemptions for membership organizations (Private Clubs) | <i>page 16</i> |
| <input type="checkbox"/> Tobacco shop, cigar bar and hookah exemptions | <i>page 16</i> |
| <input type="checkbox"/> Exemptions for casinos and gaming establishments | <i>page 16</i> |
| <input type="checkbox"/> Grandfather Clauses | <i>page 17</i> |
| <input type="checkbox"/> Long phase-in provisions (over 90 days) | <i>page 17</i> |

VI. ADDITIONAL CAMPAIGN TIPS

page 18

As you work for smokefree air, we hope you will read this document in full and take advantage of technical assistance and resources from national partners listed within 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

2009

OVERVIEW

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.

Smokefree laws are tools intended to protect public health based on clear scientific evidence about the hazards of exposure to secondhand tobacco smoke. Our ultimate goals are 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 objective is *not* simply to “get a law passed.” It is important to remember that meeting these goals within your community takes time – sometimes years – and persistence.

The good news about the smokefree air movement is that we are making extraordinary 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 entire indoor areas *100% smokefree*. Thanks to evidence from decades of scientific research, including the 2006 Surgeon General’s Report, a new generation of smokefree laws has emerged stronger than ever. Today’s advocates are less likely to settle for ineffective laws containing unnecessary exemptions and loopholes.

Ineffective laws violate the principles outlined in this document and can even prevent us from reaching our smokefree goal. **It is best to agree at the outset to walk away with nothing rather than to support a perceived “step in the right direction” approach.** Remember, the goal is to pass and implement smokefree laws that both effectively protect people from the health hazards of secondhand smoke and make smokefree air a social norm.

If you are considering the pursuit of a law at the **state level**, the same rules within this document apply. For reasons outlined below, passing **local** laws first, where we have stronger grassroots power and influence, is still the most effective strategy for guaranteeing strong smokefree protections. In states where stronger laws can’t be passed due to preemption, repeal of preemption should be a primary goal.

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 if possible. There are several considerations that favor local smokefree laws 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 during a local campaign than would occur in a state campaign. Win or lose, a local smokefree ordinance campaign is a powerful public health intervention that increases the community's awareness of secondhand smoke and other tobacco issues and energizes the community's readiness to support policy change.

Second, the tobacco industry concentrates most of its lobbying efforts and political campaign contributions at the federal and state levels; 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 campaigns for local smokefree laws. 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 laws. Keep in mind at every level the industry uses online strategies to recruit their customers to protest smokefree initiatives.

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. For an assessment form, go to <http://www.no-smoke.org/pdf/Getstart.pdf> or call Americans for Nonsmokers' Rights (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. The campaign includes working with local government bodies to implement and defend the law against opposition efforts to have it repealed or watered down.

Capital cities often pose interesting challenges and have a special importance to the smokefree movement in your state. If the campaign in a capital city is effectively planned and successfully carried out, the resulting ordinance will have high visibility and will carry symbolic weight. 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. If such a campaign is unsuccessful due to inadequate planning and lack of community readiness, 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. The industry's state lobbyists are typically based in the capital city and are well connected to both local and 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, towns, and counties 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 assessment documents mentioned above can serve as useful tools to help begin the planning process. Completing an assessment 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 campaign action plan serves as the advocates' roadmap, 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 ANR at 510-841-3032.

Agree on your “deal breakers”

Advocates and organizations 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 proposed ordinance becomes too weak and counterproductive to merit support – 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. 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. (See Dealbreakers section for a full discussion of "deal breakers.")

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 need to take incremental steps (starting with smokefree non-hospitality workplaces and restaurants, then bars and gaming facilities). **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% 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. The evidence is clear on this point. **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 coordinate the campaign.

Ideally, an organizer 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.), telephones, computers, website development and support, action alerts, local travel costs, food and refreshments, meet-ups, online social networking sites, 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.

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, musicians about smokefree bars, unions about workplace safety, and your Chamber of Commerce may respond well to healthcare cost or 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, sometimes intimidating, opposition you can expect to encounter. As you reach out to new partners and individual advocates, keep track of their contact information in a database of supporters. You will need a critical mass of well-organized community 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 and convince them to do the right thing in the face of an organized opposition.

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. For example, smokefree advocates across the country have engaged the following groups in their smokefree campaigns:

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">- medical professionals- faith communities- young adults- musicians and entertainers- restaurant, bar, and casino employees- civic organizations- hospitality business owners | <ul style="list-style-type: none">- organized labor- racial and ethnic coalitions- environmental organizations- health organizations- business owners- <i>LGBT (lesbian, gay, bisexual, transgendered) groups</i> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The goal is to build a coalition reflective of your community as a whole, including those most heavily impacted by secondhand smoke exposure.

It is important to note that the bulk of your 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 use a “concentric circles” organizational approach, with an ***Inner Core*** group that is able to draw on a larger circle of ***Committed Activists***, who act as strong hands-on workers 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 respond to action alerts and 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:*



Don't worry if your coalition meetings are relatively small. In fact, in some ways this can be advantageous, since smaller meetings are typically more productive. The important thing is that you have larger circles of supporters to call on when necessary. It is also important that you have systems in place (email list or group, campaign website or blog) to communicate the latest developments to supporters and to solicit their input and keep them engaged.

Grassroots volunteers can make a key contribution to your campaign. The best way to keep volunteers involved is to assign tasks 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 website and 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, volunteer recruitment, 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 wide 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. Your coalition should. 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 allow more time to educate the community and 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 have effective smokefree laws for indoor environments. Because people are exposed to higher levels of secondhand smoke in indoor settings than in outdoor ones, it makes sense from a public health perspective to protect nonsmokers indoors before seeking outdoor air laws.

There is emerging science on the health hazards of outdoor exposure to secondhand smoke, and as more scientific evidence becomes available, we may see increased support for outdoor smoking restrictions on the basis that they are necessary to protect public health.

Start with model ordinance language

Start 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. 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. 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.

Include expert advisors

From the earliest stages, the drafting group must combine tobacco control expertise with legal expertise and familiarity with local law and procedures. Consider consulting with national tobacco control legal organizations (such as the Tobacco Law Center at tobacco@wmitchell.edu). Local legal counsel should be brought in to assist with drafting language and ensure that your proposal does not conflict with laws already on the books. 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). **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. 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 money and voter turnout. **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. Rather, ballot measures are a last-ditch option to turn to when all other approaches have failed. Losing at the ballot is not an option.**

The perceived benefits of using the ballot as a public health tool come at a significant cost because the election process provides the tobacco industry with two key 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 novices 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 of public support by a local smokefree coalition.

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 increasingly difficult for opponents to overturn strong laws that have already been enacted due to increased public awareness about the dangers of secondhand smoke. 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.

Also keep in mind that opposition groups may place a weaker, deceptive version on the same ballot to offer a measure that appears “more reasonable” to the public. This could trigger serious challenges for any ballot campaign, which must then work at defeating the bad measure at the same time that it is campaigning to enact its own measure.

In addition to local ballot battles, some smokefree laws have been put to a statewide vote. Statewide ballot initiatives are exponentially more costly and hold greater risk than local campaigns. Statewide ballot measures for smokefree air have been successful in several states, thanks to good planning and sufficient resources. However, before you decide on a state ballot campaign, consider this. Starting with strong poll numbers and a solid strategic plan, even the smallest state requires 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. DRAFTING PRINCIPLES

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. Define critical terms like “enclosed” carefully to avoid unintended loopholes. Clear definitions for the places that are exempt from the law are particularly vital in order to limit the scope of the exemptions. When in doubt, spell it out.

Definitions for restaurants, bars and gaming establishments: The definitions of “restaurants”, “bars”, and “gaming establishments” or “casinos typically raise the most issues since these venues tend to be the major focus of debate and opposition. For

example, a restaurant should be defined as an establishment whose primary function is the consumption of food, with the consumption of alcoholic beverages being incidental. Conversely, 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. All of these establishments must be 100% smokefree 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 venues 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.

For the recommended definitions from Americans for Nonsmokers’ Rights “Model Ordinance”, see www.no-smoke.org/pdf/modelordinance.pdf or call 510-841-3032.

Cover All Workplaces

All workplaces should be smokefree in their entirety. Do not exempt small workplaces, private offices, factories, warehouses, clubs, bars or casinos, for example. All workers, no matter where they are employed, should be given a work environment completely free from secondhand smoke. Allowing smoking in certain workplaces or in certain areas of workplaces will not provide adequate health protection to employees or visitors.

- **Small workplaces:** Exemptions for small workplaces (with 3 or fewer employees for example) present a serious problem for people working in small offices with bosses or coworkers who smoke. The provisions are unnecessary and discriminatory and are rarely strengthened down the line.
- **Private offices:** 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 employees and custodians who must enter the offices as part of their jobs, as well as members of the public who must enter them for business purposes, will be exposed to secondhand smoke.

- **Hospitality workplaces:** Workers and patrons at restaurants, bars, casinos and other hospitality businesses should be fully protected. In the past, some workplaces were considered separately and exempted fully or partially from a smokefree law. Those days are over. **With the abundant science about the dangers of secondhand smoke and public education surrounding the issue, exemptions for certain workplaces are no longer acceptable.**

III. NEVER AGREE TO PREEMPTION

If you are working on a law at the state or county level, the opposition may try to add a preemption provision to your language. Preemption is unacceptable and should be avoided at all costs.

Preemption is a provision at one level of government (usually federal or state) that prevents a lower level from enacting stronger laws on an issue than exist at the higher government level. Since the 1980's, 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 have the upper hand, to the state legislature, where the tobacco industry wields substantial influence. Local municipalities that have passed the first strong smokefree ordinances in a state, have passed a flurry of smokefree ordinances in a short period of time, or have passed a smokefree law in the capital city should be on special guard for attempts to preempt local smokefree activity.

Preemption is usually added to a weak bill regulating smoking, which is then used as a cover to give the impression that the state is actually doing something to protect nonsmokers when, in fact, it isn't. Attempts to add preemption may be stealthy, employing technical, unclear language to bills that are placed on the fast track with little or no public notice. Preemptive amendments or riders can also be tacked on to unrelated bills. The tobacco industry's push for preemption is a tribute to our success at the local level.

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 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 Cancer Action Network, at www.protectlocalcontrol.org.

IV. DEAL BREAKERS

If any of the following provisions are inserted in your ordinance at any time during the legislative process, 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, having no law is better than having a weak or ineffective law.

Ventilation Provisions:

No ventilation system can completely remove the cancer-causing and toxic chemicals in secondhand smoke. Going 100% smokefree not only protects employees and patrons, but also protects business owners' bottom line for both the short and long terms.

The 2006 U.S. Surgeon General's Report, "*The Health Consequences of Involuntary Exposure to Secondhand Smoke*," concluded that ventilation and smoking rooms cannot control exposure to secondhand smoke. Since the landmark report's release, the Institute of Medicine and the U.S. President's Cancer Panel have both endorsed 100% smokefree indoor policies, free of loopholes, to protect workers and patrons from developing adverse health effects due to exposure.

In 2005, the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), the international standard-setting body for indoor air quality and ventilation, adopted a position document on approaches to controlling secondhand smoke, which states unequivocally, that "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 under which smoking will be allowed indoors if "*future ventilation technology*" can remove secondhand smoke to "*an acceptable level*." Do not agree to these types of amendments. The U.S. Surgeon General concludes that there is "*no risk-free level of exposure*" to secondhand smoke, meaning no acceptable level exists. These claims are deal breakers and provide an opening for future holes in your law.

In addition, separately ventilated smoking rooms do not effectively protect people from secondhand smoke exposure. Unless a room is completely separated with no ventilation, doors, windows, entryways, or openings of any kind, secondhand smoke from an enclosed, separately ventilated room will infiltrate into smokefree areas.

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 expensive ventilation systems, smoking rooms, or other structural modifications in order to allow smoking while complying with the law, they and the local lawmakers will strongly resist revisiting the law. Furthermore, 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.**

“Red Light/Green Light” Provisions:

Under “Red Light/Green Light” provisions, restaurants, bars, and other businesses can fulfill their legal obligations to the public 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 and that those who choose to patronize the businesses know what to expect. “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. Most importantly, even if customers can choose between smoking and nonsmoking establishments, employees 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” or Age-Restriction Provisions:

“Minors only” provisions prohibit smoking only in settings where minors are present. Smoking is permitted in restaurants, bars, 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, regardless of age, from secondhand smoke. After all, secondhand smoke is harmful to adults as well as minors and to employees as well as patrons. Like Red Light/Green Light provisions, 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 “minors only” provisions is that they sometimes allow businesses to be adults only and smoker-friendly at certain times while being open to customers of all ages and non-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, bars, 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 only at times when minors are present. As described in the previous paragraphs, 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 as a condition of employment. Employees may fear that they will be discriminated against or harassed 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.** Employers 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.

“Hardship” Exemptions:

Hardship exemptions allow restaurants, bars, or other hospitality businesses to obtain a waiver from complying with a smokefree law because doing so supposedly causes them economic harm. **These exemptions should be avoided because they create an unwarranted 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, bars, and other businesses. 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 particular business 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).

Opt-out Exemptions:

Opt-out provisions, which can appear in either county or state laws, allow local jurisdictions within the county or state either to choose not to follow the law altogether or to adopt weaker laws. Opt-out provisions are unacceptable. They undermine public health and cause implementation challenges.

Allowing local jurisdictions to ignore county or state smokefree laws denies health protections to a portion of the county’s or state’s population. It also violates a fundamental principle. County and state 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 county or state public health measures such as laws and regulations on sanitary food preparation practices and drunk driving.

Special licenses and permits:

This approach allows restaurants, bars, and/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. In other words, a city issued "license to kill". 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:

Instead of imposing fees on businesses that allow smoking, this approach **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 when it has not. Again, to be effective smokefree laws should protect ALL employees and customers in ALL businesses.

Sunset provisions:

A "sunset provision" stipulates that a law will expire on a certain date unless it is renewed, and it 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 unfairly 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.

Trigger provisions:

Opposition groups have promoted "trigger" language as a strategy to delay implementation of smokefree laws indefinitely. Trigger language prevents a law from taking effect until specified neighboring communities, usually all communities in a metropolitan area, have passed similar laws. Unless all the other communities pass laws, the enacted law is simply words on paper and will not protect anyone's health. Trigger provisions should always be avoided.

V. ADDITIONAL PROVISIONS TO AVOID

The following provisions should be avoided whenever possible because they create situations in which people will be unnecessarily exposed to secondhand smoke

Exemptions for membership associations (Private Clubs):

Membership associations (also referred to as “private clubs”) are rarely private at all. The public may be misled to believe they are “private” spaces, but in practice, they are often open to the public at certain times and may have paid employees. If an organization has employees, it should be treated like any other workplace. Smokefree laws should apply to all workplaces, regardless of ownership. The only exception to this rule may be if the membership organization is entirely closed to the public at all times and has no paid or volunteer employees. Keep in mind that membership associations routinely comply with public health and safety laws (building codes, sanitation laws, etc.) so complying with a smokefree law would not be out of the ordinary.

Exemptions for tobacco retail shops, cigar bars, and hookah bars*:

These exemptions, although once common, 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 clean air at work. Opposition groups have taken full advantage of these exemptions, stretching and testing the definitions in an effort to allow smoking in everyday bars. Chicago’s smokefree law contained 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.

Exemptions for (non-tribal) casinos and gaming establishments:

Casino workers, like other workers, deserve complete protection from secondhand smoke. The gaming industry has extremely deep pockets and is willing to spend countless dollars joining the tobacco industry and fighting smokefree laws. Joining forces, the tobacco and gaming industries can push hard to entirely exempt casinos or call for a so-called “compromise”. These “compromises” can include ineffective ventilation requirements or exemptions for gaming floors within casinos. Ventilation will not protect health. Limiting smoking to gaming floors will be equally ineffective in protecting workers from exposure. The only way to ensure a safe workplace is to make these establishments 100% smokefree.

Keep in mind that many casinos and gaming venues exist on tribal lands. Tribal land is sovereign. Smokefree policies for casinos on tribal land must be considered separately by tribal governments or via gaming compacts.

THINK OF YOUR IMPACT:

Strengths or weaknesses in your law influence other campaigns. While compromises you make during your campaign may seem like the best choices for your community or state, the impact of your decisions reaches far beyond your borders. Word travels fast. If your law exempts certain areas of casinos, for example, it becomes more difficult for other communities to pass a strong law including casinos. Over the years the smokefree movement has moved away from laws with loopholes and exemptions, and today more and more smokefree laws provide 100% workplace protection.

Grandfather clauses:

These provisions **establish separate rules for restaurants, bars, or other hospitality businesses based on the date that they obtained their operating permit.** Grandfathering in establishments that have a permit as of a particular date 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 and fair 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 time 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.

CHOOSE YOUR IMPLEMENTATION DATE WISELY:

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. Also avoid dates like **Superbowl Sunday** and **St. Patrick's Day**. In colder climates, try to avoid implementation dates during the coldest winter months. Consider implementing the law at 6:00am instead of midnight. That way, businesses will have the opportunity to remove ashtrays, post signs and have a fresh start by opening as a smokefree establishment in the morning.

VI. ADDITIONAL IMPORTANT CAMPAIGN TIPS

Organizing, educating, and empowering a community to plan and execute a successful smokefree air campaign is **not** a short-term project. **There are no shortcuts.** 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, 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 from the beginning 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.

The experiences of countless campaigns show that no matter how small or isolated a community, the tobacco industry, its 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.

Newer advocates often swear that they have never heard from the opposition. But the industry often operates 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 law efforts or its determination to oppose them. It is also important not to underestimate the influence and tenacity of local opponents of a proposed smokefree ordinance who may not be directly connected to the tobacco industry. **The bottom line is that there are NO shortcuts to enacting smokefree ordinances.** There is invariably resistance, there is invariably a fight, and victory invariably takes time. It is precisely because smokefree ordinances have such a significant, lasting impact on a community's culture and norms that they don't come easy.

Ceilings 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.

When it comes to smokefree 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 so many resources into a smokefree campaign to walk away with nothing, but often that is the best strategy. **Don't be afraid to walk away with nothing** rather than accepting something that is bad for public health and detrimental to future efforts.

Smokefree laws are one of the most powerful weapons in the public health arsenal. 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.