

COMMISSION AGENDA
January 2, 2007 – 7:00 P.M.
Commission Chambers
MEETING NO. 4667

CALL TO ORDER

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting, unless an emergency situation does exist).

City of Character trait for January – Enthusiasm.
Quarterly Report from Dodge City Public Library Director Cathy Reeves

CONSENT CALENDAR – approval of

1. Minutes of Regular Meeting of December 18, 2006.
Minutes of Special Meeting of December 29, 2006.
2. Payment of bills.
3. Cereal Malt Beverage for:
 - A. Angie's Git It n Go, 2305 W. Wyatt Earp Blvd.
 - B. Tacos Jalisco, 412 E. Wyatt Earp Blvd.(Pending inspections by Dodge City Fire and Inspection Depts.)

ORDINANCES & RESOLUTIONS

Resolution 2007-01: A Resolution of the Governing Body of the City of Dodge City, Kansas, providing certain job classification and titles and amending Resolution 2006-01. Report by Human Resource Director.

UNFINISHED BUSINESS

1. Review of design/approval for bid of St. Mary's Soccer Complex Expansion Project. Report by Park & Recreation Director.

2. Review and discussion of model non-smoking ordinance. Report by City Manager.

NEW BUSINESS

OTHER BUSINESS

City Manager
Mayor
City Commissioners

ADJOURNMENT

MINUTES
December 18, 2006 – 7:00 P.M.
MEETING NO. 4665

MAYOR Jim Sherer called the regular meeting to order at 7:00 P.M.

RESPONDING TO ROLL CALL were Mayor Jim Sherer, Commissioners Kent Smoll, Rick Sowers and Jim Lembright. Reported absent was Commissioner Terry Lee.

INVOCATION was led by Rev. Dennis Zimmerman of St. Cornelius Episcopal Church.

The PLEDGE OF ALLEGIANCE was recited.

The CONSENT CALENDAR was approved on a motion by Commissioner Smoll, seconded by Commissioner Sowers, by a vote of 4-0.

1. Minutes of Joint City/County Commission Meeting of December 14, 2006.
2. Payment of bills.
3. Cereal malt beverage license for Casa Alvarez, 1701 W. Wyatt Earp Blvd.
4. Acceptance of deed for park land adjacent to Colleen Park.
5. Supplement Agreement between the City of Dodge City, Ford County, and State of Kansas for construction of the Southwest Bypass.

ORDINANCES & RESOLUTIONS

Ordinance No. 3427: An Ordinance amending Section 8.8 of Ordinance No. 3193, the Cable TV System Franchise, dated September 13, 1997, thereby extending the term of such Ordinance and Franchise Agreement until March 19, 2007, was adopted on a motion by Commissioner Sowers, seconded by Commissioner Lembright by a vote of 4-0.

NEW BUSINESS

1. A bid for field groomer from Kansas Golf and Turf in the amount of \$13,700 and for a utility vehicle for Athletic Field Maintenance from Kan Equip in the amount of \$7,310 was approved on a motion by Commissioner Lembright, seconded by Commissioner Sowers, by a vote of 4-0.
2. A bid for installation of insulation at Hoover Pavilion from D. V. Douglass in the amount of \$16,985 was approved on a motion by Commissioner Sowers, seconded by Commissioner Smoll, by a vote of 4-0.

OTHER BUSINESS

City Manager, Jeff Peterson reported:

- CFAB meets Thursday, December 21.

- The RFQ Racetrack Committee is preparing recommendations for interview.
- Advertising for expired/vacant positions on the City Boards and Commissions will begin. The process for making appointments will be for the Mayor and City Manager to review the applications and bring recommendations to the City Commission for approval.
- The Performance Measurement document prepared by S. L. Martin was distributed.

Commissioner Sherer thanked the staff for their work throughout the year and wished them a Merry Christmas. He recapped some of the accomplishments including the Depot waiting room, pedestrian/bicycle path, ruling on events center, West Wyatt Earp construction and donation of land for Colleen Park expansion. Also thanked the Ford County Commissioners for their visionary vote on the ethanol plant.

Commissioner Lembright reported on one of the sessions he attended at the NLC Conference in Reno regarding a non smoking ordinance model from Americans for Nonsmokers' Rights.

Commissioner Smoll reported on the NLC sessions including non-smoking; economic development and the need to focus first on products – not jobs – as jobs will follow; immigration integration, and tourism.

On a motion by Commissioner Sowers, seconded by Commissioner Lembright, the meeting adjourned to EXECUTIVE SESSION to discuss land acquisition and personnel matters at 7:40 P.M. not to exceed thirty (30) minutes by a vote of 4-0. Those included in the Executive Session were the City Manager, City Attorney and Park & Recreation Director Paul Lewis. Commissioner Smoll will not participate nor vote on the land acquisition issue.

The meeting returned to Regular Session. Commissioner Lembright moved to adjourn to EXECUTIVE SESSION to discuss personnel matters for a time not to exceed fifteen (15) minutes. Commissioner Sowers seconded. Motion carried on a vote by 4-0.

The Commission returned to the Regular Session.

On a motion by Commissioner Sowers, seconded by Commissioner Lembright, the acquisition contract between Jack Denton Trust and the City of Dodge City for the purchase of All for Fun, subject to final approval of the purchase agreement and authorizing the Mayor and City Clerk to execute documents was approved by a vote of 3-0 with Commissioner Smoll abstaining.

On a motion by Commissioner Sowers, seconded by Commissioner Lembright, the meeting adjourned by a vote of 4-0.

V. James Sherer, Mayor

Lisc # 06 0000778

(This form prepared by the Attorney General's office)

(Individual)

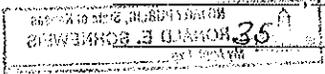
APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

_____, _____ COUNTY, KANSAS, Ford, 20 06
TO THE GOVERNING BODY OF THE CITY OF Dodge City, KANSAS,
or
THE BOARD OF COUNTY COMMISSIONERS OF Ford COUNTY, KANSAS.

I hereby apply for a license to retail cereal malt beverages in conformity with the laws of the State of Kansas and the rules and regulations prescribed and hereafter to be prescribed by you relating to the sale or distribution of cereal malt beverages; for the purpose of securing such license, I make the following statements under oath:

1. (a) Name of proposed licensee Angela Heiland

(b) Age 35
(c) Place and date of birth Dodge City
8/14/1971, 20_____
(d) Residence address 1303 Hancock

(e) I have been a resident of the State of Kansas 35
_____ years.
I have been a resident of the City of Dodge City
Ford County
 35 years.
2. The premises for which the license is desired are located at
2305 W. Wyatt Culp

(a) The legal description of said property is _____

(b) The street number is 2305

(c) The building to be used is convenience
store / gas station

(d) The business will be conducted under the following name:
Angie's Bit It n Go

3. The name and address of the owner or owners of the premises upon which the proposed business will be located is _____

4. I am a citizen of the United States. Yes () No ()
(a) My citizenship arises by birth () Naturalization ()
(b) My place of naturalization and the date thereof is as follows:
_____, _____ 20____
5. I have () have not () been convicted of a felony within two years immediately preceding the date of this application.
6. I have () have not () been convicted of a crime involving moral turpitude within two years immediately preceding the date of this application.
7. I have () have not () been adjudged guilty of drunkenness within two years immediately preceding the date of this application.
8. I have () have not () been adjudged guilty or entered a plea, or forfeited bond on a charge of driving a motor vehicle while under the influence of intoxicating liquors within two years immediately preceding the date of this application.
9. I have () have not () been convicted of a violation of any state or federal intoxicating liquor law within two years immediately preceding the date of this application.
10. My place of business will be conducted by a manager or agent—
Yes () No ()
(a) If the answer above is yes, the name, age, and residence of manager or agent is _____
Angela m Heiland 35
Said manager or agent does () does not () have the qualifications to have a license issued in his own name. The same to be determined by reference to K.S.A. 41-2703, K.S.A. 41-2702. Specifies concerning his residence, citizenship, and the answers to questions 5 through 9 are as follows:

11. I have () have not () been a resident of this State for at least one year immediately preceding making this application.
12. My spouse would () would not () be eligible to receive a retailer's license.
N/A (a) If the answer is would not, explain what the fact or facts are that would cause your spouse to be ineligible.
13. This application is for a license to retail cereal malt beverages for consumption on the premises () For a license to retail cereal malt beverages in original and unopened containers and not for consumption on the premises ()

A license fee of \$ 125.00 is enclosed herewith.

(Individual)

APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

Dodge City, Ford COUNTY, KANSAS, December 28, 2006

TO THE GOVERNING BODY OF THE CITY OF Dodge City, KANSAS,

or

THE BOARD OF COUNTY COMMISSIONERS OF FORD COUNTY, KANSAS.

I hereby apply for a license to retail cereal malt beverages in conformity with the laws of the State of Kansas and the rules and regulations prescribed and hereafter to be prescribed by you relating to the sale or distribution of cereal malt beverages; for the purpose of securing such license, I make the following statements under oath:

1. (a) Name of proposed licensee Rebecca Escalante

(b) Age 52

(c) Place and date of birth Plainview, TX November 23, 1955

(d) Residence address 1201 First Avenue Dodge City, KS

(e) I have been a resident of the State of Kansas 13 years.

I have been a resident of the City of Dodge City, Ford County 13 years.

premises for which the license is desired are located at 412 E. Wyatt Earp

(a) The legal description of said property is

(b) The street number is 412 E. Wyatt Earp

(c) The building to be used is Tacos Jalisco Used for fast foods

(d) The business will be conducted under the following name: Tacos Jalisco

3. The name and address of the owner or owners of the premises upon which the proposed business will be located is Amado & Sandra Alvarez 10829 McArthur - Dodge City, KS

4. I am a citizen of the United States. Yes (X), No ()

(a) My citizenship arises by birth (X), Naturalization ()

(b) My place of naturalization and the date thereof is as follows: N/A

5. I have (X), have not (), been convicted of a felony within two years immediately preceding the date of this application.

6. I have (X), have not (), been convicted of a crime involving moral turpitude within two years immediately preceding the date of this application.

7. I have (X), have not (), been adjudged guilty of drunkenness within two years immediately preceding the date of this application.

8. I have (X), have not (), been adjudged guilty or entered a plea, or forfeited bond on a charge of driving a motor vehicle while under the influence of intoxicating liquors within two years immediately preceding the date of this application.

9. I have (X), have not (), been convicted of a violation of any state or federal intoxicating liquor law within two years immediately preceding the date of this application.

10. My place of business will be conducted by a manager or agent— Yes (X), No ()

(a) If the answer above is yes, the name, age, and residence of manager or agent is N/A

Said manager or agent does (), does not (), have the qualifications to have a license issued in his own name. The same to be determined by reference to K.S.A. 41-2703, K.S.A. 41-2702. Specifies concerning his residence, citizenship, and the answers to questions 5 through 9 are as follows: N/A

11. I have (X), have not (), been a resident of this State for at least one year immediately preceding making this application.

12. My spouse would (), would not (), be eligible to receive a retailer's license. N/A

(a) If the answer is would not, explain what the fact or facts are that would cause your spouse to be ineligible.

13. This application is for a license to retail cereal malt beverages for consumption on the premises (X). For a license to retail cereal malt beverages in original and unopened containers and not for consumption on the premises ().

A license fee of \$ 225.00 is enclosed herewith.

Memorandum

To: City Manager, Jeff Pederson
From: Cherise Tieben, HR Director
cc: City Commission
Date: Wednesday, December 27, 2006
Subject: Resolution Providing for the 2007
Classification and Pay Plan

Attached you will find the annual resolution for the City of Dodge City classification and pay plan. There are several significant changes to the plan for 2007, however, I would first like to explain how the pay plan works.

The classification of a position (Section 1) is based upon multiple factors which are required to perform the position, the factors include the following: education, experience, complexity of work, judgment required, responsibility for equipment /materials/funds, personal contacts, supervision of others, physical requirements, working conditions & hazards and the labor market impact. Each factor has a degree of importance attached with points assigned for varying factors and degrees. The total points for each position is then used to determine the class that each position will fall. This system was developed by the consulting firm of Carl S. Becker and Associates and was last updated in 1997. Once the position description and the classification is established it is necessary to complete a test of the position to determine the exempt (ineligible for overtime-Section 3, table A & E) or nonexempt (Section 2) status of the position. This is done according to the guidelines established in the Fair Labor Standards Act.

The range of pay is established by considering the range of pay for other titles, rates of pay for comparable services in private and public employment in our region, cost of living data, other benefits received by employees, the City's financial condition and policy and any other factors that are relevant. All of these areas will be evaluated and updated through the upcoming classification and pay survey. As noted above, these have not been reviewed for nearly ten years and until this year, we have only made small cost of living increases over this time period.

The steps established in this range of pay, as shown in Section 2 and Table A of Section 3 are best described as: Step A being the new employee meeting the minimum standards for the position, Step B being the employee who has successfully completed the

introductory 6 month period, Step C being the employee which has satisfactorily completed one year of service and the Maximum is used to cap the value of the position to the organization.

Table C in Section 3 shows the guidelines for fire fighters, engineers and captains. In previous years, there had been a starting pay range for individuals hired as Firefighter I's but did not have their firefighter I and EMT certifications, this step has been removed to assist with recruiting wages. Step A will become the initial wage and we will require the fire fighter I and EMT certifications at hire or within 1 year of hiring. Steps B - J indicate the guidelines for years of experience in this position, with J being the maximum value of the position to the organization. The entire range for these positions has been restructured. Previously there had been large increases at year 5 of employment and then again at year 10. Dan Williamson and I were able to successfully remove these huge steps and spread the increases evenly throughout the years of service. All positions will have a minimum 2% increase between steps and due to the economic adjustment to the scale, no one individual will receive less than 4% annually in 2007.

The schedule for covered police positions (police officer, corporals, detectives, sergeants) has been removed, as the contract dictates these values.

At your direction, the annual 4% budgeted pay increase will be utilized two ways this year. First, the pay scale has been adjusted by 4% across the board, with the exception of the firefighters, engineers and captains as explained above. This adjustment will apply only to those individuals who are in their first year of employment and those at the top of the 2006 scale. Employees who are not at the top of the scale and have been here in excess of one year will receive increases based upon a 3.5% cola and may if eligible benefit from a .5% merit pool. The merit pool will be used to distribute .5% of the payroll budget to those employees who have exceeded the expectations of their supervisors. The merit has been capped at 5% for 2007.

Request for proposals to complete a classification and salary survey study have been distributed to known vendors and will be due January 22, 2007. The study will be utilized to evaluate the status of each position in comparison to positions with like duties in City's of similar size and in comparison to local market values. This information will be completed for use in the 2008 budget discussions.

If you have questions or wish any additional information, please do not hesitate to contact me at your convenience.

RESOLUTION NO. 2007-01

A RESOLUTION PROVIDING CERTAIN JOB CLASSIFICATION AND TITLES AND AMENDING RESOLUTION 2006-01

WHEREAS, in order to provide for an effective classification and salary plan for the employees of the City of Dodge City; and

WHEREAS, The Governing Body desires to establish a permanent classification and salary plan to be updated on a regular basis through staff recommendations, local surveys and surveys of other municipalities in the State.

NOW THEREFORE, LET IT BE RESOLVED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS:

Section 1. That the following classifications and job titles are hereby established as guidelines for the officers and employees of the City of Dodge City:

<u>Classification</u>	<u>Class Title</u>	<u>Classification</u>	<u>Class Title</u>
12	Clerk Typist I Janitor Laborer	19	Maintenance Worker III Mechanic I Secretary II Construction Assistant Computer System Operator
13	Receptionist Animal Shelter Attend.	20	Deputy City Clerk Engineering Tech I Electrician I Probation Officer Traffic Facilities Tech Warrant Officer Information Systems Tech
14	Account Clerk I Meter Reader	21	Asst. Golf Course Superintend. Assistant to Finance Director Clerk of the Court Executive Secretary
15	Clerk Typist II Court Clerk I Maintenance Worker I Recycle Center Attendant	22	Administrative Aide Code Enforcement Officer Office Manager Fire Fighter Police Officer CVB Marketing Assistant
16	Customer Service Worker Sanitation Driver I Secretary I Support Service Technician	23	Util. Records Technician Evidence Technician
17	Animal Control Officer Airport Maintenance Worker Court Clerk II Bus Services Worker Maintenance Worker II	24	Detective Civic Center Operator Corporal
18	Account Clerk II Sanitation Driver II Zoo Keeper Utilities Service Worker Cemetery Caretaker		

<u>Classification</u>	<u>Class Title</u>	<u>Classification</u>	<u>Class Title</u>
25	Administrative Assistant Fire Engineer Electrician II Recreation Activities Coordinat. Foreman Mechanic II	31	Golf Course Superintendent Recreation Superintendent Utilities Superintendent Park Superintendent
	Engineering Technician II Animal Control Supervisor Concessions Coordinator	32	Civil Engineer Deputy Chief of Police CVB Director
26	Building Inspector Police Sergeant	33	Human Resource Director Racetrack Gen. Manager
27	Fire Captain Support Services Supervisor Human Resource Officer Forester	34	Development Services Dir. Director of Administration
28	Development Administrator Information System Administrat. Police Lieutenant	35	Finance Director/City Cler Parks & Recreation Dir.
29	Turf Specialist Construction Coordinator Dir. Of Spec. Proj./Asst. To CM	36	City Engineer Fire Chief
30	Building Official Senior Fire Officer Street & Sanitation Superintend	37	Chief of Police
		38	Public Works Director

Section 2. That the following hourly wage tables shall be utilized for those job classifications from Section 1 of this Resolution for positions defined as nonexempt, using FLSA Criteria; excluding partially exempt commissioned law enforcement and fire positions.

<u>Classification</u>	<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Maximum</u>
12	\$8.09	\$8.41	\$8.92	\$11.15
13	\$8.41	\$8.74	\$9.28	\$11.36
14	\$8.76	\$9.11	\$9.65	\$12.06
15	\$9.08	\$9.44	\$10.01	\$12.54
16	\$9.45	\$9.82	\$10.42	\$13.06
17	\$9.85	\$10.24	\$10.86	\$13.56
18	\$10.22	\$10.63	\$11.27	\$14.11
19	\$10.63	\$11.07	\$11.72	\$14.67
20	\$11.07	\$11.51	\$12.20	\$15.27
21	\$11.50	\$11.96	\$12.68	\$15.86
22	\$11.98	\$12.46	\$13.21	\$16.24
23	\$12.72	\$13.23	\$14.02	\$17.82
24	\$13.56	\$14.10	\$14.94	\$18.98
25	\$14.32	\$14.89	\$15.79	\$20.03
26	\$15.11	\$15.72	\$16.66	\$21.15
27	\$15.95	\$16.59	\$17.59	\$22.34
28	\$16.87	\$17.54	\$18.60	\$23.60
29	\$17.82	\$18.53	\$19.64	\$24.92
30	\$18.80	\$19.55	\$20.72	\$26.32

Section 3.

That the biweekly salaries from Tables A, B, C, D and E are to be utilized for those job classifications provided for in Section 1 of this Resolution for positions defined as exempt and partially exempt, using FLSA criteria. Police Officers, Corporals and Sergeant's are listed separately per contract. Partially exempt positions listed here, include commissioned law enforcement and fire department positions:

Table A: All other City Positions, exempt status excluding commissioned public safety positions and executive positions. Note: Steps A through C may not apply to some specific positions.

<u>Classification</u>	<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Maximum</u>
22	\$970.06	\$1,008.86	\$1,069.39	\$1,358.08
23	\$1,017.42	\$1,058.12	\$1,121.61	\$1,424.39
24	\$1,084.78	\$1,128.17	\$1,195.86	\$1,518.70
25	\$1,144.72	\$1,190.51	\$1,261.94	\$1,602.60
26	\$1,208.65	\$1,256.99	\$1,332.41	\$1,692.10
27	\$1,276.57	\$1,327.63	\$1,407.29	\$1,787.19
28	\$1,348.47	\$1,402.42	\$1,486.57	\$1,887.89
29	\$1,424.40	\$1,481.38	\$1,570.25	\$1,994.17
30	\$1,504.32	\$1,564.49	\$1,658.36	\$2,106.05
31	\$1,588.24	\$1,651.76	\$1,750.87	\$2,223.52
32	\$1,676.14	\$1,743.19	\$1,847.77	\$2,346.58

Table B: Commissioned police positions, exempt status.

<u>Classification</u>	<u>Minimum</u>	<u>Mid Point</u>	<u>Maximum</u>
28	\$1,975.17	\$2,185.30	\$2,395.43
32	\$2,185.30	\$2,353.41	\$2,521.49

Table C: Partially Exempt Fire Department Positions.

<u>Classification</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>	<u>I</u>	<u>J</u>	<u>K</u>
22	\$9.46	\$9.69	\$9.93	\$10.18	\$10.43	\$11.28	\$11.57	\$11.85	\$12.15	\$12.45	\$13.46
25	\$11.46	\$11.75	\$12.05	\$13.02	\$13.34	\$13.67	\$14.01	\$15.16			
27	\$12.05	\$13.02	\$14.06	\$15.18	\$15.56	\$15.94	\$16.34	\$17.02			

Table D: Exempt status Fire Department Positions.

<u>Classification</u>	<u>Minimum</u>	<u>Mid Point</u>	<u>Maximum</u>
30	\$1,933.15	\$2,143.27	\$2,353.41

Table E: All EXECUTIVE positions, exempt status.

<u>Classification</u>	<u>Minimum</u>	<u>Maximum</u>
32	\$1,805.69	\$2,347.39
33	\$1,918.10	\$2,493.51
34	\$2,031.74	\$2,641.27
35	\$2,146.64	\$2,790.63
36	\$2,262.79	\$2,941.62
37	\$2,380.18	\$3,094.23
38	\$2,498.80	\$3,248.40

Section 4. That the salary for a particular job classification shall follow the particular pay plan or particular pay matrix indicated, as adopted by the City Commission and provided the funds to do so are made available through the annual budgeting process. Fund availability, as per the adopted annual budget, shall determine whether an incremental or partial incremental pay for performance increase is awarded to eligible employees. Eligibility for and the award of pay for performance increases, whether they be full step, partial step or a percentage of current pay, will be based upon a review of employee performance by department heads and supervisors, and authorized by the City Manager. The salary of the City Manager will be set upon annual review by the City Commission.

Section 5. For the purpose of determining the interval, which shall constitute biweekly pay period for the payment of biweekly salaries in accordance with the provisions of this article biweekly shall constitute a period of two weeks (14 days).

Section 6. Salary guidelines for unclassified officer positions, or employment shall be established by the following schedule:

<u>Position</u>	<u>Minimum</u>
City Commissioners	\$200 biweekly
Part-time Help	\$5.15 per hour
Director of Golf	At the discretion of the City Manager

PASSED AND ADOPTED by the Governing Body of the City of Dodge City and approved by the Mayor this 2nd day of January, 2007.

E. JAMES SHERER, MAYOR

ATTEST:

NANNETTE POGUE, CITY CLERK

Memorandum

To: City Commission
From: Jeff Pederson, City Manager 
Date: December 26, 2006
Subject: ST. Marys Soccer Complex Project

On the Agenda Monday evening will be a presentation by Paul Lewis on the plan for expansion of the St. Mary's Soccer Complex which has been heretofore authorized by the City and County Commissions with a budget of \$1.5m.

The plan being brought forward has the endorsement of the Parks & Rec. Advisory Board. It was brought before the CFAB last week, and was objected to by County Administrator due to the inclusion of three new football fields in the footprint. Due to that, I have arranged for Paul to make a presentation to both Commissions next Tuesday.

I have enclosed a copy of the new Masterplan for St. Marys, which is inclusive of more "planning" than is proposed to be done at this time. Specifically, the parking and circle drive improvements south of Sheridan that are seen on the Plan are "futuristic".

At this time, we wish to move ahead with a base bid that includes expansion of soccer fields and supporting infrastructure. These improvements will create more field space, as well as increase convenience and safety for traffic and pedestrian access.

Secondly, in an effort to further enhance safety as well as continue to accommodate youth football on site, we propose to bid an alternate for construction of three youth football fields north and west of the Sheridan. Technically this was not part of the authorized project, however it is necessary in order to allow all soccer fields to be dedicated to that use.

Cost estimates for base bid, and alternate are attached.

ST. MARY SOCCER COMPLEX MASTERPLAN

Concept F1

Dodge City, Kansas

Pg.1 of 2

Preliminary

Estimate of Probable Costs

Plan Date: 11/28/06

BASE BID - SOCCER FIELDS 4, 5, & 6, & NECESSARY INFRASTRUCTURE

DESCRIPTION	QUANT.	UNIT	UNIT	
			PRICE	AMOUNT
SITE PREPARATION				
Site Clearing & Preparation	1	L.Sum	\$25,000	\$25,000
Pavement Removal	4220	Sq.Yds.	\$6	\$25,320
Trail Removal	510	Sq.Yds.	\$6	\$3,060
Sidewalk Removal	490	Sq.Yds.	\$5	\$2,940
Curb & Gutter Removal	600	Lin.Ft.	\$4	\$2,400
Gravel Removal	4722	Sq.Yds.	\$2	\$9,440
Post & Rail Fence Removal	1650	Lin.Ft.	\$3	\$4,950
Guard Fence Removal	120	Lin.Ft.	\$6	\$720
Temporary Erosion Control	1	L.Sum	\$12,000	\$12,000
SUBTOTAL:				\$85,800
GRADING				
Rough Grading	11800	Cu.Yds.	\$12	\$139,200
Finish Grading (Playing Fields)	25000	Sq.Yds.	\$1.25	\$31,250
Soil Amendments (Compost)	1400	Cu.Yds.	\$15	\$21,000
SUBTOTAL:				\$191,500
UTILITY WORK				
24" RCP Storm Sewer	330	Lin.Ft.	\$45	\$14,850
18" RCP Storm Sewer	250	Lin.Ft.	\$40	\$10,000
15" RCP Storm Sewer	120	Lin.Ft.	\$35	\$4,200
12" RCP Storm Sewer	320	Lin.Ft.	\$30	\$9,600
8" PVC Storm Sewer	420	Lin.Ft.	\$25	\$10,500
Type 1 End Section - 24" RCP	1	Ea.	\$500	\$500
Curb Inlet - Type 22	4	Ea.	\$3,700	\$14,800
Catch Basin	2	Ea.	\$2,500	\$5,000
Rip-Rap (6")	25	Tons	\$45	\$1,130
Connect to Exist. San. Sewer	1	Ea.	\$800	\$800
4" Sewer Pipe	10	Lin.Ft.	\$23	\$230
2" PVC Waterline	120	Lin.Ft.	\$10	\$1,200
6" PVC Waterline	1150	Lin.Ft.	\$23	\$26,450
6" Gate Valve w/ Valve Box	2	Ea.	\$550	\$1,100
6" Tapping Sleeve w/ Valve	1	Ea.	\$4,000	\$4,000
Service Line and Tap	1	Ea.	\$3,000	\$3,000
Relocate Fire Hydrant	1	L.Sum	\$1,500	\$1,500
Misc. Fittings and Appurt.	1	L.Sum	\$2,000	\$2,000
SUBTOTAL:				\$110,900
PAVEMENT				
Parking & Drives- Asphalt	8350	Sq.Yds.	\$17	\$141,950
Conc. Curb & Gutter	4300	Lin.Ft.	\$15	\$64,500
6" Th. Conc. Trail	530	Sq.Yds.	\$30	\$15,900
4" Th. Conc. Walk	1950	Sq.Yds.	\$30	\$58,500
Pavement Markings	1	L.Sum	\$3,000.00	\$3,000
SUBTOTAL:				\$283,900

ST. MARY SOCCER COMPLEX MASTERPLAN

Estimate of Probable Costs (Cont.)

Pg. 2 of 2

Plan Date: 11/29/06

DESCRIPTION	QUANT.	UNIT	UNIT	
			PRICE	AMOUNT
LANDSCAPING				
Deciduous Tree (1 1/2" - 2" Cal.)	20	Ea.	\$300	\$5,000
Evergreen Tree (5-ft - 8-ft ht)	5	Ea.	\$275	\$1,380
Shrubs	1	L.Sum	\$2,500	\$2,500
Sports Turf	7.8	Ac.	\$4,500	\$34,200
Open Space Turf	4.3	Ac.	\$3,000	\$12,900
Irrigation (Playing Fields)	222750	Sq.Ft.	\$0.40	\$89,100
SUBTOTAL:				\$146,100
MISCELLANEOUS				
Light Poles	6	Ea.	\$4,000	\$24,000
Site Furniture	1	L.Sum	\$20,000	\$20,000
Field Signage	1	L.Sum	\$10,000	\$10,000
Traffic Control Signage	1	L.Sum	\$3,000	\$3,000
Playground	1	L.Sum	\$25,000	\$25,000
Chainlink Fence	600	Ln. Ft.	\$15	\$9,000
Bleachers	6	Ea.	\$6,000	\$36,000
Restroom Building	1	Ea.	\$75,000	\$75,000
Temporary Traffic Control	1	L.Sum	\$20,000	\$20,000
SUBTOTAL:				\$222,000

SUBTOTAL:	\$1,040,000
Mobilization (5%):	\$52,000
Construction Staking (1%):	\$10,000
Contingencies (15%):	\$156,000
A/E (12%):	\$125,000
TOTAL:	\$1,383,000

ST. MARY SOCCER COMPLEX MASTERPLAN

Concept F1 - Alternate #1

Dodge City, Kansas

Pg.1 of 1

Preliminary

Estimate of Probable Costs

Plan Date: 11/29/05

ALTERNATE #1 - FOOTBALL FIELDS

DESCRIPTION	QUANT.	UNIT	UNIT	
			PRICE	AMOUNT
SITE PREPARATION				
Site Clearing & Preparation	1	L.Sum	\$5,000	\$5,000
Chain Link Fence Removal & Reinstall	50	Lin.Ft.	\$15	\$750
Temporary Erosion Control	1	L.Sum	\$5,000	\$5,000
SUBTOTAL:				\$10,800
GRADING				
Rough Grading	2800	Cu.Yds.	\$10	\$28,000
Finish Grading (Playing Fields)	8500	Sq.Yds.	\$1.25	\$11,000
Soil Amendments (Compost)	500	Cu.Yds.	\$15	\$7,500
SUBTOTAL:				\$46,500
UTILITY WORK				
Connect to Exist. San. Sewer	1	Ea.	\$800	\$800
4" Sewer Pipe	700	Lin.Ft.	\$23	\$16,100
2" PVC Waterline	700	Lin.Ft.	\$10	\$7,000
Service Line and Tap	1	Ea.	\$3,000	\$3,000
Misc. Fittings and Appurt.	1	L.Sum	\$1,000	\$1,000
SUBTOTAL:				\$27,900
PAVEMENT				
4" Th. Conc. Walk	55	Sq.Yds.	\$30	\$1,650
SUBTOTAL:				\$1,700
LANDSCAPING				
Deciduous Tree (1 1/2" - 2" Cal.)	5	Ea.	\$300	\$1,500
Evergreen Tree (5-R - 6-ft ht)	5	Ea.	\$275	\$1,380
Shrubs	1	L.Sum	\$1,500	\$1,500
Field Turf	3.4	Ac.	\$4,500	\$15,190
Open Space Turf	0.3	Ac.	\$3,000	\$830
Irrigation (Playing Fields)	79200	Sq.Ft.	\$0.40	\$31,680
SUBTOTAL:				\$52,100
MISCELLANEOUS				
Site Furniture	1	L.Sum	\$10,000	\$10,000
Site Signage	1	L.Sum	\$10,000	\$10,000
Chainlink Fence	100	Ln. Ft.	\$15	\$1,500
Bleachers	3	Ea.	\$6,000	\$18,000
Pedestrian Bridge	1	L.Sum	\$15,000	\$15,000
Restroom Buildings	1	Ea.	\$75,000	\$75,000
Temporary Traffic Control	1	L.Sum	\$5,000	\$5,000
SUBTOTAL:				\$134,500
SUBTOTAL:				\$274,000
Mobilization (5%):				\$14,000
Construction Staking (1%):				\$3,000
Contingencies (15%):				\$41,000
ME (12%):				\$33,000
TOTAL:				\$365,000

ST. MARY SOCCER
COMPLEX EXPANSION

MASTERPLAN

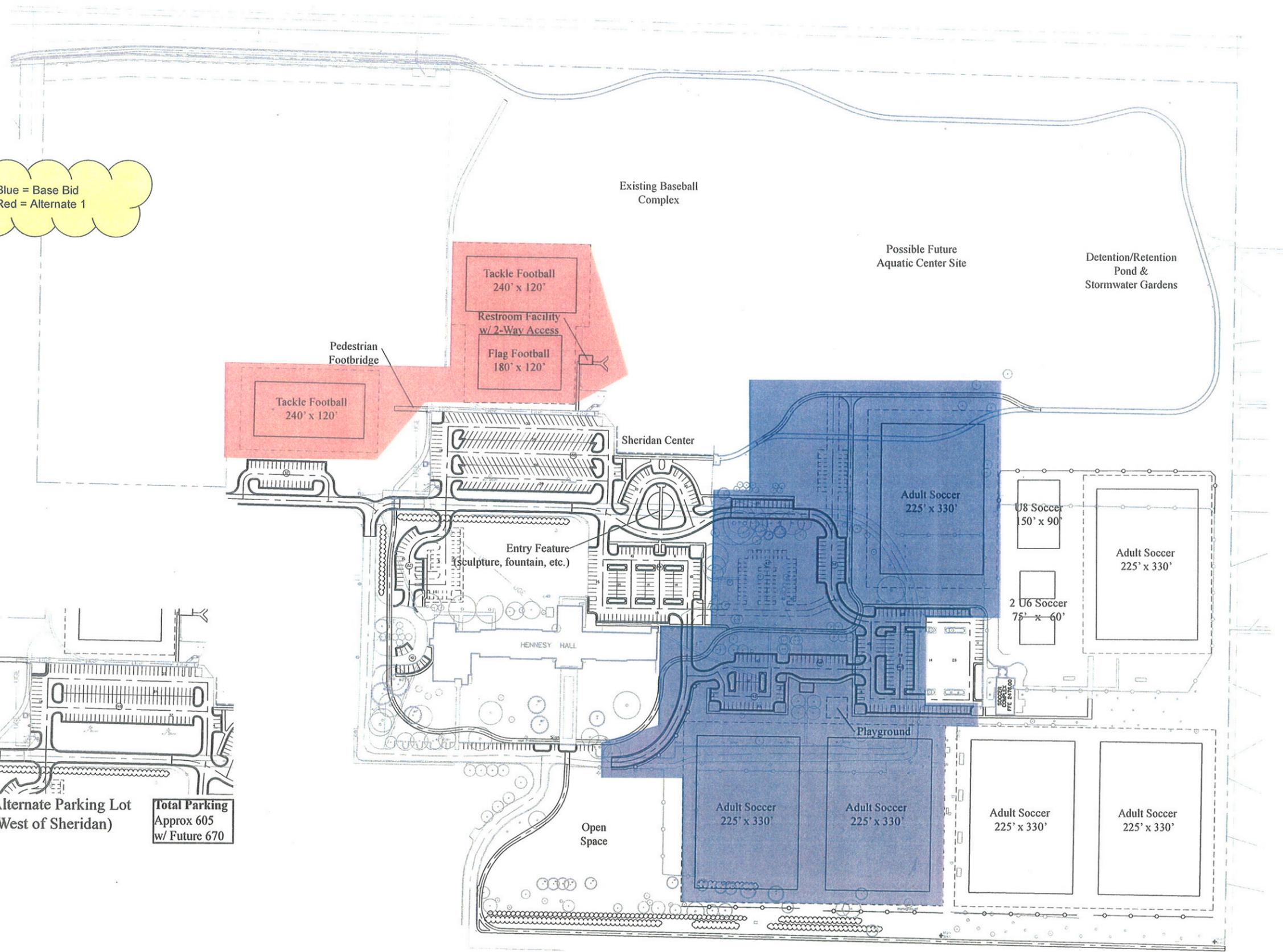
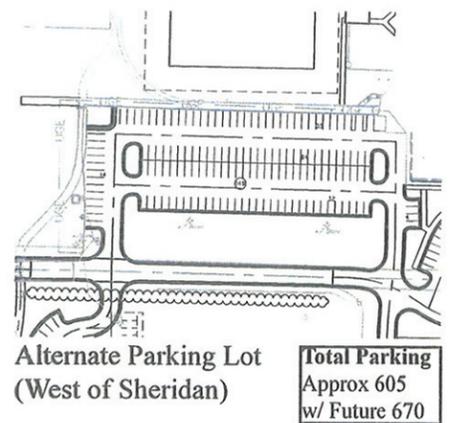
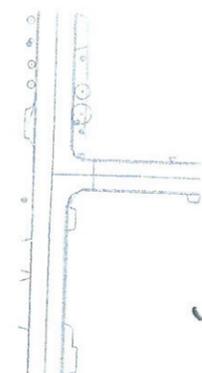
SCALE 1" = 100'

Revised
December 20, 2006

Total Fields
 6 Adult Soccer
 +1 U8 Soccer
 +2 U6 Soccer
 +2 Tackle Football
 +1 Flag Football

Total Parking
 Approx 644
 w/ Future 709

Blue = Base Bid
 Red = Alternate 1



Memorandum

To: City Commission
From: Jeff Pederson, City Manager 
Date: December 29, 2006
Subject: Non-smoking ordinance-related materials

I apologize for the volume of information being provided on this item, however after reviewing it I thought that it would be helpful in our efforts to move forward with a non-smoking ordinance for Dodge City.

I hope that you can find some time over the Holiday to review this. I am becoming increasingly of the opinion that a non-smoking ordinance needs to pretty absolute in order to be legal, enforceable, and understandable. Naturally, the challenge that remains lies with making it acceptable.

There are a number of ways we could proceed with this. If the CC is at the point of having a consensus on content, then we could put the model ordinance in proper form, refine it where desirable, and then proceed to place it on the Action Agenda and perhaps allow multiple readings in order to provide ample opportunity for public input.

**MODEL ORDINANCE ELIMINATING SMOKING
IN ALL WORKPLACES AND PUBLIC PLACES
(100% SMOKEFREE)**

Revised August 2006

Sec. 1000. Title

This Article shall be known as the _____ [name of City or County] Smokefree Air Act of _____ [year].

Sec. 1001. Findings and Intent

The _____ [City or County Governing Body] does hereby find that:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.)

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*, August 1999.)

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental tobacco smoke:

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coultas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A., "ASHRAE position document on environmental tobacco smoke," *American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)*, 2005.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure, and \$4.6 billion in lost productivity. (Behan, D.F.; Eriksen, M.P.; Lin, Y., "Economic Effects of Environmental Tobacco Smoke," *Society of Actuaries*, March 31, 2005.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States. *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

Hundreds of communities in the U.S., plus numerous states, including California, Delaware, Florida, Massachusetts, Montana, New Jersey, New York, and Washington, have enacted laws requiring workplaces, restaurants, bars, and other public places to be smokefree, as have numerous countries, including Ireland, New Zealand, Norway, Scotland, Sweden, Uganda, and Uruguay.

There is no legal or constitutional "right to smoke." Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

- G. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- H. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- I. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- J. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- K. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- L. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- M. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.
- N. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores.
- S. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the _____ [City or County] or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the _____ [City or County].
- T. Service lines.
- U. Shopping malls.
- V. Sports arenas, including enclosed places in outdoor arenas.
- W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 1005. Prohibition of Smoking in Places of Employment

- A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 1006. Prohibition of Smoking in Seating Areas at Outdoor Events

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

Sec. 1007. Reasonable Distance

Smoking is prohibited within a reasonable distance of _____ [*recommended 10-20*] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

- B. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- C. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

Sec. 1011. Nonretaliation; Nonwaiver of Rights

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 1012. Enforcement

- A. This Article shall be enforced by the _____ [Department of Health *or* City Manager *or* County Administrator] or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the _____ [City *or* County] of _____.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the _____ [Department of Health *or* City Manager *or* County Administrator].
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the _____ [Department of Health *or* City Manager *or* County Administrator] or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may

Sec. 1015. Governmental Agency Cooperation

The _____ [City Manager *or* County Administrator] shall annually request other governmental and educational agencies having facilities within the _____ [City *or* County] to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, _____ [County *or* City], and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 1016. Other Applicable Laws

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 1017. Liberal Construction

This Article shall be liberally construed so as to further its purposes.

Sec. 1018. Severability

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Sec. 1019. Effective Date

This Article shall be effective thirty (30) days from and after the date of its adoption.

[MO-04]

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Provisions Of Smokefree Air Laws

 [PDF Format](#)

May 2005

"Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.... Simple separation of smokers and nonsmokers in the same airspace may reduce, but does not eliminate, exposure of nonsmokers to environmental tobacco smoke."

***The Health Consequences of Involuntary Smoking
(The 1986 Surgeon General's Report on Smoking)***

HEALTH HAZARDS OF SECONDHAND SMOKE

There is now a broad consensus in the medical and scientific communities that exposure to secondhand smoke, sometimes referred to as environmental tobacco smoke (ETS), causes death and disease in nonsmokers. Although the first reports of the health hazards of secondhand smoke date back to the early 1980's, the first comprehensive report on the matter was the 1986 Surgeon General's Report on the Health Consequences of Involuntary Smoking, which concluded that:

1. **Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.**
2. **The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.**
3. **The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke.¹**

Since the 1986 report, the evidence has continued to mount that secondhand smoke is a major public health problem. In 1993, the federal Environmental Protection Agency (EPA) classified tobacco smoke as a Group A carcinogen, and found that secondhand smoke increases the risk of lung cancer in healthy nonsmokers.² Many other large-scale studies support the EPA's conclusions. One of these, published by the California Environmental Protection Agency in 1997, concluded that there are "developmental, respiratory, carcinogenic and cardiovascular effects for which there is sufficient evidence of a causal relationship [with exposure to ETS], including fatal outcomes such as sudden infant death syndrome and heart disease mortality, as well as serious chronic diseases such as childhood asthma."³ The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of as many as 65,000 Americans annually.⁴ And, in 2000, the Public Health Service's National Toxicology Program (NTP) listed secondhand smoke as a known carcinogen.⁵

CREATING SMOKEFREE ENVIRONMENTS

As a result of the mounting evidence of the dangers of secondhand smoke and rising pressure from nonsmokers, there has been a dramatic increase in the creation of smokefree environments in places of employment (or workplaces), restaurants, bars, and other public places over the last two decades. Smokefree environments are generally established either through legislation or voluntary policies. They are also sometimes mandated by administrative or court decrees based on federal civil rights laws.

Laws prohibiting smoking in workplaces and public places may be passed by state legislatures, but more often are enacted by local city and county governing bodies, where the influence of the tobacco industry is not as strong as it is at the state level. In addition, in some states local boards of health have the authority to enact regulations restricting smoking. (Whenever the term "ordinance" is used herein, it should be read to include the term "regulation," as well as other forms of local laws, such as resolutions and policies.) There are more than 1900 local smokefree air ordinances and regulations in the United States.⁶ The first ordinances, passed in the early 1980's, were usually weak and covered a limited number of environments. However, because of their success and the increased demand for smokefree air, more recent ordinances, beginning with those passed in California in the early 1990's, have tended to be much stronger and many municipalities now prohibit smoking completely in workplaces, public places, restaurants, and bars. Nationwide, 372 municipalities now have a 100% smokefree air law in effect for workplaces, and/or restaurants, and/or bars.⁷

Moreover, eleven states - California, Connecticut, Delaware, Florida, Idaho, Maine, Massachusetts, New York, Rhode Island, South Dakota, and Utah - have 100% smokefree air laws for one or more of those venues. Altogether, 4842 municipalities are covered by such a 100% smokefree law.⁸

Numerous private employers, restaurant owners, and others have adopted voluntary smokefree policies for various economic, legal, and health reasons. Although some voluntary policies are quite beneficial, they should not be relied on as an exclusive remedy for reducing exposure to secondhand smoke. In most places, the number of people protected by voluntary policies is miniscule compared to those who are not so protected. Moreover, unlike legislation that mandates smokefree air, voluntary policies exist at the pleasure of the employer or business owner and can easily be abandoned.

Federal civil rights laws, including the 1990 Americans with Disabilities Act and the Rehabilitation Act of 1973, have been used by individuals with documented heart or breathing impairments to secure smokefree workplaces and public accommodations. However, taking advantage of these statutes involves filing an administrative complaint and oftentimes a lawsuit. Furthermore, such legal battles must be won on a case-by-case basis and are, therefore, not a substitute for enactment of an effective local smokefree air law that protects everyone.

AREAS COVERED BY SMOKEFREE LAWS

Laws protecting nonsmokers are usually divided into three areas of coverage: enclosed workplaces, restaurants and bars (hospitality venues), and other public places. A "comprehensive" smokefree air ordinance is one that prohibits smoking in all workplaces, restaurants, and bars, but such a comprehensive law will invariably apply to other public places as well. A growing number of local laws also limit smoking outdoors, such as within a certain distance of entrances and exits to buildings where smoking is not allowed and in arenas and stadiums.

Places of Employment (Workplaces)

A nonsmoker who is employed is most in danger of exposure to secondhand smoke at work, where he or she spends eight hours a day or more. While people do not have to go to most public places, they do have to go to work, and no one should have to choose between their life and their livelihood. Thus, restricting smoking in the workplace is the most important element of any smokefree law. In some early ordinances, only local government offices were covered, but most recent ordinances cover both public and private workplaces, and an increasing number prohibit smoking throughout the workplace. There are 278 municipalities with a local law in effect requiring 100% smokefree workplaces.⁹

Restaurants and Attached Bars

Although restaurants and attached bars (including bar areas) serve as both workplaces and public places, they tend to be treated separately in most ordinances, because regulating smoking in those places is almost always a contentious issue and often requires special treatment.

Most older ordinances merely mandated that restaurants contain a minimum nonsmoking section, usually between 40% and 60%. However, the debate now focuses on restaurants as workplaces, and most recent ordinances require restaurants to be 100% smokefree. The move to completely eliminate smoking in restaurants began in the mid-1980s, and accelerated in the 1990's with the release of the EPA's classification of ETS as a Group A carcinogen. In 1993, a study concluded that secondhand smoke levels in restaurants are 1.6 to 2 times higher than those found in office workplaces and 1.5 times higher than in residences with at least one smoker.¹⁰ A report released that year by an Attorneys General Working Group on Tobacco, recommending that fast food restaurants go smokefree, has provided additional impetus toward smokefree restaurants.¹¹

The regulation of smoking in attached bars is relatively new, but the same health considerations for restaurant workers are equally applicable to bar workers. Indeed, the 1993 study on secondhand smoke levels in restaurants also concluded that levels in bars are 3.9 to 6.1 times higher than in offices and 4.4 to 4.5 times higher than in residences.¹² It is now fairly common for smoking to be prohibited in attached bars. There are 294 municipalities with a local law in effect requiring 100% smokefree restaurants, including attached bars.¹³ In some cases, smoking is permitted in attached bars only under the condition that the bar area be fully enclosed and separately ventilated from the dining areas of the restaurant, but as discussed below, this is not a desirable option.

Freestanding Bars

Even though, as noted above, bar workers' exposure to secondhand smoke is four to six times higher than that of other workers, for many years policymakers were reluctant to restrict smoking in freestanding bars and taverns. Bars have often been considered to be the last refuge for smokers, who argue that smoking and drinking go hand in hand and that they should be allowed to smoke in that one venue even if smoking is prohibited in every other enclosed public place. The same hospitality industry that opposes 100% smokefree restaurants also lobbies hard to defeat any smoking restrictions in bars. Nevertheless, although regulation of smoking in freestanding bars is one of the most contentious issues involved in enacting a smokefree ordinance, communities are recognizing that employees and patrons in bars have the same right to be

protected from secondhand smoke as do people in other venues, and there is a growing trend toward making freestanding bars 100% smokefree. There are 174 municipalities with a local law in effect requiring 100% smokefree bars.¹⁴ If your community decides that it must exempt bars from its ordinance, please contact ANR for advice on the appropriate exemption language.

Public Places

The most common provision in smokefree air laws is one restricting smoking in "enclosed public places." This is a broad term, which is generally defined to include buildings and facilities open to the public, such as retail stores and other businesses, theatres, museums, sports arenas, public transit facilities, health care facilities, etc. Many ordinances now also cover the common-use areas of multi-unit residential buildings (e.g., lobbies, stairways, hallways, laundry rooms) and day care centers, including those in private homes. While restaurants and bars are also enclosed public places, they are often treated in separate provisions (see above). However, some newer ordinances, which require restaurants and bars to be 100% smokefree, include them in the definition of public place.

Earlier ordinances sometimes provided for smoking and nonsmoking sections in public places, but almost all ordinances now prohibit smoking altogether. Freestanding bars, as opposed to bars attached to restaurants, are often exempted from the provisions covering public places, as are some other locations such as tobacco stores and rooms in hotels or restaurants that are rented for private functions.

SECTIONS OF A SMOKEFREE ORDINANCE

In general, a smokefree ordinance should be as clear and brief as possible. The provisions should be readily understandable to laypersons and should not include any unnecessary technical legal jargon. The clearer the rules are, the easier an ordinance is to implement and enforce. (Please refer to [ANR's Model Smokefree Air Ordinance](#).)

Title

The most acceptable title to an ordinance is the one that explains its objectives: "The _____ [name of City or County] Smokefree Air Act of ____ [year]."

Findings and Intent

The findings should fully set forth the medical evidence regarding the health hazards of secondhand smoke. This evidence is the legal foundation upon which the legislating body relies for its authority to pass the law. The intent of the ordinance is twofold: To protect the public health and welfare and to guarantee the right of nonsmokers to breathe smokefree air.

Definitions

Key terms used in the ordinance should be precisely defined. The definitions serve not only to prevent differing interpretations from being placed on such terms as "employer" or "enclosed area," but also to indicate the extent of coverage of the ordinance, such as by listing what constitutes a "place of employment" or a "public place." It is particularly important to define the term "restaurant" to include bar areas, or attached bars, within the restaurant. However, terms that have an obvious and narrow meaning need not be defined.

Application of Ordinance to Government Facilities

The ordinance should expressly state that it applies to municipal facilities.

Prohibition of Smoking in Enclosed Public Places

Smoking should be prohibited in all "enclosed public places," such as health care facilities, retail stores, public transit facilities, sports arenas, museums, service lines, common-use areas of multi-unit residential buildings, and day care centers. Although the term "public place" is defined in the definitions section, for purposes of clarity this section should list all of the places to be covered by the smoking prohibition. However, it should also include language stating that the list "includes, but is not limited to" the listed areas, which will insure that the provision will be interpreted to include all public places, as that term is defined, even if particular places are not listed.

Prohibition of Smoking in Restaurants and Bars

Smoking should be prohibited in all restaurants, which should be defined to include any bar facilities within a restaurant, and freestanding bars. This can be accomplished either by stating the prohibition in a separate section or by simply defining "public place" to include restaurants and bars and then listing them among the enclosed public places in which smoking is prohibited, as discussed above.

Prohibition of Smoking in Places of Employment

Smoking should be prohibited in all enclosed places of employment without exception. This provision should apply to all public and private places of employment, regardless of the number of employees. This is done by defining "employer" to include a municipal corporation and to mean any entity that employs the services of one or more individual persons. The ordinance should also require that the smoking prohibition be communicated to all current and prospective employees.

Prohibition of Smoking in Outdoor Arenas and Stadiums

Smoking should be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheatres.

Reasonable Distance

Smoking should be prohibited within a reasonable distance (10-25 feet) outside all enclosed areas where smoking is prohibited. This provision will ensure that smoke does not enter those areas through entrances, windows, ventilation systems, or other means. It will also protect people entering or leaving buildings from having to walk through a wall of smoke.

Where Smoking Not Regulated

Exceptions to smokefree ordinances should be kept to a minimum. Typical exceptions include private residences, retail tobacco stores, a percentage of hotel and motel rooms rented to guests, and private and semiprivate rooms in nursing homes.

Declaration of Establishment as Nonsmoking

This provision insures that any business owner may declare his or her establishment to be a nonsmoking area, regardless of whether it is covered by the ordinance. For example, a bar owner could make the bar smokefree even though bars are exempt from regulation.

Posting of Signs and Removing Ashtrays

Requiring the posting of "No Smoking" signs and the removal of ashtrays from areas where smoking is prohibited enhances compliance with smokefree ordinances. Most smokers will willingly refrain from smoking when "No Smoking" signs are prominently displayed and ashtrays are removed, thus minimizing the need for active enforcement.

Nonretaliation; Nonwaiver of Rights

A nonretaliation clause protects nonsmokers from retaliation by employers for exercising the right to a smokefree environment. The nonsmoking employee is protected from discharge, refusal to hire, or other retaliation. A nonwaiver of rights clause protects an employee who is required to work where smoking is allowed from waiving any legal rights he or she might have against the employer for damages suffered as a result of exposure to secondhand smoke.

Enforcement

Enforcement is best accomplished by the City Manager or local Health Department. It is not recommended that enforcement responsibility be placed with the police, because this may lead people to believe that resources are being diverted from other law enforcement priorities. The enforcing agency should be permitted to name designees to carry out its enforcement responsibilities. Citizens should be given the right to register a complaint and initiate enforcement procedures.

Violations and Penalties

This provision should impose penalties on both people who smoke in an area where smoking is prohibited and employers and business owners who fail to comply with the ordinance, such as by permitting smoking where it is prohibited or by not posting the required "No Smoking" signs.

Violations should be civil rather than criminal; most ordinances classify violations as an infraction. The criminal justice system is already overburdened, and violations of smokefree ordinances are usually not a high priority with law enforcement officials or the courts.

The ordinance should establish a graduated fine structure, which increases with multiple violations. It should also specify that each day a violation occurs is a separate and distinct violation. Although seldom invoked, fines provide enforcing agencies with a "stick" to achieve compliance.

Public Education

The purpose of this provision is to insure that the general public understands the purposes and scope of the ordinance. When people understand the health hazards of secondhand smoke and know just where smoking is prohibited, voluntary compliance with the law will be heightened.

Governmental Agency Cooperation

This provision will make it more likely that other governmental entities, even though not within the jurisdiction of the municipality enacting the ordinance, will nevertheless voluntarily extend the smoking prohibitions of the ordinance to their facilities.

Other Applicable Laws

This provision is designed to make it clear that even if certain places are not covered by the ordinance, smoking may nevertheless be prohibited in those places by other laws.

Liberal Construction

This is a standard clause that is used to direct the courts to interpret the law in such a way that the purpose of the law, to protect people from the health hazards of secondhand smoke, will be furthered. In effect, the clause requires the courts to resolve any ambiguities in the law in favor of that purpose.

Severability

This is a standard clause that preserves all other provisions of the ordinance even if one or more provisions are found to be invalid by a court.

Effective Date

An ordinance will usually go into effect 30 days after enactment, but sometimes that time frame is extended to allow for adjustment to the new rules. It is reasonable to provide for some flexibility in this regard, but delays in implementation beyond 90 days should be avoided.

SPECIAL CONSIDERATIONS

In most cases, when a comprehensive smokefree ordinance is proposed, one or two aspects become controversial even though the bulk of the ordinance draws little opposition. The following are areas that may generate debate:

100% Smokefree vs. Smoking and Nonsmoking Sections

Early ordinances often provided for separate smoking and nonsmoking sections in some locations, such as certain public places, restaurants, and even workplaces. However, we have known for many years that separate sections do not adequately protect nonsmokers. The U.S. Surgeon General determined in 1986 that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke.¹⁵ As long as smoking and nonsmoking sections share the same ventilation system, the toxic components of secondhand smoke circulate throughout the building. Thus, sound public policy dictates that smoking should be prohibited in all enclosed places of employment, restaurants, and public places. Smokefree ordinances are clearer and simpler to enforce than those permitting smoking sections, which require negotiation between smokers and nonsmokers over the use of common air space. See below for a discussion of ventilation as an inadequate means of eliminating secondhand smoke from a nonsmoking section.

Ironically, the tobacco industry, which vigorously opposed smoking and nonsmoking sections in the 1970's and 1980's, now advocates separate sections in restaurants and other hospitality venues. However, although separate sections may reduce nonsmoking restaurant patrons' perception of their exposure to secondhand smoke, they do not eliminate that exposure or the harmful effects emanating from it. In addition, separate sections provide no protection for restaurant employees who are forced to work in the smoking section. These employees are usually not covered under the workplace provisions of an ordinance and thus they need to be specifically covered under the restaurant provisions. The tobacco industry has put together an array of supporters in the hospitality industry who do its bidding by opposing 100% smokefree ordinances on the spurious ground that they will lose business if such an ordinance is enacted.

Bowling Alleys and Bingo Parlors

Prohibiting smoking in places such as bowling centers and bingo parlors may be contentious, primarily because they are places of entertainment and the business community argues that people will not go there if they can't smoke. But smoking should be completely eliminated in these and other venues for all the usual reasons; the health hazards of secondhand smoke are just as serious in one place as another. Furthermore, the perception that smokers will stop going to these facilities has repeatedly been refuted by the experience of municipalities that have eliminated smoking in them.

Casinos and Other Gambling Venues

The recent proliferation of casinos and other gambling venues has given rise to a new battleground over secondhand smoke. Generally speaking, the same hospitality industry that forms the opposition to smokefree restaurant and bar laws has spearheaded the effort to defeat smoking regulations in casinos, and it is using all the same discredited arguments. This issue has arisen primarily at the state level and one state, Delaware, has successfully made its casinos smokefree. California law also provides for smokefree card rooms, but the many casinos on tribal land are beyond the jurisdiction of the state. Any community that does have a casino or other gambling venue within its jurisdiction should include it within the coverage of a smokefree law.

Private Clubs

Some ordinances exempt private clubs from the smoking prohibitions, but this is not recommended. In places where this has been done, some restaurants and bars have tried to establish themselves as private clubs in order to avoid compliance with the law. For example, they may charge a nominal fee to customers so that they can claim to be membership organizations. Private club exemptions often become a mechanism for the hospitality industry to undermine or roll back smokefree laws.

Ventilation

Ventilation is often touted as a means of removing secondhand smoke from enclosed areas. However, ventilation systems cannot remove many of the harmful constituents of secondhand smoke. The

Environmental Protection Agency recognizes no safe level of exposure to Group A carcinogens and has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation.¹⁶

Current ventilation standards for tobacco smoke developed by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) are based on a presumption of a smokefree environment, because ASHRAE acknowledges the overwhelming body of evidence pointing to the fact that cognizant health authorities have not determined a safe level of exposure to secondhand smoke.¹⁷

In spite of this, the tobacco industry and its allies attempt to convince business owners and policymakers to believe the myth that improved ventilation is a suitable substitute for smokefree air laws. However, ventilation only addresses the odor of secondhand smoke, and even the tobacco companies acknowledge that it cannot purport to address the health issues relating to secondhand smoke.¹⁸ Thus, legislation that relies on ventilation to protect people from the health hazards of secondhand smoke does nothing to protect the public health, and gives building owners and occupants the false impression that there is no health risk when the risk is still present.

Some ordinances allow smoking in separately ventilated rooms in workplaces and in separately ventilated attached bars. The biggest problem with respect to these exceptions to a 100% smokefree law is that the people who clean the separately ventilated rooms at workplaces and the employees who work in separately ventilated attached bars are exposed to inordinately high levels of secondhand smoke. Moreover, ventilation is never fully effective in preventing smoke from penetrating to the nonsmoking areas of the workplace or restaurant.

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Common Mistakes in Drafting Smokefree Indoor Air Ordinances

 PDF Format

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1. *Defining a term without using it in the substantive provisions of the ordinance.* Examples of this include the terms "bar" and "place of employment." Defining such terms without actually using them creates confusion as to what the ordinance really covers. Thus, if you define "bar" and the ordinance makes public places smokefree, without mentioning bars, there will be uncertainty as to whether the ordinance makes bars smokefree.
2. *Using ambiguous or contradictory language.* This leads to enforcement problems and makes it more likely that the ordinance can 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.
3. *Amending an ordinance without carrying forward all the provisions from the old ordinance that are meant to be kept in the new ordinance.* An example of this problem is strengthening an ordinance to make workplaces and public places 100% smokefree, but failing to include coverage of workplaces in the operative provisions of the new ordinance.
4. *Providing for separately ventilated smoking rooms.* There is no safe level of exposure to secondhand smoke, and there is no known ventilation system that will prevent secondhand smoke from permeating nonsmoking areas and adversely affecting people in those areas. Moreover, separately ventilated smoking rooms offer no protection for employees who work in those rooms and may even exacerbate their situation by concentrating all the smoking into one place. Even if no employee is required to work in a separately ventilated smoking room, the people who clean the room will be exposed to the secondhand smoke. Further, allowing ventilation systems makes it difficult to strengthen the law in the future, because places that have installed them will complain that their investment in the systems will have been lost if the law is changed.
5. *Exempting factories, warehouses, etc. from the workplace smoking restrictions.* All employees, not just those who work in an office or in a business open to the public, should be protected from the health hazards of secondhand smoke. There is no safe level of exposure to secondhand smoke, so the argument that, because of their large size, factories and warehouses should be exempt from the law is not valid. Nor should there be any distinction in protecting people from secondhand smoke between blue-collar and white-collar workers.
6. *Allowing smoking in private offices in the workplace.* Because most buildings have shared ventilation systems, smoke from a private office can travel throughout the building, exposing everyone in the building to the health hazards of secondhand smoke. Further, nonsmokers who must enter the private offices for business purposes will also be exposed to secondhand smoke.
7. *Allowing smoking in the workplace if all persons are smokers or consent to smoking.* This kind of provision is unacceptable because it creates a situation in which peer pressure, rather than an enforceable law, is the determining factor as to whether smoking is allowed. A nonsmoker who is outnumbered by smokers in a small office, or whose supervisor smokes, may believe that he will be subject to harassment, or even termination, if he complains about others' smoking. Even some smokers may prefer to have a smokefree office, but would feel the pressure from fellow smokers to allow smoking in the office. Further, once an office develops a "smoking allowed" policy, it will be difficult for a nonsmoker to be hired without agreeing to that policy.
8. *Allowing smoking in common work areas or offices as long as nonsmokers are not present.* This is a corollary to the above provision and is unacceptable for the same reasons. Again, such a provision puts peer pressure on nonsmokers either not to work in the same areas as smokers or to declare that they don't mind the smoking. Further, because smoke lingers in places for as long as two weeks, allowing smoking in a work area or office during certain times will result in exposure to secondhand smoke by employees who enter those areas or offices during other times.
9. *Giving nonsmokers preference in workplace disputes only if that does not interfere with normal business operations.* This provision gives employers a free pass to say that any rule limiting smoking in a particular area of the workplace will interfere with business operations and, therefore, is not feasible.

To the extent that smoking is permitted in any workplace, nonsmokers should be provided every opportunity to avoid being exposed to secondhand smoke, and that should not be dependent on any perceived problems with business operations.

10. *Providing that employees may not be required to work in a smoking room or area without signing a consent form.* This kind of provision, usually used in connection with restaurants and bars that allow smoking in separate rooms or areas, puts undue pressure on employees, particularly new employees, to either agree to endanger their health or risk losing their jobs. If a smoking room or area is created and service must be provided there, then some employee or employees will have to work there, and the employer will expect that one or more employees will volunteer for the job. If nobody volunteers, the employer will necessarily have to replace one or more employees with people who are willing to risk their health to get a job. Also, consent forms are a means for employers to evade their liability for work-related health hazards.
11. *Providing that restaurants, bars, or other places can comply with the law by simply posting their smoking policy.* Such a provision (generally referred to as a "Red Light/Green Light" policy) does not result in any protection for nonsmokers, but merely gives the impression that something has been done to solve the problem, thus encouraging lawmakers to claim that no further legislation is necessary. Moreover, even if customers can choose between smoking and nonsmoking establishments, employees cannot.
12. *Allowing restaurants to choose to be bars and, thus, be exempt from the smoking restrictions.* This is sometimes done in one of two ways: a) providing that restaurants may be bars during certain hours of operation, or b) providing that restaurants may choose to be bars during any particular licensing period, usually one year. Such provisions allow places that are, in reality, restaurants to skirt the intent of the law. They also cause confusion among the public as to what smoking restrictions are applicable in a given restaurant and add to enforcement problems.
13. *Establishing separate rules for restaurants and bars, based on the date that they obtained their operating permit.* By grandfathering in establishments that already have a permit as of a particular date, this provision locks in a two-tier system of smoking regulations. It is unfair to both employees and customers of older establishments not to allow them to benefit from the same smokefree air enjoyed in newer establishments. Since there is no real cost for a restaurant or bar to go smokefree, there is no legitimate economic argument for permitting older establishments to avoid the smoking regulations.
14. *Restricting smoking in specified places only during certain hours of operation.* Such provisions are generally found with respect to restaurants and bowling alleys, usually in an attempt to make a distinction in the law with respect to when minors are present. First, smokefree laws are meant to protect employees as well as members of the general public, and allowing smoking at any part of the day will expose employees to secondhand smoke. Second, smokefree laws are important for everyone, not just minors. Third, because smoke lingers in places for as long as two weeks, allowing smoking in a restaurant or bowling alley at night, but not in the morning, will result in exposure to secondhand smoke by both the morning and evening workers and customers. Lastly, these provisions create confusion and are very difficult to enforce.
15. *Providing that smoking is permissible so long as minors are not allowed on the premises.* Smokefree laws are meant to protect employees as well as members of the general public, and allowing smoking when minors are not present does not fulfill that objective. Moreover, smokefree laws are important for everyone, not just minors. Adult customers of businesses deserve to be protected from the health hazards of secondhand smoke as much as children. And, as is true with #14 above, these provisions create confusion and are very difficult to enforce.
16. *Allowing restaurants or other places to permit smoking on the premises upon payment of a licensing or other fee.* Such an arrangement is nothing more than granting an establishment a license to pollute and 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 to pay a pollution fee.
17. *Giving tax incentives for businesses that ban smoking.* This is the converse of the rule that an ordinance should not permit smoking on the premises upon payment of a licensing or other fee, and is equally wrong. First, such a provision does not actually require businesses to prevent smoking on their premises. In this respect, it is like a "Red Light/Green Light" provision (see #11 above). Tax incentives merely reward businesses for doing something that they should be required to do in any case - protecting the health of their employees and customers. It would be like giving tax incentives for restaurants that have clean kitchens. Further, such a provision does not result in any protection for nonsmokers, but merely gives the impression that something has been done to solve the problem, thus encouraging lawmakers to claim that no further legislation is necessary. 100% smokefree laws are meant to protect all employees and customers, not merely those in businesses that can't afford to forego a monetary incentive.
18. *Granting exemptions for particular places, which are inconsistent with the objectives of the ordinance.* Smokefree ordinances are intended to protect employees and customers of all businesses, not just some. Although there are some standard exemptions to ordinances that are consistent with this

objective (such as private residences and retail tobacco stores), exemptions that try to single out specific businesses are not. Examples of this include truck stops, bowling alleys, and bingo halls.

19. *Including overly long phase-in provisions.* Except under unusual circumstances, ordinances normally become effective sometime within 30-90 days of enactment. Smokefree ordinances typically provide for some phase-in period so that the employers and businesses subject to the law can prepare for its implementation and so that the authorities can adequately prepare for enforcement procedures. But, at the behest of restaurant and bar owners, ordinances sometimes provide for overly long phase-in periods, even for as long as two or three years. Such a long period serves no purpose other than to postpone implementation of the law as long as possible or even to allow for the possible repeal of the law before it goes into effect. Restaurants and bars can fully prepare for a smokefree law by simply putting up a few signs and removing their ashtrays. If the sense of the community is that restaurants and bars should be smokefree, then there is no reason to postpone that from happening.
20. *Including a so-called "sunset provision," allowing the ordinance to expire as of a certain date.* This kind of provision carries with it the inference that there is some reason to doubt the validity of the law and puts the burden on the public health community not only to prove that the law is working successfully after a specified period, but also to work for its renewal. A law that is enacted to protect the public health should be permanent and not subject to political pressures to let it expire.

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Determining Your Dealbreakers

 [PDF Format](#)

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Why smokefree workplaces? Everyone deserves the right to breathe smokefree air. The purpose of passing a smokefree law is to fully protect employees, residents, and visitors from dangerous exposure to secondhand smoke in enclosed workplaces and public places. When drafting and debating the language of a proposed law, keep this purpose in mind. Your lawmakers may attempt to weaken the bill. Pay close attention to the text of any proposed amendments to prevent unwanted changes that defeat the purpose of fully eliminating secondhand smoke exposure.

Your coalition should consider all potential amendments, provisions, and exemptions to determine what you will accept and what provisions will cause you to walk away. The following commonly proposed provisions and exemptions should be looked at closely. Some provisions are absolute dealbreakers and should be avoided at all costs. Others deserve careful consideration before agreeing on a compromise. Discuss all potential provisions during the initial stages of your campaign, agree where you will draw the line, and document your decisions in writing.

Be prepared to walk away. While it may be appropriate to take an incremental approach when enacting smokefree legislation (such as passing a smokefree restaurant law now, and adding freestanding bars at a later date), never support a law that includes exemptions or loopholes that make it more difficult to strengthen the law in the future. For example, if a law includes a provision allowing a ventilated smoking room, it will become extremely difficult to remove that provision and pass an effective law later. **It is always better to walk away from a bad law, than to be stuck with it and, therefore, be prevented from passing an effective law later. In such cases, nothing is better than something.**

Determine your dealbreakers. Review the language of the proposed law closely and determine where you will draw the line. The following provisions should always be considered *dealbreakers*. These provisions are unacceptable and should be actively opposed, as they create unnecessary exemptions and loopholes that both allow unwarranted exposure to secondhand smoke and impede progress toward comprehensive smokefree protections.

For a comprehensive summary of troubling policy provisions and lessons learned, please consult ***Fundamentals of Smokefree Workplaces Laws***, which is on the ANR website at http://www.no-smoke.org/pdf/CIA_Fundamentals.pdf or can be obtained by contacting ANR at 510-841-3032.

Absolute Dealbreakers:

Ventilation systems and/or Smoking Rooms are ineffective and costly. Ventilation cannot remove the harmful constituents of secondhand smoke and smoking rooms put employees who work in them at risk. See ANR's *Ventilation* page for more information, at <http://www.no-smoke.org/getthefacts.php?dp=d20>.

Hardship Provisions allow for exemptions if a business can demonstrate economic hardship after going smokefree. These exemptions are unnecessary and are based on the false premise that a negative economic impact results from smokefree air laws.

Signage or "Red Light/Green Light" Provisions allow businesses to simply post signs indicating that an area allows smoking. These do nothing to protect employees and patrons in those areas.

Grandfather Provisions exempt certain existing businesses from the smokefree regulations, which is unfair to both employees and patrons. There is no legitimate economic argument for permitting older establishments to avoid a health regulation.

Consent Provisions allow smoking if all employees in a business consent. Employees are then pressured into "consenting" to work in smoke-filled areas either voluntarily or contractually (by signing a contract as a condition of employment). Employees should never be put in a position where they must choose between jeopardizing their health or their job.

Hours Provisions restrict smoking only during certain hours of operation. These provisions are not only ineffective, but create confusion and are difficult to enforce.

Minors Only Provisions allow smoking if minors are not allowed on the premises. These provisions do not protect employees or patrons. Smokefree laws are important for everyone, not just minors.

Licensing Fees allow businesses to permit smoking on the premises upon payment of a licensing or other fee. This arrangement is completely ineffective and does not protect the public health.

Tax Incentives for smokefree businesses merely reward businesses for doing something that they should be required to do in any case - providing a safe and healthy workplace for their employees and customers.

Long Phase-in Provisions delay health protections. Laws typically become effective within 30-90 days of enactment, which allows ample time to inform business owners and residents of their responsibilities. Longer periods simply allow time for possible weakening or repeal of the law.

Additional Problematic Provisions to Discuss:

Bar, Bowling Alley, and Bingo Parlor Exemptions

Prohibiting smoking in places such as bars, bowling centers, and bingo parlors may be contentious. But smoking should be completely eliminated in these and other venues for all the usual reasons; the health hazards of secondhand smoke are dangerously high in these establishments. For more information, please see Smoking and Bars: www.no-smoke.org/pdf/smokingandbars.pdf, Bowling Center and Association Quotes: www.no-smoke.org/document.php?id=266, and Glantz Bingo Study: www.no-smoke.org/getthefacts.php?id=36.

Casinos and Other Gambling Venue Exemptions

Casino or other gambling venues are workplaces and should be included within the coverage of a smokefree law. See ANR's *Casinos and Gambling* page for more information: www.no-smoke.org/goingsmokefree.php?id=104.

Private Club Exemptions

This exemption is not recommended. Restaurants and bars may try to establish themselves as private clubs in order to avoid compliance with the law. If private clubs are exempted, the definition of a private club must be clear, and include only not-for-profit clubs with no paid employees. Also, the exemption should not apply when a club is open to the public.

Contact ANR at (510) 841-3032 for additional information, including provisions not listed here.

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